

INSURANCE LAW BETWEEN BUSINESS LAW AND CONSUMER LAW

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I. ECONOMIC ASPECTS

1. What is the economic importance of consumer insurance as compared to business insurance in your country (e.g. France) and region (e.g. Europe)?

In Hellas for the year 2008¹, the total gross insurance premium to GDP ratio was 1.99%. The percentage has slightly diminished compared to that of 2007, which was 2.07%, but the overall picture of the last decade is rather stable. The ratio between life assurance and non-life insurance was 47% to 53%². The actual amount of premiums shows an increase of the insurance market over the years; nevertheless, the annual growth ratio of non-life insurance presents a constant reduction (17.03% in 2000; 4.44% in 2008), as opposed to that of life assurance, which is quite unstable (-1.39% in 2000; 20.20 % in 2004; -1% in 2008). One should however notice that from 21,079,482 insurance contracts in force on 31 December 2008, only 2,501,435 were life assurance contracts; the rest, that is, 18,578,047 were non-life insurance contracts³.

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¹ Data according to the Annual Report of the Private Insurance Supervisory Committee, *infra*, under III 4, and the relevant Report of the Hellenic Association of Insurance Companies.

² EUR 2,809.2m for non-life insurance and EUR 2,501.6m for life assurance.

³ This specific data was for the first time recorded in 2008.

Private indemnity insurance, that is, health and accident insurance, covers almost 3% of the non-life insurance premiums⁴, while land-vehicles insurance covers 15.08%. General civil liability insurance amounts to 2.92%, when land vehicles liability insurance, which is compulsory, reaches 45.13% of the non-life insurance premiums. Life assurance in a narrow sense covers 65.97% of the life assurance premiums.

Commercial insurance⁵ amounts to 3.1% of the non-life insurance premiums. More analytically, aircraft insurance covers 0.02%, ships insurance 0.91%, goods in transit insurance 1.83%, aircraft liability insurance 0.07%, and ship liability insurance 0.27%⁶. The biggest increase in non-life insurance premiums was that of health insurance (+68.83%) and the biggest decrease that of aircraft liability insurance (-27.07%).

Provisional figures for 2008⁷ indicate that in the European insurance market gross written premiums declined in nominal terms and at constant exchange rates by 6%, mainly because of the shrinkage of the life sector⁸, which accounts for more than 60% of all premiums. Non-life premiums, which cover the remaining 40%⁹ of all premiums, showed a 2% nominal growth at constant exchange rates. The marine, aviation and transport market, which accounts for 4% of the total European non-life market, remained stable in 2008 (-7% at current exchange rates).

2. What are the expectations for further growth in each area of insurance?

According to data for the first nine months of 2009, the Hellenic insurance industry is going through the worst phase of the last decades, mainly because of the international economic crisis, but also due to solvency problems that insurance companies are facing. Growth ratio of life assur-

⁴ 2.51% for accident insurance and 0.41% for health insurance.

⁵ For the definition of commercial insurance *see infra*, under V 1.

⁶ For the following categories of insurance, which can also be characterised as commercial under specific circumstances, only general data is available: credit insurance 1.53%; suretyship insurance 0.22%; land vehicles insurance 15.08%; fire and natural forces insurance 16.01%; other damage to property insurance 5.45%; miscellaneous financial loss insurance 0.92%, all compared to total percentage of non-life insurance. It should be also noted that no railway rolling stock insurance existed in Hellas in 2008.

⁷ Data according to CEA (European Insurance and Reinsurance Federation) *Statistics no. 37, European Insurance in Figures* (October 2009), <www.cea.eu> [15 December 2009].

⁸ Total European life premiums recorded a drop of 11% in nominal terms and at constant exchange rates.

⁹ 27% for property and casualty insurance and 12% for accident and health insurance.

ance continues to be negative (-5.5%), while the amount of indemnity paid to policyholders and the number of contracts terminated by the insured is constantly rising. Non-life insurance shows a growth of 8.07%. The ratio between life assurance and non-life insurance for the same period is 44% to 56%. Since life assurance is traditionally characterized as consumer insurance, one can assume – although not safely – that business insurance is the area where larger growth is expected in the following years.

II. ACADEMIC PERCEPTION OF THE FIELD

1. Is insurance law taught and examined as a part of general private (contract) law or of commercial (contract) law?

Private insurance law is taught and examined in the Hellenic law faculties as a part of commercial law. More specifically: in the Faculty of Law, Athens University¹⁰ insurance law is a fourth-semester, optional course of Section B of Private Law, Commercial Sub-section. In the Faculty of Law, Thessaloniki University¹¹ the relevant compulsory course of the Commercial and Economic Law Department is entitled ‘Law of Commercial Transactions, Commercial Papers and Insurance Law’ and is taught in the sixth semester. Finally, in the Law Department, Thrace University¹² insurance law and law of commercial papers are forming the eighth-semester, compulsory course ‘Commercial Law IV’ of the Business and Labour Law Department.

2. Are the leading textbooks/commentaries/etc. published by Professors of general private (contract) law or of commercial (contract) law (or by practitioners, and, if so, do they participate in university law courses)?

The leading textbooks, commentaries and monographs on private insurance law are published by professors or lecturers of commercial law. Professors *A. Argyriadis, L. Georgakopoulos, V. Kiantos, K. Rokas, I. Rokas,*

¹⁰ National and Kapodistrian University of Athens, School of Law, Economics and Political Science, Faculty of Law. For relevant information see <www.uoa.gr> [15 December 2009].

¹¹ Aristotle University of Thessaloniki, School of Law, Economic and Political Science, Faculty of Law. For relevant information see <www.auth.gr> [15 December 2009].

¹² Democritus University of Thrace, Faculty of Komotini, Department of Law. For relevant information see <www.duth.gr> [15 December 2009].

K. Skouloudis and *R. Hatzinikolaou-Aggelidou*, whose works¹³ are among the most important and most cited in the field of private insurance law, are (or were) all professors of commercial law. Practitioners seldom – if ever – publish relevant books and participate in university law courses. The Hellenic Institute for Insurance Education, established in 1987 by the Hellenic Association of Insurance Companies and the Association of Greek Insurers, provides education and training services mostly to practitioners belonging to the administrative staff and the productive network of insurance companies on current insurance, finance and management issues.

3. *Are professorships in insurance law considered chairs in general private (contract) law or of commercial (contract) law? If neither, what is their position?*

In Hellas professorships in insurance law do not exist. As already mentioned *supra* (under II), private insurance law is part of commercial law, taught most often in courses on various aspects of commercial law, such as commercial papers or specific commercial transactions, by professors with commercial law chairs.

III. PROCEDURAL ASPECTS

1. *Are cases concerning commercial insurances heard in special commercial courts?*

Special commercial courts do not exist in Hellas. Cases concerning commercial insurances, *i.e.* disputes between insurer and policyholder, insurer and intermediary, policyholder and intermediary or between insurance companies, are heard in ordinary courts, under ordinary proceedings and according to the general provisions on subject-matter and territorial competence of the Code of Civil Procedure (CCivP)¹⁴.

¹³ Their most recent leading textbooks on insurance law are: A. Argyriadis, *Elements of insurance law* (4th edn, Athens/Thessaloniki 1986); L. Georgakopoulos, *Manual of commercial law*, vol. II, fasc. 2D (2nd edn, Athens 2002); V. Kiantos, *Insurance law* (9th edn, Athens/Thessaloniki 2005); K. Rokas, *Private insurance law* (Athens 1974); I. Rokas, *Private insurance. The Greek law relating to insurance contracts and insurance enterprises* (11th edn, Athens/Komotini 2006); Z. Skouloudis, *Private insurance law* (3rd edn, Athens 2000); R. Hatzinikolaou-Aggelidou, *Private insurance law* (2nd edn, Athens/Thessaloniki 2008) [all in Greek].

¹⁴ Code of Civil Procedure (*Κώδικας Πολιτικής Δικονομίας*; *Kodikas Politikis Dikonomias* – CCivP), Necessity Law 44/1967 (in force 16 September 1968). Substantially

Disputes arising out of motor vehicle insurance contracts between insurance companies and policyholders or their successors are handled according to art. 681A CCivP through special proceedings¹⁵, basically the same applied to labour disputes. Competent court in the first instance is always the one-member district court, regardless of the amount in controversy¹⁶; claims under EUR 12,000 are heard by justices of peace.

2. Are there special procedures for consumer claims?

In Hellas there are no special courts for consumer cases. Disputes between consumers and suppliers, due to breach of private rights stemming from consumer legislation, are heard in ordinary civil courts under ordinary proceedings.

Legislation on consumer protection is mainly the result of Hellas' obligation to implement relevant European Communities law. Thus, the basic law on consumer protection (Law 2251/1994 – ConsPL)¹⁷ embodied in

amended by Law Decree 958/1971 and consolidated by Royal Decree 657/1971 (in force 10 October 1971). Last amendments: Laws 3388/2005 and 3418/2005. A presentation of the Hellenic judicial system and civil procedure in English by K.D. Kerameus, Judicial Organization and Civil procedure in K.D. Kerameus & Ph.J. Kozyris (eds), *Introduction to Greek law* (3rd rev. edn, The Hague/Athens 2008) 341-378 and P. Yessiou-Faltsi, Hellas in P. Lemmens (ed.), *International encyclopedia of laws: civil procedure* (The Hague/London/New York 2004) 1-296.

¹⁵ Special proceedings (*ειδικές διαδικασίες*; *eidikes diadikasies*) are subject to simpler and speedier procedures, accompanied by wider powers of the court. However, a number of features of special proceedings (i.e. procedure is concentrated in a unique oral hearing, defaulting parties are considered present, no reopening of default is allowed without cause) were generalized by virtue of Law 2915/2001, which largely amended and simplified procedure in ordinary proceedings. See Kerameus, *supra* note, 366-368; Yessiou-Faltsi, *supra* note, 225-230.

¹⁶ According to art. 14 CCivP, one-member district courts are competent for disputes, the amount in controversy of which are over EUR 12,000 but do not supersede EUR 80,000. Art. 16 CCivP provides that disputes concerning insurance premiums and motor-vehicle insurance contracts are heard by one-member district courts, even if the amount in controversy is over EUR 80,000.

¹⁷ Law 2251/1994, in force 16 November 1994, substantially amended by Law 3587/2007, in force 10 July 2007. The 1994 Law replaced the first Hellenic consumer protection Law 1961/1991. For an unofficial English translation of Law 2251/1994 before the 2007 amendment see EU Consumer Law Acquis Database: <www.eu-consumer-law.org/legislation> [15 December 2009].

national law the most important EC Directives¹⁸ in this area. Presidential decrees 339/1996, 182/1999, 100/2000, 301/2002 and 131/2003¹⁹, along with some joint ministerial decisions, are forming the current legal framework on consumer protection.

According to the ConsPL²⁰, consumer is any natural person or legal entity or association without legal personality, for which products or services offered in the market are intended, and which make use of such products or services, as long as they are their final recipient. Consumer is also any addressee of an advertisement and any person or legal entity providing guarantees for the consumer, as long as they don't act in their professional or business capacity. This definition of the term 'consumer' is quite broad, so that commercial companies could also be regarded as consumers, as long as they are the final recipient of products or services. Of course the ConsPL and other relevant legislative instruments make use of the term 'consumer' in a narrower sense, where it is deemed necessary. Concerning disputes proceedings, there exists a differentiation between the rights of natural persons and commercial companies in their capacity as consumers, especially regarding consumer associations, as we will further see.

The ConsPL provides that all consumer associations are entitled to request before courts and administrative authorities the legal protection of their members' rights. Consumer associations are constituted at first and secondary level. Members of consumer associations at first level are only natural persons. Members of consumer associations at secondary level are only consumer associations at first level²¹. Consumer associations are entitled to bring an action, ask for provisional measures, make an application for annulment or for substantive judicial review against administrative

¹⁸ Consumer acquis directives transposed into Hellenic legislation by the ConsPL are: the Directive on distance selling (97/7/EC), the Directive on injunctions (98/27/EC), the Directive on doorstep selling (87/577/EEC), the Directive on sale of consumer goods and guarantees (99/44/EC) and the Directive on unfair contract terms (93/13/EEC). Directives outside the scope of the acquis transposed into Hellenic legislation by the ConsPL are: the Directives on misleading advertising and comparative advertising (84/450/EC – 97/55/EC), the Directive on unfair commercial practices (2005/29/EC) and the Directive on the distance marketing of consumer financial services (2002/65/EC).

¹⁹ Accordingly transposing to Hellenic legislation the following directives: the Directive on package travel (90/314/EEC), the Directive on timesharing (94/47/EC), the Directive on pursuit of television broadcasting activities (89/552/EEC), the Directive on injunctions (98/27/EC) and the Directive on electronic commerce (2000/31/EC).

²⁰ Art. 1 §4a.

²¹ Art. 10 §2 ConsPL.

acts and to make representations in civil proceedings. They are also entitled to intervene in pending legal proceedings involving their members, in order to support their consumer rights²². Furthermore, consumer associations, which have at least 500 active members and have been entered to the Consumer Associations Register for at least one year are also entitled to bring a declaratory action²³, concerning redress for damages suffered by consumers due to illegal behaviour of suppliers.

The above mentioned provisions introduce two exceptions to the rules on standing to sue, i.e. the ability of a person to become a proper party with regard to a given proceeding. Normally, standing to sue is granted only to persons whose substantive rights constitute the object of the relief sought in action. Third persons having only indirect or remote interest or fighting *pro bono publico* are not allowed to institute civil proceedings. Such actions, brought by a third party other than the holder of the subjective right in question, are admissible only when expressly permitted by law²⁴.

Art. 10 §§15 and 16d ConsPL establish the exceptional right of consumer associations to institute civil proceedings, asking for the protection of a specific right belonging to one of their members or a consumer²⁵. In this case standing to sue is characterized not only as exceptional but concurrent as well: the actual owner of the right can bring an action in his own name, even if an action brought by a consumer association for the same cause is pending. The opposite is not possible: *lis pendens* of the action brought by the owner of the right impedes consumer associations to ask for the judicial protection of this right as well²⁶.

Nevertheless, consumer associations can always intervene in the pending proceeding. Intervention is regularly permissible to third parties, only if they claim a legal interest in the victory of one of the original parties. The condition of legal interest is not only connected to the *res judicata*

²² Art. 10 §15 ConsPL.

²³ Declaratory actions (art. 70 CCivP) tend to the judicial determination of the existence or non-existence of a legal relationship capable of becoming *res judicata*. Declaratory judgments are not enforceable *per se*. See Kerameus, *supra* note 14, 350-351; Yessiou-Faltsi, *supra* note 14, 119-120.

²⁴ Kerameus, *supra* note 14, 349; Yessiou-Faltsi, *supra* note 14, 125.

²⁵ This right is distinguished from the right of bringing collective actions. See *infra*, under III 3.

²⁶ Ch. Apalagaki, Art. 10 Law 2251/1994 in E. Alexandridou (ed.) *Law on consumer protection. Greek and European Community law. Article-by-article commentary of Law 2251/1994 as standing after Law 3587/2007* (Athens 2008) nos 36-46.

effect or other binding effects of the decision against the third party, but also extends to any other interest related to the legal rights of the intervener²⁷. Thus, the right of intervention of consumer associations in a pending case between a consumer and a supplier would be doubtful, if it weren't expressly provided in the ConsPL²⁸.

The ConsPL provides also for amicable settlement of consumer disputes²⁹. In each of the 54 prefectures, into which Hellas is structured administratively, a Committee of amicable settlement is established, as a means of alternative dispute resolution between suppliers and consumers or consumer associations. These three-member Committees consist of a lawyer appointed by the board of directors of the local bar, a representative of the local chamber of commerce or industry appointed by the board of directors of the chamber, and a representative of the local consumer associations nominated by the relevant boards of directors. Cases are brought before the Committee at the request of consumers, consumer associations and the Consumer Ombudsman³⁰ and are heard within a maximum of 15 days following submission of the plea; interested parties must be invited in writing at least 5 days before the hearing. Whenever special conditions so require, the chairman of the Committee can extend the time limits by a maximum of 5 days. Interested parties can represent themselves at the hearing or they can appoint a lawyer or authorize a third person for this purpose. Findings of the Committee, which must be notified to the Consumer Ombudsman and the parties within a maximum of 15 days after the hearing, are not binding for the parties and are not considered as enforceable instruments.

Law 3297/2004³¹ established the Consumer Ombudsman, an independent authority of extrajudicial dispute resolution in the area of consumer

²⁷ Yessiou-Faltsi, *supra* note 14, 146.

²⁸ Apalagaki, *supra* note 26, no. 39.

²⁹ Art. 11 ConsPL.

³⁰ For the function and jurisdiction of the Consumer Ombudsman *see* next paragraph.

³¹ In force 23 December 2004; last amended by Law 3769/2009, in force 1 July 2009. The establishment of the Consumer Ombudsman followed a series of legal texts of the European Union, such as the Commission Recommendation of 30 May 1998 (98/257/EC) on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes and the Commission Recommendation of 4 April 2001 (2001/310/EC) on the principles for out-of-court institutions involved in the consensual resolution of consumer disputes. The Consumer Ombudsman is the most important alternative dispute resolution scheme regarding consumer disputes. Other relevant schemes are the European Consumer Center, SOLVIT NET, FIN-NET, the Ombudsman for Banking-Investment Services, etc.

disputes, supervised by the Minister of Development. The authority's institutional role is to intervene in consumer disputes and seek their out-of-court consensual settlement. The Ombudsman is also legally endowed with the power to issue public recommendations and directives to providers in order to ensure the smooth operation of the market and the effective protection of consumers' rights from misleading and unfair commercial practices. Additionally, the Consumer Ombudsman operates as a legal consultant to the state, making concrete propositions and detailed legislative suggestions for tackling various market dysfunctions and promoting consumer protection.

The Consumer Ombudsman undertakes cases of its own motion or after a signed request, submitted at least by one of the interested parties (natural or legal persons or associations) within three months from the day the complainant was fully informed about the harmful and damaging act. The Ombudsman also undertakes requests of consumers or consumer associations rejected in the framework of previous out-of-court dispute settlement proceedings. Nevertheless, he does not intervene in cases pending before regular courts.

Each complaint is examined objectively and impartially. The interested parties can communicate their views to the Ombudsman and be informed about the arguments of the opposite party. The Consumer Ombudsman promotes the amicable settlement of the dispute, endeavoring to reconcile the parties. If such an agreement is achieved, a relevant record is drawn up and signed by both parties or by their representatives. The record has the same legal effects as an in-court settlement. If no settlement is reached, the Ombudsman makes a written recommendation to the parties in order to solve their dispute. If one of the parties does not comply with the recommendation, the Ombudsman has the right to disclose the facts notifying the relevant findings.

3. Is there a difference in commercial and consumer insurance litigation as to the availability of pre-emptive actions (injunctions) or class actions?

In Hellas there is no difference in commercial and consumer insurance litigation regarding pre-emptive actions, nor does procedural law provide the admissibility of class actions. The ConsPL³² provides though that consumer associations, which have at least 500 active members and have been entered in the Consumer Associations Register for at least one year, may

³² Art. 10 §16.

bring any kind of action in order to protect consumers' general interests (collective action – *Verbandklage* according to German law)³³. A number of claims – of no restrictive character – are mentioned in the law, such as claims against the supplier to cease and desist from any illegal behaviour, even prior to its materialisation, regarding the use of unfair standard terms, contracts negotiated away from business premises, contracts negotiated at a distance, after-sales services, defective products, misleading, unfair, comparative or direct advertising, etc., and claims for the financial redress of non-pecuniary damages. Consumer associations can also demand for interim protection of their members' rights, while the judicial decision is still pending.

4. *Is there a difference between commercial and consumer insurance concerning the activity of the supervisory agency in protecting the policyholder or the insured?*

Insurance enterprises, which are regulated by Legislative Decree 400/1976³⁴, are subject to the sole supervision of the Private Insurance Supervisory Committee (PISC). The PISC is a public law entity recently established by Law 3229/2004³⁵ and supervised by the Ministry of Finance. Its main duties are the granting of licence to insurance enterprises, their financial supervision, comprising in particular their solvency control and the formation of their technical reserves, and the imposition of fines, disciplinary penalties as well as administrative penalties. The law makes no distinction between commercial and consumer insurance regarding the activity of the supervisory agency, stating that the basic aim of the supervision

³³ In collective actions against suppliers the general rules on standing to sue apply, since consumer association is regarded as the actual owner of the right in dispute, although in reality it is not a contractual party: *see* Apalagaki, *supra* note 26, nos 38, 50. According to contrary opinions, collective action is a kind of *actio popularis*: consumer associations are not the actual owners of the right in question but merely defendants of general interests. *See* N. Nikas, *Civil Procedure*, vol. I (Athens/Thessaloniki 2003) 314; S. Koussoulis, The results of decisions on collective actions, *Δίκαιο Επιχειρήσεων και Εταιριών* (= *Dikaio Epichiriseon kai Etairion – DEE*) 2002, 1097-1103, 1099.

³⁴ In force 17 January 1970, last amended by Law 3746/2009.

³⁵ The Private Insurance Supervisory Committee fully assumed its function on 1 January 2008. The first attempt to establish state supervision of insurance companies was made in 1909 through law ΓΥΣΓ. Law ΓΧΜΣΤ/1 March 1910 permitted for the first time the establishment of foreign insurance companies in Hellas. In 1926 insurance companies were put under the supervision of the Ministry of Commerce; from 1997 supervision of insurance undertakings was the duty of the General Secretariat of Commerce of the Ministry of Development. *See* Hatzinikolaou-Aggelidou, *supra* note 13, 78-79.

is the protection and safeguard of the interests of policyholders and parties entitled to indemnity under an insurance agreement³⁶. The provisions on insurance supervision could be classified according to their purpose: provisions aiming at the uninterrupted solvency of insurance enterprises and at the insured's protection can be characterised as the law of insurance supervision in the narrow sense; provisions regulating the operation of the insurance enterprise may be characterised as the law on insurance supervision in the broad sense³⁷. According to jurisprudence, state supervision of insurance enterprises is imposed by reasons of public interest's protection, since the leading purpose of insurance is the coverage of financial needs created by different events occurring in a person's life³⁸.

The PISC, although existing only for a very short period, seems to well realise that supervision oriented towards consumer protection falls under its scope. Among the principles governing the PISC's function is the reinforcement of consumer trust in insurance undertakings through the development of a regulatory frame, including the drafting of a code of deontology for insurance enterprises³⁹. Towards this direction the PISC, in conjunction with the Consumer Ombudsman, the General Secretariat of Consumer and the Hellenic Association of Insurance Companies, recently proceeded to the signature of a Memorandum⁴⁰ regarding means of alternative dispute resolution between insured/consumers and insurance companies. The dual aim of consumer's requests to the Consumer Ombudsman regarding matters of insurance was stressed: extra-judicial resolution of private-law-nature disputes between insurer and insured on the one hand and, on the other hand, control of insurance company's behaviour for breach of law and imposition of administrative penalties. Since the Con-

³⁶ It should be noted, however, that in an attempt to deregulate the insurance market, insurance companies are no longer obliged to place terms of insurance under the control of the supervisory agency from 1 January 1999. See R. Hatzinikolaou-Aggelidou, *Insurance contract. Protection of the insured under consumer law* (Athens/Thessaloniki 2000) 187-192 [in Greek].

³⁷ I. Rokas, Hellas in S. Fredericq & H. Cousy (eds), *International encyclopedia of laws: insurance law* (The Hague/London/New York 1999) 45.

³⁸ Areios Pagos (=Supreme Court – AP) 688/2005, *Επιθεώρηση Εμπορικού Δικαίου* (=Epitheorisi Emporikou Dikaiou –EEmpD) 2005, 749-750.

³⁹ See the PISC *Annual Report 2008*, <www.pisc.gr> 5-6 [in Greek; 15 December 2009]. The Hellenic Association of Insurance Companies approved a Code of Deontology – Rules of Proper Conduct in 1998. This Code is implemented to all the members of the Association, but has no binding effect whatsoever. Its purpose is to create an ethical frame for the insurance companies, which will lead to a trustworthy and transparent insurance environment: Hatzinikolaou-Aggelidou, *supra* note 36, 336-341.

⁴⁰ PISC, Consumer Ombudsman, General Secretariat of Consumer, *Memorandum of 19 March 2008*, <www.pisc.gr/Agreement> [in Greek; 15 December 2009].

sumer Ombudsman has no power of imposing administrative penalties, it was agreed that all relevant data would be forwarded to the PISC, which would see that appropriate penalties would be imposed. Until the beginning of 2009, the Consumer Ombudsman had forwarded 223 consumers' requests to the PISC; 414 consumers' complaints for breach of mandatory provisions of insurance legislation by insurance companies were handled by the PISC in 2008⁴¹.

IV. LEGISLATION

1. *Is 'insurance law' regulated in a separate codification, such as an 'Insurance (Contract) Act', or as a part of a general Civil Code or a general Commercial Code?*

Private insurance law is basically regulated by the Insurance Contract Law (InsL)⁴². Marine and aviation insurance are governed by the Private Maritime Code⁴³ and the Private Aviation Code⁴⁴ respectively. Also important is the law on compulsory insurance of civil liability arising from motor vehicle accidents⁴⁵.

2. *To what degree does the codification of insurance law cover both commercial and consumer insurance?*

The InsL governs all kinds of insurance, including both commercial and consumer insurance. Usually the policyholder, namely the person who concludes an insurance contract with the insurer, or the insured, that is the person who suffers from the occurrence of the insured event, are the final recipients of the insurance services, so they are characterised as consumers according to the ConsL⁴⁶, irrespective of their business activity.

⁴¹ PISC *Annual Report 2008*, *supra* note 39, 62-64.

⁴² Law 2496/1997, in force 17 November 1997. Art. 33 para. 2 InsL abolished the ninth part of the Commercial Code on insurance contracts, which regulated all relevant matters since 1911. For a brief exposition in English of the Hellenic law on Private Insurance see N.A. Deloukas & E. Perakis, *Commercial Law in Kerameus & Kozyris*, *supra* note 14, 248-251.

⁴³ Law 3816/1958, in force 28 February 1958, arts. 257-288.

⁴⁴ Law 1815/1988, in force 11 November 1988, arts. 129-138.

⁴⁵ Law 489/1976, in force 1 January 1978; consolidated by Presidential Decree 237/1986; last amended by Law 3557/2007.

⁴⁶ See *infra* under III.2.

This assessment, based on the broad definition of the term ‘consumer’ in consumer legislation, would result to the same treatment of all insured, whether they are natural or legal persons and conclude an insurance contract for private or business reasons. Since the primary aim of the insurance legislator was the protection of the party who concludes an insurance contract for private reasons, the InsL narrows the field of application of consumer legislation, considering as consumer the natural person or the legal entity which enters into an insurance contract for non-commercial reasons⁴⁷. In that sense, it could be deemed that in the field of consumer protection insurance law takes priority over consumer law by defining in which insurance cases the ConsL is applicable⁴⁸.

It should be noted that no provision of the InsL contains the above-mentioned definition of ‘consumer’, nor does the law make straight reference to policyholders who conclude an insurance contract for private reasons. However, the application of a number of protective provisions for the insured can be restrained, if the policyholder or the insured has concluded the insurance contract for purposes relating to its trade, business or profession⁴⁹. These exceptions clearly indicate the legislator’s intent to distinguish between consumers and non-consumers⁵⁰.

Of great significance towards that direction is the provision of art. 33 §1 InsL, according to which

“[a]ny and all legal acts which are to the detriment of the policyholder, the insured or the beneficiary shall be null and void, unless otherwise specifically stipulated in this Law. This shall not apply to insurance for the carriage of goods, credit or guarantee insurance⁵¹, or marine or aviation insurance”.

Based on what has been so far exposed, the following categorisation can be made: (i) purely commercial insurances are the 5 categories mentioned in art. 33 InsL, i.e. (a) insurance for the carriage of goods, (b) credit

⁴⁷ Hatzinikolaou-Aggelidou, *supra* note 36, 32-33.

⁴⁸ I. Rokas, *supra* note 13, §381.

⁴⁹ Arts. 7 §§3 and 6, 14 §4, 18 §4, 19 §5. For the content of arts. 7 §§3 and 6 and 14 §4, see *infra* under VI 1; art. 18 regulates open cover insurance and art. 19 fire insurance. For an English translation of the InsL see I. Rokas, *Insurance Code. Basic Greek legislation of private insurance. Explanatory notes and critical comments* (2nd edn, Athens/Komotini 2008) 515-541. The translation was made by E. Galanaki.

⁵⁰ Hatzinikolaou-Aggelidou *supra* note 36, 34; I. Rokas, *supra* note 13, §377 with reference to favourable jurisprudence.

⁵¹ The law refers to commercial guarantees. Accordingly, the consumer guarantee insurances are not included in the exceptions of this article.

insurance, (c) guarantee insurance, (d) marine insurance, and (e) aviation insurance; (ii) all other insurance contracts are classified based on their functional character: (a) if they are concluded for purposes related to the insured's trade, business or profession, they are deemed as commercial; (b) if they are not concluded for professional reasons, they are regarded as consumer insurance contracts.

The main characteristics that insurance must have in order to fall into category (ii)(a) are the following: (a) the risks undertaken by the insured cover events that occur in the course of professional activity; (b) the policyholder or the insured has a negotiable advantage and is familiar with the insurance market; (c) the insurance contract is of commercial character for both parties⁵², (d) the insurance contract does not have the characteristics of a *contrat d'adhésion*.

Commercial insurance in the narrow sense (*see* previous paragraph under *i*) is also governed by the InsL, as already mentioned. There exist some special provisions though, regarding marine and aviation insurance⁵³. Marine insurance is regulated in title 14 (arts. 257-288) of the Private Maritime Code. The Code provides that the InsL shall also apply by analogy in case of navigation risks unless its provisions are incompatible with marine insurance⁵⁴. As far as aviation insurance is concerned, special provisions are introduced by the Private Aviation Code, containing though minimal regulation. The relevant provisions of the Private Maritime Code and the InsL⁵⁵ also apply by analogy to aviation insurance.

V. 'CONSUMER' AND 'COMMERCIAL' RISKS

1. How does the legal system distinguish 'consumer' from 'commercial' risks?

In a commercial insurance contract the insurer undertakes large risks⁵⁶. Large risks insurance⁵⁷ is deemed to be (a) railway rolling stock insur-

⁵² Insurance is always regarded as a commercial activity for the insurer.

⁵³ *See infra* under IV 1.

⁵⁴ In fact art. 257 Private Maritime Code states that arts. 189-255 of the Commercial Code on insurance contracts also apply in marine insurance; considering that the provisions of the Commercial Code on insurance contracts have been fully replaced by the InsL, art. 257 should be interpreted as referring to the new law: Rokas, *supra* note 49, 85.

⁵⁵ Also by succession to the Commercial Code: art. 138 Private Aviation Code. *See* Rokas, *ibid.*, 96.

⁵⁶ Hatzinikolaou-Aggelidou, *supra* note 36, 48.

⁵⁷ According to art 13 §3 Law Decree 400/1976, as amended by Presidential Decree

ance, (b) aircraft insurance, (c) ships (sea, lake and river and canal vessels) insurance, (d) goods in transit (including merchandise, baggage, and all other goods) insurance, (e) aircraft liability insurance, (f) liability for ships insurance, (g) credit or suretyship insurance, whenever the policyholder is engaged professionally in an industrial or commercial activity or in one of the liberal professions and the risk relate to such activity, (h) land vehicles or motor vehicles insurance, fire, natural forces or other damage to property insurance, general civil liability insurance and miscellaneous financial loss insurance, provided that the business size of the policyholder exceeds some limits⁵⁸. This definition follows the line of art. 33 InsL (*supra*, under IV 2), being at the same time broader – including as well railway rolling stock insurance and land and motor vehicles insurance, fire, natural forces or other damage to property insurance, general civil liability insurance and miscellaneous financial loss insurance – and narrower, as far as credit and suretyship insurance are concerned, although it is generally accepted that only credit and suretyship insurances for commercial reasons fall under the scope of this article.

2. *Does the legal system award protection for large risks, mass risks, policyholders who are natural persons, and private consumers?*

As already mentioned (*supra*, under IV 2), the InsL does not contain special regulation for policyholders who are natural persons. Special protection is awarded to consumers, that is, natural persons or legal entities which enter into an insurance contract for non-commercial reasons. The InsL is also applied to large risks insurance, but in this case the parties are free to negotiate all terms of the insurance contract and waive the rights and protection that the legal system awards.

VI. SUBSTANTIVE ASPECTS

1. *In what areas do consumers enjoy special protection?*

Insurance legislation is mainly oriented towards the protection of the policyholders' rights, so favourable provisions, contained both in the InsL

252/1996, in order to implement into Hellenic law the Directive on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC (88/357/EC).

⁵⁸ The limits relate to the balance-sheet total, the net turnover and the average number of employees.

and Legislative Decree 400/1976, usually apply to both consumer and commercial insurances, unless the parties, due to the commercial character of the contract, agree otherwise. Thus the most significant principles of policyholders' protection in Hellenic law will be subsequently exposed:

A. Information duty: the insurer has the duty to provide the policyholder with specific information relevant to the contract itself and the insurance company before the conclusion of the contract⁵⁹. Insurance undertakings are also obliged in the duration of the contract to inform the policyholder of any change of name, legal form or address of its registered office, branch office or agency issuing the policy. If this pre-contractual obligation of the insurer is not met, the policyholder has the right to withdraw in writing within fourteen days of the policy being delivered; the consequence of the policyholder's withdrawal is that the contract will be avoided⁶⁰.

B. Incorporation of the insurance terms and conditions: whenever the contract is governed by general or special insurance terms and conditions, the insurer shall note this in the section of the insurance policy where the individual elements of the contract appear, and provide the aforesaid terms and conditions to the policyholder together with the insurance policy⁶¹. If the insurer does not comply with this obligation, the policyholder has a right to withdraw, which leads to a void contract. If the policyholder does not withdraw, the insurance contract is governed by the general insurance terms, which apply to the specific kind of insurance⁶². All terms contained in the insurance policy should take into consideration the policyholder's reasonable interests as well as those of the insured; they should also be clearly expressed and written in understandable language. Any agreement

⁵⁹ Art. 4 §§2H, 3D Law Decree 400/1976, as amended by Presidential Decree 252/1996, in order to implement into Hellenic law Directive on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239 and 88/357 (92/49/EC – third non-life insurance Directive) and Directive on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267 and 90/619 (92/96/EC – third life assurance Directive).

⁶⁰ Art. 2 §6 InsL.

⁶¹ Art. 2 §4 InsL.

⁶² It should be stressed though that, in an effort of deregulation of the insurance market, the systematic notification of the general insurance terms and conditions to the supervisory agency is no longer obligatory according to art. 42c §1 Law Decree 400/1976.

purporting to waive the right to avoid the insurance contract on grounds of error shall not be binding on the policyholder⁶³.

C. Rights of withdrawal and rescission: (a) the policyholder has a withdrawal right to the formation of the insurance contract in the following two cases: (i) in the event that the contents of the insurance policy differ from the contents of the application for insurance, the policyholder has the right to withdraw within one month following receipt of the insurance policy, provided that the insurer has duly informed the policyholder of such inconsistencies, as well as of his right to object⁶⁴. It is supported that the inconsistencies refer to the content of the application of insurance (nature of risk, extent of cover, amount of premium, etc.), not to the insurance terms that are not individually negotiated. If the application for insurance does not make explicit reference to the extent of exceptions acceptable by the applicant, this does not constitute inconsistency to the application, although the exceptions have to be reasonable⁶⁵; (ii) as already mentioned above (this paragraph, under A), if the insurer fails to supply to the applicant all necessary information, when the application or insurance is submitted, or if the insurer fails to communicate to him the insurance terms and conditions, the policyholder has the right to withdraw within fourteen days of the policy being delivered. The aforesaid time limit shall not commence, should the insurer fail to inform the policyholder of his right of withdrawal. The policyholder's right to withdraw shall expire after the lapse of ten months from the date of payment of the first premium. If the policyholder withdraws, the contract shall be avoided⁶⁶. (b) The policyholder has the right to rescind from the contract irrespective of

⁶³ Art. 2 §8 InsL.

⁶⁴ Art. 2 §5 InsL. The insurer should inform the applicant in writing, or by notice situated on the first page of the insurance policy written in such a way as to make the notice readily distinguishable from the other parts of the document, thus enabling it to be easily noted by the reader. The insurer must also supply the policyholder with a sample withdrawal statement.

⁶⁵ Rokas, *supra* note 49, 518 note 3, and *idem*, Comment to AP 846/2003, *EEmpD* 2003, 842-843. In its decision (*EEmpD* 2003, 839-842), the Supreme Court embedded a different opinion, accepting that the policyholder should be duly informed about all exceptions contained in the insurance policy. It is also interesting to note that neither the law nor the courts distinguish between consumer and commercial insurance for the application of this protective regulation, which, as Rokas points out in his comment, can lead to the weakening of the consumer's position.

⁶⁶ Art. 2 §6 InsL.

cause, unless otherwise provided in the insurance policy⁶⁷. Specifically, in indemnity insurances with a contract period in excess of one year and in personal insurances the policyholder shall be entitled to rescind from the contract within fourteen days from the date when the policy was delivered to the policyholder. In non-group life insurances the policyholder is entitled to rescind from the contract within thirty days from the moment he was informed about its conclusion. The cooling period shall not commence, if the policyholder has not been informed by the insurer of his right in this regard, which must be confirmed by means of a document. If the insurer fails to inform the policyholder of his right to rescind, the right lapses after two months from the payment of the first premium. The right to rescind does not apply to indemnity insurances where, on the particular request of the policyholder, cover is provided immediately⁶⁸.

D. Non-interruption of the insurance coverage: the InsL provides larger protection for the policyholder in case of negligent or intentional breach of his duties in comparison to the previous legal regime. The provisions of the InsL, which regulate the insurer's duties, are of mandatory character for consumer insurance, and all legal acts which are to the detriment of the policyholder, the insured or the beneficiary shall be null and void. In purely commercial insurances (*see supra*, under IV 2) this mandatory character fully retreats, whereas for the rest of the commercial insurances, contractual deviations in specific cases are allowed⁶⁹. The policyholder enjoys protection mainly in the following areas: (a) He has a duty to disclose before the conclusion of the contract all information or circumstances of which he is aware, and which are material for the assessment of the risk. If, for any reason whatsoever beyond the control of the insurer or the policyholder, or because of negligent breach of his disclosure duty by the policyholder, information or circumstances which are objectively material for the assessment of risk did not become known to the insurer, the latter shall be entitled to terminate the insurance contract, or to request its alteration, within a period of one month following the insurer's discovery of such information or circumstances. The proposal of the contract's alteration by the insurer shall be deemed to constitute a termination of the contract if, within one month from receipt thereof, such proposal is not accepted by the policyholder. Intentional breach of the disclosure by

⁶⁷ The contract can also provide for private sanctions in case of rescission, although these sanctions cannot prevent the rescission from taking effect: Rokas, *supra* note 49, 527 note 25. In distance insurance contracts such provisions are not permitted.

⁶⁸ Art. 8 §3 InsL.

⁶⁹ Hatzinikolaou-Aggelidou, *supra* note 36, 60-61.

the policyholder shall entitle the insurer to terminate the contract within one month from the date on which the insurer acquired knowledge of the breach⁷⁰. The insurer is obliged to comply with the time-limits provided by law, otherwise he cannot invoke his termination or alteration right; (b) Throughout the contract period, the policyholder shall be obliged to notify the insurer, within fourteen days after acquiring knowledge, of any information or circumstances liable to entail a significant aggravation of risk. The insurer is also in this case entitled to terminate the contract or to request its alteration⁷¹. On the other hand, if there is a material reduction of risk, the policyholder shall be entitled to request a proportionate reduction of the premium. If the insurer refuses to make the reduction, or fails to answer the relevant request for a period in excess of one month following its submission, the policyholder shall be entitled to terminate the contract for the remaining contract period⁷²; (c) The policyholder shall be obliged to take all necessary measures to avoid or mitigate the insured loss and to comply with the insurer's instructions. In the event of negligent breach of this obligation, the policyholder shall be obliged to indemnify the insurer. Expenses resulting from such actions will be borne by the insurer, provided that they are reasonable under the circumstances, even if such expenses exceed the insured sum. Any agreement to the contrary shall be acceptable, if the policyholder or the insured has concluded the insurance contract for commercial purposes⁷³; (d) The policyholder shall notify the insurer of the occurrence of the risk within eight days as from the date on which he acquired knowledge thereof. He is also obliged at the insurer's request to supply all necessary information, details and documents relating to the circumstances and the consequences of the occurrence of the insured event. The intentional breach by the policyholder of these duties shall grant the insurer the right to claim damages. Negligent breach of the policyholder's duties does not create any kind of liability, but he cannot evoke ignorance of the occurrence of the insured event, should the ignorance be imputable to his gross negligence⁷⁴. Nevertheless, the insurer is obliged to pay the insurance money, even in case of late notification by the policyholder; any contrary agreement is null and void, unless the insur-

⁷⁰ Art. 3 §§1-6 InsL.

⁷¹ Art. 4 §§1-2 InsL. According to §3 of this article its provisions do not apply to life insurance and health insurance.

⁷² Art. 5 §1 InsL. In case of life and health insurance policy, any change in the health of the insured shall not give rise to the right to reduce the premium.

⁷³ Art. 7 §§3-4 InsL.

⁷⁴ Art. 7 §§1-2 InsL. These provisions shall not apply to personal insurances.

ance contract is purely commercial⁷⁵; (e) The insurer shall not be obliged to pay the insurance money, if the insured event, occurred (i) in case of indemnity insurance, due to an intentional act or omission or due to gross negligence, (ii) in case of personal insurance, due to an intentional act or omission, on the part of the policyholder or the insured or the persons dwelling with any of them, or their legal or other representatives⁷⁶; However, the terms of the policy may provide for an increased number of cases in which the insurer's liability shall be excluded, if the policyholder or the insured concludes the policy with a view to covering professional risks⁷⁷; (f) In case of multiple insurance the policyholder should notify without undue delay each insurer of the conclusion of the other contract and of the insured sum. Should the policyholder intentionally fail to make the said notifications, the insurer is entitled to terminate the contract⁷⁸.

E. Prohibition of termination without prior notice of the contract. (a) The policyholder is obliged to pay the premium. Failure to pay a subsequent premium due gives the insurer the right to terminate the contract. The termination notice shall be sent to the policyholder, whereby the latter shall be informed that any further delay in the payment of premium shall result on the expiry of one month from receipt of the notice, in the termination of the insurance contract⁷⁹; (b) The policyholder shall be entitled to terminate the insurance contract by notice, if the insurer is declared insolvent. The insurer shall also be entitled to terminate the insurance contract by notice, if the policyholder is declared insolvent. The termination, whenever initiated by the insurer, shall not come into effect until the lapse of thirty days from the date on which such notice of termination was communicated to the policyholder⁸⁰; (c) The indemnity insurance contract shall not be terminated, if the policyholder or the insured is succeeded by another party. The insurer or the policyholder shall be entitled to terminate the contract within thirty days from the date on which such succession becomes known. The termination, whenever initiated by the insurer, shall not come into effect until the lapse of fifteen days from the date on which such notice of termination was communicated to the policyholder⁸¹. This provision does not however apply to insurance policies issued to order or

⁷⁵ Hatzinikolaou-Aggelidou, *supra* note 36, 73-76.

⁷⁶ Art. 7 §5 InsL.

⁷⁷ Art. 7 §6 InsL.

⁷⁸ Art. 15 §§1, 3 InsL.

⁷⁹ Art. 6 InsL.

⁸⁰ Art. 8 §§ 4-5 InsL.

⁸¹ Art. 12 §§ 1-2 InsL.

to bearer, *i.e.* to commercial insurances⁸²; (d) If the contract is of indefinite duration, it shall be terminated by notice at the end of the insurance period. The notice does not have to mention a cause. The time limit set for the exercise of the right of termination may be neither less than one month, nor more than three months⁸³; (e) Other reasons for terminating the insurance contract than those provided by law can be agreed in the insurance policy. In the event that the insurer maintains the right to terminate the contract after the insured event has occurred, the policyholder shall have a corresponding right. The termination, whenever initiated by the insurer, shall not come into effect until the lapse of thirty days from the date on which such notice of termination was communicated to the policyholder⁸⁴.

F. Protection in case of subrogation. The policyholder and, in the event of insurance on the account of a third party, the insured and the beneficiary, if any, shall be obliged to safeguard their rights to bring a legal action against any third party to which the insurer may become subrogated. In case of breach of such obligation, the liable party shall compensate the insurer for any loss or damage sustained thereby⁸⁵. If the policyholder or the insured concludes insurance for purposes relating to its trade, business or profession, it may be agreed that the insurer shall be discharged of its liability to pay the insurance money to the insured under the policy, to the extent that the insurer was deprived of the right to claim damages for reasons for which the policyholder or the insured is liable⁸⁶.

G. Protection from void insurance contracts. (a) An insurance contract, covering risks or undertaking insurance commitments that are contrary to rules of safeguarding public interest, is prohibited and is absolutely null and void⁸⁷; (b) conclusion of insurance contracts by an undertaking without lawful licence is prohibited and is null and void. The invalidity cannot be invoked against a *bona fide* contracting party⁸⁸.

⁸² Hatzinikolaou-Aggelidou, *supra*, note 36, 94.

⁸³ Art. 8 §2 InsL.

⁸⁴ Art. 8 §5 InsL. This provision does not apply to life and health insurance.

⁸⁵ Art. 14 §3 InsL. Under the previous legal regime, breach of such obligation generated the insurer's right to terminate the contract.

⁸⁶ Art. 14 §4 InsL.

⁸⁷ Art 53 §1 Law Decree 400/1976.

⁸⁸ Art 53 § 2 Law Decree 400/1976.

2. What are the instruments of protection in consumer insurance law?

The provisions of the InsL are in principle mandatory, to the extent that they aim at protecting the policyholder's rights. Indeed, as already stated before, any act to the detriment of the policyholder is considered null and void, unless otherwise specifically stipulated by the InsL. Some authors characterise the set of insurance rules as semi-mandatory, considering that the above-mentioned protective provision does not apply to purely commercial insurance contracts, contractual deviations being permitted in specific cases of commercial insurance, and policyholders' rights cannot be reduced but only expanded⁸⁹.

The main instruments of protection in consumer insurance law have mainly been described in the previous paragraph (VI 1). As we have already seen, the InsL provides for rights of withdrawal and rescission, cooling off periods and information and advice duties. As far as control of general terms of insurance is concerned, consumer legislation also applies, along with special rules contained in insurance law⁹⁰. Thus, the provisions on standard contract terms and unfair standard terms included in the ConsPL are also implemented to general insurance terms⁹¹. Therefore, terms which have been drafted in advance for a future number of contracts shall not be binding on the consumer, if at the conclusion of the contract he was unaware of them without fault, especially if the supplier omitted to inform him of their existence or deprived him of the opportunity to appraise their content⁹². Standard contract terms which cause a significant imbalance in the parties' rights and obligations to the detriment of the consumer shall be prohibited and are considered null and void. The abusive character of a general term inserted in a contract shall be assessed taking into account the nature of the goods or services for which the contract was concluded,

⁸⁹ Hatzinikolaou-Aggelidou, *supra* note 36, 47 with reference to I. Rokas, *Private insurance* (6th edn, Athens/Komotini 1998) §112.

⁹⁰ *Infra*, under VI 1 B.

⁹¹ Hatzinikolaou-Aggelidou, *supra* note 36, 57-58. For an exposition of jurisprudence regarding abusive general insurance terms *see* G. Dellios, Art. 2 Law 2251/1994 *in* Alexandridou, *supra* note 26, no. 48 and notes 148-151.

⁹² Art. 2 §1 ConsPL. On this subject *see* I. Rokas, Consumer and insurance terms *in* *Miscellanea in honorem Alikis Kiantou-Pampouki* (Thessaloniki 1998) 533-578 [in Greek] and *idem*, *supra* note 13, §§338-362. For an interesting comment on general insurance terms with reference to jurisprudence *see* M. Varela, *DEE* 2007, 710-712. *See also* G. Triantafylakis, Private insurance and consumer protection, *DEE* 2006, 142-147, mainly dealing with motor vehicle liability insurance.

the contract's scope, all special circumstances existing at the conclusion of the contract, as well as the rest of the terms of the contract or of any other contract on which it is dependent⁹³. Nevertheless, when a court declares by final judgment that a standard term is abusive, its decision is binding only for the specific parties and the specific contract. No rule exists providing the general abolition of the said term in all existing contracts or the prohibition of its insertion in future contracts. The same stands for collective actions as well, since the ConsPL does not broaden the subjective limits of *res judicata*, although it provides that legal effects of such a decision apply to everyone and not only to the parties⁹⁴.

Hellenic law does not provide for special sanctions for late performance on the part of the insurer. On the occurrence of the insured event, the insurer must pay the insurance money promptly. If a longer period is required for the assessment of the full extent of the loss, the insurer shall be obliged to pay the undisputed amount without undue delay. If the insurer does not perform his obligation in a timely manner, the policyholder can set him in default by means of protest and claim moratory interest.

3. *What role does consumer policy play?*

In Hellas responsible for the implementation of EU and national consumer legislation and policy protecting consumer interests is the Ministry of Development through the General Secretariat of Consumers (GSC). Among its main responsibilities are consumer information, education, advice and assistance. The GSC has taken a number of initiatives and actions to inform and educate consumers about their rights and protections: it has published and distributed an informative booklet, the 'Consumer Guide', covering a wide range of consumer issues. It has also put together and distributed a large amount of informative leaflets on several topics that apply to the interest of consumers, including insurance policies. Trying to

⁹³ Art. 2 §6 ConsPL. Art. 2 §7 ConsPL contains a black list of 32 terms which are characterized *ex lege* as abusive, and are also implemented to insurance contracts, as far as they comply with the special regime applying to insurance: for example, according to art. 2 §7 no. 25 ConsL, terms obliging the consumer to pay in advance an excessively large proportion of the price before the execution of the contract are deemed abusive; in contrast, the InsL provides (art. 6) that the policyholder shall be obliged to pay the premium in cash and the cover shall not begin prior to the payment of the premium: *see* I. Rokas, *supra* note 13, §343 and note 3.

⁹⁴ *Ibid.*, §354; Apalagaki, *supra* note 26, nos 60-67.

raise public awareness, GSC representatives participate in panels, give lectures in schools about consumer issues and organise seminars.

To the General Consumer Secretariat answers the European Consumer Center (ECC). The ECC's main target is to inform and advise consumers about their rights in order to make safe purchases based upon consumer protection law. The ECC also helps to solve differences between providers and consumers. Therefore consumers facing problems in transactions made within the European Union, outside their native country, can file their complaints to the ECC. The ECC's role is intermediary and aims at the amicable settlement of a complaint or dispute between provider and consumer. Complaints received by the ECC concern only differences between providers and individuals and not between companies. The Consumer Ombudsman is also responsible to inform and advise consumers.

Consumer associations, as mentioned *supra* (under III 2), are constituted as legal bodies and are governed by the provisions of article 10 ConsL and the Civil Code. Their exclusive objective is the protection of consumers' interests. They represent consumers in the organizations in which consumer representation is provided for, and they inform and advise consumers. The most important consumer associations are KEPKA (Consumers' Protection Centre), EKPIZO (Consumers' Association 'Quality of Life') and INKA (General Consumers' Federation of Hellas). A specific policyholders' organization does not exist in Hellas. Nevertheless, all three major consumer associations have taken action in the insurance area, which is considered a rather sensitive domain in consumers' protection. The most important problems of private insurance sector according to consumer associations are the following: lack of information, insurer's denial to pay the indemnity, late performance from the insurer, enormous and without previous notice raise of premiums, high insurance cost, ambiguous insurance terms and limited choice of insurance companies.

The existence of consumer policy institutions and consumer associations and the availability of ADR/Ombudsman procedures and collective actions are of course an important step towards the essential protection of consumers' rights, including policyholders' rights. Indeed, consumer protection can only be effective, if consumers are active and eager to facilitate the exercise of market regulation. It seems that consumers constantly become more aware of their rights and eager to take action. This change of attitude of course is reflected in the insurance market as well; however, substantial changes are to be expected in the following years.