DUTY TO PROVIDE PRECONTRACTUAL INFORMATION AND INFORMATION AFTER CONTRACT CONCLUSION ACCORDING TO THE EU DIRECTIVES AND LAWS OF THE MEMBER STATES

SUMMARY

In this work, authors examined content of the information that insurers, insurance intermediaries and agents must give to policyholders or consumers of the insurance service on their status and contract being negotiated before and during insurance contract according to the relevant EU directives and national laws of certain EU member states.

There are three directives in insurance obliging member states to regulate that certain information determined in those directives must be communicated to clients. Such obligation has been adopted for life, non-life insurers and insurance intermediaries (agents and brokers). Those are Directive 2002/83/EC of the European Parliament and of the Council concerning life assurance, Council Directive 92/49/EEC on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) and Directive 2002/92/EC of the European Parliament and of the Council on insurance mediation. In the following text, authors have examined general requirements regarding provision of these information regulated by the Articles 5 and 6 of the Directive 2000/31/EC on electronic commerce and Article 3, item 1, Article 4 and 5 of the Directive 2002/65/EC on distance marketing of consumer financial services. After that, authors studied insurer obligation to provide bidder or policyholder precontractual information and information after contract conclusion according to the Draft Common Frame of Reference for European Contract Law.

Taking into account large number of the member states, authors focused on studying laws of France, Germany, Austria, Czech Republic, Slovakia, Bulgaria, and Croatia from the list of candidate states.

Law on Obligations and Tort of Serbia adopted 1978 well before examined directives, regulated field of property, liability and persons insurance contracts by Articles 897 to 937 (non marine insurance), but did not implement any of the analyzed directives solutions.

Harmonization in the field of insurance contract for Serbia is simple in those fields that are not specific for insurance only and need not be regulated by special laws. Within the framework of relations under scrutiny in this work those are relations regulated by the Directive on distance marketing of the financial services and Directive on electronic commerce containing rules on information for consumers of financial services related to distance contracts and rules on duty to provide information to consumers in electronic and other remote business transactions. Duties regarding provision of consumer information may be regulated in more or less common way for all types of contracts or services by special law, e.g. Law on Consumer Protection as done in France. Alternatively, they can be included into insurance contracts by amendments to the Law on Insurance 2004, which authors believe is efficient solution. However, this is not the case with legislation on contractual relations in insurance field (duty to provide ¢consumer' information, regulating in different way contract content in accordance with mentioned Directives on life insurance and Third Directive on non life insurance and right to terminate insurance contract without reason) because they have their sedes materiae in the Law on Obligations and Tort. It has been proposed that these be regulated in the Law on Insurance 2004 until their adoption in the Civil Code of Serbia which preparation is under way.

Somewhat more complex situation is with contractual relations of insurance intermediaries regulated by the Directive on insurance mediation 2002. They are partly regulated by the Law on Obligations and Tort, which shall be incorporated into the Civil Code of Serbia, e.g. Article 906 providing for insurance agent authority who did not receive power of attorney from insurer outlining his scope of authority. Furthermore, part of legislation is confined in the Law on Insurance, where Article 84 provides for certain duties by insurance intermediary (broker) towards their clients in contract on insurance mediation. Authors have suggested earlier that these be regulated in the Law on Insurance 2004 until their adoption in the Civil Code of Serbia.
Regarding insurer duty to provide policyholder with information on identity, legal status and his commitment, on contract before its formation solutions from the Czech Law on Insurance Contract are acceptable for Serbian Insurance Law, particularly that insurer has duty to provide such information not only to the prospective policyholder, but also to any other person (agents, brokers) interested in concluding insurance contract. On the other hand, information on insurer commitment before contract formation and contract itself specific for life insurance contracts should be made compulsory for all classes of personal insurances and not only in life insurance.

Solution from the Czech Law on Insurance Contracts is adequate for Serbian Insurance Law and, compared to rules from the directives, scope of information that need to be given before insurance contract formation to interested persons on insurer when contract is being negotiated at a distance by way of electronic means should be extended. We mainly refer to the information on place of insurer registration at the commercial or other public register, registration reference, relevant mean for identification in the register and on name and head office of the body competent for supervision. Furthermore, information on deductible, deductible calculation and right of the policyholder, insured or beneficiary to bring objection before body competent for supervision of insurer must be given before contract formation to a person interested for contract on personal insurance.

Before insurance contract formation by way of electronic means, it is acceptable that the lawmaker, as in the Czech Law on Insurance Contracts, bind insurer to inform the interested party on contract on his request, on possibility to request hard copy of the insurance conditions and right to change communication mean.

Duty to provide written information before insurance contract conclusion should be reduced for large risks insurance and made completely inapplicable for contracts where policyholder requests immediate cover and reinsurance contracts.

It is very important to establish specific sanctions for breach of the duty to provide 'consumer' information in the Serbian Insurance Law. We believe question of insurer’s breach of the duty to give information to policyholder before contract formation on facts and duties of importance for insurance contract should be regulated in the way done in German Law.

For regulation of the insurance intermediary (agents and brokers) duty to inform client before insurance contract formation and on each amendment we believe the Czech Law on Insurance Intermediaries and Independent Adjusters is a good example for the Serbian lawmaker.