On the Reform of Hungarian Insurance Contract Law

Péter Takáts

1 Generalities

In Hungary, insurance contract law has traditionally been regulated by the Civil Code. Earlier, the rules were provided by Chapter XLV of the Law Nr. IV of 1959 (hereinafter referred to as "1959 CC") – sections 536 to 567 – on the contract of insurance. The recent reform of insurance contract law also took place in the frames of the re-codification of the Civil Code. The respective regulation now is to be found in Book Six – on the Law of Obligations – of the *Law Nr. V of 2013*, the new Civil Code (hereinafter referred to as "CC"), in *Title XXII* on the contracts of insurance (sections 6:439 to 6:490). This Title is constituted by the following structure:

Chapter LXII – The general rules of the contract of insurance
Chapter LXIII – Indemnity insurance
Chapter LXIV – Insurances of fixed sums
Chapter LXV – Health insurance

It is necessary to note, however, that Title XXII of the CC provides *only the main body* of insurance contract rules. *Mandatory third-party motor liability insurance* – a quite important part of the insurance market[1] - is regulated *separately* by the Law Nr. LXII of 2009 (hereinafter referred to as "Gfbt"), in many aspects built on *different principles* than the CC,[2] whereas some rules of private law nature (e.g. the details of information duties of the insurer and the common rules of mandatory insurance contracts) may also be found in the *supervisory law* – now the Law Nr. LXXXVIII of 2014 on the insurers and the insurance business (hereinafter referred to as "Bit").[3]

This study cannot strive to provide either a systematical overview of Hungarian insurance contract law, or even of the new rules, introduced throughout the reform. Its target is rather to throw light on the social and economic background, as well, as the main principles, underlying the reform, to highlight the balance, sought between dogmatics and pragmatical solutions. Some of the main new rules are used as examples to demonstrate these. The author (the drafter of Title XXII of CC) would also like to comment on the first experiences in the practice of the new legislation.

1 There were 4,861,426 motor liability insurance contracts in Hungary in 2016, representing 50% of all non-life insurance contracts: *cf.* www.mabisz.hu/en/market-reports" - Hungarian Insurance Companies' Yearbook 2017, p. 13.

2 The incongruency may perhaps be explained by the different government bodies in charge of the particular legislations: whereas the CC was drafted under the auspices of the Ministry of Justice, the Gfbt was prepared by the Ministry of Finances, where the lobby of insurance companies may have had a greater influence. It is, however, to be noted that the interim results of the re-codification of the CC were available already to the drafters of the MTPL law, too, hence its main principles could well have been taken into account.

3 For the information duties of the insurer *Cf.* sections 152 to 157, further Appendix 4 of Bit, the common rules of mandatory insurances are summarized in section 129 Bit.

2 Backstage

Chapter XLV of the 1959 CC reflected an age characterised by the insurance monopoly of the state in a command economy, where insurance was nearly exclusively a consumer issue (the word "consumer" being certainly an euphemism). Since 1 May 1960, when the 1959 CC entered into force, lots of changes have taken place in this field in Hungary. Starting with the early seventies of the past century, insurance has spread from personal lines also to the corporate area already during the socialism, further to bodies of government and organisations budgeted by the state, too, in the nineties. The insurance monopoly of the state was lifted on 1 July 1986 and – due mostly to the multi-national insurance companies, getting settled in Hungary – after the change in the political system a modern insurance market was established.[4] Independent insurance intermediaries play an increasing role in connecting the competing insurance undertakings and the market. Lately, insurance may also be seen to have become an important means in catalysing savings, as well, as in the self-care for old age or health problems.

Hungary joined the European Union on 1 May 2004. Prior to this date, Hungarian law underwent a harmonisation to the *acquis communautaire* in all the relevant fields, of which it may suffice to mention supervisory law and consumer protection legislation. Certainly, the respective developments also affected the area of insurance contract law. However, Chapter XLV of the 1959 CC remained unchanged, new rules were either inserted into the supervisory law or issued as separate legislation. As a result, the regulation lost its transparency, it was not sure whether the new general rules would be applicable to insurance contracts at all,[5] or failing to comply with rules of contractual nature, placed into supervisory law could lead to private law sanctions.[6] It was easy to recognise that many rules of Chapter XLV of the 1959 CC represented different values and to solve such conflicts required the reconsideration of insurance contract law.

The Hungarian government passed its decision on the preparation of the new Civil Code in its Resolution Nr. 1050/1998. (IV.24.) Korm. The concept of the new legislation, prepared by the Codification Committee, chaired by *Professor Lajos Vékás*, was approved by the Resolution Nr. 1003/2003. (I.25.) Korm.[7] The

4 Currently there are 24 insurance companies and 19 mutual insurance associations, registered in Hungary, further 17 branch offices of insurance companies of other EU Member States, doing business in the country: *Cf.* "www.mabisz.hu/en/market-reports"- Hungarian Insurance Companies' Yearbook 2017, p. 8

5 Insurance contracts are contracts based on general conditions of contract. However, as the modern rules relating to the conclusion and interpretation of such contracts were inserted into the general part of the law of obligations of the 1959 CC without any express reference as to their applicability to insurance contracts, as there were some special rules in Chapter XLV on the conclusion of the contract, the practice of insurers avoided the use of the former, based on the principle of *lex specialis derogat legi generali*.

6 In the lack of a reference to any private law consequences, the failure of the insurer to comply with its information duties had no impact on the insurance contract, as the respective rules were regulated in the frames of the supervisory law.

7 Published in the official gazette *Magyar Közlöny* Nr. 8/2003 (to the topic of insurance contracts see pp. 104-106). Cf. also the preparatory study by Zavodnyik, József: *Tézisek a*

first draft of the new rules of insurance contract was published for discussion in the spring of 2005, as a result of which the text was amended in several places until finally approved by the Committee on 28 November 2006. Afterwards, the project was taken over by the Ministry of Justice, its draft, passed by the Parliament as the Law Nr. CXX of 2009 on the Civil Code, however, has never entered into force, due to the veto of the that-time President of Hungary, László Sólyom (a law professor himself, previously the founding chairman of the Hungarian Constitutional Court). Civil law codification was picked up by the new government after the 2010 elections, directed again by Professor Vékás.

The Civil Code – now also including company law – was passed as the *Law Nr. V of 2013*, entering into force on 15 March 2014.[8] As the rules of insurance contract law are concerned, however, in the merits, the regulations provided by the failed Law Nr. CXX of 2009 and by the CC are practically identical.

3 Balancing – Values, Principles, Regulation

3.1 Commercial vs Consumer Insurance

According to the concept of the CC, the model of the new regulation of the contracts of insurance shall be *commercial insurance*, flexibility to be balanced by consumer protection measures only where necessary. This was clearly a basic change vis-a-vis the 1959 CC, characterised by *the strict semi-mandatory nature* of Chapter XLV,[9] its rigidity becoming more and more an obstacle in corporate insurances, in creating modern solutions in B2B insurance contracts. Instead, the CC offers a *structured* and much *more flexible* approach, with *freedom of contract as the main rule*, maintaining the semi-mandatory character of the regulation only in cases expressly specified, provided *the policy holder is a consumer*.[10]

Accordingly, the CC is *semi-mandatory* in view of the following rules, provided the policy holder qualifies as consumer:

a) the conclusion of the insurance contract via the implicit behaviour of the insurer; the aggravation of risk; the consequences of non-payment of the premium; the reinstatement of cover; the duty of the insured to prevent and mitigate losses; the information duties of the policy holder and the insured prior to and after the conclusion of the contract as well, as to the notice of the insured event; the settlement between the insured and the victim; the premium,

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biztosítási szerződési jog átfogó reformjához (Theses to a comprehensive reform of insurance contract law), Manuscript, 1999.

8 *See* also the Law Nr. CLXXVII of 2013 on the enactment and interim regulations concerning the CC (hereinafter referred to as „Ptké").

9 Section 567 para. (1) of the 1959 CC allowed the parties to deviate from the rules of Chapter XLV in the contract in favour of the policy holder, the insured or the beneficiary only, except in transportation insurance and reinsurance.

10 Note that according to item 3 of section 8:1 para. (1) CC a consumer is „a natural person acting beyond his or her profession, occupation or trade".

if any, to be paid in case the contract is terminated; the discharge of the insurer from its duties of payment; the subrogation rights of the insurer (section 6:455)

b) the rules of the chapters on life, accident and health insurances are all semi-mandatory, in case the policy holder is a consumer (section 6:456).

The freedom of contract, as the main underlying principle of Title XXII of the CC is not only the appreciation of the fact that in the corporate business the bargaining position of the policy holder vis-a-vis the insurer is much stronger and clients may make extensive use of the services of professional brokers. Freedom of contract might be an incentive for insurers to develop a *broader scale of products*, too.

Concerns, expressed in the literature, envisaging even the potential abuse of freedom of contract by insurers,[11] have not realised, due to the effect of general consumer protection legislation, including the rules on unfair contract terms and abusive clauses, harmonised with the respective EU directive.

It is interesting to remark, that Hungarian courts share the international trend to interprete rules, offering immunity to certain terms of contracts, based on general conditions of contract, under the "fairness test"[12] *rather restrictively*, therefore in insurance contracts judicial control seems to prevail in a broader area, than dogmatics of insurance contract law itself would support the reasoning of courts.[13]

3.2 Dogmatics vs Pragmatic Solutions

The dogmatics of Hungarian insurance contract law traditionally requires the existence of an *insurable interest* as a *sine qua non* of the insurance contract. Whereas the 1959 CC referred to this only by identifying the person eligible for insurance (section 548), the CC explicitly defines insurable interest as a *pre-condition of a valid insurance contract*. The second sentence of section 6:440 declares indemnity insurances and group insurances of fixed sums null and void,

11 *Cf.* Oroszlán, Zsuzsa: *A biztosítási szerződések jogának újdonságai a Polgári Törvénykönyvről szóló 2013. évi V. törvény szerint (New rules in insurance contract law in the Law Nr. V of 2013 on the Civil Code)*, ÜgyvédVilág (LawyerWorld), 2013 May.

12 As per Article 4(2) of the Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts *OJ* 1993 L 95, p. 29.: *„Assessment of the unfair nature of the terms shall relate neither to the definition of the main subject-matter of the contract nor to the adequacy of the price and remuneration, on the one hand, as against the services or goods [supplied] in exchange, on the other, in so far as these terms are in plain, intelligible language"*. This rule had been inserted into Section 209 para. (5) of the 1959 CC and maintained by Section 6:102 para. (3) of the CC.

13 For a critical analysis cf. Takáts, Péter: *Unfair insurance contracts? A case study*, in: Liber Amicorum in Honour of Ioannis K. Rokas (ed. Lambros Kotsiris, Kyriaki Noussia), Nomiki Bibliothiki, Athens, 2017. pp. 346-355. *Cf.* also the overview by Molnár, István: *A tisztességtelen szerződési feltételek és az egyoldalú kogencia viszonya a biztosítási szerződések jogában (Unfair contracts and semi-mandatory rules in the law of insurance contracts)* – Lecture on the 20th Conference of the Hungarian Lawyer's Association (Pécs, 9-10 October 2003).

if made in the absence of insurable interest, whereas section 6:475 requires the *written consent of the insured* to any individual insurance of fixed sums in case it is made by a different person, relating to this requirement as the expression of the existence of an insurable interest. The first sentence of section 6:440 defines insurable interest as a vested interest in avoiding the occurrence of an insured event under some form of property or personal relationship.

The *lapse of insurable interest* during the period of insurance leads to the termination of the contract.[14] The CC, however, establishes two exceptions under this rule, from pure pragmatical reasons:

a) as per section 6:454 para. (3): ”The legal effects attached to cases of lapse of interest in the insurance shall not apply, if the lapse of interest results solely from the transfer of ownership of the insured property, and the property in question was held by the new owner previously under a different title. In that case, insurance cover shall pass together with ownership, and the former and the new owner shall be jointly and severally liable for premium payments due at the time of transfer of ownership. The contract may be terminated by either of the parties within thirty days after gaining knowledge of the transfer of ownership, by giving thirty days' notice.” This rule is set to regulate a specific situation, rather typical at the end of certain contracts of leasing, the ownership of the leased property being automatically transmitted to the lessor, whereas the property had been insured by the leasing company. The reasoning behind the rule is similar to that of Article 12:102 of PEICL,[15] however, with a narrower scope of application.

b) According to section 6:442 para. (4) the contract on group insurance may provide that ”termination of the relationship between the insured and the policy holder shall not affect the insurance cover”. This rule is for the potential benefit of the insured, allowing an arrangement of not losing cover in case this person leaves the group, which would otherwise qualify a lapse of interest. Such agreement may be made either at the time of the conslusion of the group insurance contract or in a later time.

A similar interplay between traditional dogmatics and pragmatical solutions may be found at the new regulation of *overinsurance*. Hungarian insurance contract law is *uniquely severe* in sanctioning overinsurance. Following firm practice since the late 19th century, section 549 para. (1) of the 1959 CC declared the insurance contract *null and void* in its part where the sum insured exceeded the ”real value” of the insured property and ordered the respective part of the premium to be reimbursed to the policy holder. Judicial and company practice, strictly following dogmatics, tackled with the problem of *multiple insurance* also from this point of view. Accordingly, in case of an already insured property, any

14 Section 6:454 para. (2) CC. Strictly speaking, from a pure dogmatical point of view, this solution is not fully correct. The first draft of the Title on insurance contracts in 2005 phrased the consequence of the lapse of insurable interest as the contract „becoming null and void”. However, after a discussion, the Ministry of Justice decided for a more neutral formula.

15 *Cf.* Basedow, J.–Birds, J.–Clarke, M.–Cousy, H.–Heiss, H–Loacker, L. (eds.): *Principles of European Insurance Contract Law (PEICL)*, 2nd Expanded Ed. Sellier, Köln, 2014. p. 280 ff.

subsequent insurance contract, made either unintended or deliberately, might be valid only in the part the prior insurance had not covered the full value (e.g. underinsurance) or the subsequent insurance provided cover against additional risks. Obviously, as a central database on insurance policies exists only in the area of mandatory third-party motor liability insurance,[16] it was practically impossible to track down multiple insurances and in cases where the insurer, to which the loss was reported, suspected there might be another policy, issued earlier, to cover the same risk, the adjustment of the loss might easily have become a lengthy ping-pong game.

As it was deeply embedded in the general practice, the CC did not change the strict approach to overinsurance, only the wording of the respective rule was slightly amended, in compliance of dogmatics. As per section 6:458 para. (1) CC any agreement for an insurance cover that is higher than *"the value of the insured interest"* shall be null and void and the premium shall be reduced accordingly.

The rules on overinsurance, however, *do not apply* to multiple insurance, defined by section 6:459 para. (1) CC as the same interest being insured by more than one insurance company independently. Multiple insurance now *does not affect the validity* of any of the parallell agreements, thus the insured person shall have the right to submit his claim to one or more of these insurance companies of his choice. The insurance company to which a claim is submitted shall be liable to make a settlement payment under the terms and conditions fixed in the respective policy and up to the sum insured as specified therein, with a right to share the paid insurance money afterwards with the other participant insurers proportionally [cf. section 6:459 paras. (2) and (3)].[17]

3.3 Legal Certainty

One of the unique features of Hungarian insurance contract law in Europe was the *automatical termination* of the contract of insurance upon the failure of the policy holder to pay the insurance premium. As per section 543 para. (1) of the 1959 CC the contract terminates after the expiry of a 30 days' grace period after the due date, provided the premium was not paid and the insurer did not approve any respite or commenced a lawsuit to claim the premium. Steady practice of the courts confirmed that the insurer was not under any duty to send a reminder about the possibility of the termination in case of non-payment.

However, the most problematic issue was not the lack of the duty of the insurer to remind the policy holder to the delay, but the *controversial practice* of this rule. One could observe that insurers tended to accept late payments (even those, made fifty-sixty days subsequent to the due date) without applying any consequences, however, this usage did not prevent them to revoke strictly the termination of the cover *in case of any loss*, occurring after the expiry of the 30

16 *Cf.* sections 46 to 50/A Gfbt.

17 This solution follows Article 8:104 of PEICL. *Cf.* Basedow, J.–Birds, J.–Clarke, M.–Cousy, H.–Heiss, H–Loacker, L. (eds.): *Principles of European Insurance Contract Law (PEICL)*, 2nd Expanded Ed. Sellier, Köln, 2014. pp. 250-254.

days' grace period. Courts also could not help policy holders in this situation: as insurance contracts require a written form, they *may not be amended* solely by the implicit conduct – the acceptance of the late premium payment – of the insurer.[18]

This is why the CC changed the rule, the new regulation being *semi-mandatory* in consumer insurance. As per section 6:449 para. (1) CC, in the event of the non-payment of the premium as due, the insurer shall dispatch a *written reminder* with a payment deadline of thirty days from the date of the reminder to the party in default, also indicating the potential legal consequences. In case of non-compliance within this additional period, the contract shall be terminated with a retroactive effect to the *original due date*, except if the insurance company forthwith moves to enforce its claim in a judicial process. The new regulation maintains the legal tradition of the contract to terminate automatically in case of the non-payment, however, this effect being conditional on the written reminder and the ommission to pay during the additional period.

Another problem, however, of less significance, was created by section 554 of the 1959 CC, according to which the cover for the current insurance period shall be *reduced* by the loss paid for the same insurance period, unless there is a reinstatement of the cover against additional premium paid by the policy holder. Insurers certainly made use of this rule, however, without warning the insureds, who were many times caught by surprise not to be paid in full in case of a second larger loss during the year. Judicial practice also denied any specific information duty of the insurer.

Whereas the CC maintained the above mentioned rule in section 6:461 para. (1), there are further conditions added. Section 6:461 para. (2) allows the insurer to apply the reduction of the cover only if the policy holder *has been advised* about the consequences in writing not later than at the time of the settlement of the claim and also been informed about the *additional premium necessary to the reinstatement* of the cover. As per para. (3), the contract may remain in force with the reduced sum insured only if the policy holder did not make use of the option to have the cover reinstated. This regulation is also semi-mandatory in consumer insurance.

A further issue of legal certainty was related to the fact that according to the common interpretation of the 1959 CC, it was always the future policy holder (the "applicant"), that submitted a proposal to the insurance contract and the insurer had a deadline of fifteen days to assess the risk and take a decision on its acceptance.[19]

In the practice, the first axiom was soon questioned by the practice, as soon as a real insurance market was established in Hungary. In the corporate sector, larger enterprises usually invited insurers to tenders at renewals. Here, the competitors were asked to provide firm insurance offers and not only indications,

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18 *Cf*. the decision of the Metropolitan Court of Budapest *Főv.Bír. 41.Pf.20.365/2000*, discussed also by Takáts, Péter: *A biztosítási szerződések (Contracts of insurance)*, in: Wellmann, György (ed.): *Polgári jog – Kötelmi jog (Civil law – Law of Obligations)*, 2nd Expanded Edition, HVG–ORAC, Vol. VI. Budapest, 2014. p. 388.

19 This was derived from the rule about the consequences of the failure of the insurer to respond, that are discussed *infra* 12.

on the basis of which applications would have been made. The CC confirms this development by subsuming the conclusion of insurance contracts *under the general rules*.[20] The regulation, however, is not mandatory, hence insurers are allowed to provide standard contract documents that put the client into the applicant's position.

The risk assessment period of fifteen days created more controversies in the practice. First, the general semi-mandatory nature of Chapter XLV of the 1959 CC precluded the insurers to set *longer periods* even if such could have been necessary in life insurance, as the medical examination of the applicant, if required, was hardly manageable within such a short notice. Second, in cases when the insured event did occur after the application had been made, but before the expiry of the fifteen days' deadline, insurers usually *rejected the application*, referring to the negative outcome of the risk assessment to avoid payment, even if the insurance documents were signed and the first instalment of the premium was paid. The vast majority of decisions by the courts in such cases held that insurers might reject applications within the risk assessment period *at their discretion*, trying, however, to provide protection to applicants by requiring that the letter on the rejection also be received by the applicant within this period, thereby cutting the deadline by days in the practice.

The CC offered a radical change in both situations. First, as per section 6:443 para. (3) the offeror *shall be bound by the offer* for a period of fifteen days from the time when it was made, or for sixty days if a health risks assessment is required for the evaluation of the offer – this is, however, an optional rule, permitting the parties to find the appropriate arrangement required by the circumstances of the case. Second, section 6:444 para. (3) provides a solution to the problem of the insured event occurring during the risk assessment period, based on the general principle of the *prohibition of the abuse of law*.[21] As in the practice, insurers usually defer the acceptance of smaller and standard risks in advance to lower levels of their organisations, as a result of prior general actuarial assessments of the risk, the CC allows the insurer to refuse the application only if the insurer's documentation (proposal form, webpage) contains an express warning to this effect, and it is instantly clear from the nature of the insurance cover requested or from other circumstances of the cover that an individual risk assessment is necessary to accept the application.

3.4 Contract Certainty

The rules in section 537 para. (2) and (3) of the 1959 CC represented another unique feature of Hungarian insurance contract law. Accordingly, the insurance contract shall also be deemed to be concluded, if the insurer *did not respond* to the application for insurance within fifteen days, however, in case the contents

20 This means that any of the parties may make an offer to an insurance contract. The new approach of the law is implicitly suggested by the wording of section 6:443 para. (3) speaking about the „offeror" (and not the „applicant") when regulating the binding force of the offer. *Cf.* Takáts: op.cit. (Fn. 18 *supra*), pp. 380-381.

21 *Cf.* section 1:5 para. (1) CC.

of such contract differ from the general conditions of the insurer, the insurer may propose its amendment in writing within further fifteen days in order to have it adjusted to its general conditions. Should this proposal be rejected or remain unanswered by the policy holder within the same deadline, the insurer would be entitled to cancel the contract in writing, subject to 30 days' notice.

The *raison d'étre* of this rule, among an environment, characterised by the insurance monopoly of the state, was certainly the *protection of the private person* seeking insurance, allowing him to rely on his application sent to the monopoly insurer even if the bureaucracy of the latter was unable to react within fifteen days. In the practice, however, there were many cases when insurance contracts with rather untypical contents were made this way, as insurers were often unable to check offers against their general conditions even within the further fifteen days the law allowed for corrections. Establishing the contents of insurance contracts, concluded by the implicit conduct of insurers, became even more complicated with the consumer protection legislation about the information duties of the insurer. Even if the offer of the applicant was made on the proposal form of the insurance company, there was often no evidence that such information duties were performed and the applicant had access to the terms and conditions at the time the offer was dispatched.

It is not surprising, that the rule underwent a *thorough revision* during the codification. By excluding corporate insurance, its scope of application became restricted to *consumer* insurance, subject to the following conditions:

a) the *relevant period*, after the expiry of which the contract shall be deemed to be concluded as a result of the failure of the insurer to respond to the offer is generally fifteen days, or sixty days if a health risk assessment is required for the evaluation of the offer, the deadline starting with the reception of the application,

b) the offer shall have been made on the *standard* proposal form (electronic surface, website etc.) used by the insurance company, with reference to the *applicable tariff*,

c) the *information duties* of the insurer shall have been performed at the time the application was made.[22]

In case all these conditions are met, the inception date of the contract shall be the day, following the expiry of the risk assessment period, the insurer to carry the risk with a retroactive effect from the date the offer was conveyed to the insurance company, its contents as per the offer.[23]

22 Section 6:444 para. (1) CC.

23 Section 6:444 para. (2) CC.

3.5 Group Insurance

In Hungarian insurance contract law, the *first regulation of group insurance* was provided by the CC. This is why it might be interesting to introduce the respective rules.

As per section 6:442 para. (1) in group insurance the insured persons are identified on the basis of their *affiliation to an organisation or of a relationship*, legal or other, between the insureds and the policy holder, further *the insurer's assessment and acceptance of the risk takes place in view of the group itself and not with respect to the constituent persons individually*. If the insured persons are defined in the contract solely on the basis of their membership in a specific group, those shall be regarded as insureds, that were members of such group at the time of the occurrence of the insured event. *Family members* of any member of the group may also be *eligible* for cover.

The CC defines group insurance as a unitary cathegory of law, hence it does not follow the classification of group insurances, provided by the PEICL: according to the CC, the real *differentiating factor* between group insurances and individual insurances is the way, insurers assess and accept the risk.[24] Similar legal structures, such as affinity schemes or framework contracts, *might qualify both group or individual insurances*. It would still be an individual insurance, notwithstanding the number of the insureds involved, in case each of the participants is picked up and quoted (or rejected) by the insurers subsequent to an individual assessment of the risk.

The CC made an attempt to provide the practice solutions to most of the issues, connected with group insurances. Still, the regulation is far from complete.

a) The *information duties* of the insurer shall be performed vis-a-vis the policy holder. The policy holder shall be responsible to notify the insured persons of the statements he has received and of any changes in the policy [section 442 para. (2) CC].

b) The main principle, that in insurances of fixed sums, the written consent of the insured person, expressing the existence of insurable interest, shall be required for the conclusion and the amendment of the contract, if the policy holder is different from the insured, *prevails also in group insurance*. The lack of the written consent, however, cannot hinder the making of a group insurance contract, its consequence being only that the *nomination of the beneficiary* shall be null and void (section 6:475 CC). On the other hand, in case the insured has already given his written consent to the contract, section 6:479 para. (2) allows the parties to *waive the right of the insured to revoke* such consent in group insurance.

24 Part Six of the PEICL differentiates between accessory and elective group insurances, offering partly different rules to these. *Cf*. Basedow, J.–Birds, J.–Clarke, M.–Cousy, H.–Heiss, H–Loacker, L. (eds.): *Principles of European Insurance Contract Law (PEICL)*, 2nd Expanded Ed. Sellier, Köln, 2014. pp. 354-366. Note that the authors of the PEICL have also recognised the specific way group risks are underwritten, but did not raise this to an element of the legal definition: cf. *op.cit.* C1 on p. 354.

c) Section 442 para. (3) CC allows the application of a clause in group insurance *to restrict or to exclude the insured person's right to enter the contract and become policy holder*.[25] As group insurances usually contain more advantageous terms and conditions, than individual policies, this rule considers the interest of the policy holder that the insured shall not be permitted to achieve such advantages individually by abusing the right to enter the contract.

d) The right of the insured to *continue cover* is an issue in several legal systems in the EU.[26] The CC, however, approaches the problem from a different angle. Instead of establishing complicated rules balancing the interests of the group and the member leaving the group, it rather suggests that *the solution be taken care of by the group insurance contract itself*. Accordingly, section 6:442 para. (4) CC allows the contract to provide that the termination of the relationship between the insured and the policy holder (i.e. the lapse of interest) *shall not affect insurance cover*.

3.6 Liability Insurance

The regulation, provided now by the CC acknowledges *two functions* of liability insurance. The *compensatory* one, having been also a subject in the 1959 CC,[27] is dealt with now by section 6:470 para. (1) CC: "Under liability insurance, the insured shall be entitled to demand the insurer to exempt him, in the manner and up to the limit specified in the policy, from paying material damages and pain and suffering, respectively, for which he is legally liable." As a new rule, section 6:470 para. (2) emphasizes the *protective* function of liability insurance: "Liability insurance shall cover procedural costs, if incurred under the insurer's guidance or upon its prior consent. The insurer shall be liable to advance the expenses if so requested by the insured."[28]

The CC *does not define* the insured event under liability insurance deliberately, allowing insurers to issue policies both on an occurrence-made or a claims-made basis (or combined). Instead, section 6:471, as a new rule, regulates the *notification of the loss* rather strictly. The insured shall – within a

25 According to section 6:451 para. (1) CC, if a contract was not concluded by the insured, the insured shall be entitled to enter the contract with a written statement addressed to the insurer. The insurer's consent is not required. Upon entering the contract the rights and obligations conferred upon the policy holder shall pass to the insured person. Para. (2) provides that upon the insured to enter the contract, the insured and the policy holder shall be subject to joint and several liability to pay the premium due for the current insurance period. The insured, entering the contract, however, shall be liable to cover the policy holder's expenses arising from the contract, including previous premium payments.

26 *Cf.* Basedow, J.–Birds, J.–Clarke, M.–Cousy, H.–Heiss, H–Loacker, L. (eds.): *Principles of European Insurance Contract Law (PEICL)*, 2nd Expanded Ed. Sellier, Köln, 2014. p. 362. and Article 18:204 PEICL.

27 *Cf.* Section 559 para. (1) of the 1959 CC.

28 As an optional rule, para. (3) provides that the insurer shall be liable to pay the legal expenses and the interests incurred at the insured also if these exceed the sum insured combined with the settlement payment.

deadline stipulated in the contract – notify the insurer in writing, if a claim has been filed with respect to his insured activity, specified in the contract, or if he becomes aware of any circumstance that is likely to give rise to such a claim. An *extended reporting period of at least thirty days* after the termination of the contract shall be provided for the notification of an insured event.

Unlike in most countries of the EU, *action directe* of the victim against the insurer has never been an issue in Hungarian insurance contract law. The reason for this is that already section 559 para. (2) of the 1959 CC – a rule maintained by section 6:472 para. (1) CC – ordered the insurer to pay the amount of settlement *exclusively to the victim*. The insured may claim that the payment be made to him only upon giving evidence to have already settled the claim of the victim himself.[29] Accordingly, the main rule is – as defined by section 6:473 para. (1) CC – that the victim shall not be entitled to lodge his claim against the insurer directly,[30] instead, the CC expressly allows the victim to sue the insurer for the *judicial establishment* that the insured's liability insurance policy did provide cover for his claim at the time when the loss occurred.[31]

4 The Impact of New Legislation – the First Experiences

The rules of the CC shall apply in case *the inception* of the insurance policy is dated later, than 15 March, 2014 – the day the CC entered into force.[32] It is therefore no surprise that in the four years since, final judicial decisions, based on the new regulation in insurance-related disputes have not been published yet. However, following the practice of insurance companies, some valid first observations may already be made.

Freedom of contract was hoped to give an incentive to insurers to further product development, which has not been realised yet. Insurers seem to be interested to use freedom of contract rather *to maintain previous contractual practice and old solutions* in corporate insurance, where possible.

As insurance companies may be seen more and more as the captives of their own internal IT systems, it had also been assumed, that new rules of the CC, which are semi-mandatory in consumer insurance contracts, would *necessarily become the default models* and would thereby spread also to the corporate area and change contractual practice, simply by the interests of insurance companies to avoid parallell solutions. Such developments have yet to take place. The reason of this delay might be that there still are a lot of insurance contracts in

29 As per section 6:472 para. (2) CC, the insurer may settle the claim of the victim even if the insured disputes his liability, but on grounds manifestly unfounded.

30 The only exception being mandatory third-party motor liability insurance: the *action directe* is allowed by section 28 para. (1) Gfbt.

31 *Cf.* section 6:473 para. (2) CC.

32 *Cf.* section 55 para. (1) Ptké.

force, to which the 1959 CC applies, hence the *unavoidable duplicity*. One may, however, observe some *effects of the new rules* in certain areas.[33]

A recent study also called the attention how supervisory practice might *adversely influence* insurers in making use of contractual solutions, now fully legal as per the CC, however, not compliant with the *guidelines and recommendations* of the Hungarian National Bank (and the FSA, its predecessor). Though legally non-binding, as such products of soft law serve as the basis of the regular reviews by the supervisory authority, insurers disciplinedly follow these to avoid consequences ranging from fines to the prohibition of the distribution of products in case, according to the opinion of the supervisors, these were in breach of the law or disadvantageous to the interests of insureds (policy holders, beneficiaries etc.).[34]

Also, hitherto *no effects of the CC* can be seen on the rules of mandatory third-party motor insurance, even though there are conflicting solutions in important areas – in the definition of the policy holder (eligibility), as to the consequences of the non-payment of the premium, to name only a few. It seems, that the current two-tier system in Hungarian insurance contract law would prevail, at least, mid-term.

33 It is remarkable, how swiftly the new rule of section 6:461 para. (2) CC on the duties of the insurer relating to the reinstatement of cover changed the practice. Insurance companies immediately started to offer products with automatic reinstatement clauses instead of complying with the new regulation by quoting additional premiums to the reinstatement of the cover on a case by case basis.

34 *Cf.* Rabár, Olga: *A diszpozitivitás hatása a biztosítási jog komplexitására – Lehetőségek a csoportos biztosítások területén (The effect of non-mandatory rules on the complexity of insurance law – Potential developments in the area of group insurances)*, Dissertation, ELTE JTI, Budapest, 2015.