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THE DUTY TO NOTIFY THE INSURER OF CHANGE IN RISK AFTER THE CONCLUSION OF THE INSURANCE CONTRACT[2]

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Summary

Circumstances relevant to the assessment of risk may change after the conclusion of an insurance contract. Since the policyholder is the only party with full insight into all circumstances relevant to the risk assessment, he has a duty to notify the insurer of any such changes. This paper will examine the nature of the duty to notify the other contracting party as a manifestation of the principle of good faith. It will further define the relevant risk, the aggravation or reduction of which constitutes the duty to notify, analyze the insurer's rights upon being informed of a change in circumstances, and examine the legal consequences of breaching this duty by the policyholder. The duty to notify the insurer of an aggravation or reduction of risk is regulated by Articles 914–916 of the Serbian Law on Contracts and Torts. In addition to the analysis of Serbian law, the author will examine the relevant provisions of French and German law, as well as the Principles of European Insurance Contract Law (PEICL).

Keywords: *insurance contract, risk, aggravation of risk, reduction of risk, duty to notify*

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I Introduction

An insurance contract is an agreement by which the policyholder agrees to pay a certain amount to the insurer, and the insurer undertakes to pay compensation or perform another action for the insured or a third party if an event defined as the insured event occurs. The monetary amount paid by the policyholder is called the premium, while the amount paid by the insurer upon the occurrence of the insured event is referred to as the insured sum or insured amount. In other words, in exchange for the premium paid by the policyholder, the insurer pays the agreed amount or provides another form of compensation if the insured event takes place.

At the time the contract is concluded, the insurer assesses the probability of the insured event occurring. Based on this risk assessment, i.e. the probability of its occurrence, the insurer determines the amount of the premium to be charged to the policyholder. In order to accurately determine the premium, it is crucial for the insurer to be aware of all relevant circumstances, primarily at the time of contract conclusion, but also throughout its duration. It is important to emphasize that this is a contract in which, by its very nature, there is an asymmetry of information regarding the relevant circumstances pertaining to the insured property or person. In this respect, the insurer is the "information-disadvantaged party" as it does not possess such information and can obtain it only based on the statements of the policyholder.[3] The policyholder is obliged to disclose all circumstances relevant to risk assessment, which is most commonly done by filling out a form or answering specific questions posed by the insurer.[4] The insurer relies on the loyalty of its contracting party and depends on their statements, without verifying their completeness or accuracy.[5]

Once the policy is issued, the insurer hopes there will be no significant aggravation of risk.[6] However, it must be borne in mind that the insurance contract is a contract of continuous performance, creating obligations whose fulfillment extends over time.[7] Given that risk is a variable category, and that the performance of the insurer's obligation, by its very nature, requires a certain passage of time, the

[3] Marijan Ćurković, "Obveza ugovaratelja osiguranja, odnosno osiguranika, prijaviti osiguratelju okolnosti značajne za ocjenu rizika", *Zbornik radova Aktualnosti građanskog i trgovačkog zakonodavstva i pravne prakse* No. 15/2017, 103.

[4] In the past, the policyholder independently decided which circumstances were important and which to disclose to the insurer and voluntarily informed them. This approach proved too burdensome for the policyholder and was gradually replaced by a system in which the insurer asks specific questions in the form of a questionnaire (see Herman Cousy, "The Principles of European Insurance Contract Law: The Duty of Disclosure and the Aggravation of Risk", ERA Forum No. 9/2008, 120).

[5] M. Ćurković (2017), 102.

[6] Project Group Restatement of European Insurance Contract Law, Fritz Reichert-Facilides, Jürgen Basedow, *Principles of European Insurance Contract Law: (PEICL)*, München, 2009, 181.

[7] More on contracts with continuous performance, see Marija Karanikić Mirić, *Obligaciono pravo*, Belgrade, 2024, 186–187.

risk level may fluctuate between the conclusion of the contract and the occurrence of the insured event. From the insured's standpoint, there is an understandable tendency to continue their usual activities practiced prior to the conclusion of the insurance contract, without having to limit their conduct to maintain the insured risk. Additionally, there is a legitimate public interest to ensure that the insurance sector operates efficiently and remains financially stable, while not hindering activities that contribute to economic development and innovation.[8] Accordingly, it is understandable that during the insurance period, there may be significant fluctuations in risk, whether aggravations or reductions. Still, if a significant change in risk occurs, the policyholder is obligated to notify the insurer, so the latter can adequately assess the new situation and, if necessary, adjust the contract terms accordingly.

The duty to notify is prescribed with the aim of reducing the information asymmetry between the contracting parties. It is essential for the insurer to be aware of any circumstance that could lead to an aggravation or reduction of risk.[9] This duty is underpinned by two main reasons. First, it prevents the insured from profiting from the insured event.[10] In other words, it represents an application of the principle of full compensation – the injured party has the right to be compensated for the entire damage, but nothing beyond that. If the policyholder fails to report subsequent changes in risk, they may end up paying a lower premium than they should have or receiving greater compensation than they would have if all relevant circumstances had been disclosed – in effect, insurance becomes a source of profit rather than a means of compensation. Second, this duty contributes to reducing moral hazard.[11] Without such a duty, the insured could influence the risk after concluding the contract at their discretion, relying on the fact that the agreed sum would still be payable upon the occurrence of the insured event.

Since the duty to notify does not exist in all legal systems, this paper will first present comparative law approaches to this obligation, along with the theoretical rationales supporting those solutions. The central part of the paper is dedicated to the analysis of the duty to notify itself – who is bound by it, what exactly it entails, and what legal consequences result from a change in risk during the term of the contract, whether it be an aggravation or reduction of risk, depending on whether the policyholder informs the insurer in a timely manner or withholds such information. Finally, the paper presents the solution prescribed by the Principles of European Insurance Contract Law (PEICL) concerning changes in risk during the insurance period.

[8] Project Group Restatement of European Insurance Contract Law, F. Reichert-Facilides, J. Basedow, 181.
[9] Predrag Šulejić, *Pravo osiguranja*, Beograd, 2005, 233.
[10] Irma Nozadze, "Duty to inform as a Specifity of Demonstration of Good Faith Principle in Voluntary and Compulsory Insurance", *Journal of Law (TSU)* No. 1/2017, 137.
[11] *Ibidem*.

II The duty to notify during the term of the contract in comparative law

While all legal systems recognize the policyholder's duty to disclose all relevant circumstances at the time the insurance contract is concluded, comparative law reveals differing approaches regarding the duty to notify about fluctuations in risk during the term of the contract.[12] Specifically, in countries with a so-called "maritime insurance tradition", the policyholder is generally not obligated to report circumstances that lead to an aggravation or reduction of risk after the contract has been concluded.[13] This is the case in England and the Netherlands. In these jurisdictions, the duty to notify the insurer may only be imposed on the insured through a specific contractual clause. However, English and Dutch courts typically interpret such clauses restrictively, in favour of the insured, and rarely treat them as binding obligations.[14] On the other hand, in the countries of the so-called "Alpine insurance tradition",[15] the policyholder is obliged to notify the insurer of all relevant circumstances throughout the duration of the insurance contract. This duty is expressly stipulated by law. The French Insurance Code (*Code des assurances*; hereinafter: CA)[16] stipulates that the policyholder must notify the insurer during the contract period of any new circumstances that result in either an increase in risk or the emergence of new risks, and that thereby render previously provided answers to the insurer untrue or outdated.[17] The German Insurance Contract Act (*Gesetz über den Versicherungsvertrag* or *Versicherungsvertragsgesetz*; hereinafter: VVG)[18] obliges the policyholder who has

[12] Also, the insurance contracting party is obliged to report all relevant circumstances that have changed in the period from sending the offer to the insurer to conclude the insurance contract until the conclusion of the contract (H. Cousy, 127). This is particularly important in motor liability insurance, since the vehicle between the declaration, when the insured stated that the vehicle was in proper condition, and the conclusion of the contract may become technically defective (Dirk Looschelders *et al*., *Versicherungsvertragsgesetz Mit Nebengesetzen Und Systematischen Erläuterungen. 4. Auflage*, Hürth, 2023, 510).

[13] H. Cousy, 131. This is confirmed by judgments such as *Pim v Reid* (1843) and *Kausar v Eagle Star Insurance Co Ltd.* (1997) (Project Group Restatement of European Insurance Contract Law, F. Reichert-Facilides, J. Basedow, 181).

[14] Project Group Restatement of European Insurance Contract Law, F. Reichert-Facilides, J. Basedow, 183. It is important to emphasize that even in those countries the legislature does not allow deliberate or grossly negligent behavior by the insured that causes the occurrence of the insured event (Project Group Restatement of European Insurance Contract Law, F. Reichert-Facilides, J. Basedow, 181).

[15] H. Cousy, 131.

[16] Insurance Code (CA), consolidated version of May 3, 2025, available at: *https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006073984/* (last accessed May 30, 2025).

[17] CA, art. L113-2 point 3.

[18] Insurance Contract Act (VVG), version of November 23, 2007 (*Federal Law Gazette I,* 2631), last amended by Article 15 of the Act of December 20, 2022 (*Federal Law Gazette I*, 2793), available at: *https://www.gesetze-im-internet.de/vvg_2008/* (last accessed May 30, 2025).

increased the risk or allowed it to be increased without the insurer's consent to immediately inform the insurer of such an increase, or, in cases where the risk increase has occurred independently of the policyholder's will, to notify the insurer as soon as they become aware of the increased risk.[19]A similar obligation on the part of the policyholder is prescribed by the Serbian Law on Contracts and Torts (hereinafter: ZOO).[20] Why do legal systems approach this issue so differently?

First and foremost, this is a matter that "touches the very essence of insurance".[21] On one hand, an insurance contract is an aleatory contract, its legal effect at the time of conclusion is unknown and depends on an uncertain future event, that is, a circumstance unknown to the contracting parties.[22] At the time the contract is concluded, it is not known whether the insured event will occur. It may be expected of the insurer to accept, at the moment of contract conclusion, not only the existing risk but also any changes to that risk during the contract period.[23] Indeed, the very calculation of risk is inherent to the insurance contract as an aleatory agreement, and it can be argued that the law should not protect insurers from a poor risk assessment.

The legislator's stance on this issue is also influenced by the duration of the insurance period. The shorter the period, the less justified it is to require the policyholder to report circumstances that contribute to an increase or decrease in risk. In countries where insurance typically lasts one year or less, the law usually favours the insured and does not provide legal mechanisms for insurers to adjust policy terms in the event of a significant increase in risk.[24] In most European countries, however, insurance periods usually exceed one year, so the law permits the contract to be modified in case of a significant increase in risk during that time.[25]

Finally, the (non-)existence of the duty to inform about changes in relevant circumstances after the contract is concluded largely depends on how the principle of good faith and fair dealing is understood within a particular legal system. The insurance contract is based on the *principle of utmost good faith,* which entails a higher level of trust between the parties than is required in other contracts.[26]

[19] VVG, art. 23 para. 2 and 3.

[20] Law on Contracts and Torts, *Official Gazette of SFRY*, No. 29/78, 39/85, 45/89 – decision of the Constitutional Court of Yugoslavia and 57/89, *Official Gazette of SRJ*, No. 31/93, *Official Gazette of SCG*, No. 1/2003 – Constitutional Charter and *Official Gazette of RS*, No. 18/2020, available at: *https://www.paragraf.rs/propisi/zakon_o_obligacionim_odnosima.html* (last accessed May 30, 2025). See Law on Contracts and Torts, art. 914.

[21] H. Cousy, 131. H. Cousy, 131.

[22] See M. Karanikić Mirić, 188–189.

[23] H. Cousy, 131.

[24] Project Group Restatement of European Insurance Contract Law, F. Reichert-Facilides, J. Basedow, 181.

[25] *Ibidem*.

[26] I. Nozadze, 131. The principle of utmost good faith originates from marine insurance. In this type of insurance, the insurer had to trust the statements of the contracting party about the ship and the cargo, since the contract was often concluded far from the cargo and the ship (I. Nozadze, 131).

It is a contract of *uberrimae fidei*.[27] Continental legal systems, rooted in Roman law tradition, prescribe this principle and give it concrete expression through several specific rules. It applies not only at the time of contract conclusion but also during the performance of contractual obligations.[28] Among other things, the principle of good faith and fair dealing is reflected in the policyholder's obligation to inform the insurer of relevant circumstances concerning the insured object throughout the term of the contract.[29] The equivalent of the principle of good faith and fair dealing in *common law* is the *good faith principle*. However, the *good faith principle* does not have the general character it holds in continental systems. On the contrary, it is applied only in a limited number of cases where it is explicitly stipulated and is reduced to specific duties.[30] The insurance contract, as a *uberrimae fidei* contract, is one of the few exceptions where the principle finds application, but only at the stage of contract formation.[31] Once the contract is concluded, the duty to act in good faith, more precisely, the policyholder's duty to disclose information, ceases to exist.[32] Such a duty would serve no purpose, as from the moment the contract is binding, the insurer can no longer change the agreed terms of risk coverage out of fear that an unfavourable contract has been concluded.[33] In the case of a significant increase in risk, such a risk is no longer covered by the policy, and the insured is required to insure the new risk with the same or a different insurer, where at the time of entering into the contract, they will once again have the obligation to fully inform the insurer.[34]

[27] Hein Kötz, Gill Mertens, Tony Weir, *European Contract Law: Second edition*, Oxford, 2017, 181.

[28] Hugh Collins, "Implied Duty to Give Information during Performance of Contracts", *The Modern Law Review* Vol. 5, No 4/1992, 557.

[29] I. Nozadze, 135. For example, art. 1104 *Code Civil* provides that contracts must be negotiated, concluded, and performed in good faith. BGB art. 241 para. 2 stipulates that an obligation relationship may, by its content, require each party to consider the rights, legal goods, and interests of the other party. From these provisions derives the obligation of contracting parties to inform their counterpart about facts affecting their mutual relationship. In Serbian law, such obligation is explicitly prescribed in art. 268 Law on Contracts and Torts, with damages provided as a sanction for its breach.

[30] This is a principle that "exudes robust Victorian individualism," that each contracting party must inform themselves about facts relevant for contract conclusion and cannot rely on the counterparty to provide such information (H. Kötz, G. Mertens, T. Weir, 180–181).

[31] H. Kötz, G. Mertens, T. Weir, 181.

[32] In *New Hampshire Insurance Company v MGN Ltd*, the issue was when the insured's obligation to disclose relevant facts to the insurer. The Commercial Court considered it indisputable that the insured had the duty to disclose information at (a) conclusion of insurance, (b) renewal of insurance (which actually constitutes concluding a new contract), and (c) submission and presentation of claims, although the last point was rejected. It was emphasized that "the duty to act in good faith... does not imply positive obligations to disclose facts affecting risk during coverage, except regarding some event or situation foreseen by the policy to which the duty of good faith relates" (see Peter Eggers MacDonald, Simon Picken, Patrick Foss, *Good Faith and Insurance Contracts. 3. ed.*, London, 2010, 56).

[33] P. Eggers MacDonald, S. Picken, P. Foss, 53.

[34] *Ibid*., 56–57. The closest doctrine applicable here under English law is some form of estoppel, such as estoppel by convention or promissory estoppel as a form of contract modification, but even that could be precluded by the absence of any express statement by the insurer (H. Collins, 557).

For this reason, in English law, it is common for insurance contracts to contain an explicit clause obliging the policyholder to inform the insurer of any change in circumstances that affect the risk.[35]

III On the duty to notify about changes in risk during the term of the insurance contract

In legal systems that provide for a duty to notify about changes in risk during the term of the insurance contract, the question arises as to whom this duty is imposed upon and what exactly it entails. In other words, who is obligated, within what period, in what manner, and under what circumstances, to inform the insurer after the contract has been concluded?

According to both Serbian and German law, the duty to notify relevant circumstances for risk assessment lies with the policyholder (*Versicherungsnehmer*).[36] This solution is logical, given that the policyholder is a contracting party and thus can be bound by the contract. Most often, the policyholder concludes the contract in their own name and for their own account and is also the insured person. However, if that is not the case, there is nothing preventing the insured (the person on whose behalf the policyholder concludes the contract with the insurer), as well as the beneficiary of the insurance (the person in whose favour the insurance has been agreed), from notifying the insurer. If the insured or the insurance beneficiary notifies the insurer that there has been a change in relevant circumstances, they thereby eliminate the risk of the insured event occurring "in the meantime", i.e. after the change in circumstances but before the insurer has been notified.[37] The French legislator, on the other hand, imposes this duty on the insured (*l'assuré*).[38]

What kinds of circumstances can be considered relevant? Generally speaking, these are all the circumstances that the policyholder would have been obliged to disclose to the insurer had they existed at the time of concluding the insurance contract.[39] Ćurković points out that the insurer alone determines which circumstances are relevant for assessing the risk.[40] These are the circumstances the insurer takes into account and uses to calculate the premium amount.[41] Since such circumstances may change after the contract is concluded, the information the policyholder

[35] H. Collins, 557.
[36] Law on Contracts and Torts, Art. 914 para. 1; VVG, Art. 23.
[37] Ivica Jankovec, "Articles 901–923", *Komentar Zakona o obligacionim odnosima* (eds. Borislav T. Blagojević, Vrleta Krulj), Belgrade, 1980, 475.
[38] CA, L113-2 point 3.
[39] I. Jankovec, 475.
[40] M. Ćurković (2019), 41.
[41] Nataša Petrović Tomić, *Osnovi prava osiguranja: treće izmenjeno i dopunjeno izdanje*, Belgrade, 2024, 312.

provided to the insurer at the time of contract formation may become inaccurate or outdated.[42] However, the duty to notify applies only to those circumstances that significantly alter the perception of risk. The **VVG** (German Insurance Contract Act) explicitly states that the duty to notify does not apply to a *minor* increase in risk.[43] Moreover, the changes must be of a *permanent* nature, since the duty to report does not extend to circumstances that temporarily increase or reduce the risk.[44] Therefore, it concerns circumstances that create a *state* of increased or reduced danger, those that, over the long term, raise or lower the probability of the insured event occurring, whereas isolated instances of risky behaviour are not taken into account.[45] Furthermore, conduct by the insured or other circumstances that are still in an early stage but may potentially lead to an increase or decrease in risk in the future are not considered relevant – the only relevant circumstances are those which have *already* resulted in a material increase or reduction of risk.[46] This distinction differs between property insurance and personal insurance.

In the case of **personal insurance**, the only relevant circumstance under Serbian law is a change in the insured person's occupation that results in an increased risk. This is explicitly stipulated by the Law on Contracts and Torts (ZOO).[47] Other circumstances, such as a deterioration in the insured's health, are typically already accounted for by the insurer when calculating the premium at the time the contract is concluded, particularly considering the insured's age and general health condition.[48] The term "occupation" refers to regular employment or a professional calling, not to temporary activities the insured might undertake, nor to recreational activities.[49] For example, the fact that the insured was temporarily engaged in breaking concrete in an already excavated tunnel or in a covered trench does not necessarily mean their occupation is tunnel excavation.[50] Accordingly, the insured is not obliged to report one-off or short-term jobs performed during the insurance period.[51] The **German**

[42] Claude J. Berr, Hubert Groutel, Code Des Assurances: 9. éd., Paris, 2003, 31.

[43] Not relevant is also the increase in risk that may be considered agreed to be covered (VVG, Art. 27).

[44] I. Jankovec, 475. It may happen that circumstances increasing and those reducing risk occur simultaneously, requiring examination of the entire case to see if circumstances increasing risk may be balanced by those reducing risk (so-called risk compensation) – e.g., eviction of tenants from a building under fire insurance reduces risk due to tenants' negligence but increases risk of fire caused by homeless persons occupying it (D. Looschelders *et al*., 508).

[45] D. Looschelders *et al*., 507.

[46] *Ibid*, 509.

[47] ZOO, Art. 914 para. 1.

[48] See N. Petrović Tomić, 310–311, 312 fn. 651.

[49] George James Couch, Ronald Aberdeen Anderson, *Couch Cyclopedia of Insurance Law (2. ed.): sections 35:1 – 37:420*, New York, 1961, 685, 693.

[50] *Ibid*, 686.

[51] Also, merely changing the job title, while the insured continues performing the same work, does not constitute a change of occupation (G. Couch, R. Anderson, 691). However, taking up seasonal work different

legislator also takes a cautious approach to the duty of disclosure in the context of life insurance, stating that an increase in risk is recognized only when such a change has been explicitly defined as a risk increase by written agreement, and the insurer cannot invoke an increase in risk after more than five years have passed since that increase occurred.[52] The same applies to circumstances that result in a **reduction** of risk.[53] The **French Insurance Code (CA)** provides that the insured's obligation to report new circumstances does *not* apply to life insurance contracts.[54]

When it comes to **property insurance**, the relevant circumstances concern the insured property itself. For example, these include a change in the intended use of the item, relocation of the item from the location specified in the insurance contract,[55] exposure to hazardous materials, a significant increase in its value, and similar changes. On the other hand, leasing the property may or may not be considered a relevant circumstance, depending on whether the lease increases the risk covered by the insurance.[56] In **motor vehicle liability insurance** (commonly referred to as auto insurance), relevant circumstances that the policyholder is required to report include, for instance, a change in the use of the vehicle, operating the vehicle in a higher-risk area of accidents, a change in the type of fuel used, or a significant increase in mileage.[57]

Legislators prescribe different timeframe within which the policyholder must notify the insurer of an increased risk. The **Serbian Law** on Contracts and Torts **(ZOO)** and the **German Insurance Contract Act (VVG)** stipulate that the policyholder is required to notify the insurer *without delay* if the increase in risk occurred as a result of their own action or of the insured's action that the policyholder permitted.[58] For example, if they bring flammable material into a basement,[59] convert a house into a workshop, install solar panels without appropriate permits, etc. Conversely, if the increase in risk occurred **without their involvement,** then according to Serbian

from the regular employment may be a relevant circumstance the contracting party must report (e.g. a school principal working as a forest ranger during summer vacation), especially if such work is more dangerous or linked to higher accident risk (see G. Couch, R. Anderson, 693).

[52] See Art. 158 VVG. If the contracting party intentionally or fraudulently breaches their obligation, the limitation period is ten years.

[53] VVG, Art. 158 para. 3**.**

[54] CA, Art. L113-2 para. 5.

[55] P. Šulejić, 234; I. Jankovec, 475.

[56] P. Šulejić, 234. *The Supreme Commercial Court emphasized that leasing the insured item does not in itself constitute an increase in risk which the policyholder is obliged to notify to the insurer (Official Gazette 732/68 of August 8, 1988)* (cited in **I. Jankovec,** 1980, 475).

[57] M. Ćurković (2019), 42.

[58] ZOO, art. 914 para. 2. In some legal systems, such as Swiss law, the legal consequences arising from a change in circumstances significant for risk assessment depend on whether the change was caused by the policyholder or not (see I. Jankovec, 475–476).

[59] P. Šulejić, 235.

law, they are obliged to notify the insurer **within fourteen days** from the moment they became aware of the change.[60] For instance, the water level may rise due to flooding or groundwater entering the basement, the roof may be damaged due to an earthquake, or electrical wiring may become overloaded as a result of a neighbour's actions… If the policyholder is unaware of such changes, there is no duty to notify the insurer.[61] Under German law, even in cases where the increase in risk occurred independently of the policyholder's will, they are still obliged to notify the insurer **immediately upon becoming aware** of it.[62] **French law** prescribes a period of **fifteen days**, counted from the moment of awareness, regardless of how the change in risk occurred.[63]

Finally, regarding the **method of notifying** the insurer, **only French law** requires that the notice be sent by **registered letter or registered electronic mail**.[64] Consequently, in both German and Serbian law, the general rules on declarations of intent apply, meaning such notifications may be made orally, at the insurer's premises. Nevertheless, in the event of a legal dispute, the policyholder will find it easier to prove that the insurer was notified if the notice was provided in writing or via electronic mail.

IV Legal consequences of notifying the insurer about a change in risk

1. Increase in Risk

Once the insurer has been notified of an increase in risk, they have two options: to terminate the contract or to propose a new (higher) premium rate to the policyholder. By their nature, these options constitute **the potestative rights (powers).** The **Law on** Contracts and Torts **(ZOO)** does not grant the insurer complete discretion to freely choose between these transformative rights, rather, their decision must be **proportional** to the increased risk. If the risk has increased to such an extent that the insurer would not have entered into the contract at all, they may choose to **terminate** it. If the risk has increased, but the insurer would still have agreed to the contract but under different terms, they may **adjust the premium** accordingly. It appears that the Serbian legislator followed the principle of ***favori contractus***, allowing termination only as a last resort. The **French legislator** reasons similarly.[65]

[60] **ZOO**, art. 914 para. 2; German Insurance Contract Act (VVG), art. 23 para. 2.
[61] I. Jankovec, 476.
[62] **VVG**, art. 23 para. 3.
[63] French Insurance Code (CA), art. L 113-2 para. 2.
[64] CA, art. L 113-2 para. 2
[65] *See* CA, art. L 113-4 para. 1;

In contrast, the **German Insurance Contract Act (VVG)** stipulates that the insurer may **terminate the contract or *instead*** (as the author emphasizes) increase the premium.[66] This means that the same increase in risk is sufficient for either termination or premium adjustment, giving the insurer full freedom to choose between these alternative rights.

After being informed of the increased risk, the insurer has **one month** to decide how to proceed. This deadline is stipulated under both **Serbian and German law**.[67] If the insurer remains passive i.e. does not offer the policyholder a new premium or declare the contract terminated, the contract remains in force **under the original terms**, and the insurer **cannot later exercise its rights**.[68] The same applies in cases where the insurer **explicitly or implicitly** demonstrates acceptance of the extension of the contract under the same terms (e.g. by accepting payment of the premium or paying compensation for an insured event that occurred after the risk increased, etc.).[69] The **German legislator** also adds that the insurer's rights cease if the circumstances change again, thereby reestablishing the prior risk aggravation.[70] This provision should not be interpreted restrictively to require the **exact** reinstatement of the former state, but rather it is sufficient that the **relationship between risk and premium** assumed under the contract is restored.[71]

If the increase in risk is such that the insurer would not have concluded the contract had that condition existed at the time of contracting, the insurer may terminate the contract. The effect of the contract ceases at the moment when the insurer notifies the policyholder of their decision to terminate.[72] Exceptionally, in **French law**, the legal consequences of termination are deferred for **ten days** from the time of notification to the policyholder.[73] During this period, the policyholder may reconsider, seek information, and change the insurance.[74] The termination operates ***ex nunc***, from that moment, the insurance coverage ceases, and the

[66] See VVG, arts. 24 and 25.

[67] ZOO, art. 914 para. 6; VVG, art. 24 para. 2.

[68] ZOO, art. 914 para. 6.

[69] ZOO, art. 914 para. 6. A similar provision exists in French law, see CA, art. L 113-4 para. 4.

[70] VVG, art. 24 para. 3.

[71] D. Looschelders *et al.,* 527. If, however, the restoration of the prior state occurs only after the contract has been terminated, such a change in circumstances has no legal effect and the termination remains valid (D. Looschelders *et al.* 2023, 527).

[72] I. Jankovec, 476.

[73] CA, art. L 113-4 para. 2.

[74] *Similar provisions can be found in laws across Europe. The effective notice period after which termination takes effect is 7 days in Denmark (art. 47 of the Danish Insurance Act), 15 days in Greece (art. 4 para. 2 and first sentence of art. 3 para. 7 of the Greek Insurance Act), one month in Belgium (art. 26 para. 1(2) of the Belgian Insurance Act) and Luxembourg (art. 34 para. 1(3) of the Luxembourg Insurance Act), while in Italy termination takes effect immediately or after 15 days depending on the degree of risk increase (art. 1898 para. 3 of the Italian Civil Code) (*Project Group Restatement of European Insurance Contract Law, F. Reichert-Facilides, J. Basedow, 187*).*

policyholder is entitled to a refund of the portion of the premium corresponding to the remaining insurance period.[75] Therefore, if the insured event occurs before the termination notice is communicated to the policyholder, the insurer is obligated to pay the insured amount.

If the increase in risk is such that the insurer would have entered into the contract **only with a higher premium** had such a condition existed at the time of contracting, the insurer may propose a new premium rate to the policyholder.[76] If the policyholder agrees, the premium increase produces legal effect from the day they give their consent.[77] If the policyholder rejects the insurer's proposal or fails to respond within **fourteen days** of receiving the proposal, the contract terminates **by operation of law** under Serbian law.[78] The situation is similar under French law, except the deadline is **thirty days,** and termination occurs through a **unilateral declaration of will by the insurer**.[79] The legal consequences (especially the possibility of termination in case of silence) must be explicitly stated in the proposal. I believe that this solution would be useful to introduce into Serbian law ***de lege ferenda***. The German legislator authorizes the insurer to unilaterally increase the premium and merely notify the policyholder of this, but simultaneously grants the policyholder the right to terminate the contract within **one month** from receiving the notification, provided the premium increase exceeds **ten percent** or if the insurer excluded coverage for the increased risk.[80] This unilateral authority of the insurer is justified by the doctrine of **changed circumstances** under Article 313 of the German Civil Code (BGB) (*Störung der Geschäftsgrundlage*).[81]

2. Reduction of Risk

After the contract has been concluded, circumstances may also change in a way that reduces the risk. It is also possible that circumstances significantly increasing the risk cease to exist, e.g. the purpose of a premise changes (from a welding workshop becomes a garage), hazardous materials previously stored there are removed, fire protection or theft protection measures are implemented. In such cases, the policyholder has the right to request a proportional reduction of the premium.

[75] I. Jankovec, 476; D. Looschelders *et al*., 523. *Same also in CA, art. L 113-4 para. 2.*
[76] ZOO, art. 914 para. 4.
[77] I. Jankovec, 476.
[78] ZOO, art. 914 para. 5.
[79] CA, art. L 113-4 para. 3.
[80] VVG, art. 25.
[81] D. Looschelders *et al.,* 528. German Civil Code (BGB), art. 313 para. 1: If circumstances forming the basis of the contract significantly change after contract conclusion, and if the parties, had they foreseen this change, would have entered into a contract with different content or not at all, the affected party may request contract modification, provided that, considering all pertinent circumstances, especially distribution of risk under contract or law, it cannot reasonably be expected to remain bound by the original contract.

This solution is provided for by the provisions of Serbian, German, and French law.[82] The policyholder's request is not subject to any formal requirements or time limits. Indeed, it is in their interest to report such changes, so a reasonable policyholder will notify the insurer immediately upon becoming aware. The right to a corresponding premium reduction applies from the day the insurer is notified. The German Insurance Contract Act (VVG) adds that the same legal consequences apply if the increased premium was based on incorrect statements made by the policyholder, which arose from a mistake concerning those circumstances.[83]

After the policyholder notifies the insurer about the change in circumstances and requests an adequate premium reduction, two scenarios are possible. The insurer may agree to reduce the premium, which will take effect from the day of notification. However, the insurer may refuse to reduce the premium paid by the policyholder.[84] In that case, the **Serbian Law** on Contracts and Tort (ZOO) grants the policyholder the right to terminate the contract.[85] The Serbian legislator does not prescribe a notice period for termination.[86] I believe that termination in this case takes effect upon notification to the insurer, according to general rules. The situation is different under French law, where termination becomes effective thirty days after notification.[87] Also, by analogy with the rules where the insurer terminates the contract due to an increase in risk, the policyholder is entitled to a refund of the portion of the premium corresponding to the remaining insurance period.

V Failure of the policyholder to notify the insurer about changes in risk

In practice, situations often arise where the policyholder ignores their duty to notify relevant circumstances for risk assessment and thus fails to notify the insurer of an aggravation or reduction of risk that has occurred in the meantime. The reasons for such conduct may vary, carelessness or negligence of the policyholder, mistaken belief that the change is not relevant and therefore does not require notification, or intentional concealment to avoid contract termination or a premium increase. It is also possible that the policyholder did not know and could not have known that

[82] *See* ZOO, art. 916 para. 2; VVG, art. 41; CA, art. L 113-4 para. 4.

[83] VVG, art. 41.

[84] *The VVG does not regulate the legal consequences if the insurer refuses to reduce the premium. In that case the policyholder has the right to raise the defense of exceptio non adimpleti contractus under BGB art. 320, the right to terminate the contract under BGB art. 323, and, if conditions are met, the the right to comepnsation under BGB art. 280 (*Looschelders *et al.,* 2023, 693*).*

[85] ZOO, art. 916 para. 2.

[86] Slobodan Jovanović, "Uticaj povećanja osiguranog rizika na prava i obaveze iz ugovora o osiguranju u nemačkom, francuskom, češkom i srpskom pravu", *Strani pravni život,* Vol. 53 No. 3/2013, 215.

[87] Jovanović (*Ibidem*) discusses the termination period.

a change in risk had occurred. The insurer then learns of the changed circumstances *post festum*, after the insured event has occurred, during the damage assessment process. What legal consequences arise in such cases? Most often, these are cases where the risk increased after the insurance contract was concluded, since in such cases the policyholder, aware of the unfavourable consequences for themselves, is not motivated to timely notify the insurer about the change.

Domestic legislator refers to situations in which the insured event occurs "in the meantime", considering the period from the risk deterioration to the insurer taking legal action in response to that deterioration.[88] In such a cases, the compensation paid by the insurer is reduced proportionally between the premiums actually paid and the premiums that should have been paid according to the increased risk.[89] Moreover, if such proportionality cannot be calculated because the change in circumstances is so significant that the insurer would not have entered into the contract had such circumstances existed at the time of conclusion, or would have terminated the contract if timely informed, the insurer owes no compensation to the policyholder; the obligation to pay the agreed sum ceases.[90] This provision applies equally to a policyholder who intentionally concealed the increased risk and to one who could not have known about the deterioration. It also applies to a policyholder who became aware of the increased risk, but the insured event occurred immediately after that knowledge, so the policyholder did not have time to fulfil the duty of notification. The Serbian legislator, therefore, does not prescribe stricter consequences for a policyholder who deliberately failed to report the increase. Furthermore, it appears that the legislator did not consider situations where the insured event occurred not because of the increased risk but for some other reason. Serbian legal theory holds that the legal consequences under Article 915 apply even in such cases.[91]

German law, on the other hand, takes into account several factors: the policyholder's level of fault, the time of occurrence of the insured event, and the causal link between the increase in risk and the occurrence of damage. The insurer can be fully released from the obligation to pay compensation under three conditions. The VVG provides that the insurer is not obligated to pay if the insured event occurs after one month from the moment the insurer should have been informed, unless the insurer was already aware of the risk increase at that time.[92] The first condition is that the increase in risk was not reported on time. The legislator ties the start of the deadline to the moment the insurer should have been informed about the change

[88] Under ZOO there is no distinction between cases where the policyholder was not notified of deterioration and cases where they were notified but have not yet terminated or amended the contract in agreement with the insurer. The primary focus of analysis remains the former scenario.

[89] ZOO, art. 915.

[90] I. Jankovec, 477.

[91] *Ibidem.*

[92] VVG, art. 26 para. 2 (first sentence).

in risk (the so-called fictional receipt of notification).[93] One month must pass from that moment. The one-month period is prescribed because the insurer, even when it receives notification about the change in risk, has one month to decide whether to terminate the contract (see above). The purpose of fictional receipt is to ensure that the insurer is not in a worse position than if it had been properly notified.[94] The second condition is that the insurer did not know (e.g. from another source) about the increased risk at the time they should have been notified. The burden of proving that the insurer did know about the increased risk lies with the policyholder.[95] The third condition is that the policyholder acted intentionally, as the most serious degree of fault. Legal theory debates who bears the burden of proving intent.[96] Although not explicitly stated, such a conclusion is suggested since the legislator in subsequent paragraphs prescribes different legal consequences for conduct characterized by gross and ordinary negligence. In the case of gross negligence of the policyholder, the insurer has the right to reduce its contractual obligations in proportion to the severity of the insured's fault, and the burden of proving the absence of gross negligence lies with the policyholder.[97] Finally, the insurer is still liable (must pay the agreed sum) if the breach of the duty to notify was not intentional.[98] The insurer is also required to pay if the increased risk did not cause the insured event or affect the extent of the insurer's liability, or if the insurer's right to terminate had already expired when the insured event occurred and the contract had not been terminated.[99] These are cases where the causal link between the increased risk and the insured event's occurrence is missing.

The French legislator prescribes different legal consequences depending on the policyholder's fault. If the policyholder concealed (withheld) or intentionally misrepresented facts affecting the risk, whether regarding a change in the risk object or the insurer's general risk assessment, the insurance contract will be void, even if the concealed or distorted risk had no effect on the insured event that occurred.[100] Moreover, the premiums paid remain with the insurer, who is entitled to payment of all due premiums as compensation for damages.[101] Conversely, an omission or inaccurate statement by the insured, if bad faith is not proven, does not lead to the nullity of the insurance contract.[102] If such omission or inaccuracy is discovered before

[93] D. Looschelders, 533.
[94] *Ibidem*.
[95] *Ibidem*.
[96] From the wording of VVG art. 26 it follows that the policyholder bears the burden of proof that they did not act intentionally, which deviates from the general rule that the burden of proving intent lies with the insurer; literature suggests this is a drafting error. (D. Looschelders, 534).
[97] VVG, art. 26 para. 2 (second sentence) in conjunction with art. 26 para. 1.
[98] VVG, art. 26 para. 2.
[99] VVG, art. 26 para. 3.
[100] CA, art. L 113-8 para. 1.
[101] CA, art. L 113-8 para. 2.
[102] CA, art. L 113-9 para. 1.

the insured event occurs, the insurer has the right to choose between increasing the premium accepted by the insured or terminating the contract ten days after sending notification to the insured by registered mail, with a refund of the portion of the premium corresponding to the period during which the insurance no longer applies.[103] If the omission or inaccurate statement is discovered only after the insured event, the compensation is reduced proportionally between the premiums paid and the premiums that would have been paid if the risks had been fully and accurately declared.[104]

VI Change of risk in the principles of european insurance contract law (peicl)

The Principles of European Insurance Contract Law (hereinafter: PEICL) represent an alternative, unified legal framework intended for insurance contracts within the European Union, which parties may choose to apply to their contract instead of national law. The purpose of the PEICL is to enable insurers to offer identical insurance services in different member states, thereby reducing costs, overcoming legal differences, and increasing legal certainty in cross-border trade.[105] According to Article 4:201 of the PEICL, if an insurance contract contains a provision pertaining to an increase in the insured risk, that provision shall have no effect unless the increase in risk is substantial and the type of such increase is specified in the insurance contract.

The PEICL, therefore, limit themselves to cases where policies contain clauses that impose on the policyholder the duty to notify the insurer about relevant circumstances during the term of the contract. This rule aims to find a compromise between the autonomy of the will and the protection of the insured.[106] The working group opted for this solution because the issue is regulated differently across jurisdictions (see above).[107] The PEICL leave the contracting parties free (primarily the insurer, since this is an adhesion contract) to include a clause on change of risk in the contract.[108] However, if the insurer opts for such a clause, they must respect the limitations imposed by Article 4:201. First, the increase in risk must be substantial (*material*). The adjective "substantial" should be interpreted in connection with Article 2:103(b) PEICL, meaning that only circumstances that influence the insurer's behaviour

[103] CA, art. L 113-9 para. 2.
[104] CA, Art. L113-9, para. 3.
[105] Christoph Brömmelmeyer, "Principles of European Insurance Contract Law", *European Review of Contract Law*, Vol. 7 No. 3/2011, 446.
[106] H. Cousy, 130.
[107] Project Group Restatement of European Insurance Contract Law, F. Reichert-Facilides, J. Basedow, 181–182. The provisions of the PEICL do not apply to personal insurance, such as health insurance or life insurance (Project Group Restatement of European Insurance Contract Law, F. Reichert-Facilides, J. Basedow, 182).
[108] H. Cousy, 131.

are relevant, in the sense that the insurer would have concluded the contract under different terms, or would not have concluded it at all, had they known about it.[109] Cousy emphasizes that the increase must be substantial either in magnitude and/or in probability.[110] An increase resulting from depreciation (in property insurance) or aging of the person (in life insurance) is not considered substantial.[111] Second, the type of such increase must be specified in the contract itself. By prescribing this limitation, the working group aimed to ensure that the insured is aware of their obligation during the contract, based on the assumption that a reasonable and careful insured reads their policy.[112]

If the clause requires the insurer to be informed about an increase in risk, the duty to notify lies with the policyholder, the insured, or the beneficiary, depending on the case, provided that the person obliged to notify knew or ought to have known about the existence of the insurance and the increase in risk.[113] No special rules on the method of notification are prescribed. Furthermore, if the clause requires that the insurer be notified within a certain period, that period must be reasonable.[114] This is a question of fact depending on the circumstances of the case, especially whether the change in risk occurred due to the action of the obligated party or not. The notification takes effect upon dispatch.[115] The working group chose this solution because sending is easier to prove than receipt.[116] What legal consequences arise if the policyholder breaches their obligation and fails to notify the insurer within a reasonable time? It is prescribed that, in that case, the insurer does not have the right to refuse payment of the agreed sum solely on that ground, unless the damage occurred precisely because of that increased risk.[117]

Finally, the PEICL also provide for "sanctions", i.e. legal consequences of a change in risk. If agreed upon, in the event of an increase in the insured risk, the insurer has the right to terminate the contract. It is understood that contract termination is possible only under the conditions regarding risk set out in Article 4:201 PEICL.

[109] Project Group Restatement of European Insurance Contract Law, F. Reichert-Facilides, J. Basedow, 86, 182. Article 2:103 of the PEICL sets out exceptions under which the insurer has no right to sanction the policyholder for providing inaccurate or incomplete information. Among other things, the insurer is not entitled to any legal remedy if such information was not material to its reasonable decision to enter into the contract under the agreed terms (Art. 2:103(b)). It follows that the policyholder is only obliged to disclose information that is objectively material to the specific risk (Project Group Restatement of European Insurance Contract Law, F. Reichert-Facilides, J. Basedow, 86).

[110] H. Cousy, 131.

[111] Project Group Restatement of European Insurance Contract Law, F. Reichert-Facilides, J. Basedow, 182.

[112] *Ibidem*.

[113] PEICL, art. 4:402(1).

[114] PEICL, art. 4:402(2).

[115] PEICL, art. 4:402(2).

[116] Project Group Restatement of European Insurance Contract Law, F. Reichert-Facilides, J. Basedow, 184.

[117] PEICL, art. 4:402(3).

Also, there is a requirement regarding the manner of notification - the insurer must terminate the contract by means of written notice sent to the policyholder within one month from the moment the insurer became aware of the increase in risk or when it became apparent that the increase occurred.[118] If the insurer decides to terminate, coverage ceases one month after the termination notice.[119] The one-month termination period is left to the policyholder to allow time to find new coverage.[120] However, if the policyholder intentionally failed to notify the insurer about the increase in risk, there is no termination period, and the contract ends immediately upon termination.[121] In this way, the PEICL sanction the policyholder who concealed the increase in risk to avoid a premium increase. In such a case, if the insured event was caused by the increased risk that the policyholder knew or ought to have known about, no compensation is paid if the insurer would not have accepted the risk at all otherwise. However, if the insurer would have accepted the risk under a higher premium or different terms, compensation is paid proportionally or in accordance with those terms.[122] Conversely, a policyholder who neither knew nor was required to know about the increase in risk does not bear legal consequences.[123]

Regarding a reduction in risk, in the case of a substantial decrease, the insured has the right to request a proportional reduction of the premium for the remaining term of the contract.[124] Such a solution is justified by reasons of fairness. Since each premium overpayment for the previous period is a burden for the insured, this allows them to request a change in the contract terms.[125] If the parties do not agree on the proportional reduction within one month from the submission of the request, the insured has the right to terminate the contract by written notice within two months from the date of the request.[126]

VII Conclusion

Unlike the duty to report relevant circumstances that determine risk at the time of contract conclusion which, as such, exists in all legal systems, the obligation to report such circumstances during the term of the contract is not universally accepted. The main reason is that this duty represents a concretization of the principle of good faith and fair dealing in contract performance, which *common law* does not

[118] PEICL, art. 4:403(1).
[119] PEICL, art. 4:403(2).
[120] Project Group Restatement of European Insurance Contract Law, F. Reichert-Facilides, J. Basedow, 186.
[121] PEICL, art. 4:403(2).
[122] PEICL, art. 4:403(3).
[123] Project Group Restatement of European Insurance Contract Law, F. Reichert-Facilides, J. Basedow, 186.
[124] PEICL, art. 4:301(1).
[125] Project Group Restatement of European Insurance Contract Law, F. Reichert-Facilides, J. Basedow, 189.
[126] PEICL, art. 4:301(2).

recognize as a general principle permeating the contract at all its stages. Still, even in common law systems, this duty can be explicitly agreed upon. This possibility is also provided by the PEICL, which prescribes the conditions under which a clause imposing on the policyholder a duty to inform the insurer after contract conclusion will produce legal effect. In contrast, in continental law systems, the duty of notification is common, and legislators provide legal consequences for changes in risk during the term of the contract.

In any case, whether the duty to inform is prescribed or agreed upon, the policyholder is obligated after contract conclusion to report to the insurer relevant circumstances that lead to risk fluctuation. The question of what is considered relevant in a specific case is left to legal theory and judicial practice. Only those circumstances that significantly and permanently change the risk are considered relevant, such that the policyholder would have concluded the contract under different terms had these circumstances existed at the time of contract conclusion or would not have concluded it at all. The deadlines for providing notification under Serbian law differ depending on whether the policyholder caused the increase or decrease in risk, or whether the change occurred in another way, independent of their will. On the other hand, German and French legislators do not make such distinctions, prescribing the duty to notify immediately upon knowledge (German law) or within fifteen days of becoming aware (French law). The PEICL prescribe that the agreed deadline for notification must be reasonable. I believe that no distinction should be made regarding notification deadlines, as the Serbian legislator does, since what matters is only that the policyholder became aware of the changed circumstances, regardless of how such awareness was obtained. The French legislator prescribes written form for the notification (registered letter or email), which does not constitute an additional burden for the policyholder in today's technological environment, and it contributes to legal certainty.

The legal consequences differ depending on whether the risk has increased or decreased in the meantime. In the case of an increase in risk, the insurer may amend the contract terms (increase the premium) or terminate the contract. Serbian and French law condition contract termination on the fact that the circumstances have changed so significantly that the contract would not have been concluded had those circumstances existed earlier. Such a solution appears justified, as contract termination is generally regarded in contract law as a last resort, when the interests of the contracting parties cannot be achieved in any other way. German law, on the other hand, allows the insurer free choice between termination and premium increase. Additionally, German and French law provide for a notice period, enabling the policyholder to prepare and find alternative coverage. PEICL also adopt this approach. I believe that a notice period should be introduced in Serbian law ***de lege ferenda*** (as a legislative proposal). In any case, the premium cannot be

unilaterally increased, and legal systems prescribe different mechanisms allowing the policyholder to consent to contract amendments within a specified deadline. If the policyholder does not agree to the changes, termination of the contract is the alternative. Conversely, in the case of a risk reduction, the policyholder is entitled to request a modification of the contract terms (premium reduction), and if the insurer does not agree, the policyholder may terminate the contract.

Regarding the legal consequences of the policyholder's failure to notify the insurer of the changed risk, Serbian law seems to lag behind in terms of nuanced legal consequences compared to German and French law. First, the **Serbian Law** on Contracts and Tort (ZOO) does not differentiate based on the degree of fault of the policyholder. Situations where the policyholder intentionally concealed the change in circumstances from the insurer to retain favourable contract terms, or where the duty was breached through mere negligence, lead to the same consequences under the law. This is understandable as the intent is difficult to prove. Second, there may be situations where the risk increases due to generally known circumstances, and in such cases, an exception to the duty to notify should be foreseen. Finally, it is especially problematic that the Serbian legislator does not consider the causal link between the increased risk and the occurrence of the insured event. When the increase in insured risk was not the cause of the insured event, but the insured event occurred for an entirely different reason, the insurer should not be allowed to proportionally reduce the compensation amount.

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