

SOME PROBLEMS RELATED TO ONLINE CONCLUSION OF INSURANCE CONTRACTS

Sigorta Sözleşmesinin İnternet Üzerinden Akdedilmesi Hakkında Bazı Sorunlar

*Prof. Dr. Samim ÜNAN**

1. Introduction

The use of the Internet for the distribution of insurance products has begun in 1990's. The main advantages to use the internet for distribution/acquisition of insurance products are:

- for the insurer
 - reducing the costs
 - penetration of new markets
- for the consumer
 - saving of time
 - price comparison

Insurers (and insurance distributors) use the internet significantly more nowadays. This increased use is expected to continue. Following figures illustrate the current situation:

In Canada

- More than three quarters of Canadians (approx.22 million people) used the Internet in 2009.
- Approx. 40 % of them has placed an order online.

* Bilgi Üniversitesi ve Galatasaray Üniversitesi Öğretim Üyesi

- 95 million online orders represent a value of 15 billion of Dollars (35% more than in 2007).

In the USA

- In 2009, 17 million online searches on life insurance (15% more than the year before) were made
- In 2009, 2 million quotes (for life insurance) were asked
- In 2010 2,9 million automobile insurances were sold online (35% more than 2007).

Internet and other distance communication means have made life easier. Nowadays entire claim process can be carried out using a mobile phone: The insured reports the accident together with transmission of photos taken with his (smart) phone. He can monitor the status of repairs and pay the bill through the phone.

Today Internet is used not only for concluding the contract but at different stages (almost every stage) of the contractual relationship: An interesting example is the use of the Internet in credit insurances to obtain a credit limit.

2. Consumer Protection

The concern to protect the consumer is even greater in deals over the Internet. There is an imbalance of information between the consumer (weaker party) and the insurer (specialist). This gap is narrowed with the intervention of intermediaries (who advise, answer the questions and help the consumers to understand the product).

On the Internet, this positive role played by the intermediaries is either absent or reduced and if not remedied, this can create a number of risks:

- Invalid contract (lack of consent – product not understood, contractual commitment)
- Inappropriate purchase of insurance product (excessive or insufficient cover)

- Buying expensive insurance product
- Overinsurance
- Omission to buy
- Inappropriate selection of insurer
- Doubt as to the appointment of beneficiary (if this act is subject to written form)
- Failure to accomplish adequately contractual duties

In the practice following developments merit special attention in order to achieve broader consumer protection:

3. Provision of Information to the Consumers

It is vital to provide adequate information to the Internet user ("Internaut") to make run the system. Information to be given should relate in particular to the following:

Products and services offered, conditions governing the use of the website, legal framework of the relationship between the provider and the user of the website, security measures, protection of personal data, claim and complaint procedures, contact information (to reach the insurer's representative). *[According to the decision of the European Court of Justice dated 16 October 2008, the provision of the e-mail address alone would not be sufficient to satisfy the requirements of rapid contact and communication in a direct and effective manner stated in Article 5.1 (c) of the E-commerce Directive, the insurer must put at the disposition of the recipient of the service other means such as telephone or personal contacts in the premises of the service provider or fax].*

4. Quote obtaining

Consumers often try to obtain a quote on the Internet. But the process is sometimes not completed online.

- Consumer makes a request
- Insurer's representative contacts the consumer to give a quote

- Or the consumer is invited to contact the insurer's representative (usually by phone for concluding the insurance contract)
 - Process can be completed online. To that end, the consumer completes secure forms, answers to questions about identity, eligibility and premium rates (mainly in property and automobile insurance).
 - In car insurance for example
 - the consumer indicates the model, the frequency of use, casualty record
 - Forms are "interactive" – questions asked vary according to answers ("yes or no tree structure").
 - If consumers are eligible, the premium amount is displayed on the screen
 - When firms present quotes via the Internet consumers have the possibility to compare the rates of different insurers and make a choice.

5. Conclusion of the Contract

Only few insurers conclude the contract online. Usual steps are as follows:

- Consumer validates the form containing the information entered, indicates the date of entry into force and accepts online the quote proposed.
- The insurance policy is sent to the consumer via Internet or by ordinary mail.

Online modification of the contract:

- In some cases the consumers (policyholders) are given the possibility to amend the contract online (for example in case of replacement or storage of the motor vehicle, additional drivers)

Advising the consumer:

- Insurers may provide technical and advisory service to consumers
 - A representative of the insurer is sometimes charged with the duty to check the answers of the consumer regarding the rates, eligibility. On the other hand, consistency and logic of the answers are also checked. If any inconsistency is detected, the consumer is warned and a revision is made.
 - The revision process is susceptible of causing delay for the entry into force of the policy.

The legislations regarding the insurance and in particular the insurance contract were developed in periods where Internet did not exist. But today, new rules are elaborated taking into account the particularities of the e-commerce. Modern rules tend to ensure the protection of consumers who purchase goods or services at the Internet.

Consumers should particularly

- have access to additional information/advice
- be aware that they are dealing with a regulated entity
- have the necessary information about the product and understand this information.
- have the possibility to review the information they provide
- be aware of the terms and conditions
- rely on the transaction and
- are sure that their personal data is secure.

Generally speaking, few financial services products are sold on-line with no off-line element. In the field of insurances, general insurance products are maybe the exception.

On-line selling of insurance products require systems that are

- Robust
- Technically efficient

- Legally compliant with regulatory standards

This requirement is a dissuasive factor because it is not always easy to achieve. We must also mention two other factors having negative impact on taking out insurance on-line:

- Legal complexity
- Uncertainty of completing a sophisticated contract on-line.

However there are also significant drivers of change:

- The need to maximize effective use of consumer data
- Reduction of expenses

On the other hand there are also risks in doing business on-line:

- For example there is no "wet" signature on the application

But the danger of fraud exists also for off-line transactions.

6. Signature

The traditional "wet" signature (i.e. ink on paper) is relevant in three respects: identification, the individual's becoming bound by the agreement, trustworthiness.

A properly designed on-line sale process and secure audit trail will help achieving the functions of wet signature. The insurer's records should evidence that

- relevant information was given to the applicant
- terms of the contract were provided
- the applicant accepted those terms

7. Electronic Signature Directive (1999/93/EC)

In Europe rules about electronic signatures are set forth in a Directive dated 1999. "Electronic signature" is the data in electronic form attached to or logically associated with other electronic data and serve as a method of authentication.

“Advanced electronic signature” is an electronic signature.

- Uniquely linked to the “signatory” (being the person holding a signature creation device which is a configured software or hardware used to implement the signature creation data which means unique data such as codes or private cryptographic keys used by the signatory to create an electronic signature)
- Capable of identifying the signatory
- Created using means under the sole control of the signatory
- Linked to the data in such a manner that any subsequent change of the data is detectable.

Advanced electronic signatures based on a qualified certificate and created by secure signature creation device

- Are equivalent of hand written signatures on paper
- Are admissible as evidence in legal proceedings.

But electronic signatures may be attributed legal effect too. The Directive prohibits that an electronic signature is denied legal effect and quality of evidence solely on the grounds that it is

- In electronic form, or
- Not based upon a qualified certificate (an electronic attestation linking the signature verification data to a person and confirming the identity of that person, provided by a certification service provider fulfilling certain requirements) (signature verification data means codes or public cryptographic keys used for verifying the electronic signature), or
- Not based upon a qualified certificate issued by an accredited service provider, or
- Not created by a secure signature creation device (configured software or hardware used to implement the signature creation data, meeting certain requirements).

Is the “click” (on the “buy” button) a kind of electronic signature? It is open to discussion.

8. Protection of the Data

The insurer gathers an important quantity of “sensitive personal data” from customers. For example: in life insurance or health insurance the physical and/or mental health of an individual. Other examples: In some of the property insurances the insurer is almost aware of all the details of the policyholder’s financial situation. The same is also valid in credit insurance. An important part of the data is shared with the insurer on line and is electronically stored by the insurer. The insurer must comply with information and data protection requirements.

If there are several parties involved (insurance sold through an aggregator site or through the common brand of joint venture providers) these parties must agree on how data will be used and by whom.

9. Risk Allocation

The risk allocation on the Internet is also an important issue. It depends on technical factors. For example in life insurance:

- The acceptance of the application for insurance will be depending on the software used (whether it is apt to analyse the information given by the applicant, to identify the terms of the contract especially the exclusions).
- The commencement of cover may be pending on a medical doctor confirmation.

Detailed questions contribute to immediate (real time) decisions but have a dissuasive impact on the prospective applicants.

10. Selling Through Third Parties

In sales made through intermediary extranets, portals, sites run by supermarkets one of the main problems is the respective roles of

the parties involved (whose duty it will be to ensure the compliance of the website and the sales process, the data protection notice).

11. Some Legal Issues Related to Online Conclusion of Insurance Contracts

11.1. Legal Framework

In Europe legal requirements to comply with when concluding contracts online are laid down in various directives: It is worth mentioning particularly the following:

- Directive concerning the distance marketing of consumer financial services (2002/65/EC)
- Directive on certain legal aspects of information society services, in particular e-commerce (2000/31/EC)
- Directive on payment services (2007/64/EC)

11.2. Distance Financial Services Directive

The Distance Financial Services Directive defines the “distance contract” as being a contract concerning financial services concluded between a supplier and consumer under an organized distance sale or service provision scheme run by the supplier.

The Directive provisions apply only when the supplier makes exclusive use of means of distance communication up to the conclusion of the contract. Means of distance communications refers to any means used for distance marketing without the simultaneous physical presence of the supplier (insurer) and the consumer (policyholder).

According to Article 3, the insurer (in his capacity of distance service provider) is required to provide information in a clear and comprehensible manner on

- His identity and particulars (address, register in which he is entered, supervisory authority)
- the financial service (insurance) with the overall price to be paid

- the distance contract (including with the right of withdrawal, minimum duration, right to terminate early or unilaterally the contract, law applicable, language)
- redress (out of court complaint, redress mechanism, existence of guarantee funds).

Article 5 imposes on the insurer the obligation to communicate the terms and conditions of the contract.

The information and the terms and conditions of the contract must be given on paper or on other durable medium available and accessible to the consumer (“durable medium” means any instrument which enables the consumer to store information addressed personally to him in a way accessible for future reference for an adequate period of time and which allows the unchanged reproduction of the information stored).

Further, the Directive grants the consumer the right to withdraw from the contract (Article 6), but puts him under the obligation to pay remuneration for the service provided before withdrawal (Article 7). Taking into account the importance of this topic, we will examine it in more details below.

The Directive prohibits the unsolicited communications (Article 10). The prior consent of the consumer is necessary for the use of distant communication techniques towards him (automatic calling machines, fax machines and others).

11.3. E-Commerce Directive

The Directive 2000/31/EC regulates certain aspects of the information society service including e-commerce to ensure legal certainty and consumer confidence. Recital 27 makes it clear that the e-commerce directive together with the distance marketing financial service directive contributes to the creating of a legal framework for the on-line provision of financial services.

The Directive establishes a general information duty (Article 5) to be acquitted by the service provider about his identity and

particulars. The Directive imposes the obligation to ensure that legal systems allow contracts to be concluded by electronic means.

Prior to the placement of the order the client (the consumer and -if not otherwise agreed- the merchant) must be informed of the following:

- Different technical steps leading to the conclusion of the contract
- Whether the service provider will file the concluded contract
- Whether the concluded contract will be accessible
- Technical means for identifying and correcting input errors prior to the placing of the order
- Languages offered for the conclusion of the contract
- Codes of conduct to which the service provider subscribes and information on how those codes can be consulted electronically.

In case of contracts concluded exclusively by exchange of e-mails or by equivalent individual communications, the information duty cited above shall not apply. Contract terms and general conditions must be made available in a way to store and reproduce them.

The insurer has to acknowledge the receipt of the prospective policyholder's order without undue delay and by electronic means (this rule is not mandatory in b2b transactions). The order or the acknowledgement of receipt is deemed received when the addressee is able to access it.

The insurer has to provide technical means appropriate, effective and accessible to identify input errors prior to placing of the order.

The requirements to acknowledge the receipt and the provision of technical means can be derogated in contracts concluded exclusively by exchange of e-mails or by equivalent communications. The Directive requires the availability of out of court dispute settlements if a dispute arises between the insurer and the customer.

11.4. Payment Services Directive (2007/64/EC)

Insurers often collect the premiums online. Rules concerning payment transaction are set forth in the Payment Services Directive. According to Article 54 (1) the consent of the payer is necessary to execute an authorised payment transaction (an act initiated by the payer or the payee, of placing, transferring or withdrawing funds, irrespective of any obligation between the payer and the payee). Otherwise the payment will be regarded “unauthorised”.

If a payment order (instruction by a payer or payee) is executed in accordance with the unique identifier (password [combination of letter, numbers or symbols] specified to the payment service user who has to provide it to identify unambiguously the other service user and/or his payment account for a payment transaction) there will be a presumption of correctly execution with regard to the payee specified by the unique identifier (Article 74 (1)).

If the unique identifier provided by the payment service user is incorrect, the service provider will incur no liability for the payment service provider for non-execution or defective execution of the payment transaction (Article 74 (2)).

If an unauthorised payment occurs, the payer’s payment service provider refunds to the payer immediately. However the payer shall bear all losses relating to any unauthorised payment up to 150 EURO resulting from the use of a lost or stolen payment instrument, if he has failed to keep the personalised security features safe, from the misappropriation of a payment instrument (Article 61 (1)). If the payer acts fraudulently or violates his obligations under Article 56 with intent or gross negligence, all costs shall be borne by him (Article 61 (2)). (Article 56 imposes on the payment service user the obligation to use the payment instrument in accordance with the contract terms (relating to the issue and use of that payment instrument) and to notify the payment service provider without undue delay on becoming aware of loss, theft or misappropriation of the payment instrument or of its unauthorised use. The payment service user must in particular take all reasonable steps to keep its personalised security features safe).

The local law can opt for a less heavier liability when the breach of the obligations stated in Article 56 is neither intentional nor fraudulent (Article 61 (3)). In case of unauthorized payment transaction initiated by or through a payee, the payer can claim a refund from his payment service provider under certain conditions (Article 62 (1) (a) (b)) in eight weeks (Article 63 (1)).

11.5. Some legal issues

At this point we must underline that solutions defended by Dörner (in Beckmann/Matusche-Beckmann *Versicherungsrechts-Handbuch*, 2. Aufl. (§ 9. Abschluss und Abwicklung von Versicherungsverträgen im Internet), pp.484-507, München 2009) seem very satisfying. We adhere to most of the opinions expressed there and for more details we refer to this high quality publication.

11.6. Conclusion of the contract

A contract concluded online is subject to rules about formation of contracts. Agreement on the “*essentialia negotii*” by way of offer and acceptance is necessary. It is not relevant

- Whether the parties reach this agreement by exchange of e-mails they formulate themselves
- Whether the process is completed after the applicant fills the form on the website of the insurer
- Whether the offer is completed by the support of an existing automatic programme (in this case the personal data provided by the applicant would be processed automatically and the insurer would be requested to explain the fact that led to his (automatic) refusal if the application is finally refused.

Often the applicant visits the website of the insurer. Whether the mechanism of the website (i.e. the precision of the product indicated by the insurer after online interview) should be regarded as a binding offer or an invitation (“*invitatio ad offerendum*”) is a matter of interpretation.

But as the insurer is under the duty to inform about the steps leading to the conclusion of the contract, he must explain whether he intends to make an online offer or an invitation only. If the insurer makes an offer on the Internet, the contract will be concluded by the online acceptance of the applicant.

If the insurer is deemed to have made an invitation only, the contract will be concluded when the insurer will accept the applicant's offer. The insurer may accept this offer online or by other means (for example sending of the insurance policy).

The insurer is obliged to provide the terms of the contract in due time before the conclusion of the contract (to enable the applicant to make a conscious decision). The usual way to achieve this is the possibility given to the applicant to download the terms before the process is completed. The applicant must be in a position to run forth the programme after downloading and examining the contract terms.

[Civil law experts think that on line sellers or service providers should not be deemed to have made an offer but rather to have solicited an offer from the customer. This widespread point of view is based on the fact that the on line sellers or service providers normally are not in a position to satisfy all the demands (for instance for lack of sufficient stocks). For that reason they intent not to be bound by an offer on the Internet and keep reserved the right to refuse any eventual offer by the customer. This argument is not convincing at least for insurance contracts where the insurer normally would welcome a large number of demand, this is particularly true for mass risks].

An insurance contract concluded online by filling forms or by exchange of e-mails is it between "present" or "absent" persons?

The rule is that an offer made by telephone or other technical means from person to person must be accepted immediately as in the case of physically present contracting parties. However the expression "other technical means" refers to videoconferences, chats on the Internet or Internet phones where an immediate answer can be expected. In case of online offer or offer by e-mails, there is no such kind of contact. Thus it is appropriate to apply the rule about

“contract conclusion between absents” when the insurance contract is concluded online.

How long will the offer be binding? In contracts between absent persons, the offeror will be bound until the moment he should expect an acceptance having regard to the circumstances. In respect of offers online, as a result of the communication means chosen, the acceptance can be expected in a relatively short time. If the insurer is the offeror, he will be bound only until the other party exits the web site. In any case there is always the possibility to impose unilaterally the length of the binding period.

11.7. Declaration of Will Sent and Received Online

The declarations of will necessary for the contract conclusion must emanate freely from the issuer (for example: click on the send button or texts written in the box and enter button pressed) and reach the addressee. A declaration not intended by the text writer (issued by a third person without his knowledge) will not have a binding effect (but may give rise to liability for losses caused).

The declaration of will must arrive within the power sphere of the addressee in such manner that the addressee can learn its content in normal circumstances. The moment of actual knowledge of the content is not relevant.

The arrival of the declaration of will within the power sphere of the addressee occurs for example when it is stored in the mail server or data processing equipment and is available to the addressee. Will the knowledge from an alien homepage be regarded as enough? This seems open to discussion. Here download on its own computer may be decisive.

In respect of the “knowledge under normal circumstances” requirement, it seems appropriate to make a difference between legal entities and private policyholders.

- The insurer and the customer who is a legal entity can be expected to have knowledge of a declaration of will the same day of arrival in their power sphere within the office

hours. (According to another view the moment of storage should be decisive).

- The case of the “private policyholder” the following solutions can be adopted: When such policyholder makes it clear to the insurer that he uses the internet for communication purposes in legal matters (for example if he answered on the internet the questions asked to him by the insurer) he can be expected to have a look at his mail box regularly (once daily) and the insurer’s communication can be regarded as effective the same date as its arrival and storage. However a policyholder who does not use the Internet as communication means in legal matters will not be supposed to control his mailbox regularly and the actual knowledge would then be required for valid receipt.

The withdrawal of the declaration is possible. Normally it is effective when the addressee learns the withdrawal declaration before or at the same time. If both declarations are stored before the addressee is aware of their content, withdrawal can be deemed effective.

The insurer is obliged to confirm the receipt of the electronic declaration of will. But this is not a necessary element of the good receipt or the contract conclusion. The obligation to confirm can be lifted by agreement in b2b transactions.

If the customer is offeror (the insurer having only made an invitation to offer) the insurer has to confirm the receipt of the offer. The insurer can rectify a lack of confirmation by a late reaction (by asking a new question, acceptance or refusal of the offer). Where the customer has rightly deduced from the lack of confirmation that his offer was rejected, the insurer will be liable for the resulting losses (An interesting example given by Dörner (at p. 492) is as follows: The insurer is late in confirming the receipt of the offer and the customer, believing that his offer is refused, gets cover from another insurer. At the same time the first insurer’s acceptance reaches the customer. There is double insurance and the first insurer can be held liable for losses caused by the contract with the second insurer: The customer

will be entitled to claim that he be freed from the first or second contract).

11.8. Communication Failures

The risk relating to communication failures (delay in reaching the addressee or the loss in the Internet of the declaration) is shared as follows:

The sender of the declaration bears the risk until its arrival in the power sphere of the addressee. In case the declaration is lost in the Internet or hindered by the intervention of third parties, it does not arrive and will be ineffective. In case the declaration reaches destination but is not stored for instance due to technical failures what will happen? Is the mere "storage possibility" enough? This is debatable. E-Commerce Directive provides that a declaration is received when the addressee is able to access it. That the accessibility requirement provided in the E-Commerce Directive is achieved only when the storage is completed seems to be the prevailing approach. If the addressee intentionally hindered the arrival of a declaration in his power sphere, the declaration will be deemed as "arrived".

In case the electronic declaration is stored at destination but destroyed before the addressee is expected to have knowledge of its content (for example due to a defective computer), the declaration shall be deemed as received. Here the risk is borne by the addressee. The same is valid when the technical failure is due to the service provider of the addressee. In that case the addressee's service provider will be seen as a "receiving agent".

It is obvious that the declaration is "received" (a fortiori) when it is stored in the power sphere of the addressee but not read by him as a result of crashes, viruses or careless destruction by the addressee himself or a third person.

In respect of "compatibility risks" and "update risks" (the declaration reaches the addressee who is not able to have access to it or has access but the text is corrupt due to the fact that the addressee's technical equipment is not compatible with that of the

sender or the software version used is different) there are three approaches

- Not legible or not easily convertible declarations are to be regarded as “not received”
- The Addressee must bear the risk of incompatibility or not being updated
- For business it can be expected that they use the average standard; but for consumers this is not the case (this last point of view looks more satisfactory). Nevertheless the consumer can be expected on the ground of good faith and fair dealing to fall back on to the insurer and notifies him that the information sent was not received/read, if the consumer could identify the sender.

11.9. Avoidance on the Ground of Failure of Intent

In online transactions errors are frequent. In that context, three types of errors should be examined particularly:

- Errors in declaration:

First scenario: The sender wants to make a declaration and for instance clicks on the send button for that purpose, but the declaration intended is different. In that case it is possible to avoid the contract on the ground of error.

Second scenario: The sender does not know that by clicking on the mouse he makes a declaration. In that case, although the sender does not have the will (consciousness) to declare, he would be regarded as having made a declaration (as he should take into account that his declaration would be relied upon by the recipient). However an action based on error is not excluded (provided that the sender compensates the losses incurred by the addressee as a result of his trust).

The insurer must establish a system apt to hinder errors in declaration: The E-Commerce Directive imposes on the service provider to make available to the recipient of the service appropriate,

effective and accessible technical means allowing him to identify and correct input errors, prior to the placing of the order (Article 11.2). Awareness of those technical means is essential for their effective use. The insurer is thus under the duty to inform the customer of their availability (Article 10.1 (c)).

In case of breach of the obligation to establish a correcting system and to inform thereof, the customer will benefit from an unrestricted period of withdrawal (due to the fact that the withdrawal period begins only after the information requirement is fulfilled and it makes no sense to fulfil it after the customer's offer is completed). Nevertheless this period can be limited according to good faith and fair dealing principle.

- Transmission errors:

Internet errors, virus attacks or software errors may give rise to incomplete or defective transmission. If this is the case, the understanding of the addressee is decisive. The contract will be concluded on the basis of "incomplete" or "altered" declaration. But avoidance will be possible for transmission error.

- Software errors:

If the error is due to the software (and not to the declaration itself) it is question of error in motivation that results from the fact that the sender has installed and used defective software. However he will not have any action for avoidance since in e-commerce, the risk of using defective software is borne by the user himself.

11.10. Right of Withdrawal

As said above the consumers are protected also through the right of withdrawal that they may use discretionarily. The Directive concerning the distance marketing of consumer financial services (2002/65/EC) grants the consumer the right to withdraw from the contract within 14 days without penalty and without giving any reason. This period is extended to 30 days in case of a distant contract related to life insurance (Article 6.1).

According to Article 12, the rights conferred to consumers under the directive have a mandatory character: The consumer cannot wave those rights.

The period for withdrawal begins

- From the day of conclusion of the contract (in life insurances, from the time when the consumer is informed of the conclusion of the distance contract)
- From the day on which the consumer receives the contractual terms and conditions and the prior information (that are to be given to the consumer on paper or on other durable medium available and accessible to the consumer in good time before the consumer is bound by any distance contract or offer)
- If the terms and conditions and the information are given to the consumer after the conclusion of the contract, the period for withdrawal will be calculated from this later date (Article 6.1)

[The Directive seems to admit that the contract can be concluded without the consumer being aware of the content of the insurer's terms and conditions. If there is no agreement reached by the insurer and policyholder that these terms would, by way of incorporation, form part of their contract the policyholder will not be bound by them (for lack of mutual agreement). The Directive supposes that the insurer's terms and conditions are incorporated: Insurer refers to these terms and conditions and the policyholder accepts to be bound by them without being aware of their content. If the policyholder is not happy with these terms and conditions, he may nevertheless cancel. At this point it would be appropriate to remind that non-negotiated contract terms would not bind the consumer (nor the business, in countries where the protection against unfair contract terms exist also in b2b transactions).

The right of withdrawal is excluded

- in travel and baggage insurance policies or similar short-term policies of less than one month's duration

- in contracts whose performance has been fully completed by both parties at the consumer express request before the consumer exercises his right of withdrawal (Article 6.2).

The insurer must inform the consumer about the existence or absence of the right of withdrawal, and where it exists, its duration and the conditions of exercising it (Article 3.1.(3) (a)).

The consumer who wants to use his right of withdrawal must send a notification to the insurer within the time limit provided (dispatch is sufficient). The notification can be on paper or on other durable medium available and accessible to the recipient (Article 6.6) [*Thus delivery, posting, faxing or e-mailing or giving notice to the website indicated by the insurer for that purpose will be regarded as sufficient. Notification by phone is valid only if the insurer has given his consent*].

In case the insurance is attached to another distance financial service contract, the insurance (additional distance contract) shall be cancelled without any penalty if the consumer exercises his right of withdrawal in respect of the (main) financial service contract (Article 6.7).

If service is provided before the right of withdrawal is exercised (commencement of performance of the service requires consumer's approval) a payment proportionate to the service actually provided can be claimed. The sum to be paid should not have the character of a penalty (Article 7.1). On the other hand the insurer must have informed the consumer also about the amount payable (Article 7.3).

In insurance contracts, usually the insurer performs (begins to bear the risk) after payment of the premium or the first instalment thereof. Thus, payment of the premium would mean that the consumer gives his consent to the performance.

12. Incorporation of Contract Terms

The general conditions of insurance (general conditions of business) become part of the contract when the insurer refers them to the consumer before he gives his consent to the contract. Therefore insurers must send those conditions by e-mail or place them in their

website (centrally placed, easily remarkable button). Further the customer must have the possibility to download and print these conditions (read copy only is not enough).

13. Compliance with Form Requirements in Electronic Transactions

Insurers must respect the form requirements set forth by special provisions such as the Electronic Signatures Directive or the Distant Financial Services Directive (for instance “durable medium”). In some countries there are additional regulations (electronic form, text form).

14. Unsolicited Services

Insurers who provide unsolicited service (for example renewal) and charge premium for it does not act in compliance of the rules. The use of a credit card details given by the (ex) policyholder or drawing money from his account will normally engender civil liability and criminal responsibility as well.

Related Publications Consulted

Electronic Commerce in Insurance Products (prepared by the CCIR – Canadian Council of Insurance Regulators Electronic Commerce Committee), January 2012.

Herve JACQUEMIN, Conclusion et prevue du contrat d'assurance dans l'environnement numerique, Forum de l'assurance, no.100, Janvier 2010, pp 249-255.

Distance marketing of Consumer Financial Services (www.netlawman.co.uk home >articles business> trade and commerce>).

Reinhard STEENNOT Allocating liability in case of fraudulent use of electronic payment instruments and the Belgian mobile payment instrument pingping, Financial Law Institute Working Paper Series Universiteit Gent July 2010.

Reinhard STEENNOT Consumer Protection relating to contracts concluded online- The European Point of View, Financial Law Institute Working Paper Series, Universiteit Gent September 2005.

Heinrich DÖRNER in **Beckmann/Matusche-Beckmann**, Versicherungsrechts-Handbuch, 2 Aufl. (§ 9. Abshchluss und Abwicklung von Versicherungsvertraegen im Internet), pp.484-507, München 2009.

Richard GHUELDRE/Fabrice NAFTALSKI in **LAMY Assurances** 2011 (Directeur scientifique: **Jérôme KULLMANN**), Cinqieme Partie, E- commerce et assurance, pp 2213-2260.