

Principles of European Insurance Contract Law: A Model Optional Instrument

With a Postscript in Honour of Fritz Reichert-Facilides

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European Insurance Contract Law

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Book review by Jacquetta Castle, Fishburns LLP

The title to this book is something of a misnomer, suggesting that it reproduces the Principles of European Insurance Contract Law (PEICL) or is otherwise a comprehensive commentary on them. In fact, the PEICL have been produced in a separate, larger volume published in 2009 (ISBN 978-3-86653-069-0). Notwithstanding this, the current 152 page volume under discussion is an invaluable background work for anyone interested in the PEICL or indeed in insurance contract law reform more generally.

The greater part of the book reproduces the papers presented by the eminent speakers who took part in the Vienna conference on PEICL in 2010 which was hosted by the Austrian Ministry of Justice. The speakers included MEP Diana Wallis, Vice President of the European Parliament, Professor Jurgen Basedow of the Max Planck Institute, Professor Heiss of Zurich University and Peter Hinchliffe, who was then the Lead Financial Ombudsman at the Financial Ombudsman Service in England.

What makes this work particularly interesting is the range of different views of the speakers who come from a variety of political, industry and academic backgrounds across Europe. Apart from the speakers, the editors have included a selection of comments from the floor of the conference. The criticisms of the PEICL (both from the speakers and from the floor) are generally constructive and should be useful for the Project Group if this initiative is to progress. For example, the PEICL differentiate between “large risks” and “mass risks” (as opposed to consumers vs. non-consumers): “large risks” derogations from the PEICL are allowed to the benefit of either party, insurer or insured. Professor Fontaine (University of Louvain), considers that derogation should only be allowed for a limited list of provisions and that PEICL should not allow what he refers to as “sweeping exemptions”. At the other end of the scale, Peter Hinchliffe, looking at the PEICL from a consumer standpoint, raises the point that the PEICL do not appear to apply to intermediaries but even so, he feels that the assumptions in PEICL about the role and responsibilities of intermediaries should perhaps be reviewed. He also raises various drafting concerns.

One point that impressed me was that the editors have done a good job in ensuring that the various papers reproduced are in fluent, clear and readable English. However eminent the speakers and however excellent their spoken English (the conference was in fact conducted in English, rather than with simultaneous translation as some of the other PEICL conferences), I believe that English is the first language of only two of them.

The only issue I might mention is that in the 15 or 16 months between the conference and the publication, Europe is now a different environment and it would be interesting to hear current views on how realistic the PEICL are in the new political environment.

Bringing things up to date, it is understood that the PEICL project Group has completed work on its Rules on Liability Insurance and Group Insurance. The Rules on Life Assurance will be completed by the end of 2012. In 2013 the Project Group will write Comments and publish the second volume (either together with a slightly revised edition of the first volume or with both parts in one new book). This will represent the conclusion of the work of the Project. Further Principles (Rules) on other areas will only be provided if the EU Commission wants them for a legislative proposal.

The EESC's 2010 own-initiative opinion on the "The 28th regime – an alternative allowing less lawmaking at Community level" called for an optional European private law following the model of the PEICL ("2nd regime model"). This model was taken up in the EU Commission's Green Paper on policy options for progress towards a European Contract Law for consumers and businesses of 2010 as an "option 4". On 8 June 2011, the European Parliament delivered its Resolution on policy options for progress towards a European Contract Law for consumers and businesses, which advocates the adoption of an Optional Instrument including Insurance Contract Law based on the PEICL. EC Justice Commissioner Reding started a dialogue with the insurance sector about an optional European Insurance Contract Law on 21st September 2011 (Press Release 11/624). The Draft Optional Instrument on Sales Law of October 2011 also follows the "2nd Regime Model" as applied by the PEICL (it is, however, limited to cross border transactions).

It is also understood that the Commission wants to set up an expert group drafting an Optional European Insurance Contract Regulation (parallel to the Sales Regulation) by the end of this year.

The book ends with an English translation of the text of the Late Professor Emeritus Dr Fritz Reichert-Facilides, the original Chairman of the Project Group on the Restatement of European Insurance Contract Law setting out the original concept behind the project. It is a fitting tribute to this visionary academic.