

UDK: 528.065:065:303.443:34+348.1.39:368:331.105.4:727.3:681.5:368.811(4-672 EEZ):
347.961.8: (497.11):368.029:368.023.1 : 347.763.14

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CONFERENCE REVIEW

CHALLENGES, NEW TECHNOLOGIES AND CORPORATE GOVERNANCE IN LAW AND PRACTICE

The 19th Annual Conference of the European Insurance Law Review was held on Palić from 20 to 22 April, organized in cooperation with the Association of Serbian Insurers. The topic of this year's gathering of lawyers from Serbia, the countries of the Region and the European Union was "Insurance Law and Practice - Challenges, New Technologies and Corporate Governance".

Prof. Dr. Slobodan Jovanović, President of the Association for Insurance Law of Serbia opened the Conference, highlighting that it was held at the time of active implementation of Solvency II Directive in Serbia, pending implementation of the Insurance Distribution Directive and new challenges for insurance industry brought about by coming into force of the General Data Protection Directive, with numerous disruptions and inevitable effect on the reorganization of business processes of all insurance market participants. On the other hand, the development of existing legal framework in these areas is not the only challenge for the insurance industry - new technologies and services based on them need to be legally regulated as well and possibilities and methods of insuring against such risks will appear as a special issue, Jovanović emphasized.

1. The introductory papers were presented by **Dr. Giorgio Ambrogio Marchegiani**, President of the Executive Board of DDOR "Novi Sad" and **Dr. Dragica Janković**, member of the Executive Board of Dunav Insurance Company.

1.1. Considering the economic situation, challenges and businesses perspectives in Serbia (one of the topics of the Conference), which should also be placed in the focus of the legislator and the management of companies facing the challenges, Marchegiani said that Serbia had progressed, that it had developmental opportunities, prospects for changes and entry into the European Union. With regard to insurance, Serbia was still underdeveloped, with a share of 2.70 % of GDP and at a low level compared to the EU and the world. Marchegiani pointed out that although the market was slowly emerging, this need not be of a particular concern,

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because insurance is not prone to rapid development such as telecommunication, for example, and the prospect was still good. Insurance is a sector closely linked to the economy and with uninterrupted development of the economy; we are developing the insurance. He mentioned the underdeveloped insurance culture as one of the challenges, which was a problem in Italy as well, a much more developed and wealthier country than Serbia, in macroeconomic terms. The salaries of employees are still low, so in some areas of Serbia, from Subotica to Vranje, it is difficult to sell the policy of mandatory MTPL insurance even with the benefits of instalment payment. Although people are aware of the importance of insurance, they lack money to pay the premium. Speaking of other challenges facing Serbian insurance, Marchegiani pointed out that the new Solvency II regulation could improve but also make the situation more adverse, depending on our attitude towards it. A more efficient judiciary is a must, especially for development of two main forms of insurance in Serbia – motor third party liability and general liability insurance. The new technologies, a different attitude towards data privacy and many other novelties recently in use in the EU pose a double-tougher task for Serbia than for the European insurers, who operate in a much more developed market, Marchegiani claimed.

1.2. The second introductory speaker, Dr. Dragica Janković, introduced the participants of the Conference with the amendments to the Implementation Strategy for Solvency II Directive in Serbia and the situation on the Serbian insurance market. The two-year implementation of the Solvency II regime in the countries of the European Union, which came into force after many postponements on January 1 2016 showed its weak points – too much redundancy, complexity and insurance overregulation under its implementation. Besides the media and professional literature, we could hear this from the very creator of the regime, Professor Karel Van Hulle, who was a guest on the First Serbian Insurance Days held last year in the town of Arandelovac. On that occasion, the professor announced the aim to simplify the regime in its further implementation, said Dragica Janković, outlining the completed and pending phases of the regime implementation in Serbia.

Dragica Janković further presented the situation in the Serbian insurance market, pointing to all the weaknesses that need to be dealt with in order to catch up with the developed EU markets. This is, among other things, a very low share of insurance premiums in the GDP, by which Serbia only ranks 61st in the world. The weaknesses include unfavourable premium structure, in which non-life insurance has a primacy of 75.55% versus 24.45% of life insurance. The non-life insurance premium structure is also unfavourable; half of it is accounted for by mandatory insurance (45% of the premium is accounted for by motor insurance), which represents a very high risk for the market, in the light of expected price liberalization and premium decrease on the one hand and increase in non-material indemnity limits for gaining compliance with the EU limits, on the other hand. Apart from life insurance,

agricultural insurance is also underdeveloped, professional liability insurance is only beginning to develop and much effort should be invested in the digitization and development of the sales channels.

Moreover, she pointed to the positive role of the National Bank of Serbia in insurance companies supervision. Since 2005, when the NBS began to supervise, until 2017, technical reserves of both non-life and life insurance increased by almost five times - from 265.5 million euros to one billion three hundred thousand euros. Besides technical reserves, the best indicator of the long-term financial stability and solvency of an insurance company is the capital adequacy, consequentially- the safety of its insured. According to the 2016 NBS data, the overall adequacy of Serbian insurers transacting non-life insurance under the S1 regime was expressed as a coefficient of 2.17 (the ratio between the available and required solvency margin), and as regards the companies that mainly transact life insurance - 2.45. The average S2 ratio in the EU is 2.25 (under the S2 mode). Bearing in mind this is an average market adequacy, there is a peril that a number of insurance companies will not meet the basic capital requirement, which could result in a reduced number of market participants, concluded Dr. Janković.

2. During the first day of the Conference, two roundtables were held - one dedicated to insurance contracts and the other to non-life insurance contracts.

2.1. Within the first round table, **Prof. Dr. Wolfgang Rohrbach**, from the European Academy of Sciences and Arts in Salzburg, Austria, spoke of a very current modern topic - "Digital Age Insurance Crime". In the paper, he pointed to the cyber-crime problem, which affected the increased indemnities paid through a well-tried options of abuse. Professional criminal organizations cause insurance economy annual damages amounting to billions of euros, with transport insurance and motor vehicle insurance as evidently particularly vulnerable to frauds. According to the data published by Allianz Risk Barometer, the 2017 Austria risk picture drastically changed in comparison with previous years. The greatest among the risks is cyber-crime, second is the risk of business interruption or delivery interruption, while the third is the risk of natural catastrophes.

2.2. Prof. Dr. Slobodan Jovanović presented a paper „Insurance against Extortion Costs in Using Information Technology“. The use of the Internet and new technologies and equipment led to the expansion of the information and communication opportunities of a modern society, but their availability has simultaneously become a tool for various forms of illegal behaviour, including a peril of information extortion that emerged under new business circumstances, Jovanović highlighted. A preferred way of managing this type of risk, according to prof. Jovanović, is to insure against the costs of IT extortion. This type of coverage belongs to property insurance, always to the contractual sum insured, since it is impossible to determine in advance the value of the insured interest. However, the lack of awareness

about the possible extent of the damage, the mistaken belief that these risks are covered by the general liability insurance or computer device insurance and that the bad experience will pass us by are the reasons for insufficient demand for these insurance services, and the domestic insurance market has not yet established its own insurance terms and conditions for IT risks. In the London market, the offer is diverse and will be developed in the future, by replacing the existing and using new technologies and equipment.

2.3. The paper "Some Contractual Traps in Large Companies Insurance Contracts with Reference to Particular Types of Insurance", by **MA. Aleksandar Mladenović**, sheds light on the legal changes referring to insurance contract. It is noted that those changes almost exclusively concern improvement of the rights of insured persons that have the status of consumers or small companies or relate to small risks. The insurance of large entities is regulated by the state only through provisions regarding insurance financial supervision, assuming that these insured are capable of negotiating on equal footing with insurers. The author analyses liability insurance of directors and officers (D&O), Business Interruption Insurance (BI) and Bankers Blanket Policies (BBB), indicating cases where the insured may be under-protected and indemnity denied. The paper, therefore, emphasizes that these contracts, in addition to the need of being harmonized with the local regulations, must be written in a clear language that excludes the possibility of different construing.

3. During the second round table on non-life insurance, three papers were presented.

3.1. The topic "Legal Position of Carrier's and Liability Insurance against Damages to Goods in Road Transportation" was spoken of by **Dr. Zoran Ilkić**, claims department legal representative, DDOR Novi Sad. In this paper, the author points to the most important international sources of the law of the Republic of Serbia that define the legal position of the road carriers, their obligations and rights. He states that the provisions on carrier's liability in Serbian legislation are not fully compliant with the European Union law. The provisions of the Convention on the Contract for the International Carriage of Goods by Road (CMR), adopted in 1956 in Geneva and ratified by Serbia as well, have been incorporated into national laws. In this part, the position of road carrier from domestic geographical areas is equal to the foreign carriers and the conditions of their responsibility. However, the compliance has not been fully achieved, especially with regard to the limits up to which the carrier is held accountable for the damage on goods taken over for transport. It would be necessary for the Republic of Serbia to ratify the protocols that have been adopted, after and in addition to the Convention, which would lead to equalization of liability limits and less expensive transport, by using e-bills of lading.

3.2. In the paper titled "The Ways of Introducing Disruptions in Non-Life Insurance and their Challenges, Globally and in Serbia", **Prof. Dr. Nebojša Žarković**,

from the Faculty of Business Studies in Vršac, Belgrade "Megatrend" University, researched the opportunities for insurance companies in developing new services, processes and internal organization so as to be able to offer the insured amended and improved forms of coverage and completely new forms of protection. The author recommended that companies should stick to gradual changes, which includes adjusting the insurance policies and terms and conditions and gradually amending business procedures, internal organization and marketing. By relying on gradual changes, non-life insurers will provide a steady inflow of funds that can be invested in research and development, with the goal of finding major novelties that will, in a positive sense, disrupt the well-established market patterns. The disruptions in Serbian market should spur its development. According to the author, a special responsibility lies with non-life foreign insurers who have been present in this area for more than ten years. Their contribution would reflect in conveying new insurance services, more or less customized, from the market of their home countries.

3.3. The need to introduce a new insurance that includes both the insurance of bicycles as a means of transportation and bicycle riders was the theme of the paper "Cycling and Insurance - the Necessity of Innovation" by **Zorica Šipovac**, law graduate, specialist of exclusive sales of all types of insurance of the Uniqa Insurance, Novi Sad and **MA. Vladimir Šipovac**, doctoral candidate at the Faculty of Economics and Engineering Management at "FIMEK" University of the Business Academy in Novi Sad. The authors see the benefit primarily for cyclists as the most prominent category of road users, but also for insurance companies who win a new open market by acquiring new portfolio customers and offering them other insurance services. They conclude that science and practice of insurance, in order to advance, cannot move only in a safe environment by selling purely classical types of services, but must take a risk. Without taking any risks, they conclude, no win is possible.

4. The second day of the Palić Conference started with the third round table dedicated to motor-liability insurance.

4.1. Participant from the Great Britain, **Dr. Matthew Channon** from the University of Exeter introduced participants to the Great Britain's draft law on automated and electrical vehicles. He pointed out that the world has begun the fourth industrial revolution around the technological development that also included the autonomous vehicles. The first such vehicles are expected to be tested on the road by 2021 and made available to the public in the next fifteen years. The introduction of autonomous vehicles creates numerous legal challenges in various areas including responsibility, intellectual property, criminal law, information security and insurance. The author focuses on insurance challenges in the Great Britain and insurance reform under the draft law on automated and electrical vehicles, which is currently in the legislative procedure. The author sees possible weakness of the draft law in what it brings before the technology becomes available and becomes used in public.

Unlike the 1930 Road Transportation Act, adopted in Britain 30 years after the first motor vehicles appeared on the roads and still with numerous gaps in the compensation of damages, which was put out of force only four years after the adoption, the current legislation foresees technology years ahead of its massive usage. In the future, this could be time consuming when filing an amendment, but on the other hand, it indicates Britain's intention to lead the development of autonomous vehicle technology by reducing legal barriers to its introduction.

4.2. In the report "Failure of the Claimant to Obtain Data after Traffic Accident", **MA. Miloš Radovanović** from the Guarantee Fund with the Association of Serbian Insurers deals with the issue of the rights of the claimant to indemnity where the tortfeasor and his vehicle are unknown due to the fault of the claimant himself. Although the Serbian legislator does not have a clear view on this matter, the case law resolved this issue in a way that the claimant cannot be indemnified if the vehicle is unidentified due to the fault of the claimant. Typical events in which such failures occur are the claimant being transported by tortfeasor's vehicle after the accident, the tortfeasor assisting the claimant after the accident and when after an accident there is a fight between the tortfeasor and the claimant. In such situations, as a rule, there is no right to indemnity, but the claimant can justify his own failure and exercise the right to indemnity by proving in a lawsuit that he was objectively unable to obtain the relevant information.

5. Personal insurance contracts were the topic of the next, fourth round table of this Conference.

5.1. Theme "Blockchain Technologies, Smart Contracts and Their Application in Insurance Industry" was delivered by **Dr. Katica Tomić**, lawyer at BVM in Vienna, Austria. Blockchain technology is an algorithm that first appeared in 2009, as technology on which the digital currency Bitcoin rests. This technology is significant due to the fact that it made possible reaching a consensus on the data evolution in an open Internet by allowing the synchronization of the distribution digital share book without the involvement of a reliable intermediary. It is expected that digitalization of insurance business through blockchain technology will significantly improve business procedures, trust, relevance and secure exchange of confidential information between business partners, and that smart contracts will save costs and time by optimizing and automating the process. The Blockchain Insurance Initiative, known as the B3i, was launched in October 2016 by large insurance and reinsurance companies, with the intention to explore the possibility of providing faster, more convenient and secure services, while already in September 2017, market testing was announced for the smart reinsurance treaties prototype management system. Although still in the experimental phase, it is considered that blockchain technology and smart contracts will change the attitude towards contract design, administration and enforcement and eventually replace traditional contracts.

5.2. The theme “Position of Life Insurance Beneficiaries with Reference to Case Law in Croatian and Comparative Law” was presented by **Doc. Dr. Loris Belanić** from the Faculty of Law of the University of Rijeka. The paper explicated the issues of defining life insurance beneficiaries, persons eligible for the role of insurance beneficiaries and/or the consent of the insured if he is not the same person as the policyholder. The question of the possible recall of the named insurance beneficiary and limitations on this issue were also addressed. A special attention was given to the possible situation where the beneficiary would deny the benefit intended for him and the benefit distribution where the policyholder has designated more than one beneficiary. In this paper, Belanić, in a systematic manner, presented the rights of the insurance beneficiary as well as the relationship between the insurer and the beneficiary and/or the possible rights of the creditors of the policyholder as regards the sum insured intended for the beneficiary. The paper also presented particular legal solutions in the Italian and French legal systems including a presentation of court practice in these legal systems.

6. At the roundtable “Sales of Insurance Products and Consumer Protection”, the referents addressed current topics that concern both the insured and insurers.

6.1. Dr. Angelo Borselli from the University of Bocconi in Milan, Italy, spoke about algorithm use in insurance. Artificial-algorithmic intelligence systems have the potential to reverse large sectors of the economy, including insurance. Although, at first glance, it seems that the insurance business is slow in accepting and exploring the value of artificial intelligence, the applications within intelligent insurance vehicles are on the rise today. This paper analyses the role that artificial intelligence and machine learning can have in insurance. The attention is also paid to the possible application of artificial intelligence to “smart” contracts. The author refers to some of the main issues related to artificial intelligent algorithmic systems and highlights the need to ensure transparency and accountability in the automated decision-making.

6.2. Kristina Mariani of the “Unipol Group” in Bologna, Italy, presented the paper on “New Directive on Insurance Distribution and Sharing Advice”. The main objective of the Directive is to establish insurance market customer confidence by improving consumer protection standards to avoid the unfair sales practice, especially when it comes to the sale of insurance services with an investment component. The new counselling rules are aimed precisely at achieving this goal. In this paper, Kristina Mariani explored the analysis performed by the European Commission when presenting the Proposal to amend the Insurance Mediation Directive. In addition, the author presented the implementation phase of the Directive in Italy. She pointed out that it would be interesting to see how the conservative European insurance market addresses challenges of the new supervisory legal framework and how skilfully it takes advantage of advancement opportunities while maintaining high consumer protection standards.

6.3. In the article “Product Control, Requirements and Needs of Consumers: Implications of Contract Law”, **Dr. Margarita Lima Rego** from the Law School Nova in Lisbon, Portugal, revealed various forms of fight against unfair sales of insurance services that are regulated by the Insurance Distribution Directive, with a special emphasis on the supervision of services, the obligations of insurance companies management and the test of consumer requirements and needs. She states that dishonest selling is done when there are services that meet the needs of a particular group of clients, but are sold outside that group. The Insurance Distribution Directive (DDO) requires insurance distributors to provide information about both their product and themselves, since it is even more important for clients to know whom they are negotiating with than understand the service or its supplement. In fact, the clients must be able to make an informed decision on whether they can trust the chosen distributor. They must take into account individual requirements and needs of their clients.

6.4. MA. Nikola Filipović, Assistant at the Belgrade Business School, spoke on the “Business Principles under Insurance Distribution Directive”. He analysed the requirement stipulated under the Article 17 of this Directive that member states should ensure fair, equitable and professional performance of insurance distributors, in accordance with the best interests of their clients. He considered the reasons for stipulating such a principle in the insurance law and whether this requirement can be identified with the general principle of conscientiousness and fairness under the Law of Contracts and Torts and, if not, what is the mutual relationship between these two requirements. The author analysed the tasks that this requirement sets before the insurance companies business compliance departments and the supervisory practice in England, where, for ten years now, supervision has been applied based on the 11 general principles that financial institutions have to adhere to in their business and six goals to be achieved by applying these principles. The author considers communication between supervisory authorities and insurance companies as playing a key role in implementing the requirements of DDO and that the goals set before insurance companies and other distributors must be feasible and realistic.

7. The last round table at this year’s conference was titled “Management and Competition in Insurance”.

7.1. With reference to this topic, **Dr. Ljiljana Stojkovic**, a lawyer from Belgrade and deputy president of the Association for Insurance Law, presented the paper “Compliance Control in Insurance Company - Theoretical and Legal Analysis”. She noted that the statutory requirement for business compliance should be observed as a standard of the insurance company’s business and considered the solutions under the law of the Republic of Serbia in order to better understand the institution of control in terms of managing the risk of non-compliance as an integral part of insurance company risk management following Solvency II as a European Union

regulatory framework. At the core of the implementation of legality principle is the institute of compliance control, i.e. the legality of operations that materializes in the activities of company's management. In this paper, the management liability is specially considered and emphasized as a prerequisite and guarantor of ensuring legality of business operations.

7.2. Prof. Dr. Pierpaolo Marano, associate professor of insurance law at the Catholic University of the Sacred Heart in Milan, Italy, inspired the attendees with the paper titled "Controlling the Activities of the Insurance Product Manufacturer". He gave a brief overview of product monitoring and management under the Insurance Distribution Directive (DDO), with a special focus on controlling activity aimed at product analysis and distribution, as well as corrective measures. In addition, he spoke about the integration of control activities into the system of internal control of service provider. The author considers that the product control and management must be in line with the policies and procedures of the internal control system that provide support to the Board of Directors in decision-making, including, inter alia, insurance services.

7.3. The "Discrimination and Insurance" paper by **Prof. Dr. Katarina Ivančević** from the Law Faculty of the University "Union" in Belgrade focused on the use of genetic information in the insurance risk assessment procedure. One of the types of discrimination is the deprivation of the possibility of concluding an insurance contract or refusing coverage for particular risks or requiring the payment of premium higher than usual for the relevant risk type for admission into coverage. The use of genetic testing results in assessing risk and client qualifications can be very useful for insurers, but for the insurance beneficiaries it may have negative consequences at the border of denying the right maintain insurance coverage through an insurance contract, which is considered to be a violation of the social rights of the individual and the family, said prof. Ivančević and pointed out that most countries have completely ruled out the possibility for insurers to use these tests, or has limited and conditioned this possibility to a considerable degree. Under the Serbian law, there is explicit ban on the use of genetic tests only with regard to voluntary health insurance and prof. Ivančević argues that this prohibition should be extended and defined so that it would apply to all types of insurance providing social security to individuals and their families, in particular in life insurance lines.

7.4. The paper "One Look at Legal and Organizational Aspects of Corporate Governance in Insurance" came out from the pen of the co-authors, **Prof. Dr. Mihajlo Rabrenović** from the Faculty of Business Economics and Entrepreneurship in Belgrade and **Sarita Olević, LLM** from Dunav Insurance Company", who presented the paper on this occasion. The authors addressed the current issues and challenges of corporate governance in insurance, as one of the ways of ensuring operating efficiency, profitability and transparency of insurance companies. They noted that

corporate governance must be organized to ensure the achievement of business goals, strategies and operational plans of insurance companies while at the same time reducing the level of risk exposure. Special attention was paid to the legal and organizational position of the Shareholders Assembly, the Executive and Supervisory Boards and their mutual relations.

8. Academically educated experts employed within insurance companies and institutions, whose professional activity covers insurance, members of the Association of Insurance Law of Serbia and foreign experts who took an active part in this annual Conference presented numerous proposals for improving the legal framework of insurance in Serbia. Like in all previous years since 2005, when the first Conference was held, the main objective were the development of insurance law and keeping up with legal standards of the most developed EU countries. As it turned out, this had more than one benefit for employees in insurance companies who create modern services applying the new knowledge and/or change the client and management approach. The papers presented at the Nineteenth Annual Conference were published in the Proceedings and the Journal of the Association, the European Insurance Law Review.

*Translated from Serbian by: **Bojana Papović***