I. LIFE INSURANCE PRODUCT TYPES

Life insurance is the most significant segment of the insurance market in terms of premiums. Despite a decline by 6.9% percentage points since 2010, in 2011 life insurance premiums still accounted for the major stake of the insurance market in Europe: 60% of insurance premiums.  

Life insurance may broadly be defined as: "Category of insurance contracts for which the benefit payment is based on the occurrence of death, disability, or critical illness of the insured within the specified coverage term, or on the life status of the insured at maturity."

In modern insurance practice there are various types of life insurance products, which serve different purposes. In view of the multitude of existing individual life insurance products, different classifications attempt to place them under several broader categories. The classifications mentioned below illustrate the different approaches to classifications in market practice and literature. For instance, one classification singles out the traditional life insurance which pays an agreed sum of money on the death of the life insured (including term and whole life policies), endowment policies, annuities and policies linked to investments in securities or property. Another classification identifies three categories: life assurance on the death of the insured (including term and whole life policies), life insurance on the survival of the insured (including insurance with investment functions.

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1 This paper does not reflect the view of the Commission as an institution.
2 European Insurance in figures, 2013.
5 Birds’, p. 375: The two common types of policies are whole life and term life policy. The whole life policy pays a sum of money on the death of the life assured. The term life policy pays an agreed sum of money only if the death of the insured occurs within a pre-defined period of time.
6 Birds’, p. 375: These policies are often linked to mortgages for house purchase.
8 De levensverzekering: uw vermogen verzekerd!, Jo Viaene, Peter Magherman, Geert Van Ermelen, Thomans Weyts, 2007, Roularta Books, Roeselare, p. 18-19: The risk covered is the death of the insured – at any point in
and annuities)\textsuperscript{9} and a combined life insurance (a term life policy with an investment element).\textsuperscript{10} The European insurance industry has introduced a simplified classification for statistical purposes: traditional life products, “which offer capital and/or return guarantees", "unit-linked individual contracts in which the risk is borne by the policy holder” and other individual contracts.\textsuperscript{11} Another classification,\textsuperscript{12} which is more widely used in the American market, distinguishes between whole life,\textsuperscript{13} term life,\textsuperscript{14} universal life,\textsuperscript{15} variable life\textsuperscript{16} and a variable universal life insurance policy.\textsuperscript{17}

Based on a number of considerations this discussion paper adopts a specific classification for its own purposes. More specifically, the aim is to focus on the main types of life insurance products, which account for the major share of the life insurance market in the EU. Thus, the focus is on individual insurance contracts which account for more than 70% of life insurance premiums in the EU.\textsuperscript{18} Second, the paper concentrates on more widely-spread types of insurance products. In general terms, these products provide protection against the loss of income to the beneficiaries in case of the insured

\textsuperscript{9} De levensverzekering: uw vermogen verzekerd!, Jo Viaene, Peter Magherman, Geert Van Ermelen, Thomans Weyts, 2007, Roularta Books, Roeselare, p. 18-19: The risk is the survival of the insured up to the maturity of the policy. The purpose of this policy is to make an investment or savings for old age for the life insured. The two types of policy within this category are a life policy with an investment function (deferred capital) and an annuity.

\textsuperscript{10} De levensverzekering: uw vermogen verzekerd!, Jo Viaene, Peter Magherman, Geert Van Ermelen, Thomans Weyts, 2007, Roularta Books, Roeselare, p. 19-20: In this type of policy the insurer has to pay an agreed sum if the insured dies within a given period or to pay the accumulated investment capital if the insured survives up to a certain age (usually 60 or 65 years).

\textsuperscript{11} Insurance Europe, Key Facts 2012, p. 10.


\textsuperscript{13} Investopedia: Whole life insurance provides guaranteed insurance protection for the entire life of the insured. The premiums are usually level for the life of the insured and the death benefit is guaranteed for the insured’s lifetime.

\textsuperscript{14} Investopedia: The term policy pays the face amount of the policy, but only provides protection for a definite, but limited, amount of time. Term policies do not build cash values and the maximum term period is usually 30 years.

\textsuperscript{15} Investopedia: Similarly to the whole life policy it also offers permanent protection, but the premiums, cash values and level amount of protection can each be adjusted up or down during the contract term as the insured’s needs change.

\textsuperscript{16} Investopedia: This type of policy is designed to combine the traditional protection and savings features of whole life insurance with the growth potential of investment funds. Due to the underlying investment feature of this policy, the value of the cash and death benefit may vary.

\textsuperscript{17} Investopedia: Variable universal life insurance combines the features of universal life with variable life and gives the consumer the flexibility of adjusting premiums, death benefits and the selection of investment choices.

\textsuperscript{18} Insurance Europe, Key Facts 2012, p. 10.
passing away, or aim to accumulate capital for the benefit of the insured in case of his or her survival above a certain age. These two types of life insurance products accounted for 69% of European life premiums by type of contract in 2010. Finally, this paper focuses on life insurance products, which may serve as individual pension products under the third pillar of national pension systems. The analysis of the Expert Group will thus address "Measure 19" of the Commission White Paper on Pensions.

This discussion paper will therefore not deal with all classes and types of life insurance. The most significant class excluded is health insurance which accounted for 11% of the total insurance gross premiums in the EU in 2011. However, as health insurance contains a number of specificities it is often considered separately from life insurance in practice. Its economic significance in the market is also limited due to the fact that private health insurance is often taken to supplement the state health insurance systems in order to cover some additional health services not provided by the State.

Based on the above considerations, this discussion paper will concentrate on the issues most relevant to the more widely spread types of life insurance presented in the classification below.

1. Traditional life insurance

This category refers to life insurance products where the insurer covers the risk of death of the insured. Thus, this type of insurance will normally pay in case of death of the insured within a pre-defined period or at any point in time (depending on the type of policy). The purpose of these products is to provide coverage for the benefit of beneficiaries, who may be disadvantaged financially in the event of death of the life insured ("person at risk" henceforth). Beneficiaries may be the family members, in particular, spouse or children of the policyholder or person at risk, but could for instance also be parties who depend on the person at risk in a professional context (e.g.

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21 Some specific classes of life insurance, such as marriage and birth insurance are not included in the categories of insurance addressed in this paper.
22 Insurance Europe, Key Facts 2012, p. 10.
23 Amongst others, health insurance is closely interlinked with national social security systems. Thus, the need for a private health insurance arises depending on the way the state social security system is structured.
24 Solvency II Glossary in relation to health insurance products: "In sensu stricto these are not life insurance, because they do not relate to the occurrence of death."
25 The term "person at risk" will be used in this paper in relation to the person whose life is insured.
employer or business partners). The most common types of products in this category are term and whole life insurance.

2. Life insurance with investment functions

This category refers to insurance products, which accumulate capital. They are taken with the purpose of accumulating a financial benefit for the policyholder at a future point in time (e.g. towards retirement). Thus, this type of products contains an investment risk, which is borne entirely or partially by the policyholder. On the other hand, the insurance company bears the risk of survival of the policyholder up to the maturity of the policy. There are various types of life insurance policies with investment functions. For simplicity, this paper will use a recent classification into four types of insurance investment products:

- Life insurance where the policyholder purchases "units" in a fund;

- Life insurance where the policy's cash value is tied to the performance of a financial index (e.g. FTSE 100);

- Life insurance which offers benefits which are partly guaranteed and partly dependent on the evolution of assets chosen by the policyholder.

- Life insurance which offers the policyholder some rights to participate in the profits of the insurance undertaking in addition to a guaranteed return.

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27 Europe Economics, p. 3: "The value of the policy at maturity is dependent upon the growth of the fund in which the policy is invested and there is generally no guarantee to the value of the policy when it matures, i.e. investment risk is borne by the policyholder and market values directly determine outcomes for the policyholder. In general this is referred to as unit-linked life insurance policy and can be issued with or without a guarantee."

28 Europe Economics, p. 4: "Most policies offer guarantees that if the index is negative, the crediting rate will not go below zero. In general this is referred to as an index-linked life insurance policy and can be issued with or without a guarantee."

29 Europe Economics, p. 4: "...the insurance firm partially invests the premiums in guaranteed assets (in order to safeguard the guaranteed benefit) and partly in assets on the account and risk of policyholder".

30 Europe Economic, p. 4: "The profits can result from: The investments’ income exceeding the guaranteed minimum return; The mortality profit (i.e. actual death benefits lower than those calculated in advance); The general expenses profit (i.e. actual expenses lower than those charged to the policyholder). The profits are in most cases added to the insurance policy as an annual bonus."
In addition, for the purpose of this paper, the so-called combined life insurance (which covers both the risk of death within a given period and has the option to pay out the accumulated capital in case of the survival of the person at risk above a certain age) will be included in this category.

It should be noted that due to the investment characteristics inherent in this type of life insurance policies, some of these products may be qualified as investments in some EU countries and thus become subject to their investment legislation. However, in all cases, the products referred to in this paper are those offered by insurance companies.

3. Life insurance which could serve as a pension

The purpose of this type of products is to provide regular income for retirement of the policyholder or person at risk. The pension insurance product, as defined by the insurance industry is: "products which enable the insured to obtain an annuity with effect from a fixed date, related to the date of retirement or to a subsequent date, as long as he/she is alive." Thus, the product type, which falls within this category, is annuities.

This paper will limit itself to insurance products which may serve as individual private pension products. First, this is in line with the scope of Measure 19 of the White Paper on Pensions, which is part of the broader Commission agenda in the area of pensions. Second, third pillar pension are the share of the market where insurers play the most significant role. Overall, pension products developed by the insurance industry accounted for 21% of the market premium income for pensions based on recent estimates. While the insurer's activity in pension provision covers all three pillars of the pension system, it mainly concentrates on the second and third pillars. The insurer's role is most significant in third pillar pension provision, where they account for 91% of the premiums.

Questions on Section I:

1. Do you think that there are important other categories of life insurance which may be affected by

32 Other activities in this area include: the Discussion Paper on a possible EU single market for personal pension products, launched by EIOPA (EIOPA/13/241, 16 May 2013 in response to the Commission request to deliver technical advice on the prudential regulations and consumer protection measures that are needed to create a single market in the field of personal pension products; the Consultation on Consumer protection in third-pillar retirement products of 11 April 2013, launched by the European Commission Health and Consumers Directorate General.
33 The role of insurance in the provision of pension revenue, CEA Statistics, No 28, 2007, p.7.
34 The role of insurance in the provision of pension revenue, CEA Statistics, No 28, 2007, p.7.
35 The role of insurance in the provision of pension revenue, CEA Statistics, No 28, 2007, p.7.
2. Measure 19 of the White Paper on Pensions refers to life insurance with savings and investment functions which can serve as private pension products. Are there other life insurance products than annuities, which would fall into this category of pensions and should be taken into consideration in the context of Measure 19?

II. KEY INSURANCE CONTRACT LAW AREAS FOR LIFE INSURANCE

Nine contract law areas are singled out in this section in view of their particular relevance to life insurance. The choice of areas has been based on several considerations. First, these areas are of general relevance, as they address the main issues which are likely to arise whenever a life insurance contract is concluded. Second, these are areas where specific rules have been adopted in a number of national laws in relation to life insurance. Third, the selected areas cover the whole life cycle of a contract.

The nine areas discussed in sub-sections 1 to 9 of Section II however do not represent an exhaustive list of contract law issues which are specific to life insurance or which may be of key importance in all situations. Some specific issues which may play a key role in specific cases are mentioned in Section III. Finally, the presentation of contract law areas below focuses on rules which are specific to life insurance contracts. While acknowledging that in the absence of specific rules, general contract law rules also apply to life insurance, this paper does not focus on the general insurance contract law rules, as they have already been discussed in Discussion Papers II, III and IV.

The following questions are asked in relation each of the sub-sections from 1 to 9.

Questions on sub-sections 1 to 9 of Section II,

1. Do you consider that any of the areas addressed in sub-sections 1-9 pose contract-law related obstacles to cross-border trade in insurance products?

2. Do any of these areas necessitate adaptations of the same product if it was offered in different Member States?

Please consider all possible problems/costs which may result due to differences in contract laws. They may relate to the design of insurance products (e.g. risk assessment, coverage, pricing); the marketing of insurance products (e.g. business strategies for market entry); the management of
existing contracts (e.g. adaptations of IT systems, formalities for notifications) as well as broader considerations for the company (e.g. liquidity).

2. If relevant, what is the degree of adaptation necessary? Please describe the area where adaptations would be necessary.

3. If relevant, what would be the costs for adaptations (including time and legal costs)?

4. Is this contract law area more relevant for any of the categories of life insurance products addressed in this paper?

5. If relevant, which of the categories of life insurance products addressed in this paper would be more affected? How?

6. Does it make a difference whether the relevant provisions are mandatory or can be derogated from? Do you think that differences in default rules that may be derogated from may potentially pose an obstacle?

7. Do these differences have an impact on intermediaries involved in cross-border trade in insurance? Please describe it if relevant.

   Please provide examples to substantiate your answers.

8. Are there other areas not treated in this paper where differences in national insurance contract laws may create obstacles? If so, please describe the area and the nature of the obstacle.

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1. **Definition of life insurance contract**

   Article 2 of the Solvency II Directive (Solvency II)\(^ {36} \) defines life insurance activities on a contractual basis which fall within the scope of the Directive. Its Annex II sets out nine different classes of life insurance. The description of life insurance activities and classes under Solvency II is defined in broad terms, which could apply to multiple life insurance products. For instance, one of the classes\(^ {38} \) defined in Solvency II includes life insurance on survival to a stipulated age only, assurance on death

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\(^ {36} \) For more detail on the general requirements in this area, see Discussion Paper 3.


\(^ {38} \) Solvency II, Annex II, point I, referring to Article 2(3)(a)(i),(ii)and (iii).
only, assurance on survival to a stipulated age or earlier death, unit-linked life assurance and annuities and supplementary insurance underwritten in addition to life insurance.39

Even though Solvency II provides for a classification of life insurance products, it does not contain a definition of what constitutes a life insurance contract, which could then be categorised under one of the nine classes. Thus, the question, whether a given product would qualify as a life insurance is open to interpretation. This is particularly relevant for certain insurance products which have similar features to other financial products. In particular, a life insurance product may become subject to the legislation on investments instead of insurance services in another EU country.40 For example, a certain degree of uncertainty exists whether certain life insurance products with investment functions where the risk is borne by the policyholder would be considered investment products in some EU countries. As noted in the earlier discussions of the Expert Group, such problems often occur with unit-linked life insurance.41 For instance, the Netherlands has established rules helping to draw the distinction between life insurance and investments.42 Without being aware of the detailed rules of other Member States in this area, it is still reasonable to assume that the rules are likely to differ from country to country.

In such cases an insurer may have to comply with two different sets of rules (when such rules are mandatory) which may entail significant costs and adjustments to the rules regulating investments services. These changes may dissuade insurers from exporting products which may be qualified as investments in other markets.

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39 Solvency II, Article. 2(3)(iii) reads "Supplementary life insurance, in particular, insurance against personal injury including incapacity for employment, insurance against death resulting from an accident and insurance against disability resulting from an accident or sickness."

40 A practical example is mentioned on p. 2 of the "Law Society of England and Wales (Law Society) initial comments for the work of the European Commission’s European insurance contract law expert group" of 10th July 2013: "...a recent case involving an Italian company concerned a question as to whether a policy could be treated as life insurance. The English courts classified it as life insurance but it could have been classified differently for regulatory purposes elsewhere."

41 See Minutes of the Third Meeting of the Expert Group on European Insurance Contract Law.

42 An example provided on p.6 of the Draft Comments of the Dutch Insurers Association to the Third Discussion Paper states: "In the Netherlands, a life insurance product has to have a certain degree of risk. For instance a unit linked product (based on investments) can be considered a life insurance product when the amount payable when the insured dies is 90% or 110% of the value of the contract at moment of death. In that way a unit linked insurance product is different from an investment product which pays 100% of the value of the contract. Depending on the type of risk an insurance contract has to have in the other country, this can be an obstacle for cross border provisions."

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2. Insurable Interest

The definition of a life insurance contract is inextricably linked to the concept of insurable interest or the rules setting the conditions when life insurance contracts are considered valid. The rationale behind these rules is ensuring protection of the person at risk, thus preventing the risk of murder or gambling on the lives of other people. While these rules largely have a shared aim, the ways of achieving it differ substantially among Member States.

One approach, applied in the UK, requires “insurable interest” as a pre-condition for the validity of a life insurance contract, thus laying down rules on what contracts are considered valid. Insurable interest is a valid reason that leads the party to enter into a legally binding agreement. English law bans the conclusion of contracts where there is no interest. Furthermore, the range of persons and situations when an insurable interest may be proven is limited by law. Insurable interest may arise by natural affection, in case of a potential financial loss, or in situations laid down by statutory provisions or jurisprudence. Moreover, detailed case-law specifies what the scope of application of each of these scenarios is. For instance, while the relation between spouses constitutes natural affection, and thus makes it possible to insure your own life or the life of the spouse, it is not possible to insure the life of a parent or your own child.

Limitations on the conclusion of life insurance contracts, which are justified by public policy reasons, also exist in other countries. The approach they take however aims to define the types of contract which are considered invalid. For instance, under Bulgarian law life insurance contracts concluded on the death of a minor child, a person of complete mental incapacity or for the risks of abortion or a still borne child are considered invalid.50 French law, for instance prohibits the conclusion of life contracts.

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44 Life Assurance Act of 1774, Article 1(1).
46 The insured must show that he will or may lose some legal or equitable right or come under some kind of legal liability in consequence of the death of the person whose life is insured (Lucena v Craufurd (1806) 2 Bos & PNR 269; Dalby v India & London Life Assurance (1854) 15 C.B. 365).
47 Law Commission Issues Paper 4, Issues paper 4, January 2008, p. 16: For example, the Civil Partnership Act 2004 creates a presumption of natural affection among civil partners as among married couples, thus recognising an unlimited insurable interest for civil partners.
48 Law Commission Issues Paper 4, Issues paper 4, January 2008, p. 17: Insurable interest that does not fit into any of the other categories may also be recognised by the courts.
50 Кодекс за застраховането, в сила от 01. 01. 2006 (Bulgarian Insurance Code) Article 230(3).
insurance on the life of minors below the age of 12. For situations which do not fall within the pre-defined exclusions however, the matter can be resolved contractually. Specific rules regulate in particular the situations when life insurance is taken on the life of a third party. In that case, the policyholder is another person and as a rule, the written consent of the person at risk is required. Nevertheless, even legislations which apply this principle vary in relation to its practical application. For instance, German law allows the conclusion of a life insurance contract, as long as the person at risk (for a benefit above normal funeral expenses) gives consent in written form. While French legislation also requires a written consent of the person at risk, it additionally specifies that consent should be given also on the amount initially covered. In case of an intentional breach the insurer and policy holder have to pay a fine of €4 500. Bulgarian legislation also requires an explicit written consent of the person at risk insured by a third person and specifies further that the person at risk may withdraw their consent by written notice to the insurer at any time. However, if a third party is designated as a beneficiary, they do not need to provide consent. As noted in the discussion of the third meeting of the Expert Group, these differences could affect the scope of the business project that an insurer could pursue in a given country. For instance, in countries where only the written consent of the person at risk is required for the validity of the contract, insurers would have a wider potential range of customers. They may develop business strategies of products which target specific groups within this range. However, if insurers from this group of EU countries decide to enter the British market under English law, they should limit the scope of their business plans to the situations when an insurable interest is recognised by English law. Furthermore, they would need to deal with the existing uncertainty as to which party to the contract needs to make sure that an insurable interest exists under English law. These difficulties may result in additional costs and adjustments of the business strategies of such insurers.

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51 Article L132-3 of the French Insurance Code.
53 Code des assurances (Version consolidée au 8 août 2013) (French Insurance Code), Article L132-2: an insurance contracted by a third party on the life of the insured would be null and void if the latter had not consented in writing with indication of the amount of the capital or annuity initially covered.
54 Bulgarian Insurance Code, Article 233.
55 Bulgarian Insurance Code, Article 234.
56 See Draft Minutes of the Third Meeting of the Expert Group on European Insurance Contract Law, p. 3.
57 Law Society of England and Wales (Law Society) initial comments for the work of the European Commission’s European insurance contract law expert group of 10th July 2013, p. 5.
3. Pre-contractual information

The area of pre-contractual information has been harmonised to a large extent at European level by general rules and specific rules to life insurance under Solvency II. The requirements include rules on the way in which information has to be provided and the content of the information items.

At EU level, the specific requirements on the way of providing information on life insurance state that it should be provided in a clear and accurate manner, in writing, and in the official language of the Member State of the commitment. The required content includes information on the provider, applicable law and redress, the contract conclusion, right of withdrawal and the service.

In addition, for life policies extensive information needs to be provided on the product characteristics and contract terms. The rationale behind these further requirements is that life insurance is often a relatively complex product, which customers may not be familiar with, as they are likely to purchase once or only a couple of times in their lives. Moreover, life insurance contracts are often of a relatively long duration. Thus, they require a long-term financial commitment by the policyholder or alternatively, a more substantial investment from the outset. Furthermore, in case of some life policies (e.g. with investment functions) the risk is partially or entirely borne by the policyholder. For

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58 For a more detailed general overview of pre-contractual information requirements for insurance, see Discussion Paper 3, p. 7-14.
61 Solvency II, Article 185(6).
62 Solvency II , Article 185.
63 Solvency II, Article 185.
64 Solvency II, Article 185: In case of life insurance products, the information on the right of withdrawal needs to be provided irrespective of whether the contract is offered at a distance or not.
66 Solvency II, Article 185 requires amongst others the provision of information on each benefit and option, surrender and paid-up values and the extent to which they are guaranteed, information on the premium for each benefit, for unit-linked policies, the definition of the units to which the benefits are linked, an indication of the nature of the underlying assets for unit-linked policies and general information on the tax arrangements applicable to the type of policy.
this reason, it is important to make him or her aware of the nature and extent of the risk. Finally, the policyholder should also know what tax arrangements are applicable to the policy. Thus, the purpose of pre-contractual information is to make policyholders aware of the nature of the product they subscribe to and the obligations they commit to.

In view of all these specificities, Member States have developed further rules in their national laws, taking advantage of flexibility that minimum harmonisation of EU rules in the area grants. Additional requirements have been put in place in particular in relation to insurance products with investment functions. The following examples illustrate various additional rules for unit-linked policies:

- **Information on the provider:** one Member State requires insurance undertakings to provide their entry number in a commercial register (not only in case of electronic sales alone, pursuant to the Directive on Electronic Commerce). Another Member State requires an identification of the financial group to which the undertaking belongs.

- **Information on product characteristics and contract terms:** One Member State requires that the consumer signs that he received a written guide containing information about the product with sufficient evidence about a life assurance policy. Another Member State requires the consumer to confirm by signature that descriptions of investment options chosen by him have been presented to him before concluding a unit-linked life insurance contract.

- **Information on the service:** Some Member States require information on whether the intervention of the intermediary terminates upon signature of the contract or whether it also includes assistance during the period of validity of the insurance contract. Furthermore, a number of Member States have introduced additional requirements for the disclosure of costs and charges associated with the management of the contract (e.g. annual fund management charge, annual advisor remuneration,

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67 The Distance Marketing in Financial Services Directive is based on the full harmonisation principle. However, this principle does not apply to pre-contractual information requirements. Pursuant to Article 4(2) "Pending further harmonisation, Member States may maintain or introduce more stringent provisions on prior information requirements when the provisions are in conformity with Community law."

68 CEIOPS Report on National Measures regarding Disclosure Requirements and Professional Requirements for Unit-Linked Life Insurance Products, which are additional to the Minimum Requirements of the CLD and IMD, CEIOPS-DOC-20/09, 2 July 2009, p. 15.

69 CEIOPS Report on National Measures regarding Disclosure Requirements and Professional Requirements for Unit-Linked Life Insurance Products, which are additional to the Minimum Requirements of the CLD and IMD, CEIOPS-DOC-20/09, 2 July 2009, p. 19.

70 CEIOPS Report on National Measures regarding Disclosure Requirements and Professional Requirements for Unit-Linked Life Insurance Products, which are additional to the Minimum Requirements of the CLD and IMD, CEIOPS-DOC-20/09, 2 July 2009, p. 15.
additional charges, such as early cash-in/surrender charges or charges due to tax or regulatory changes).  

- **Way of providing the information**: Some Member States require that key items are brought to the attention of the consumer, that the method of presentation must not disguise, diminish or obscure important information, statements and warnings, that comparative information is meaningful and presented in a fair and balanced way, or a product information sheet. 72 For instance, Italy established detailed rules stating that the insurer should provide information in a synthetic form, including an information note, insurance conditions, glossary and an answer form. 73

The above described differences in national laws add complexity and costs for insurers from other Member States. First, insurers would need to identify the applicable rules to pre-contractual information. For this purpose, they may need to hire lawyers or intermediaries from the respective country. Furthermore, they may have to adapt their pre-contractual documentation and if necessary, adjust their IT systems.

### 4. Right of Withdrawal 74

There is a certain degree of harmonisation at EU level when it comes to the customer right to withdraw from insurance contracts under certain conditions. The Distance Marketing of Financial Services Directive contains general rules on withdrawal from distance contracts for B2C transactions. 75 Article 186 of Solvency II contains specific rules for life insurance contracts. It sets out a withdrawal period between 14-30 days and ensures this right for individual life insurance contracts irrespective whether they were concluded at a distance. On the other hand, the scope of application of this right, the possible range of contracts for which Member States may decide not to grant the right of withdrawal, the conditions for the exercise of this right when it applies and other legal effects of withdrawal are largely left to the discretion of Member States. Indeed, national laws establish

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72 CEIOPS Report on National Measures regarding Disclosure Requirements and Professional Requirements for Unit-Linked Life Insurance Products, which are additional to the Minimum Requirements of the CLD and IMD, CEIOPS-DOC-20/09, 2 July 2009, p. 17.


74 For more detail on the general requirements in this area, see Discussion Paper 3.

75 Distance Marketing of Financial Services Directive, Article 6.
different rules on the modalities of the right of withdrawal. A comparison of the laws of several Member States illustrates the existing differences:

- **Starting point of the period of withdrawal:** For instance, French Law\textsuperscript{76} establishes a general 30 day withdrawal period and specifies that it has to be exercised by registered mail by 12 p.m. of the 30\textsuperscript{th} day after the conclusion of the contract (irrespective whether this is Saturday, Sunday or a holiday). Under German law the right of withdrawal is also 30 days, but the start of the period is counted from the moment the policyholder received a pre-defined set of documents.\textsuperscript{77} The burden of proof that the policyholder has received the documents rests with the insurer. Under Bulgarian law the period starts from the moment when the policyholder was informed of the conclusion of the contract.\textsuperscript{78}

- **Restitution in case of withdrawal from the contract:** For instance, under French law the withdrawal implies the duty for the insurer to give back all the sums paid by the policyholder by 30 days from the knowledge of the withdrawal by the policyholder.\textsuperscript{79} However, under German law\textsuperscript{80} under certain conditions the insurer only has to repay the share of the premiums paid for the period after receipt of the notice of withdrawal if the policyholder has been duly informed about this right. Similarly, Bulgarian law requires the insurer to repay only the premiums for the period when it was not bearing a risk.\textsuperscript{81}

- **Excluded contracts from the right of withdrawal:** For instance, under French law the withdrawal right does not apply to contracts of a shorter duration than 2 months,\textsuperscript{82} but under German law the exclusion is limited to 1 month.\textsuperscript{83} On the other hand, under Bulgarian law the right of withdrawal only applies for contracts of a longer duration than 6 months.\textsuperscript{84}

The differences in the modalities of the exercise of the right of withdrawal among Member States have implications both for the policyholder and the insurer. The policyholder should make sure they count their period of withdrawal correctly, based on the rules of the applicable law. This may be particularly relevant for EU nationals residing in a different Member State than their nationality. They

\textsuperscript{76} French Insurance Code, Article L132-5-1.
\textsuperscript{77} German Insurance Contract Act, Article 8(2).
\textsuperscript{78} Bulgarian Insurance Code, Article 237(1).
\textsuperscript{79} French Insurance Code, Article L132-5-1.
\textsuperscript{80} German Insurance Contract Act, Article 9.
\textsuperscript{81} Article 237(2) of the Bulgarian Insurance Code.
\textsuperscript{82} Article L132-5-1, French Insurance Code.
\textsuperscript{83} The German Insurance Contract Act, Article 8(3) excludes the right to withdrawal for certain types of contracts or situations, such as insurance contracts for provisional cover, unless they are distance contracts or when the contract has been wholly performed by both sides at the explicit request of the policyholder before the exercise of the right to withdrawal.
\textsuperscript{84} Bulgarian Insurance Code, Article 237(6).
may still take out life insurance under the law of the Member State of their nationality. However, in this case the rules on calculating the starting point and modalities for the right of withdrawal may differ compared to the country of their residence, under whose law they may have taken other insurances, for instance for their car or home. On the other hand, also insurers which operate in different EU countries would have to adjust to these differences. This may require an adjustment of their internal procedures for handling withdrawals, as well as of their IT systems. Furthermore, the modalities of restitution may also affect the way premiums are calculated. Finally, in countries where the scope of application of the right of withdrawal is broader, insurers may need to adjust their marketing and possibly pricing strategies. For instance, an insurer which has operated in a country where the right of withdrawal applies only for contracts of longer duration than 6 months, may have to make adjustments when entering a country where this period is only 1 month, as the right of withdrawal would also apply for contracts of a duration between 1 and 6 months.

5. Disclosure duties of the customer before and after the conclusion of the contract

5.1. Pre-contractual disclosure by the customer

This area is not harmonised at European level and thus the Member States have had full freedom to develop different rules. The disclosure by the customer plays a key role for the evaluation of the biometric risk by the insurer. The key risk factors for life insurance include the age, health condition and profession of the person at risk. While it is in the interest of the insurer to obtain all the detailed information they may need, some national laws impose restrictions on the data the insurer may require. This particularly applies to the health condition of the person at risk.

As noted in earlier discussions of the Expert Group, insures may not be allowed to ask certain questions. Such restrictions may be justified for reasons such as protection of private life and personal data (e.g. on HIV) as part of citizen’s fundamental rights. For instance under Belgian law questions on genetic diseases are prohibited. However, the laws of other EU countries take a different approach and allow the insurer to ask the questions they wish, given that the customers are

85 For more detail on the general requirements in this area, see Discussion Paper 3.
86 “Draft Reactions of Consumer’s Associations to the discussion paper of the first meeting” (of the Expert Group on European Insurance Contract Law), paragraph 7.
87 See Minutes of the Third Meeting of the Expert Group on European Insurance Contract Law, p. 7.
88 See Minutes of the Third Meeting of the Expert Group on European Insurance Contract Law, p.7.
free to decide whether they want to undergo this process in order to buy a given life insurance product.\(^9\) For instance, Dutch legislation allows insurers to ask questions on the health condition of the insured for individual life insurance contracts.\(^9\) Bulgarian law\(^9\) guarantees the right of the insurer to detailed and accurate information about the age, gender and health condition of the person at risk whose life, health or physical integrity is insured. Moreover, in case the insured even occurs, the insurer has the right to access all medical documentation relating to the health condition of the person at risk and may require it from any persons who keep such records.

Further restrictions may relate to the conduct of a medical examination as a means of obtaining information on the health condition of the person at risk. For instance, German\(^9\) and Austrian\(^9\) laws state that an agreement that the person at risk should undergo a medical examination does not establish the insurer’s right to conduct the examination.

The different rules on pre-contractual disclosure have implications both for the insurer and policyholder. As noted in earlier discussions of the Expert Group, if an insurer is not able to obtain certain information by way of pre-contractual disclosure, the insurer would have to compensate the gaps in its knowledge of the risk.\(^9\) If it is impossible to calculate the risk accurately, insurers may adjust the prices of their products or even recalculate the actuarial basis on which products are based. On the other hand, some customers in different countries would be in a different position for obtaining life insurance. For instance, a person with a genetic disease may have a higher chance of getting a life insurance policy in Belgium, compared to Bulgaria.

### 5.2. Risk aggravation

Similarly to pre-contractual disclosure requirements, the national laws differ as regards what should be considered risk aggravation after the conclusion of the contract. No uniform approach exists for instance in relation to changes in the health condition of the person at risk. For instance, under French legislation the normal evolution of someone’s health is not considered a risk aggravation (as

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\(^{9}\) See Minutes of the Third Meeting of the Expert Group on European Insurance Contract Law, p. 7.

\(^{9}\) Draft Comments of the Dutch Insurers Association to the Third Discussion Paper, p. 20-21. However, individualised question on the health condition of the potential insured are not allowed for occupational pensions under the second pillar, where the risk needs to be estimated on a collective basis.

\(^{9}\) Bulgarian Insurance Code, Article 243.

\(^{9}\) German Insurance Contract Act, Article 151.


\(^{9}\) See Minutes of the Third Meeting of the Expert Group on European Insurance Contract Law, p. 7.
opposed to other changes, like starting to smoke).\textsuperscript{95} Furthermore, the duty of disclosure of risk aggravation is limited to the range of questions asked in the pre-contractual questionnaire.\textsuperscript{96} Under Austrian law, only what was explicitly agreed at the beginning may be considered risk aggravation if it materialises.\textsuperscript{97} Likewise, under English law, the policyholder does not have an obligation to declare risk aggravation in the absence of a contractual requirement in the policy.\textsuperscript{98} On the other hand, the duty to disclose risk aggravation may be defined in general terms, without being formally limited to the issues raised prior to the conclusion of the contract (in the questionnaire). For instance, under Bulgarian law, the insurer’s right to receive detailed and accurate information, amongst others on the health of the person at risk, also applies throughout the duration of the contract.\textsuperscript{99}

Furthermore, national laws take a different approach to the changes of profession as a risk factor. For instance, Italian law sets out that the change of profession does not affect the insurance contract to the extent that the insurer would have concluded the contract even knowing about it. However, depending on the change in risk following a subsequent change in profession, the insurer may modify the premiums or insurance benefit or even terminate the contract.\textsuperscript{100} On the other hand, Bulgarian legislation does not specify the profession as a risk factor on which the insurer has the right to obtain information prior and after the conclusion of the contract.\textsuperscript{101}

Risk aggravation is an important factor for the insurer’s risk evaluation. As a result, the insurer may wish to increase the premiums or even terminate the contract. Differences in the rules on risk aggravation may limit the information on different risk factors that an insurer may require. Thus, an accurate assessment of the risk, taking into account all factors may not be possible. The gaps in risk knowledge may force insurers to re-price their products or even recalculate the actuarial basis they use for different EU countries.

6. Payment of insurance money\textsuperscript{102}

\textsuperscript{95} See Minutes of the Third Meeting of the Expert Group on European Insurance Contract Law, p. 10.
\textsuperscript{96} French Insurance Code, Article L-113-3.
\textsuperscript{97} Austrian Insurance Contract Act, Article 164.
\textsuperscript{98} Law Society of England and Wales (Law Society) initial comments for the work of the European Commission's European insurance contract law expert group\textsuperscript{*} of 10th July 2013, p. 9.
\textsuperscript{99} Bulgarian Insurance Code, Article 243.
\textsuperscript{100} Italian Civil Code, Article 1926.
\textsuperscript{101} Bulgarian Insurance Code, Article 243.
\textsuperscript{102} For more detail on the general requirements in this area, see Discussion Paper 3.
Life insurance belongs to the category of insurance for fixed sums. Therefore, the main obligation of the insurer is to pay to the policyholder (or beneficiaries or heirs) an amount of money agreed once the insured event occurs. National laws establish different rules on the conditions for the payment of the insurance money. For instance, some Member States' laws leave contractual freedom for setting the deadline for the payment. French law states that in case of the occurrence of the risk or the contract’s maturity the insurer must perform the service defined in the contract within the agreed time.\textsuperscript{103} Bulgarian law is more specific by requiring the insurer to pay the insurance money within 15 days from the day on which all required evidence has been provided by the policyholder.\textsuperscript{104} Thus, insurers which operate in countries which grant them more flexibility for setting the payment deadlines may have to adjust their internal procedures to adapt to possibly shorter statutory deadlines.

What is more, some Member States set specific requirements relating to the forms of payment of the benefits. They may apply to certain types of life insurance products, for instance those which may serve as a pension. These rules may be part of insurance contract law, but may also be laid down in other branches of law, such as tax law. The following example, which has been brought up in previous discussions of the Group illustrates problems, which could possibly be due to the interaction of tax law and contract law rules:

\textit{Example:}\textsuperscript{105} In the Netherlands an individual can save for additional, private pensions in the third pillar. The Dutch tax law prohibits the pay-out of a lump sum, while other Member States may allow this. Suppose a policyholder moved to another Member State, where he reaches his retirement age. According to the Dutch tax law, the policyholder would have to convert his accrued pension capital into an annuity. According to the Dutch Central Bank (the supervisor) the conversion into an annuity is a new legal agreement. This means that the Dutch insurance company would be considered conducting cross border activity and would for instance need a notification. However, the company may not be interested in providing services in that country in order not to be confronted with applicable law in that Member State. As a result, the insurance company may refuse to offer the annuity. The policyholder who would be forced to receive a lump sum would be confronted with a major fiscal claim. He would have to pay up to 72% taxes and fines to the Dutch tax authorities. So, for instance out of an accrued pension capital of €100,000 he will only receive €28,000.

\textsuperscript{103} French Insurance Code, Article L113-5.
\textsuperscript{104} Bulgarian Insurance Code, Article 238.
7. Payment of premiums\textsuperscript{106}

One of the main obligations of the policyholder is to pay the premium. Life insurance contracts are normally of a long duration and thus periodic payments of premium may be due over a long period of time, possibly the whole life time of the policyholder. Thus, the likelihood that some of the periodic premiums due may not be paid in time seems higher compared to policies of a shorter duration. If the contract is terminated due to non-payment of premiums in time, and the policyholder wishes to obtain a new policy, he or she is likely to be in a more disadvantaged position in the future due to the increase in age and a possible deterioration in health condition. Some national systems therefore aim to ensure that the policy will not be terminated immediately due to a late payment of the premium and offer some safeguards for the policyholder. However, other Member States leave the matter to the contractual freedom.

For instance, under English law the general rules on non-payment may also apply to life insurance policies. Insurance contracts may contain a premium warranty under which the policyholder pays the premium at given times. Thus, in case of default, the insurer’s liability under the policy will come to an end and the policyholder will remain liable for the premium. A grace period for payment of premium is normally granted only in case of renewal of life policies, where this is a long established practice.\textsuperscript{107} Similarly, Portuguese law\textsuperscript{108} does not oblige the insurer to give an additional period for the payment of the premium. On the other hand, it requires the insurer to send a notice with details on the payment of the premium at least 30 days in advance of the due date.\textsuperscript{109} Furthermore, it requires that the conditions of a policy contain a maximum period within which a policyholder may restore a reduced or terminated contract to its original position without a new medical examination.\textsuperscript{110} Other Member States take an even more protective position of the policyholder by requiring the insurer to grant the policyholder an additional period for the payment before resorting to termination. For instance, French law sets out that when a premium or part of it is not paid within 10 days from the due date, the insurer has to send the contracting party a registered letter, informing that the contract would be terminated if the payment is not made upon expiration of a 40-day period.

\textsuperscript{106} For more detail on the general requirements in this area, see Discussion Paper 4: Insurance Contract Law - General Part 2, Expert Group on European Insurance Contract Law (Discussion Paper 4).
\textsuperscript{107} Principles of European Insurance Contract Law (PEICL), Sellier, European Law publishers, 2009, p. 199 N2-N3.
\textsuperscript{109} Portuguese Insurance Framework, Article 202.
\textsuperscript{110} Portuguese Insurance Framework, Article 203(2).
Similarly, under Bulgarian law, the insurer is obliged to invite the policyholder to pay the due premium within a term which may not be shorter than one month from the receipt of the invitation. Italian legislation provides that for subsequent premiums (excluding the first premium) the insurer would have to wait for 20 days from the due date of the premium payment before they may terminate the contract.

The above described differences are likely to result in additional costs. They may be due to the need to adjust the insurer’s internal procedures for managing the contacts with the policyholders. They would need to observe different formal requirements relating to the deadlines and the required correspondence. This may necessitate also an adjustment of the IT systems managing this communication. In addition, insurers may need to adjust also their procedures for management of the contracts with late payments. For instance, an insurer coming from a country where they have the right to terminate the contract immediately in case the premium is not paid in time, would need to deal with contracts with late payments for an additional period, which may exceed one month.

8. Assignment of beneficiaries

One of the specificities in case of life insurance is that the benefit may not be paid to the policyholder or person at risk, but to the beneficiaries. Thus, a number of issues arise in relation to the rules on appointment of beneficiaries. They include the number of beneficiaries that may be designated, their rights, respective shares of benefit, revocability of the designation and conditions for it, or the rights of the policyholder’s heirs (or other interested parties) in case there are no beneficiaries.

A limited overview of the laws of Member States shows that some general principles regulate these issues in a similar way. Some of the common principles in different legislations include the right of the policyholder to designate and change the beneficiary, that the benefit shall be distributed in equal shares to several beneficiaries when their respective shares have not been designated, that a beneficiary loses the right to the benefit in case he or she unlawfully causes the death of the person

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112 Bulgarian Insurance Code, Article 236.
113 Italian Civil Code, Article 1924.
114 Austrian Insurance Contract Act, Article 166 (1); German Insurance Contract Act, Article 159(1); Bulgarian Insurance Code, Article 234(1).
115 Bulgarian Insurance Code, Article 234(5); Austrian Insurance Contract Act, Article 167; German Insurance Contract Act, Article 160(1).
and that in the absence of a designation of a beneficiary the lawful heirs shall inherit the benefit in proportion to their respective shares of inheritance.\textsuperscript{117}

On the other hand, a number of differences exist as regards the specific aspects of the position and rights of beneficiaries. For example, Austrian legislation stipulates that beneficiaries acquire their right to the benefit only at the time of occurrence of the insured event.\textsuperscript{118} Thus, the policyholder has the right to change beneficiaries throughout the duration of the policy. Bulgarian law takes a similar approach, stating that the policyholder may use the possibility of changing the beneficiary at any time.\textsuperscript{119} German law maintains the same position, but only in case of a revocable designation.\textsuperscript{120} In case of an irrevocable designation under German law\textsuperscript{121} the beneficiary acquires the right to payment of the benefit at the time when the irrevocable designation is made. Similarly, French legislation foresees the possibility of an irrevocable designation, but specifies that it only becomes irrevocable with the beneficiary’s express or implied acceptance.\textsuperscript{122} As long as no acceptance is made, the policyholder alone is entitled to revoke it (e.g. creditors or legal representatives of the policyholder may not exercise this right).\textsuperscript{123}

Furthermore, some national laws establish additional rights for beneficiaries, which they may exercise prior to the occurrence of the insured event. For example, Portuguese law imposes an obligation on the insurer to contact the irrevocably designated beneficiary within a period of 30 days in case of non-payment of a premium.\textsuperscript{124} Thus, the beneficiary obtains the possibility to step in and pay the premium in order to maintain the right to the agreed benefit. Furthermore, Austrian legislation provides for a possibility for a beneficiary designated by name to step in the contract in case of insolvency proceedings against the policyholder.\textsuperscript{125}

These are only some examples of the differences, which are likely to raise complexity for insurers operating in different EU countries. They may necessitate adjustment of their procedures to manage contacts with beneficiaries based on different rules. This may require a reorganisation of their

\textsuperscript{116} Bulgarian Insurance Code, Article 234 (7); German Insurance Contract Act, Article 162(2); French Insurance Code, Article 132-24.
\textsuperscript{117} Bulgarian Insurance Code, Article 238 (6), Article 234(8); Austrian Insurance Contract Act, Article 167; German Insurance Contract Act, Article 160(2).
\textsuperscript{118} Austrian Insurance Contract Act, Article 166(2).
\textsuperscript{119} Bulgarian Insurance Code, Article 234.
\textsuperscript{120} German Insurance Contract Act, Article 159 (2).
\textsuperscript{121} German Insurance Contract Act, Article 159 (3).
\textsuperscript{122} French Insurance Code, Article L132-9.
\textsuperscript{123} French Insurance Code, Article L132-9.
\textsuperscript{124} Portuguese Insurance Framework, Article 204.
\textsuperscript{125} Austrian Insurance Contract Act, Article 177.
internal procedures and IT systems. For instance, insurers from countries where beneficiaries acquire the right to the benefit only when the insured event occurs would not need to enter into communication with them until that point. However, if such insurers enter Member States which distinguish between revocable and irrevocable designation of beneficiaries, they may have to deal with irrevocably designated beneficiaries and observe their rights also throughout the duration of the contract.

9. Termination of the contract

Life insurance policies are often contracts of long duration and a termination by either party may come into play for additional reasons, than in case of short term policies. Member States have established different rules on the grounds, modalities and consequences of termination.

9.1. Grounds for termination

- From the insurer's perspective, the non-payment of premiums may be a common ground for termination. The policyholder may not be willing or able to continue to pay the periodic premiums at some point of the duration of the policy. Under certain conditions (see above sub-section 7) insurers may terminate the contract on this ground. Another common ground is non-disclosure of a significant risk factor by about the person at risk, for instance an incorrect indication of the age, which exceeds the insurable age limit. Another ground for termination may be an excessive risk aggravation after the conclusion of the contract. National laws may differ in relation to the risk factors, which they recognise as a lawful ground for termination. For instance, as mentioned above Member States' law may differ in relation to whether they recognise significant changes in the profession or medical condition as a ground for termination (see sub-section 5.2). Furthermore, there are also differences in respect of the deadlines within which the insurers may exercise the right to terminate the contract on these grounds. For instance, under German law, the insurer may no longer assert an aggravation of

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126 For more detail on the general requirements in this area, see Discussion Paper 4.
128 Italian Civil Code, Article 1926.
the risk insured once 5 years have elapsed since the increase, \(^{129}\) while under Austrian law this period is three years.\(^{130}\)

- From the perspective of the policyholder, their unwillingness to pay premiums in the future may also be a ground for termination.\(^{131}\) Another ground may be rejection of changes in the terms and conditions of the policy, proposed by the insurer following the contract conclusion. Such changes may occur for instance due to an increase in the premium which the insurer may propose as a consequence of risk aggravation.\(^{132}\)

The differences in the rules on termination may affect the business strategies of insurers. The more flexible the rules on termination for insurers are, the more flexibility insurers would have to adjust their customer base to the desired target groups (for instance, limiting problems with late payments or excessive risk aggravation). On the other hand, customers in EU countries with more flexible rules on termination for policyholders may also benefit from the greater freedom they have to terminate contracts they may consider burdensome. The consequence for insurers would be that they would need to factor in and adjust to a potentially higher loss of clients in those countries.

9.2. Policyholder’s rights in case of termination

Important areas specific to life insurance are the consequences of termination, in particular the rights policyholders have under some types of life insurance policies (e.g. with investment functions or when the insurer is certain to be liable for the risk, as in the case of a traditional whole life policy). More specifically, the insurer normally is obliged to pay out in some form the accumulated capital to which the policyholder acquires rights under certain conditions. The policyholder may be entitled to claim the surrender value of the policy or to convert it into a paid-up policy. The conditions for acquiring these rights and their exercise however may differ under national laws.

It should be noted that European law contains specific requirements relating to information on surrender and paid-up values. As regards the policies for which this information is relevant, it has to be provided pre-contractually by virtue of Solvency II.\(^{133}\) Nevertheless, Member States laws may differ

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\(^{129}\) German Insurance Contract Act, Article 158.

\(^{130}\) Austrian Insurance Contract Act, Article 164.

\(^{131}\) German Insurance Contract Act, Article 168(1). Article 168(2) also provides for this possibility in case the premium consists of a single payment in case of insurance covering a risk for which the insurer is certain to be liable.

\(^{132}\) Italian Civil Code, Article 1926(4). The insured has to declare whether he or she accepts the modified conditions proposed by the insurer within 15 days. Alternatively, the contract is rescinded.

\(^{133}\) Solvency II, Article 185(2)(f).
in relation to the conditions for the rights to surrender or conversion of the policy, as well as to the manner of calculating the surrender and paid-up values.

9.2.1. Right to Surrender

The surrender value is normally the accumulated premium reserve, which the policyholder may have the right to require in case of an early termination of the life insurance contract. The right to surrender may apply from a certain minimum time threshold and only for certain types of policies.

A key area of differences between national laws is the conditions for the right to surrender. Some Member States establish statutory rules on the minimum time threshold from which this right may be exercised. It should be noted that this right of the policyholder may not occur automatically at the point of conclusion of the insurance contract and may not exist for all types of life policies. The rules setting the conditions to surrender may be established contractually or by law. For instance, some Member States\textsuperscript{134} have established a minimum period of two years for which all premiums should have to be paid. This reflects the consideration that if a contract is terminated at a very early stage the insurer will have incurred costs (e.g. for the management of the contract) and may thus be at a loss. The insurer may be compensated for these costs by the premiums paid by the policyholder for the initial period and the right to surrender may thus only emerge after premiums have been paid for a minimum period of time. On the other hand, these conditions may also be agreed contractually: For instance, Austrian law does not establish a mandatory minimum period for acquiring the right to surrender.\textsuperscript{135} However, in cases when the surrender value accrues after a longer period potential policyholders may be more reluctant to take out life insurance policies. This may have an impact on the marketing of such policies in a given market by intermediaries and insurers.

Furthermore, the national rules on the calculation of the surrender value differ and are laid down to a different degree of detail.\textsuperscript{136} As the following example demonstrates, even the change of one rule in a national law may substantially change the amount of surrender values to be paid, let alone more substantial differences among Member States. Following a judgment of the German Federal

\textsuperscript{134} Article 240 of the Bulgarian Insurance Code establishes a minimum period of 2 years on the condition that all premiums have been paid; Article L132-23 of the French Insurance Code establishes the condition that 2 annual premium have been paid.

\textsuperscript{135} Austrian Insurance Contract Act, Article 176.

\textsuperscript{136} For instance, the degree of detail differs between the respective provisions in Bulgarian Insurance Code, Austrian Insurance Contract Law Act, German Insurance Contract Act and French Insurance Code, quoted in this section. Furthermore, some Member States have established detailed implementing measures, such as Ministerial decrees (e.g. German Insurance Contract Act, Article 169 (3); Article L132-23 of the French Insurance Code).
Constitutional Court\textsuperscript{137} Germany amended its rules\textsuperscript{138} on the allocation of acquisition and distribution costs in case of early termination. The change required that these costs are allocated evenly over the first five policy years (as opposed to two years) when calculating the surrender value. Consequently, policyholders became entitled to a higher surrender value in case of early termination.\textsuperscript{139} The different approaches to calculation of the surrender value may have a significant impact on the amount of money that the policy holder is entitled to in case of surrender.

9.2.2. Right to conversion into a paid-up policy

The conversion of the life insurance contract into a paid-up policy is another option for the policyholder in case the contract is not performed as agreed up to its maturity. This option is in the interest of the policyholder as it creates a possibility to obtain the benefit under the policy even when the premiums have not been paid or the contract is terminated early for other reasons. The benefit would however be reduced proportionately to the premiums paid. Again, policyholders do not acquire this right automatically, but from a certain minimum time threshold. Member State’s laws differ in relation to the conditions when this option becomes available to the policyholder, in particular the time when the required minimum time threshold is achieved. Furthermore, the rules on the calculation of the paid-up value may differ.\textsuperscript{140}

The differences in the rules on the rights to surrender and conversion into paid-up policies, as well as on the calculation of surrender and paid up values may necessitate adjustments in the internal procedures for the management of life insurance products, product design and pricing, business strategies or even liquidity management of insurers. For instance, the product price would have to be structured in such a way as to cover the expenses for the management of the policy up to the time when the right to surrender is established. It should also factor in the potential costs for the insurer

\textsuperscript{138} The amended rule is now reflected in Article 169 of the German Insurance Contract Law.
\textsuperscript{140} For instance, different rules exist under German and Austrian law (German Insurance Contract Act, Article 165 and Austrian Insurance Contract Act, Article 176).
based on the rules for calculating the surrender value. Moreover, insurers may have to adapt their products in view of the applicable national rules guaranteeing the right to surrender and the rules on surrender values. The business strategies would have to take into account the surrender rates in each country, which are largely influenced on the applicable rules to surrender. For its part, the rate of surrender in a given country is likely to affect also the insurer’s liquidity management.  

III. Other Areas

A number of additional issues may come into play in specific cases relating to the policyholder, the person at risk or to third persons which may have an interest in the life insurance policy. Some national laws contain specific rules regulating these issues in the area of life insurance and may leave some margin of discretion to the parties to agree on them contractually.

They include the question whether the insurer would be liable to pay the death benefit under a policy if the person at risk commits suicide or excluded risks from coverage. Furthermore, some general rules on unfair contract terms may also apply to life insurance. Another issue may be renewal of life insurance policies, which is likely to be particularly relevant to term life policies of a shorter duration. An issue concerning the insurer is the alteration of the general terms and conditions.

A number of issues addressed in life insurance contracts are linked to the interests of third parties, such as the right to subrogation, rights of heirs, family members, creditors, or the State when they have an interest in or rights relating to the benefit under the policy. Another issue addressed in a number of national laws on life insurance relates to the consequences of an unlawful killing of the person at risk by a person entitled to the benefit. While the issues mentioned in this paragraph are

\[142\] German Insurance Contract Act, Article 161.
\[143\] Bulgarian Insurance Code, Article 239: The exclusions are formulated as default rules and include: situations when the insured event materialises due to a criminal act committed by the insured; exercise of a capital punishment by virtue of a sentence which has come into force; if the death occurs in the course of war, military actions or a terrorist attack. The list of exclusions is non-exhaustive.
\[144\] German Insurance Contract Act, Article 164.
\[145\] German Insurance Contract Act, Article 170.
\[146\] For instance, German Insurance Contract Act, Article 160; Italian Civil Code, Article 1923; French Insurance Code, Article L132-9, L-132-14, and others.
\[147\] Birds', p.273-274; Bulgarian Insurance Code, Article 233; Bulgarian Insurance Code, Article 233; German Insurance Contract Act, Article 162.
regulated in insurance contract laws of some Member States, they may also touch upon other areas of laws and may thus not be considered contract law related in a strict sense.

National laws differ in these areas. On some of these issues the legislations of countries from across EU follow the same principles, for instance that a beneficiary unlawfully killing the person at risk loses the right to the benefit.\textsuperscript{148} Nevertheless, even when similar approaches are adopted, the rules implementing them differ. For instance, in relation to suicide, several Member States have adopted waiting periods, but their duration and scope of application varies. For instance, Bulgarian law\textsuperscript{149} and French law\textsuperscript{150} state that the insurer may not be held liable if the person at risk commits suicide before one year has expired from the conclusion of the contract, while German law\textsuperscript{151} establishes a waiting period of three years. German and French law\textsuperscript{152} additionally specify the types of life policies to which these rules apply.\textsuperscript{153}

Furthermore, some of the issues, such as rights of creditors or heirs may be interlinked with the national rules on insolvency and inheritance, which differ substantially from country to country. In particular, in relation to issues which may touch upon different branches of laws than insurance contract law, such as insolvency and inheritance, insurers may need to get acquainted with the specific national rules in more detail. This may require additional costs and the involvement of specialists from different areas of law.

While the above mentioned specific issues are not likely to arise in case of all contracts, insurers would need to take them into account and adjust their rules and procedures where necessary. Even if these adjustments may not affect the insurer’s business strategies for entering new markets substantially, they are likely to add costs and complexity to the process of adjustment to the laws of other EU countries.

\textbf{Questions on Section III:}

1. Do you consider that any of the above addressed issues pose contract-law related obstacles

\textsuperscript{148} Birds', p.273-274; Bulgarian Insurance Code, Article 233; Bulgarian Insurance Code, Article 233; German Insurance Contract Act, Article 162.
\textsuperscript{149} Bulgarian Insurance Code, Article 239.
\textsuperscript{150} French Insurance Code, Article L-132-8.
\textsuperscript{151} German Insurance Contract Act, Article 161. This limitation however does not apply to an act which was committed while a person was in a state of morbid disturbance of mind, precluding their ability to freely determine their intent.
\textsuperscript{152} For instance, the German Insurance Contract Act, Article 161 and French Insurance Code, Article L-132-8.
\textsuperscript{153} German Insurance Contract Act, Article 161. This limitation however does not apply to an act which was committed while a person was in a state of morbid disturbance of mind, precluding their ability to freely determine their intent.
2. Do any of the above issues necessitate adaptations of the same product if it was offered in different Member States?

Please consider all possible problems/costs which may result from differences in contract laws. They may relate to the design of insurance products (e.g. risk assessment, coverage, pricing); the marketing of insurance products (e.g. business strategies for market entry); the management of existing contracts (e.g. adaptations of IT systems, formalities for notifications) as well as broader considerations for the company (e.g. liquidity).

3. If relevant, what is the degree of adaptation necessary? Please describe the area where adaptations would be necessary.

4. Are any potentially problematic contract law related issues mentioned in Section III more relevant for any of the categories of life insurance products addressed in this paper?

5. Are there other relevant contract law areas or issues which have not been mentioned and which may pose obstacles?

Please provide practical examples where possible.