Prof. dr hab. Mariusz FRAS*

Compulsory insurance contract in private international law

UDC: 368.022:341.9
Received: 23. 11. 2020.
Accepted: 18. 1. 2021.
Original scientific paper

Abstract

Compulsory insurance is present in a vast majority of countries in the world and in all European countries. As international legal relations increasingly intensify, the market of cross-border insurance is also expanding. Despite entry into force of the provisions of the Rome I Regulation and the oncoming reform of the Brussels I bis Regulation, the European private international law, to the extent it governs compulsory insurance, is still a compromise. In the absence of a clear regime under the Rome I Regulation, doubts are still raised by the question of the pursuit for law applicable to group insurance contracts.

Key words: complusory insurance, private international law, Rome I Regulation, large risk insurance, insurance contract

1. INTRODUCTION

Compulsory insurance is present in a vast majority of countries in the world and in all European countries (Ludwichowska, 2008, 206–207). The universality of the type of insurance undoubtedly relates to the important social and economic functions performed by such contracts (Fras, 2007a, 995), which is especially manifestin case of compulsory civil liability insurance.

As international legal relationsincreasingly intensify, the market of cross-border insurance is also expanding. However, despite the evident material progress in the harmonization of the European law of compulsory motor insurance (Fras, 2007b, 13), such phenomenon is not to be seen in other areas of economic life. An obstacle for development of a uniform insurance market are, predominantly, differences between the regimes governing compulsory insurance contracts in particular Member States (Heiss, 2013). Such discrepancies are especially manifest in relationships involving legal areas of two or more countries. The consequence of development of the sector of cross-border insurance services is an increase in number of potential disputes where it is necessary to search for the law applicable to the evaluation of specific aspects of life situations relating to the insurance protection afforded within a system of compulsory insurance.

Upon entry into force of the Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), the previously dispersed conflict of laws regime of insurance contracts was generally provided for within one legislative act. Recognizing the specificity of insurance law relationships, the EU legislator introduced specific conflict of laws rules for insurance contracts, as laid down in Art. 7 of the Rome I Regulation.Issues relating to the pursuit of the law applicable to insurance contracts under the Rome I Regulation have been so far amply discussed in the Polish literature of the subject (Pilich, 2013).On the other hand, specific solutions covering exclusively compulsory insurance contracts were laid down in Art. 7(4) of the Rome I Regulation. Under the cited provision, four supplementary rules apply to "insurance contracts covering risks for which a Member State imposes an obligation to take out insurance", which rules were based on the solutions known from the EU insurance directives (Kropka, 2010, 220–221).

The Rome I Regulation I does not entirely exhaust the problems which are important from the perspective of parties to international insurance transactions (Heiss, 2008, 264). Pursuit of the law applicable to *actio directa* or*cessio legis*is based on the conflict of laws rules of the Regulation (EC) No. 864/2007 of the European Parliament and of the Council of 11 July 2007on the law applicable to non-contractual obligations (Rome II). The law applicable to those aspects of life situations which have not been covered by the scope of application of the Regulations, is designated by the norms of the

* Department of civil law and private international law, Law Faculty of Silesian University, Katowice, Poland, e-mail: kancelaria–fras@o2.pl.

Polish Act of 4 February 2011 – Private International Law.

As regards jurisdiction in insurance matters, it was governed by the special provisions of Section 3 of the Brussels I Regulation, which was superseded, as of 1 January 2015, by the Brussels I bis Regulation.

2. LAW APPLICABLE TO COMPULSORY INSURANCE CONTRACTS

2.1. Scope of application of the supplementary rules under Art. 7(4) of the Rome I Regulation

When analysing the internal systematics of the provisions of the Rome I Regulation, certain authors distinguish four categories of contracts (Kramer, 2007, 37) which are governed by different conflict of laws rules (Pilich, 2013, 332–334), namely: insurance contracts covering large risks, whose characteristic feature is unlimited choice of law, insurance contracts covering other risks (mass risks) situated in the Member States of the European Union, for which choice of law was significantly limited by the EU legislator,insurance contracts covering other risks (mass risks) situated in third countries together with reinsurance contracts, for which the applicable law is determined not under Art. 7 of the Rome I Regulation but under general conflict of laws norms, and compulsory insurance contracts, to which the abovementioned provision of Art. 7(4) of the Regulation refers (Łopuski, 2004, 18).

This does not mean, however, that compulsory insurance contracts are treated as another insurance contract type, beside large risk insurance or mass risk insurance (Popiołek, 2013, 585–587). A compulsory insurance contract under Art. 7 of the Rome I Regulation may relate both to "large risk" insurance or insurance of mass risk situated in the Member States of the European Union (Heiss, 2008, 279). Imposition of the insurance obligation by a Member State triggers the need to search for the applicable law under the specific "subsystem"of conflict of laws rules laid down in Art. 7(4) of the Rome I Regulation.

The supplementary rules under Art. 7(4) of the Rome I regulation do not apply to insurance in case of which the obligation to conclude the contract arose under the legislation of a country other than the Member States of the European Union (Ludwichowska, Thiede, 2009, 70). In such situations, the law applicable to the contract is established under Art. 7(2) and (3) of the Rome I Regulation. Consequently, an insurance contract covering large risks is subject to the law found under Art. 7(2) of the Rome I Regulation. The law governing mass risk insurance, on the other hand, depends on whether the risk is situated in one of the Member States.

Bearing in mind the substantive scope of Art. 7 of the Rome I Regulation, the supplementary rules under paragraph (4) of that provision do not refer to insurance contracts covering mass risks situated in countries other than the Member States of the European Union (Carr, 2010, 597; Stone, 2010, 361). The applicable law is designated in such situations by the norms of Art. 3, Art. 4 or, possibly, Art. 6 of the Rome I Regulation I (Ferrari, Leible, 2009, 123–124; Heiss, 2008, 274–275). In the first place, it must be determined if the insurance contract relates to a mass risk situated outside the legal area of the Member Sates of the European Union. Positive answer to that question will cancel the need to reach for the "supplementary rules" under Art. 7(4) even if *lex causae* imposes an insurance obligation. This principle will apply also when the insurance obligation arises under the legal provisions of a Member State.

2.2. Compulsory insurance contract. The problem of qualification

The scope of application of the supplementary rules is further restricted by qualification procedures relating to the terms used to delimitate the scope of the provisions under Art. 7(4) of the Rome I Regulation. In Art. 7(4) of the Rome I Regulation, the legislator used the expression "insurance contracts covering risks for which a Member State imposes an obligation to take out insurance", which will be replaced in our further considerations by the term "compulsory insurance contracts" unless otherwise restricted below.

Much attention has been paid to the problem of qualification of the term "insurance contracts" in Polish literature (Zachariasiewicz, 1978, 11). Because of the specific framework of this study, we shall only draw attention to the basic features which allow to distinguish an insurance contract from other obligational relationships which are widespread in international legal transactions.

Results of comparative law research lead to the conclusion that, in consequence ofthe entry into an insurance contract, there arises a legal relationship under which the insurer, in consideration of the premium paid, undertakes to incur the risk of paying a monetary benefit to the entitled person in case of occurrence of the event specified in the contract (Popiołek, 2013, 582). Thus, insurance contracts are characterized by their specific social and economic function which boils down to provision of security against risk. This feature allows to recognize the

insurance contract as an aleatory contract (Pilich, 2013, 328–329). It is a contract for consideration. From the conflict of laws perspective, the insurance contract is also a contract unilaterally qualified in terms of its parties (Fras, 2008, 56–57).

More doubts, however, are raised by interpretation of the term "insurance contracts covering risks for which a Member State imposes an obligation to take out insurance". The abovementioned supplementary rules refer only to this category of contracts.Moreover, as regards mass risk insurance contracts and large risk insurance contracts which are found compulsory, one should follow the rule set out in Art. 7(5) of the Rome I Regulation. Where a contract covers risks situated in more than one Member State, it is concluded that the contract is composed of several individual contracts, each of which relates only to one Member State. The *modus operandi* for insurance contracts covering more than one risk out of which at least one is situated in a Member State and at least one is situated in a third countrywas provided in Recital 33 of the Rome I Regulation. In such situations, the specific rules on insurance contracts, as envisaged in the Rome I Regulation, apply only to insurance risk or risks situated in a specific Member State or Member States.

Thus far, a couple of proposals have been put forward in the doctrine, which are to permit appropriate establishment of the meaning of the terms included in Art. 7(4) of the Rome I Regulation. Statements by representatives of legal science may be classified within two groups of opinions.

Proponents of the former position construct the definition of a compulsory insurance contract under Art. 7(4) of the Rome I Regulation in isolation from the understanding of that term in the substantive law of the Member States. M. Kropka formulates the conclusion that the insurance obligation referred to in Art. 7(4) of the Rome I Regulation does not have to follow from statutory provisions. The source of an insurance obligation may also be norms imposed by other entities, as long as their competence to introduce such obligation may be derived from the provisions of national legislation (Kropka, 2010, 219). The scope of that concept must extend also to the so called "insurance compulsion" (Kropka, 2010, 219). On the other hand, the source of the obligation to take out insurance may not be an obligational relationship (Kropka, 2010, 219). It seems that such rendition of the concept of compulsory insurance allows to restrict the phenomenon of *forum shopping.* Any attempts to adopt a different opinion would lead to a situation in which the contractual parties would be in a position to decide under which of the "subsystems" of conflict of laws rules, as included in Art. 7 of the Rom I Regulation, the applicable law is going to be designated, without the need to observe the normatively sanctioned division into mandatory and voluntary insurance.

However, autonomous qualification of the concept of compulsory insurance contract as per Art. 7(4) of the Rome I Regulation would be difficult. The Regulations Brussels I and Rome II do not use the term "compulsory insurance". Arguments for a specific direction of interpretation as to the scope of those norms may not be derived from the postulate to preserve consistency between basic EU legislative acts in the area of private international law.[1] It is also difficult to formulate any clear conclusions on the basis of the results of comparative law research. Even in such legal systems in which the definition of compulsory insurance has been introduced, e.g. Poland[2] or Germany,[3] the boundaries of that concept in legislation are vague, which follows from inconsequence of particular legislators, who may in fact construct legal definitions of compulsory insurance but, at the same time, do not hesitate to use that term in its plain meaning in other legislative acts making up the domestic insurance law. French law, on the other hand, is characterized by the legislator's relatively liberal attitude to the question of delimiting boundaries of the concept of compulsory insurance (Bigo, 2002, 50).

Adoption of the French model of compulsory insurance for the purpose of interpretative procedures may result in a situation in which the applicable law is found taking into consideration the supplementary rules of Art. 7(4) of the Rome I Regulation even though the countries which have an objective connection with the insurance contract do not approach the contract as compulsory insurance. Similar threats relate to the

[1] Under Recital 7 of the Rome I Regulation, the substantive scope of application and the provisions of the Regulation should be "consistent" with the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I) and the Rome II Regulation.

[2] The provision of Art. 3(1) of the Act of 22 May 2003 on compulsory insurance, Insurance Guarantee Fund and Polish Motor Insurers' Bureau (Dz.U. 2013, item 392) specifies that compulsory insurance is civil liability insurance of a person or property insurance if an act or international agreement ratified by the Republic of Poland imposes an obligation to conclude an insurance contract.

[3] The Provision of §113 of the German Act on insurance contracts of 23 November 2007 (*Versicherungsvertragsgesetz - Gesetz zur Reform des Versicherungsvertragsrecht vom 23. November 2007*, BGBl. I S. 2631, hereinafter referred to as VVG) defines compulsory insurance (*Pflichtversicherung*) as civil liability insurance for which an act imposes the obligation to take out insurance.

adoption of a restrictive attitude, as might be associated with the Polish and German systems, without a thorough analysis of the entirety of norms governing the obligation to take out insurance. An insurance contract against consequences of mishaps whose compulsory conclusion was envisaged by the French legislator would be governed by the law designated under Art. 7(3) of the Rome I Regulation. Limited choice of law would also be permitted (Art. 7(3) letters /a–e), and this would be the case regardless of the position taken in this regard by the French law or even by *lex fori*. Such solution seems irreconcilable with the intention of the European legislator, since in the context of Art. 7(4), letter (a) of the Rome I Regulation, the decisive factor for the qualification of a contract as compulsory insurance should be the law of the country of obligation.

As a result, the difficulties signalled above reveal the basic drawback of autonomous qualification of the concept of compulsory insurance contract. The purpose of conflict of laws qualification is supsumption of the facts under a relevant conflict of laws rule which designates the law applicable to a particular question (Schmidt, 1993, 330–331). Establishment that the law of a specific country lays down an obligation to take out insurance does not, however, refer to the sphere of facts but to existence of a normatively sanctioned obligation to enter into an insurance contract. Without knowing the provisions of substantive law, it is impossible to establish if such obligation applies.On the other hand, for obvious reasons, it may not be assumed *a priori* that all types of insurance are compulsory. Even if we leave such doubts aside, there still remains an open question of determining which legal order is to be reached for to decide if there applies an obligation to take out insurance.

It seems that, because of such difficulties, proponents of the second position opt for the opinion that the concept of compulsory insurance contract under Art. 7(4) of the Rome I Regulation should be understood according to the provisions of the national legislation imposing the obligation to take out insurance (Orlicki, 2011, 273). This solution allows to avoid problems relating to a situation in which, at the stage of qualification, a given insurance contract is found compulsory although, according to *legis causae,* it does not have such nature.

Despite advantages of this conception, one should pay attention to certain inconveniences which may be observed upon its application. According to the discussed opinion, qualification of the term "compulsory insurance contract" is not made as per *legis causae* but pursuant to the law of the country imposing the obligation to take out insurance, which does not even have to be the law applicable to the insurance contract[4] but merelythe law applicable to the determination if an insurance contract "satisfies the obligation to take out insurance" (first sentence of Art. 7(4), letter (a) of the Rome I Regulation).[5] Acceptance of such position blursthe boundaries between the determination of preconditions to application of a specific conflict of laws rule and application of the relevant law (Pazdan, 2012, 60).

An analogical opinion, although with another justification, was formulated by M. Pilich. According to this author, the provision of Art. 7(4) of the Rome I Regulation was based on the unilateral method. As a result, the scope of the concepts "obligation to take out insurance", "law of the member state which imposes (imposed) the obligation to take out insurance" may be determined by analysing in detail the substantive law of specific Member States (Pilich, 2012, 368).

To greatly generalize, assumptions of the unilateral method may be depicted as follows. The unilateral method does not require the existence of conflict of laws rules of first degree. On the other hand, delimitation of the scope of application of national law in space depends on unfettered intention of the legislator. Foreign law shall apply only to the extent in which *lex fori* does not claim to regulate a given life situation or its certain aspects (Vitta, 1980, 154–162; Droz, 30–32). The presented conception allows to reduce uncertainty relating to the establishment which country "imposes" the obligation to take out insurance. However, this issue is not the purpose of qualification. Moreover, the unilateral method is universally criticized by representatives of legal science and considered to be merely a certain theoretical modelwhich is not used by lawmakers in the enacted pieces of legislation in the area of private international law (Vitta, 1980, 155).

One could also attempt to formulate another propostač. The provision of Art. 7(4) of the Rome I Regulation, inasmuch as it stipulates that the supplementary rules apply to "insurance contracts covering risks for which a Member State imposes an obligation to take out insurance" may be treated as a norm demarcating the scope of application of the "subsystem" of conflict of laws rules relating to compulsory insurance, or as an element of the scope of norms expressed in the first and second sentence of Art. 7(4), letter (a) and Art. 7(4), letter (b) of the Rome I Regulation.

[4] Such situation will be the case when the legislator does not use the possibility envisaged in Art. 7(4), letter (b) of the Rome I Regulation. See: section 2.6 of this study.

[5] See: section 2.4 of this study.

The term "for which a Member State imposes an obligation to take out insurance" would be treated, in the light of the above assumptions, as a primary question *(Erstfrage)*. M. Pazdan points out that"that term is used to denote a component of the factual situation described in the conflict of laws rulewhich makes a substantive law precondition to the application of the conflict of laws rule and which, accordingly, requires evaluation according to the substantive law" (Pazdan, 2012, 65)[6] found on the basis of a relevant conflict of laws rule of the *lex fori*.

However, the Rome I Regulation does not contain a conflict of laws rule whose scope would cover the issue of "existence of the obligation to take out insurance." As a result, the applicable law should be determined by a Polish court under the supplementary rule of Art. 67 of the 2011 Act, which reads that "[i]n the absence of designation of the applicable law under this Act, special provisions, ratified international agreements in force in the Republic of Polandand the law of the European Union, a relationship covered by the scope of this Act shall be governed by the law of the country to which it is most closely connected." However, pursuit of the applicable law under Art. 67 of the Private International Law Act involves the need to evaluate to which legal area the obligation to take out insurance is most closely connected in itself. It seems that in case of insurance contracts covering mass risk, this will be the law of the country in which the risk is situated. On the other hand, in case of insurance contracts covering large risks, apart from objective circumstances (law of the country in which the risk is situated), the decisive factors may also be subjective circumstances (law of the country where the insured party is domiciled). It should be borne in mind that the principle expressed in Art. 7(5) of the Rome I Regulation applies as well to compulsory insurance contracts covering large risks. Then, it is assumed that the contract is composed of several contracts, each of which relates to the Member State in which the risk is situated.

2.3. EU Regulation as a source of the obligation to take out insurance

The considerations presented above do not exhaust the problem of qualification of the concept of insurance obligation. The EU legislator sporadically uses regulations to impose the obligation to take out insurance on specific categories of entities in a "uniform and direct manner" (Popiołek, 2013, 567–568). There arises a question if the law applicable to those contracts should be sought according to the provisions of Art. 7(4) of the Rome I Regulation.

EU regulations imposing the obligation to take out insurance relate predominantly to the activities conducted by air and sea carriers. Accordingly, these are insurance contracts covering large risks. Their recognition as compulsory insurance has far reaching consequences. In case of insurance covering large risks, the abovementioned rule set out in Art. 7(5) of the Rome I Regulation does not apply, because "where the contract covers risks situated in more than one Member State, the contract shall be considered as constituting several contracts each relating to only one Member State". However, recognition of a contract as compulsory insurance triggers the necessity to follow that rule. Moreover, a feature of insurance contracts covering large risks is the parties' freedom of choice of law (Popiołek, 2013, 587). In case of insurance contracts relating to large risks which at the same time constitute compulsory insurance, the parties are deprived of the option to choose the law when the forum state took advantage of the possibility provided for in Art. 7(4), letter (b) of the Rome I Regulation.

Inconveniences relating to the need to observe those rules should not, however, influence the results of qualification procedures. The obligation to comply with those principles is not dictated by the very nature of the source from which the obligation to take out insurance derives (*scil.* EU regulation) but follows from the systemic solutions adopted in the Rome I Regulation. The same principles must also be referred to compulsory insurance contracts covering large risks in whose case the obligation to take out insurance arises under statutory legislation (Heiss, 2011, 230).

It seems unconvincing to argue that the discussed contracts may not be recognized as compulsory insurance since the entity imposing the obligation to insure is the European Union. There is no doubt that insurance contracts in whose case the obligation to take out insurance derives from the implementation of EU directives constitute compulsory insurance as mentioned in Art. 7(4) of the Rome I Regulation. European Union regulations, just as national provisions introduced in implementation of such directives, are elements of the national legal order. This statement supports the conclusion that also in case of the discussed insurance contracts it is the Member State that "imposes the obligation to take out insurance". This, in turn, allows to recognize such contracts as compulsory insurance as mentioned in Art. 7(4) of the Rome I Regulation.

[6] More on primary issues: Schmidt, 1993, 324–331.

2.4. Supplementary rule under the first sentence of Art. 7(4), letter (a) of the Rome I Regulation

The first of the abovementioned supplementary rules was introduced in the provision of the first sentence of Art. 7(4), letter (a) of the Rome I Regulation, according to which "the insurance contract shall not satisfy the obligation to take out insurance unless it complies with the specific provisions relating to that insurance laid down by the Member State that imposes the obligation."

Anticipating further considerations, attention must be drawn to a relatively infelicitous term "szczegółowe przepisy" used in the Polish language version of the Rome I Regulation (Kropka, 2010, 218). Representatives of legal science agree that the expression should be referred to "special" provisions which shape the content of the obligation to take out insurance (Kropka, 2010, 230) and delimitate its "boundary conditions" (Kropka, 2010, 230). This category includes provisions specifying minimum amounts of cover, substantive type of damages for which the insurer is liable, preconditions to deprivation of the insured party of the protection afforded by the insurer, or setting the period for which the insurance should be concluded.

Much more doubts in the doctrine are raised by the evaluation of the legal nature of the norms under the first sentence of Art. 7(4), letter (a) of the Rome I Regulation. Analysis of the previous statements by representatives of legal science allows to distinguish three groups of opinion. Nevertheless, regardless of the adopted conception, the supplementary rule under the first sentence of Art. 7(4), letter (a) of the Rome I Regulation is relevant only in situations when the law of the *forum* state does not take advantage of the possibility offered in letter (b) of the said provision.[7]

Proponents of the first proposal indicate that the provision of Art. 7(4) of the Rome I Regulation does not contain conflict of laws rules in the proper sense of the word (Ludwichowska, Thiede, 2009, 69). It seems that this group of authors detect in Art. 7(4) of the Rome I Regulation only substantive norms of private international law.

The second conception is based on the assumption that the first sentence of Art. 7(4), letter (a) contains a "peculiar conflict of laws rule which indicates, as the law applicable to the evaluation if the insurance obligation has been complied with, the law of the Member State of that obligation", which makes a fragmentary issue in relation to the entirety of the insurance relationship (Pilich, 2013, 365–366).

The authors of opinions belonging to the third group assume that the first sentence of Art. 7(4), letter (a) of the Rome I Regulation contains a substantive norm of private international law (Kropka, 2009, 34). According to M. Kropka, from the provision the first sentence of Art. 7(4), letter (a) of the Rome I Regulation one may infer also a conflict of laws rule under which provisions which are mandatory in the conflict of laws sense come into play (Kropka, 2010, 223–232).

The last of the presented opinions should be considered legitimate. The provision of the first sentence of Art. 7(4), letter (a) definitely provides for a peculiar sanction for non-compliance with the requirements prescribed for compulsory insurance. Accordingly, this provision introduces a substantive norm of private international law.

More doubts are raised by the assessment whether the provision of the first sentence of Art. 7(4), letter (a) of the Rome I Regulation contains also a conflict of laws rule designating the law applicable to a fragmentary issue or if it is a basis for the application of *ius cogens* provisions of the country imposing the obligation to take out insurance.

An argument for the second of the presented conceptions are practical difficulties which would relate to the pursuit of the law applicable to the fragmentary issue. The EU legislator did not set limits for national legislators as regards the enactment of criteria specifying the requirement of insurance protection (boundary conditions of insurance). In the same way, the scope of the conflict of laws rule under the first sentence of Art. 7(4), letter (a) of the Rome I Regulation, designating the law applicable to the said fragmentary issue (*scil.* compliance with the obligation to take out insurance) may not be established *a priori,* without reaching for the substantive law of the country imposing the obligation. This leads to a situation in which the scope of the conflict of laws rule designating the law applicable to a fragmentary issue is delimited by the substantive law of the country imposing the obligation to take out insurance. One should accept as legitimate the view that the provision of the first sentence of Art. 7(4), letter (a) of the Rome I Regulation contains a norm which allows "special provisions" shaping the content of the insurance obligation to come into fore along with the law applicable to the insurance contract and sets out the terms on which such special provisions are to apply.

An analogical mechanism was introduced also in Art. 3(3) of the Rome I Regulation, according to which „[w]here all other elements relevant to the situation at the time of the choice are located in a country other than the country whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that other country which

[7] See: section 2.6 of this study.

cannot be derogated from by agreement". Both the provisions of the first sentence of Art. 7(4), letter (a) and Art. 3(3) of the Rome I Regulation are a manifestation of the conviction that the result of the conflict of laws designation of law should not render ineffective mandatory provisions as provided for in the law of the country which is strongly connected with a given life situation (Ferrari, Leible, 2009, 338–339; Magnus, Mankowski, 2012, 459). Yet, there are important differences between Art. 3(3) and the first sentence of Art. 7(4), letter (a) of the Rome I Regulation. Their synthetic presentation allows to illustrate the terms of operation of the "supplementary rule" under the first sentence of Art. 7(4), letter (a) of the Rome I Regulation.

First, the norm of Art. 3(3) of the Rome I Regulation is a basis under which mandatory provisions (*ius cogens)* apply, and the first sentence of Art. 7(4), letter (a) refers to a narrower category of mandatory rules which shape the content of the obligation to take out insurance (Kropka, 2010, 230).

Second, the provisions of Art. 3(3) and the first sentence of Art. 7(4), letter (a) of the Rome I Regulation have a different function. The norm under Art. 3(3) is to prevent attempts to circumvent mandatory rules by choice of foreign law despite the facts of the case showing connection only with one legal area (Ferrari, Leible, 2009, 338–339; Magnus, Mankowski, 2012, 459). The norm under the first sentence of Art. 7(4), letter (a) of the Rome I Regulation is intended to enable observance of the position adopted by the law of the country of the obligation for the purpose of determining if an insurance contract fulfils the requirements introduced by the legislator.

Third, the provision of Art. 3(3) of the Rome I Regulation refers only to situations in which the parties have made a choice of law. Conversely, the need to take into account special provisions specifying the obligation to take out insurance arises even when the parties do not make such choice.

Fourth, the provision of Art. 3(3) of the Rome I Regulation applies when all elements of the matter relate to the legal area of one state. The norm under the first sentence of Art. 7(4), letter (a) shifts the boundaries laid down in Art. 3(3) of the Rome I Regulation so that the application of "special" provisions does not require that all elements of the factual situation be connected with the law of the country imposing the obligation to take out insurance. It is sufficient that there is a strong connection of the life situation with a given legal area. The decisive factor in this matter should be the criterion of situation of risk. However, this is not a rule that knows no exceptions. It should be noted that the presented position shows certain similarity with the conception of limited unilateral method (*unilatéralisme limité*), as formulated in the literature, which makes an attempt to reconcile the assumptions of the unilateral method with the method based on conflict of laws rules viewed in an abstract manner (Vitta, 1980, 159).

2.5. Supplementary rule under the second sentence of Art. 7(4), letter (a) of the Rome I Regulation

The norm expressed in the first sentence of Art. 7(4), letter (a) is supplemented by the second sentence of the said provision, according to which „[w]here the law of the Member State in which the risk is situated and the law of the Member State imposing the obligation to take out insurance contradict each other, the latter shall prevail".

This rule should be read in conjunction with the first sentence of Art. 7(4), letter (a) of the Rome I Regulation. Thus, it refers to the previously discussed "special provisions" shaping the content of the obligation to take out insurance. Under the first sentence of Art. 7(4), letter (a) of the Rome I Regulation, those provisions come to the fore along with the law applicable for the contractual obligations. Therefore, there may be a situation in which they will be in contradiction with the solutions adopted under the law applicable to the insurance contract.The norm under the second sentence of Art. 7(4), letter (a) eliminates that conflict by indicating which provisions should be given priority. In the absence of such norm, there would be conflicts between the norms of substantive law originating from two legal orders. Elimination of such inconsistencies would require possible adjustment procedures, whose result might, however, lead to violations of the insurance requirements laid down by the law of the country of obligation.

The provision of the second sentence of Art. 7(4), letter (a) of the Rome I Regulation regulates expressly only situations of conflict between "the law of the Member State in which the risk is situated" and "the law of the Member State imposing the obligation to take out insurance". The EU legislator overlooked, however, situations in which Member States took advantage of the possibility set out in the second sentence of Art. 7(3) of the Rome I Regulation, affording to the parties more leeway in the choice of applicable law than admissible under the Regulation's provisions. It seems, however, that no special attention should attach to the literal meaning of the provision of the second sentence of Art. 7(4), letter (a) of the Rome I Regulation, according to which the law of the country of obligation has priority over the law of the country where the risk is situated,

but not over any other law chosen by the parties under Art. 7(3) of the Rome I Regulation (Kropka, 2010, 279).

2.6. Supplementary rule under Art. 7(4), letter (b) of the Rome I Regulation

Another supplementary rule was expressed in the provision of Art. 7(4), letter (b) of the Rome I Regulation. Under this provision, "by way of derogation from paragraphs 2 and 3, a Member State may lay down that the insurance contract shall be governed by the law of the Member State that imposes the obligation to take out insurance".

The EU legislator undoubtedly provided for the possibility to restrict the choice of law in relation to the general solutions under Art. 7 of the Rome I Regulation. This assumption was expressly formulated in Art. 7(4), letter (b) of the Rome I Regulation, according to which introduction of solutions regarding compulsory insurance on the level of national legislation takes place "by way of derogation" from paragraphs (2) and (3) of the said Article.

Any attempts to read the provision under Art. 7(4), letter (b) of the Rome I Regulation literally lead to diverging conclusions and allow to formulate at least two hypotheses. The discussed provision does not specify if a Member State may introduce a unilateral conflict of laws rule according to which an insurance contract is governed by the law of that country, as long as it provides for an obligation to take out insurance, or if a Member State may resolve that an insurance contract is always governed by the law of any Member State which imposes the obligation to take out insurance.

It seems that certain authors favour the first position. They point out that the provision of Art. 7(4), letter (b) of the Rome I Regulation allows Member States to exclude any autonomy of will of the parties to an insurance contract if the contract involves compulsory insurance, and to obligate the parties to apply only the Member State's own law in this regard (Kowalewski, Bzdyń, 2012, 81).

However, one should consider as dominant the position of authors supporting the second of the presented hypotheses. Heiss indicates that Member States may introduce in this regard an absolute conflict of laws rule. Therefore, they are not limited to making decisions solely as to the scope of application of their own law (Heiss, 2008, 279). They also have no obligation to enact a conflict of laws rule which refers to all insurance contracts. In addition, it does not have to be a conflict of laws rule of first degree (Kropka, 2010, 235–240).

This direction of interpretation is also supported by analysis of the solutions adopted by specific European legislators.

Under Art. 156 of Book 10 of the Dutch Civil Code,[8] for the purposes of Art. 7(4), letter (b) of the Rome I Regulation, compulsory insurance contracts covering risks in respect of which a Member State imposes obligation to take out insurance are governed by the law of the Member State imposing such obligation. This norm does not take into account the position of the Member State imposing the obligation to insure and prescribes to apply foreign law also when that law itself does not provide for such requirement.

A different solution was adopted by the German legislator. According to Art. 46c(1) of *Einführungsgesetz zum Bürgerlichen Gesetzbuche* BGBl, I S. 2494 of 21 September 1994 (hereinafter referred to as BGBEG), an insurance contract covering a risk in respect of which the obligation to take out insurance is imposed by a Member State of the European Union or a Member State of the European Economic Area is governed by the law of that country as long as it finds itself applicable. Additionally, under Art. 46c(2) BGBEG, an insurance contract is governed by German law where the obligation to take out insurance arises under German law.

Also, the legal nature of the provision under Art 7(4), letter (b) of the Rome I Regulation remains disputable. In Polish literature, an opinion is widespread according to which the said provision grants national legislators with "facultative legislative competence" to introduce conflict of laws rules (Gnela, 2011, 40; Kropka, 2010, 235).

It seems, however, that the proposition according to which national legislators were granted legislative competence is a peculiar figure of speech meant to reflect the *modus operandi* of Art. 7(4), letter (b) of the Rome I Regulation, and not its legal nature. In fact, the domestic legislator does not have to be given the competence to introduce an own conflict of laws rule. It is, however, another question if such norm will apply in the light of the principle of priority of EU law and concurrent applicability of the Rome I and Rome II Regulations (Bagan-Kurluta, 2011, 323–324). Nevertheless, it is possible to achieve the result which would be desired under Art. 7(4), letter (d) of the Rome I Regulation as long as the EU legislator gives way to national legislators.

[8] Book 10 of the Dutch Civil Code was introduced by the Act of 19 May 2011 (*Wet van 19 mei 2011 tot vaststelling en invoering van Boek 10 (Internationaal privaatrecht) van het Burgerlijk Wetboek, Vaststellings- en Invoeringswet Boek 10 Burgerlijk Wetboek*, Staatsblad 2011, 272).

In my opinion, the provision of Art. 7(4), letter (b) of the Rome I Regulation introduces a meta-norm of private international law delimiting the spheres of application of the conflict of laws rules of first degree, which are contained in the Regulation itself and in the laws of individual Member States. The provision of Art. 7(4), letter (b) of the Rome I Regulation requires the law enforcing authority to reach, in the first place, for the conflict of laws rules enacted by the national legislator. Only in the absence of relevant rules in this respect, the applicable law must be sought under Art.7(2) and 3of the Rome I Regulation.

The discussed construction shows certain similarity to further referral, which triggers conditional applicability (Przybyłowski, 1959, 49) of the law imposing the obligation to take out insurance.An obstacle to adopt such conception may not be the restriction of the referral construction as expressed in Art. 20 of the Rome I Regulation. This restriction is not absolute in its nature. In the literature of the subject, it is pointed out that an exception to the rule expressed in Art. 20 was introduced in the provision of Art. 7(3) of the Rome I Regulation (Stone, 2010, 298, 366; Von Hein, 2011, 118). Along the same lines, the norm under Art. 7(4), letter (b) may be considered an exception to the general rule of Art. 20 of the Rome I Regulation. In addition, an opposite qualification of the provision under Art. 7(4), letter (b) of the Rome I Regulation may not be supported by the absence of "requirement" to apply specific law. This view is a consequence of too literal attempts to read the text of the Regulation. A norm is only derived from a given provision, which is why one should not settle with mere analysis of its text.

In my opinion, any pursuit in art. 7(4), letter (b) of the Rome I Regulation of a norm based on the construction of referral makes too far reaching an attempt to identify a negative conflict between the systems of conflict of laws rules. Both the provisions of national legislation in the area of private international law and provisions of the Rome I Regulation form a part of a single system of conflict of laws rules. That is why we take the view that the provision of Art. 7(4), letter (b) of the Rome I Regulation contains a private international law meta-norm specifying the course of action to be taken in case of a positive conflict between national regimes and the Rome I Regulation itself. On this occasion, the EU legislator departed from the principle that provisions of the Regulation have priority over strictly national conflict of laws rules. The law indicated by the norms of the Rome I Regulation is the law applicable on subsidiary basis. It will apply when the conflict of laws rules of the *lex fori* do not provide for the applicability of the law of the country imposing the obligation to take out insurance. Similar course of action should be taken when the law of the *forum* state uses the construction of accepted further referral,[9] and the conflict of laws rules forming a part of the legal system to which the referral points do not provide, in the analysed matter, for the applicability of the country's own law.

2.7. Provision of Art. 29 of the 2011 Act

Under Art. 29 of the 2011 Act, „[i]f the Polish law provides for compulsory insurance, such an insurance contract shall be subject to Polish law." Additionally, under Art. 29 (2) of the 2011 Act, "[i]f the law of the Member State of the European Economic Area, which provides for compulsory insurance, designates its own law as applicable to such insurance contracts, this law shall apply".

The Polish legislator adopted an analogical solution as in the abovementioned provision of Art. 46c BGBEG. The only difference is the reversed order of editing units. The provision of Art. 29(1) of the 2011 Act contains a unilateral conflict of laws rule (Pilich, 2013, 371; Policha, 2011, 12). The norm under Art. 29(2) of the 2011 Act, on the other hand, is a "manifestation of the conviction that national regulation should not be decisive in respect of exclusion of the choice of law applicable to insurance contracts in whose case the obligation to take out insurance is imposed by the law of another Member State" (Pazdan, 2012, 168). This assumption was implemented using the construction of accepted referral since the referral will be effective only if the private international law of the country to which it points considers itself applicable to the specific life situation (Pazdan, 2012, 67). Many authors merely state that the provision of Art. 29(2)of the 2011 Act is an example of conflict of laws rule of second degree (Pazdan, 2009, 34). Already at an early stage of legislative works it was pointed out that the discussed provision is another example of sanctioning the application of foreign conflict of laws rules, beside Art. 5 and Art. 17(2) of the 2011 Act.[10]

When undertaking assessment of the Polish solution laid down in Art. 29 of the 2011 Act against

[9] Examples of such solution are the abovementioned Art. 46c(1) BGBEG and the norm under Art. 29(2) of the 2011 Act, discussed in further parts of this study.

[10] See: Justification of the governmental draft of the Act – Private International Law, Sejm Paper No. 1277, H.P. 20, published at: http://orka.sejm.gov.pl/Druki6ka.nsf/wgdruku/1277, date accessed: 14 January 2014 (Projekt ustawy – Prawo prywatne międzynarodowe, Sejm Rzeczypospolitej Polskiej, Druk nr 1277, Warszawa, 31 października 2008 r. H.P. 20).

the background of experiences of other European countries, one could say that the domestic regime is the best of the solutions that might be introduced in the context of the "defective" mechanism under Art. 7(4), letter (b) and Art. 7(5) of the Rome I Regulation. As opposed to the Dutch regime, the Polish Act respects the position of the law of the country imposing the obligation to take out insurance. On the other hand, such an approach is not conducive to the harmonization of European private international law. A prerequisite of development of a uniform regime is the use by all the Member States of the possibility envisaged in Art. 7(4), letter (b) of the Rome I Regulation, by introduction of a complete conflict of laws rule of first degree. However, this may not be regarded as reproach to the Polish legislator. At the present stage, most national legislators have not decided to introduce such solution.

2.8. Overriding mandatory rules in the law of compulsory insurance

It is indicated in the doctrine that insurance law is "a textbook example of a branch in which legislators use mandatory rules" (Pilich, 2013, 374). Therefore, it should be no wonder that the legislators are accustomed to treating their enacted norms as mandatory provisions also in legal relationships involving a foreign element.

There arises a question if the provisions specifying the statutory obligation to take out insurance may be overriding mandatory rules in the conflict of laws sense. A feature distinguishing compulsory insurance contracts is their special function. On one hand, they protect injured parties against insolvency of the entity obliged to redress the damage. On the other hand, they protect potential perpetrators against excessive and unexpected financial burdens. A positive answer to the question posed above requires determining if overriding mandatory rules may be norms introduced with a view to protect a limited range of persons.

According toArt. 9(1) of the Rome I Regulation I "[o]verriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation".

Prima facie, provisions influencing the legal situation of a narrow group of private law subjects may not serve to protect public interests. However, this conclusion is not legitimate. Protection of groups with a limited number of members may be a manifestation of the legislator's respect for such principles and values which are strongly connected with the social and economic organization of the state. As a result, the widely understood public interest covers establishment of special rights for the disabled, victims of hostilities or veterans. One should not be limited to the abovementioned quantitative criterion but evaluate whether protection of a specific, even narrow group amounts to a legislative purpose recognized by the lawmaker (Ferrari, Leible, 2009, 298). This view is shared also in the doctrine of insurance law. A vast majority of authors advocating the possibility to recognize provisions specifying the obligation to take out insurance as overriding mandatory rules point to the protective function of the system of compulsory insurance (Zachariasiewicz, 2010, 42).

The above remarks relate only to compulsory civil liability insurance. Introduction of obligations to take out insurance in other situations may be viewed as an expression of the legislator's paternalistic approach to the question of incurring risk related to business activity. It is argued, however, that, in the light of statements made by representatives of the German legal science, also regimes imposing the obligation to insure business activity may potentially be overriding mandatory rules (Popiołek, 2013, 266).

However, from the practical point of view, the significance of overriding mandatory provisions in insurance law relationships is limited.

Provisions shaping the statutory obligation to take out insurance, in principle, come to the fore beside the law applicable to contractual obligations under the discussed first sentence of Art. 7(4), letter (a) of the Rome I Regulation. Intervention of overriding mandatory provisions is probable only in case of insurance contracts which are not covered by the scope of application of Art. 7 of the Rome I Regulation.

Moreover, law enforcing authorities are obliged to respect only such overriding mandatory rules which form a part of the *lex fori* (Art. 9(2) of the Rome I Regulation). The possibility of application of any provisions from outside the *forum* state depends on fulfilment of additional conditions. Under Art. 9(3) of the Rome I Regulation, "[e]ffect may be given to the overriding mandatory provisions of the law of the country where the obligations arising out of the contract have to be or have been performed, in so far as those overriding mandatory provisions render the performance of the contract unlawful. In considering whether to give effect to those provisions, regard shall be had to their nature and purpose and to the consequences of their application or non-application".

The provision of Art. 9(3) of the Rome I Regulation requires identification of the legal area where the

obligations arising out of the contract have to be or have been performed. The literature of the subject identifies the place of performance of a contractual obligation under art. 9(3) of the Rome I Regulation with the place of characteristic performance in the understanding of Art. 4(2) of the Regulation even though the application of Art. 9(3) leads to a different result than pursuit of the law applicable to contractual obligations under Art. 4(2) of the Rome I Regulation.[11] Since the characteristic performance in insurance contractsis the insurer's obligation to afford protection against a specific risk, in our opinion, performance of the obligations arising out of the contract, as mentioned in Art. 9(3) of the Rome I Regulation, in principle takes place in the country where the risk is situated.

The obligation to take out insurance is imposed by Member States in the public interest (entirety of the society or at least entirety of the group of injured parties), and the said provisions are to protect the minimum standards of the injured party's protection under the compulsory insurance contract. Fulfilment of the aims set for a compulsory insurance institution is striven after regardless of the law governing the contract (Perner, 2009, 221). On that basis, certain representatives of the doctrine are of the opinion that Art. 7(4), letter (a) of the Rome I Regulation covers a mechanism referred to as "overriding mandatory rules" (Ger. *international zwingende Normen, Eingriffsnormen,* Fr. *lois d'application immediate, lois de police*) (Lagarde, Tanenbaum, 2008, 768).

This view does not seem legitimate for two reasons. First, it is doubtful if provisions of the imposing country specifying the obligation to take out insurance, although they are certainly mandatory rules, could be decisively assigned the status of overriding mandatory rules. The requirements that must be met for a given provision to be included in that group are very strict. Second, each substantive law norm in international legal transactions must apply to insurance contracts on a certain basis, which, according to the dominant opinion in the doctrine is always a conflict of laws norm. Also in case of overriding mandatory provisions, the prevailing opinion is that the requirement of their application arises under a conflict of laws norm "hidden" in such provisions (Fuchs, 2003, 111). Establishment of special connectors for specific fragmentary issues does not mean that the provisions designated by such connectors are overriding mandatory rules (Sonnenberger, 2003, 108).

[11] The norm under Art. 4(2) does not connect the applicability of law to the place of characteristic performance, settling for the designation of the country of domicile of the party rendering such performance (De Miguel, 2008, 210).

For the reasons presented above, it should rather be concluded that the first sentence of Art. 7(4), letter (a) of the Rome I Regulation merely contains a peculiar conflict of laws rule[12] which indicates, as the law applicable to the assessment if the obligation to take out insurance has been met, the law of the Member State where the obligation was imposed (Seatzu, 2003, 210).

Provisions that come to the fore beside the law generally applicable to the contract do not form a homogenous category. Among such rules, two groups should be distinguished according to the criterion of their conflict of laws basis of application.

The first group comprises mandatory provisions (*przepisy krajowo-imperatywne, zwinge Bestimmungen, einfach(-en) zwingenden Normen, interstaatlich zwingenden Normen, intern zwingenden Normen* (Martiny, 1998, 2138)*, intern zwingendes Recht* (Thorn, 2007, 131)*, mandatory rules)*. The basis of their application, as in the case of the law generally applicable to contractual obligations, is an "ordinary" conflict of laws rule, i.e. conflict of laws rule which connects, in the description of its scope, specific, and attached by the criteria specified in such description, substantive law norms of a specific legal area (in case of a unilateral conflict of laws rule) or of specific legal areas (in case of a complete conflict of laws rule) (Kegel, Schurig, 2000, 53). In the Rome I Regulation these are the conflict of laws rules in Art. 3(3), Art. 3(4) (Gołaczyński, 2008, 24), Art. 6(2) and Art 8(1) (Rabels, 2007, 244–245). Norms of the Rome I Regulation define the discussed category as "provisions which cannot be derogated from by agreement." Setting the terminology aside, it should be concluded that these are always *ius cogens* rules (Wojewoda, 2008, 648).

The second group of provisions that come to the fore beside the law generally applicable to the contractual obligations are overriding mandatory provisions (Gołaczyński, 2008, 22–23), (*przepisy wymuszające swoją właściwość, przepisy koniecznego zastosowania (*Mączyński, 1994, 119)*, international, zwingenden Normen, Eingriffsnormen* (Westermann, 2000, 5408–5409)*, internationally mandatory rules*). This refers to *ius cogens* which comes to the fore under and within the scope of "its own intention to apply" (*international zwingender Geltungsanspruch, Anwendungswille*) (Kegel, Schurig, 2000, 275). The conflict of laws basis of application of an overriding mandatory rule is not an "ordinary" conflict of laws rule (Gołaczyński, 2008, 24). Such basis is formed by a conflict of laws rule for a specific substantive law provision (Kegel, Schurig, 2000, 57, 276). This norm is generally included (*mitenthalten*) or inferred from (*entwickelt*) a substantive law

[12] Otherwise: Kropka, 2010, 230.

provision (Kegel, Schurig, 2000, 57, 276). In the Rome I Regulation, the rules on overriding mandatory provisions were provided for in Art. 9 (Thorn, 2007, 131–139, 148).

In the light of the considerations made so far, there arises a – key for the understanding of the normative content of the first sentence of Art. 7(4), letter (a) – question if "specific provisions," as mentioned in that rule, are mandatory rules in the conflict of laws sense or overriding mandatory provisions. In this regard, one should be guided by the criterion of conflict of laws basis of application of the provisions which come to the fore beside the law generally applicable to contractual obligations. It is not easy to answer that question. The source of the difficulties is the structure of the first sentence of Art. 7(4), letter (a). The norm under the first sentence of Art. 7(4), letter (a) assumes that the law of a Member State of the EU imposes the obligation to take out policy in relation to a specific type of insurance. The three-element structure of the first sentence of Art. 7(4), letter (a) permits the conclusion that the provision contains a substantive law norm.[13] In my opinion, it is a provision of harmonized substantive law.

It must be determined if the first sentence of Art. 7(4), letter (a) offers, apart from harmonization of substantive law, a conflict of laws rule prescribing to apply "specific provisions relating to the insurance" as mandatory rules in the conflict of laws sense or if the expression "specific provisions relating to that insurance" should attach to overriding mandatory provisions.

Exceptions should be allowed to the rule that a conflict of laws norm designating the provisions which come to the fore beside the law generally applicable to the contractual obligations is encapsulated in a "classical" conflict of laws rule devoid of any substantive law norms. It should be concluded, as a part of the authors does, that a conflict of laws rule is not only a legal norm formulated so as to recognize another legal norm as applicable but also each legal norm which can be formulated in such manner (Lorenz, 1991, 230). In the same way, the establishment that the first sentence of Art. 7(4), letter (a) is not formulated like a conflict of laws rule should not lead to the conclusion that "specific provisions" are overriding mandatory rules.

3. SUMMARY

Despite entry into force of the provisions of the Rome I Regulation and the oncoming reform of the Brussels I bis Regulation, the European private international law, to the extent it governs compulsory insurance, is still a compromise (Kramer 2008, 41). Thus far, in the doctrine there have been several postulates *de lege ferenda* which may be of use when drafting amendments to the currently applicable regime.

Most authors support adoption of the solution proposed by the researchers grouped under the auspices of the Hamburg Max Planck Institute who, already at the stage of legislative works, opted for the introduction of a rule under which the law applicable for compulsory insurance contracts would be the law of the country of obligation (Basedow,2004, 294).

Even further reaching is the proposal put forward by certain researchers suggesting that the solution outlined above be supplemented by the following provision: "If the obligation to take out insurance against a given risk is imposed by more than one country, the law of such country shall apply which is most closely connected with the insured risk" (Pilich, 2013, 384). The proposed amendment is probably dictated by the intention to prevent severance of the law applicable to contractual obligations. This is the case as the proposal of the abovementioned authors does not provide for a rule corresponding to Art. 7(5) of the Rome I Regulation. This solution, however, will not eliminate all difficulties relating to the specific nature of compulsory insurance. An insurance contract may cover several risks, which will impede the use of the connector based on the close connection of such risk with the law of only one country. Moreover, also in case of insurances covering large risks, the obligation to take out insurance may arise under several legal orders. Omission of the law of the other countries imposing the obligation to take out insurance may lead to a situation in which the boundary conditions prescribed in such laws for compulsory insurance are not complied with despite the activities to which the insurance protection relates being performed in one of such other counties. In consequence, it is still highly probable that overriding mandatory rules of the *lex fori* (Art. 9(2)) or the *lex loci executionis* (Art. 9(3)) may intervene. The question of fundamental importance for the liability of the perpetrator and for the legal situation of the injured party, namely compliance with the obligation to take out insurance, should be characterized by predictable resolutions. Such predictability is definitely not favoured by introduction of a regime which triggers an exceptionally strong urge to reach for overriding mandatory rules so as to take account of the position of the country of obligation for the purposes of establishing if the conditions of compulsory insurance have been met.

[13] See the remark by: Fallon, 1993, 177.

Recognizing the arguments for the above proposal, we advocate the solution under which the law applicable to compulsory insurance should be the law of the country imposing the obligation to take out insurance. Situations of multitude of countries imposing the obligation to take out insurance should be regulated as proposed by the abovementioned authors and supplemented by a provision corresponding to the rule expressed in Art. 7(5) of the Rome I Regulation. Recognition of these assumptions should lead to the elimination of Art. 7(5) of the Rome I Regulation and replacement of the existing paragraph (4) of that Article by the following rules: "Compulsory insurance contract shall be governed by the law of the country imposing the obligation to take out insurance. Where the obligation to take out insurance was imposed by more than one country, the law of such country applies which is most closely connected with the insured risk. If the contract covers risks situated in more than one country, without prejudice to the first and second sentence of this provision, the contract shall be deemed to be composed of several contracts, each of which relates only to one country".

In the absence of a clear regime under the Rome I Regulation, doubts are still raised by the question of the pursuit for law applicable to group insurance contracts (Heiss, 2008, 278). This construction is often used within the framework of compulsory insurance for regulated professions. In case of compulsory insurance contracts whose conclusion is a precondition to practicing a given profession which, at the same time, are based on the group insurance model, a situation arises in which, in the private international context, there intersects a relatively complex "subsystem" of conflict of laws rules under Art. 7(4) of the Rome I Regulation and the general conflict of laws mechanism, which is not suited for group insurance contracts, under Art. 7(3) of the Regulation. The analysis of that problem reaches beyond the scope of this study. The absence of clear systemic solutions regarding the mutual impact of the conflict of laws regime of group insurance and compulsory contracts definitely translates negatively into the development of that sector of the insurance industry in the international perspective.

REFERENCE

Bagan-Kurluta, K. (2011). *Prawo prywatne międzynarodowe*. Warszawa: C.H. Beck.

Basedow, J. (2004). Consument contracts and insurance contracts in a future Rome I-Regulation, Meeusen J., Pertegás M., Straetmans G. (eds.) in: *Enforcement of International Contracts in the European Union. Convergence and divergence between Brussels I and Rome I*. Antwerp - Oxford - New York: Intersentia Publishers.

Bigot, J. (ed.) (2002). *Traité de Droit des assurances. Tome 3. Le contrat d'assurance.* Paris: LGDJ, Lextenso éditions.

Carr, I. (2010). *Insurance Trade Law*. Abingdon, UK: Routledge.

Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, *Official Journal of the European Communities*, L 12,16.1.2001.

De Miguel Asensio, P.A. (2008). Applicable law in the absence of choice to contracts relating to intellectual or industrial property rights, *Yearbook of Private International Law*, vol. X, 199–219.

Droz, G. (1991). *Regards sur le droit international privé comparé. Cours général de droit international privé*, w: *Recueil des Cours, Collected Courses* 1991-IV, Alphen aan den Rijn.

Einführungsgesetz zum Bürgerlichen Gesetzbuche – BGBEG. I. S. 2494, 21. 9. 1994.

Fallon M. (1993). The Law of Applicable to Compulsory Insurance and Life Insurance: Some Peculiarities, in: Reichert–Facilides F., Jesserun d'Oliveira H. U. (Eds), *International Insurance Contract Law.*

Ferrari, F., Leible, S. (Eds.) (2009). *Rome I Regulation – TheLaw Applicable to Contractual Obligations in Europe*. Munich: selier. european law publishers GmbH.

Fras, M. (2008). Reżim prawny umowy reasekuracji - zagadnienia materialnoprawne i kolizyjne, *Prawo Asekuracyjne*, nr 4, 56–68.

Fras, M. (2007a). *Z problematyki kolizyjnoprawnej umów ubezpieczenia obowiązkowe*go, Monitor Prawniczy. Available at: https://czasopisma.beck.pl/monitor-prawniczy/artykul/z-problematyki-kolizyjnoprawnej-umow-ubezpieczenia-obowiazkowego/.

Fras, M. (2007b). Kolizyjnoprawna problematyka umów ubezpieczenia komunikacyjnego, *Europejski Przegląd Sądowy*, nr 7, 13–21.

Fuchs, B. (2003). *Statut kontraktowy a przepisy wymuszające swoje zastosowanie,* Katowice: Wydawnictwo Uniwersytetu Śląskiego.

Gnela, B. (Ed.) (2011). *Ubezpieczenia gospodarcze. Wybrane zagadnienia prawne*, Warszawa.

Gołaczyński, J. (ed.) (2008). *Kolizyjne aspekty zobowiązań elektronicznych*. Warszawa: Oficyna a Wolters Kluwer Business.

Heiss, H. (2011). Liability Insurance, in: Schulze, R. (ed.), *Compensation of Private Losses: The Evolution of Torts in European Business Law*. München: Sellier European Law Publishers.

Heiss H. (2013). *Report of the Commission's Expert Group on European Insurance Contract Law. Part II. Differences in Insurance Contract Laws and Existing EU Legal Framework*, available at:

ec.europa.eu/justice/contract/files/expert_groups/report_on_section_2_final_en.pdf, 9 April 2013.

Heiss, H. (2008). Insurance Contracts in Rome I: Another Recent Failure of the European Legislature, *Yearbook for Private*

International Law, vol. X, 261–284, DOI: https://doi.org/10.1515/9783866538566.2.261.

Kegel, G., Schurig K. (2000). *Internationales Privatrecht*. München: Verlag C.H. Beck.

Kowalewski, E., Bzdyń A. (2012). Prawo właściwe dla umów ubezpieczenia w świetle prawa polskiego na tle regulacji europejskich, *Wiadomości Ubezpieczeniowe* nr 1, 67–87.

Kramer, X. (2008). *The New European Conflict of Law Rules on Insurance Contracts in Rome I: A Complex Compromise,* The Icfai University Journal of Insurance Law, Vol. VI, 23–42.

Kropka, M. (2010). *Kolizyjnoprawna regulacja umowy ubezpieczenia w rozporządzeniu Rzym I*, Katowice: Wydawnictwo Uniwersytetu Śląskiego.

Kropka, M. (2009). Umowy ubezpieczenia a projekt nowej ustawy o prawie prywatnym międzynarodowym, Pazdan, M. (redakcją) w: *Problemy Prawa Prywatnego Międzynarodowego* (27–40). Katowice: Wydawnictwo Uniwersytetu Śląskiego.

Lagarde, P., Tanenbaum, A. (2008). De la convention de Rome au règlement Rome I, *Revue critique de droit international privé*, Vol. 97, Nº. 4, 727–780.

Łopuski, J. (2004). Nowe prawo ubezpieczeniowe a ubezpieczenia morskie: refleksje na temat kierunków rozwoju prawa ubezpieczeniowego, *Prawo Asekuracyjne*, nr 3, 5–25.

Lorenz, E. (1991). Die Umsetzung der internationalprivatrechtlichen Bestimmungen der Zweiten Schadenversicherungsrichtline (88/357/EWG) zur Regulung der Direktversicherung der in der EWG belegen Risiken, in: Stoll, H. (Hrsg), *Stellungnahmen und Gutachten zum europäischen internationalen Zivilverfahrens – und Versicherungsrecht.* Tübingen:Mohr Siebeck.

Ludwichowska, K. (2008). *Odpowiedzialność cywilna i ubezpieczeniowa za wypadki samochodowe*, Toruń: Dom Organizatora Towarzystwo Naukowe Organizacji i Kierownictwa.

Ludwichowska, K., Thiede T. (2009). Reżim kolizyjny umowy ubezpieczenia po wejściu w życie rozporzadzenia Rzym I*, Prawo Asekuracyjne*, nr 2 (59), 58–72.

Mączyński A. (1994). Wskazanie kilku praw przez normę kolizyjną prawa prywatnego międzynarodowego, in: Mączyński A., Pazdan M., Szpunar A. (eds.), *Rozprawy z polskiego i europejskiego prawa prywatnego. Księga pamiątkowa ofiarowana Profesorowi Józefowi Skąpskiego.* Kraków: Wydawn. i Druk. "Secesja".

Magnus, U., Mankowski P. (eds.) (2012). *Brussels I Regulation*. München: Sellier European Law Publishers.

Martiny, D. (1998). *Münchener Kommentarzum Bürgerlichen Gesetzbuch*, Band. 10: Einführungsgesetzzum Bürgerlichen Gesetzbuch, Internationales Privatrecht. München: C. H. Beck'sche Verlagsbuchhandlung.

Meeusen, J., Pertegás M., Straetmans G. (Eds.), (2004). *Enforcement of International Contracts in the European Union. Convergence and divergence between Brussels I and Rome I*. Antwerp - Oxford - New York: Intersentia.

Orlicki, M. (2011). *Ubezpieczenia obowiązkowe*, Warszawa: Wolters Kluwer Polska SA.

Pazdan M. (2009). *O potrzebie uchwalenia nowej ustawy - Prawo prywatne międzynarodowe,* Zeszyty Prawnicze Biura Analiz Sejmowych.

Pazdan, M. (2012). *Prawo prywatne międzynarodowe*. Warszawa: Wolters Kluwer.

Perner, S. (2009). Das Internationale Versicherungsvertragsrecht nach Rom I, *IPRax: Praxis des Internationalen Privat- und Verfahrensrechts*, Vol. 29, Nº. 3, 218–222.

Pilich, M. (2012). *Statut umów ubezpieczenia według rozporządzenia Rzym I*, in: Weitz K., Grzegorczyk P. (eds.), *Europejskie prawo procesowe cywilne i kolizyjne* (313–385). Warszawa: LexisNexis.

Policha, K.,Wnęk, A. (2011). Prawo prywatne międzynarodowe. Zasady wyboru prawa właściwego dla dużych ryzyk ubezpieczeniowych. Zagadnienia praktyczne, *Prawo Asekuracyjne*, nr 3, 3–16.

Popiołek, W.(ed). (2013). *Międzynarodowe prawo handlowe*, Tom 9. Warszawa: C.H.Beck.

Przybyłowski, C.f. K. (1959). *Z problematyki stosowania obcych norm kolizyjnych*, Kraków: Nakł. Uniwersytetu Jagiellońskiego.

Rabels, Z. (2007). *Comments on the European Comission's Proposal for a Regulation of the European Parliament and the Council on the law applicable to contractual obligations (Rome I).* Max Plank Institute for Comparative and International Private Law.

Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, *Official Journal of the European Union*, L 351, 20.12.2012.

Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), *Official Journal of the European Union,* L177, 4.7.2008.

Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 onthe law applicable to non-contractual obligations (Rome II), *Official Journal of the European Union*, L 199, 31.7.2007.

Reichert–Facilides, F., Jesserund'Oliveira H. U. (1993). *International Insurance Contract Law*. European University Institute, Florence.

Schmidt, T.S. (1993). The incidental question in private interinational law, in: *Recueil Des Cours - Collected Courses*, 1992-II, Alphen aan den Rijn.

Seatzu, F. (2003). *Insurance in Private International* Law. Oxford-Portland: Hart Publishing.

Sonnenberger, H.J. (2003). Eingriffsrecht – Das trojanische Pferdim IPR odernotwendige Eregänzung?, *Praxis des Internationalen Privat- und Verfahrensrechts*, Heft 2, 104–116.

Stoll, H. (1991). *Stellungnahmen und Gutachten zum europaischen internationalen Zivilverfahrens- Und Versicherungsrecht*. Tübingen: Mohr Siebrek Ek.

Stone, P. (2010). *EU Private International Law*. Cheltenham: Edward Elgar Publishing Limited.

Thorn, K., (2007). Eingriffsnormen, Ferrari, Leible, (Hrsg.), in: *Ein neues Internationales Vertragsrecht für Europa - Der Vorschlag für eine Rom I-Verordnung* (131–152). Jena: JWV Jenaer Wissenschaftliche Verlagsgesellschaft mbH.

Ustawaz dnia 4 lutego 2011 r.Prawo prywatne międzynarodowe, *Dziennik Ustaw*, Nr. 80, poz. 432, 4898–4906.

Versicherungsvertragsgesetz - Gesetz zur Reform des Versicherungsvertragsrecht vom 23. November 2007, BGBl. I S. 2631.

Vitta, E. (1980). *Cours général de droit international privé,* in: *Recueil des cours, Collected Courses of the Hague Academy of International Law 1979*, Alphen aan den Rijn.

Von Hein, J. (2011). Party Autonomy in International Property Law: A German Perspective, in: Westrik R., van der Weide, J. (eds.), *Party Autonomy in International Property Law*. Munich: Sellier European Law Pubishers.

Weitz, K., Grzegorczyk, P. (2012). *Europejskie prawo procesowe cywilne i kolizyjne*, Warszawa: LexisNexis Polska.

Westrik R., van der Weide J. (2011). *Party Autonomy in International Property Law*. Munich: Sellier European Law Pubishers.

Westermann H.P. (Hsg). (2000). *Erman Bürgeliches Gesetzbuch*, Münster: Aschendorff Rechtsverlag. Köln: Dr. Otto Schmidt.

Wojewoda, M. (2008). Artykuł 3.3 konwencji rzymskiej z 1980 r. jako szczególny element mechanizmu poszukiwania prawa właściwego dla zobowiązań umownych, Pazdan,M. Popiołek, W., Rott – Pietrzyk, E., Szpunar, M. (Eds) w: *Europeizacja prawa krajowego*. Warszawa.

Zachariasiewicz, M.A. (1978). *Prawo właściwe dla zobowiązań z umów ubezpieczenia*. PPHZ.

Zachariasiewicz, M. A. (2010). O potrzebie wskazania w nowej ustawie o prawie prywatnym międzynarodowym podstawy stosowania przepisów wymuszających swoje zastosowanie, Pazdan, M. (Red.) w: *Problemy Prawa Prywatnego Międzynarodowego*, T. 7, 9–43. Katowice: Prace Naukowe Uniwersytetu Śląskiego.