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Prof. dr Vladimir Čolović[1]

UTICAJ REOSIGURAVAČA NA ODLUKE OSIGURAVAČA NAKON NASTUPANJA OSIGURANOG SLUČAJA

PREGLEDNI NAUČNI RAD

Apstrakt

Funkcija ugovora o reosiguranju je pokriće viška rizika, to jest šteta koje prelaze samopridržaj osiguravača. Reosiguravač, nakon nastanka osiguranog slučaja, isplaćuje sumu definisanu ugovorom o reosiguranju. No postavlja se pitanje da li reosiguravač može uticati na rešavanje zahteva za naknadu postavljenog od strane osiguranika, bilo tako što će direktno kontrolisati i uticati na navedeno, bilo tako što će imati pravo da bude obaveštavan o toku rešavanja zahteva. Ugovorom o reosiguranju mogu biti predviđene klauzule koje definišu navedena prava reosiguravača. Jedna klauzula se odnosi na saradnju (*Claims Cooperation Clause*), a druga na kontrolu (*Claims Control Clause*). Klauzula o kontroli daje šira ovlašćenja reosiguravaču. Praksa pokazuje da se definišu i druge slične klauzule koje određuju prava reosiguravača. U radu se posvećuje pažnja kako karakteristikama navedenih klauzula, tako i Principima ugovornog prava reosiguranja koji posebno definišu odnos reosiguravača i osiguravača (reosiguranika) nakon nastupanja osiguranog slučaja.

Ključne reči: reosiguranje, reosiguravač, reosiguranik, rizik, samopridržaj, osigurani slučaj, klauzula o saradnji, klauzula o kontroli.

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I Uvodna razmatranja

Kad osiguravajuće društvo (osiguravač) preuzima u pokriće velike rizike, tada, u mnogim slučajevima, to zahteva i zaključenje ugovora o reosiguranju. To su situacije kada osiguravač proceni da eventualna šteta, tačnije nastanak osiguranog slučaja, može dovesti do opasnosti za njegovu finansijsku stabilnost. Zaključenje ugovora o reosiguranju stvara poseban ugovorni odnos između osiguravača, kao reosiguranika, i reosiguravača, uz postojeći odnos osiguranja između osiguravača i osiguranika, to jest uz postojanje osnovnog ugovora o osiguranju. Osnovna svrha zaključenja ugovora o osiguranju jeste osiguravajuće pokriće rizika koji preti osiguraniku, a cilj sklapanja ugovora o reosiguranju je efikasna zaštita osiguravača od strane reosiguravača, nakon nastupanja osiguranog slučaja. Zato i za reosiguranje kažemo da se radi o osiguranju osiguravača, iako taj institut moramo šire posmatrati. Ugovor o osiguranju i ugovor o reosiguranju su nezavisni, oni su samostalni ugovori. Osiguravač ima obaveze u okviru ugovora o osiguranju, a reosiguravač u okviru ugovora o reosiguranju. Ukoliko nastane osigurani slučaj, osiguravač, na osnovu zaključenog ugovora o osiguranju, isplaćuje sumu osiguranja, a nakon toga, na osnovu ugovora o reosiguranju, osiguravač, kao reosiguranik, zahteva isplatu iznosa od reosiguravača. Ipak, u praksi je drugačije. U mnogim ugovorima o reosiguranju nalazimo odredbe koje omogućavaju reosiguravaču da utiče na rešavanje isplate iznosa sume osiguranja po nastalom osiguranom slučaju još u fazi rešavanja ovog pitanja od strane osiguravača. Naime, po tim odredbama, osiguravač mora da obavesti reosiguravača o osiguranom slučaju i ne sme da zauzme konačni stav o isplati pre usaglašavanja s reosiguravačem. To može dovesti do kašnjenja isplate osiguravača i nepoštovanja rokova sa kojima se saglasio, pa se postavlja pitanje suprotstavljenosti takvog postupanja osnovnim pravilima ugovornog prava osiguranja.[2] Ali, kako smo rekli, da bi ta obaveza osiguravača kao reosiguranika postojala i da bi reosiguravač bio uključen u rešavanje pitanja po zahtevima za naknadu postavljenih od strane osiguranika, potrebno je ugovoriti određene klauzule, koje daju mogućnost reosiguravaču da se manje ili više meša u rešavanje osiguranog slučaja. O kakvoj vrsti uticaja reosiguravača na rešavanje osiguranog slučaja se radi, zavisi od vrste klauzule koja je ugovorena. Najčešće se ugovaraju dve klauzule koje navedeno omogućuju. Prva je *Claims cooperation clause* (klauzula o saradnji), koja se najčešće ugovara kod fakultativnih ugovora o reosiguranju. Ta klauzula obavezuje osiguravača da u rešavanje osiguranog slučaja uključi reosiguravača u onom delu koji prelazi samopridržaj osiguravača, s tim što se ostavlja sloboda osiguravaču da upravo u tom delu koji predstavlja samopridržaj samostalno odlučuje o isplati sume

[2] Marijan Ćurković, Claims cooperation clause: Utjecaj reosiguratelja na odnos „osiguratelj–osiguranik" kod rješavanja osiguranog slučaja, https://www.osiguranje.hr/ClanakDetalji.aspx?23319, 19. 7. 2025.

osiguranja. Druga klauzula je *Claims control clause* (klauzula o kontroli). Ta klauzula je otežavajuća za osiguravača, jer mu zabranjuje zauzimanje stava o isplati sume osiguranja bez prethodne saglasnosti reosiguravača. Osim toga, ona je suprotna odredbama ugovornog prava osiguranja, koje, inače, propisuje rokove u kojima osiguravač mora da isplati sumu osiguranja osiguraniku ili ga obavesti da zahtev za isplatu nije osnovan.[3]

II Reosiguranje kao zaštita ugovora o osiguranju

1. O reosiguranju uopšte

I fizička i pravna lica sve su više izložena brojnim rizicima i pritiscima, što utiče na njihove zahteve kao osiguranika prema osiguravačima, a preko osiguravača i prema reosiguravačima. Ti zahtevi se odnose na bolje usluge osiguravača i reosiguravača, koje se tiču i raznovrsnosti ponude osiguranja, kao i višeg standarda osiguravajućeg pokrića. To znači da sektor osiguranja mora biti spreman da odgovori na nove izazove, ali i na procenu sopstvenih očekivanja u obavljanju svoje delatnosti. Osiguravači stalno moraju da vrše procenu sopstvenih poslovnih strategija.[4] Na tržištu osiguranja beležimo da, još uvek, postoji određena inercija, iako su sve veći pritisci izazvani konkurencijom novih osiguravača i reosiguravača, kao i pojačanih zahteva osiguranika. Tržište osiguranja ne može dopustiti sporost u neminovnim promenama u poslovanju.[5]

Osiguravač je dužan da reosigura obaveze iz ugovora o osiguranju iznad svog samopridržaja. Samopridržaj predstavlja iznos ugovorom preuzetih rizika koji osiguravač uvek zadržava u sopstvenom pokriću i koji može pokriti sopstvenim sredstvima. Osiguravač mora uvek da zadrži deo rizika u samopridržaju.[6]

Reosiguranje funkcioniše na jednostavan način. Reosiguranik plaća premiju reosiguravaču, a zauzvrat reosiguravač pokriva deo obaveza reosiguranika kao osiguravača prema osiguraniku. Reosiguranik i reosiguravač slobodno utvrđuju sadržinu ugovora kod kojeg nema potrebe definisati odredbe kojima se posebno štite interesi jedne ugovorne strane, kao što je to slučaj kod ugovora o osiguranju, gde se prvenstveno štite interesi osiguranika kao fizičkog lica.[7]

[3] *Ibidem*.
[4] Robert Stude, „Promjena izgleda rizika u osiguranju/reosiguranju", *Zbornik Pravnog fakulteta u Zagrebu*, vol. 58, br. 1-2/2008, 678.
[5] *Ibid*., 679.
[6] Vladimir Čolović, *Osiguravajuća društva – zakonodavstvo Srbije, pravo EU, uporedno pravo*, Institut za uporedno pravo, Beograd 2010, 21.
[7] Jasna Pak, *Pravo osiguranja*, Beograd 2011, 41.

Razlikujemo dva glavna oblika reosiguranja. Prvi, fakultativno reosiguranje, kod kojeg reosiguravač pojedinačno odlučuje o svakoj polisi osiguranja u okviru koje treba da pruži pokriće. Taj oblik je manje fleksibilan, ali omogućava veću zaštitu reosiguravača. Drugi je ugovorno reosiguranje, gde se postiže sporazum u okviru kojeg reosiguravač prihvata pokriće određene vrste rizika. Kod tog oblika reosiguravač prihvata sve polise unutar navedenih kategorija rizika. Ugovorno reosiguranje je manje fleksibilno, ali je efikasnije sa stanovišta funkcionisanja osiguranja uopšte.[8]

Osiguravači u mnogo slučajeva moraju da preuzmu osiguranje pojedinačnih rizika koji po veličini prelaze njihov kapacitet, kao i rizike kod kojih postoji mogućnost nastanka masovnih šteta, kumulacije šteta i katastrofalnih šteta, kada jedan osiguravač ne može da ispuni svoje obaveze prema osiguranicima. No zaključenjem ugovora o reosiguranju, osiguravači povećavaju svoje kapacitete, čime štite i svoj bonitet i interese osiguranika. Neki veliki rizici prevazilaze samopridržaj osiguravača, pa je u tom slučaju potrebno dodatno obezbeđenje. S druge strane, reosiguranje omogućava da osiguravači homogenizuju svoj portfelj, što dovodi do smanjenja iznenađenja koja nastaju usled značajnih odstupanja između nastalih šteta i naplaćenih premija.[9]

Osim toga, sam institut reosiguranja označava indirektan prenos dela obaveze iz ugovora o osiguranju bez učešća osiguranika. Osiguranje je vertikalna podela rizika, koji se u odnosu osiguravača i osiguranika ne menja, a može se ali i ne mora zaustaviti kod jednog reosiguravača. Iz navedenog proizlazi da je reosiguranje indirektna ili sekundarna raspodela iz osiguranja, to jest osiguranje samog osiguravača za deo obaveze koji ne može samostalno pokriti.[10]

Isto tako, reosiguranje nije samo pravni već i ekonomski institut, a sa ekonomskog stanovišta, najvažnija karakteristika reosiguranja je prostorna disperzija rizika kojom se otklanjaju ili ublažuju ogromna opterećanja fondova osiguranja.[11] Opšte pravilo je da pravnoekonomski odnos između reosiguravača i osiguravača nije ni u kakvoj vezi sa odnosom između osiguravača i osiguranika, iako je deo rizika iz ugovora o osiguranju ustupljen u pokriće od strane reosiguravača.[12]

Reosiguranje velikog broja osiguravača omogućava reosiguravačima da diverzifikuje rizik na način na koji nijedan osiguravač ne može. To se, naime, postiže tako što se osiguravačima dozvoljava da osiguraju veći broj velikih rizika, s tim što se

[8] Reinsurance Uncovered: Spreading Risk and Safeguarding Solvency, https://accelerant.ai/resources/reinsurance-uncovered-spreading-risk-and-safeguarding-solvency/, 15. 7. 2025.

[9] Matea Spajić, „Modeli rizika u neživotnom osiguranju i reosiguranju", *Hrvatski časopis za osiguranje,* br. 2/2019, 172.

[10] Ratko Zelenika, „Relevantna obilježja reosiguranja", *Naše more*, *znanstveni časopis za more i pomorstvo*, vol. 43 br. 3-4/96, Dubrovnik 1996, 119.

[11] *Ibidem.*

[12] *Ibid*., 125.

mora voditi računa o geografskoj raspodeli rizika, kad je to moguće, kao i o smanjenju efektivne veličine izloženosti rizicima. Isto tako, reosiguranje doprinosi izmenama u strukturi portfelja osiguranja.[13]

2. Reosiguranje u zakonodavstvu Republike Srbije

Zakon o obligacionim odnosima Republike Srbije (dalje: ZOO)[14] institut reosiguranja nije regulisao. S druge strane, u Zakonu o osiguranju Republike Srbije (dalje: ZOS),[15] definiše se da se osigurani višak rizika iznad samopridržaja osiguravača prenosi u reosiguranje, to jest da osiguravač reosigurava onaj deo koji sam ne bi mogao da pokrije ako se desi osigurani slučaj. ZOS propisuje i izuzetak koji se odnosi na mogućnost reosiguranja celog iznosa rizika ako se radi o osiguranju imovine od katastrofalnih rizika, dakle od elementarnih nepogoda, kao i ako se radi o osiguranju finansijskih gubitaka zbog lošeg vremena. ZOS se ne bavi odnosom osiguranika i osiguravača i direktnim osiguranjem. Isto tako, ZOS ne govori ni o odnosu osiguranika i reosiguravača, tj. o slučajevima kada se osiguranik može direktno obratiti reosiguravaču za naknadu, to jest isplatu sume osiguranja.[16] Naravno, zadatak ZOS kao „statusnog" zakona nije da reguliše reosiguranje kao ugovorni odnos između reosiguravača i reosiguranika. Nažalost, u Republici Srbiji nije donesen zakonski akt koji bi regulisao ugovorno pravo osiguranja, pa samim tim i reosiguranja.

III Odnos reosiguravača i osiguravača, kao reosiguranika

Naročito moramo razlikovati odnos osiguravača i reosiguravača od odnosa osiguravača i osiguranika. No iako ne postoji pravna veza između osiguranika iz osnovnog ugovora o osiguranju i reosiguravača, ona je od značaja za opredeljenje osiguranika, koji će se, po pravilu, pre odlučiti za osiguranje sa reosiguranjem.[17] Ukoliko je osiguranik upoznat sa činjenicom da će osiguravač, sa kojim je on zaključio ugovor o osiguranju, reosigurati predmet tog ugovora, tada će i njegova zaštita biti sveobuhvatnija, imajući u vidu da i reosiguravač garantuje za obaveze osiguravača ako nastane osigurani slučaj. Mora se istaći da je reosiguravač obavezan samo prema osiguravaču, odnosno reosiguraniku koji je cedirao ugovor o osiguranju na njega.

[13] Jean François Outreville, „Introduction to Insurance and Reinsurance", *Social Re-Insurance A New Approach to Sustainable Community Health Financing* (eds. David M. Dror, Alexander Preker), The International Bank for Reconstruction and Development, Washington-Geneva 2002, 12.

[14] Zakon o obligacionim odnosima, *Sl. list SFRJ* br. 29/78, 39/85, 45/89 i 57/89, *Sl. list SRJ* br. 31/93, *Sl. list SCG* br. 1/2003 – Ustavna povelja.

[15] Zakon o osiguranju, *Sl. glasnik RS,* br. 55/2004, 70/2004 – ispr., 61/2005, 61/2005 – dr. zakon, 85/2005 – dr. zakon, 101/2007, 63/2009 – odluka US, 107/2009, 99/2011, 119/2012, 116/2013 i 139/2014 – dr. zakon.

[16] Vladimir Čolović, „Reosiguranje kao instrument zaštite osiguravača", *Pravna riječ*, br. 55/2018, 160.

[17] *Ibid*., 16.

Osiguranici osiguravača nemaju pravo podnošenja zahteva prema reosiguravaču, iako je osiguranik lice koje će imati koristi od reosiguranja.[18]

Postoji dilema da li je ugovor o reosiguranju za osiguravača, u stvari, ugovor kojim se pruža obeštećenje od strane reosiguravača ili se radi o pokrivanju odgovornosti osiguravača (reosiguranika). U vezi s tim, postavlja se pitanje da li osiguravač (reosiguranik) plaća premiju za eventualni gubitak, tako da, kad se desi osigurani slučaj, dobija naknadu za taj gubitak, tj. sumu osiguranja. Sigurno je da možemo reći da osiguravač plaća premiju kako ne bi pretrpeo eventualni gubitak, ali sa stanovišta same prirode ugovora o reosiguranju, osiguravač ugovor zaključuje kad proceni da bi eventualna šteta bila viša od samopridržaja kojim on raspolaže. To znači da osiguravač neće biti u opasnosti da pretrpi gubitak kod svih osiguranih slučajeva, već samo onda kada taj iznos prelazi njegov samopridržaj. Isto tako, ovde ne možemo govoriti o proširenju osiguranja, osim ako se ne radi o uključenju više osiguravača koji će zaštiti jedan rizik ili više rizika u određenom vremenskom intervalu.[19]

Za definisanje odnosa osiguravača i reosiguravača bitno je to što ugovor o reosiguranju mora da egzistira uporedo sa ugovorom o direktnom osiguranju,[20] on, naime, predstavlja deo skupa ugovora (i jedan i drugi ugovor) sa istom kauzom. Ugovor o reosiguranju se može odnositi na pokriće koje je predviđeno i ugovorom o osiguranju u celini, a može da pokriva i deo te obaveze osiguravača. Reosiguravač nikako ne mora da pruži šire pokriće od onog koje je predviđeno ugovorom o osiguranju. Takođe, reosiguranje se mora odnositi na isti rizik kao i ugovor o osiguranju.[21]

Najzad, ugovor o osiguranju može samostalno egzistirati, dok ugovor o reosiguranju ne može.[22] Upravo navedeno može objasniti definisanje klauzula u ugovoru o reosiguranju, koje smo već pomenuli, a kojima ćemo kasnije posvetiti značajnu pažnju. Naime, ako ugovor o reosiguranju ne može samostalno da egzistira, odnosno ako je on zavisan od ugovora o osiguranju, onda se mora postaviti pitanje uticaja reosiguravača na rešenje osiguranog slučaja.

Dakle, reosiguravač preuzima originalni rizik koji je na njega prenesen od strane cedenta, odnosno reosiguranika. No, po osnovnim pravilima, reosiguravač je obavezan da prihvati odluke osiguravača kao reosiguranika u dobroj veri, a koje se tiču opštih uslova osiguranja, ali i drugih elemenata koje čine osnovno osiguranje. Odluke mogu da uključe pokriće osiguranja, kompromis osiguravača i osiguranika,

[18] J. F. Outreville, 1.

[19] Larry Schiffer, Reinsurance Matters, https://www.irmi.com/articles/expert-commentary/reinsurance-matters, 20. 7. 2025.

[20] Mora se koristiti termin „direktno" osiguranje, kako bi se razlikovala ta dva ugovora, imajući u vidu da i reosiguranje predstavlja osiguranje.

[21] Nataša Petrović Tomić, „Reosiguranje – suština, domašaj, značaj", *Anali Pravnog fakulteta u Beogradu*, br. 2/2015, 79.

[22] *Ibid.*, 80.

pregovore između njih, kao i prihvatanje zahteva postavljenog od strane osiguranika odnosno oštećenog. Upravo zbog toga što su reosiguravači dužni da prihvate navedene odluke, oni su i odgovorni za isplatu po originalnoj polisi, ali u smislu onoga što je obuhvaćeno ugovorom o reosiguranju. No reosiguravač nije dužan da prihvati poravnanje ili priznanje odgovornosti koji su van onoga što je predviđeno u polisi.[23]

IV Klauzula o saradnji i klauzula o kontroli u ugovoru o reosiguranju

I klauzula o saradnji i klauzula o kontroli su, danas, česte i uobičajene u ugovorima o reosiguranju. Razlika između njih je sledeća. U skladu s klauzulom o kontroli, koja se odnosi na kontrolu zahteva za naknadu, reosiguravač može zahtevati od reosiguranika tj. osiguravača da prenese odgovornost za rešavanje navedenog zahteva na reosiguravača. S druge strane, u skladu s klauzulom o saradnji, osiguravač (reosiguranik) je dužan samo da obavesti reosiguravača o zahtevu i da zatraži njegovu saglasnost pre konačnog rešavanja zahteva, to jest pre isplate iznosa štete.[24]

U nekim slučajevima su, prema praksi, morale da se pojasne navedene klauzule koje su se odnosile na slučajeve kada na jednoj strani imamo više osiguravača, kao i kada se radi o poravnanju između osiguravača i osiguranika. Zbog toga se te klauzule mogu detaljnije definisati obavezama kako reosiguranika, tako i reosiguravača. Naime, reosiguranik bi bio obavezan da o svim okolnostima koje mogu dovesti do podnošenja zahteva za naknadu obavesti reosiguravača, a u svakom slučaju je dobro odrediti rok u kome se to mora učiniti. Zatim, reosiguranik mora da sarađuje s reosiguravačem u istrazi i proceni bilo kakvog gubitka ili okolnosti koje mogu dovesti do gubitka. Najzad, ne sme se postići nikakvo poravnanje, kao ni priznanje odgovornosti bez prethodnog odobrenja reosiguravača.[25] Samim tim, te klauzule, kao i navedene obaveze koje prate njihovu realizaciju, moraju se razumeti kao prethodni uslov za definisanje pokrića ugovorom o reosiguranju.

Teret dokazivanja kršenja tih klauzula je na reosiguravaču. Osiguravači to jest reosiguranici moraju pažljivo postupati kada se protiv njih podnese zahtev za naknadu, budući da svako kršenje klauzula može dovesti do gubitka prava prema reosiguravaču, čak i kada se može dokazati obaveza reosiguravača po polisi. Ovde se postavlja pitanje da li će se navedeno primenjivati samo ako su ove klauzule definisane kao prethodni uslov za pokriće ugovora o reosiguranju ili uopšte. Prema

[23] James A. Johnson, „Reinsurance – Follow the Settlements, What Practitioners Need to Know About Reinsurance", *The Journal of Insurance & Indemnity Law* 2023, 5.

[24] DLA Piper's Practical Guide for Claims Managers in 2022 – Part 10 https://www.dlapiper.com/en/insights/publications/practical-guide-for-claims-managers/2022/dla-pipers-practical-guide-for-claims-managers-in-2022-part-10, 16. 7. 2025.

[25] *Ibidem*.

ovom shvatanju, ako taj uslov nije jasno definisan, tada reosiguranik može zahtevati isplatu od strane reosiguravača ako dokaže svoj gubitak po osiguranom slučaju.

Inače, dužnost je reosiguranika da učestvuje zajedno sa reosiguravačem u ispitivanju svih okolnosti koje su dovele do osiguranog slučaja, tj. štete, gubitka. Ta dužnost je trajna, tako da se saradnja ne vezuje za vremenska ograničenja. Ako se vode pregovori o zahtevu za naknadu, o čemu su, uopšte, reosiguravači obavešteni, oni ipak mogu podneti konkretan zahtev za pružanje informacija, na koji će reosiguranici morati da odgovore. No dužnost reosiguranika ne mora biti apsolutna, s obzirom na to da postoje ograničenja u pogledu onoga što reosiguravač može zahtevati. Kod priznanja odgovornosti, odnosno postizanja poravnanja, reosiguranik mora da dobije odobrenje reosiguravača. No moramo reći da reosiguranik treba da dobije navedeno odobrenje samo u situaciji kad se radi o iznosu koji je definisan u ugovoru o reosiguranju. A ako se radi o nižem iznosu, onda odobrenje nije potrebno.

Ugovori o reosiguranju, vrlo često, u sebi sadrže element inostranosti, kada ih osiguravači sklapaju sa reosiguravačima sa sedištem u inostranstvu. Tada je pitanje definisanja navedenih klauzula takođe veoma značajno. Naime, reosiguravač će često biti izložen stranom pravu, odnosno pravu reosiguranika (osiguravača), budući da se ugovori zaključuju u skladu sa zakonom zemlje sedišta osiguravača, koji je, s druge strane, u potpuno drugačijoj situaciji jer zaključuje ugovore o reosiguranju u skladu sa „svojim" pravom. No to ne znači da osiguravač ima potpunu pravnu sigurnost. To važi za pravne sisteme u kojima nije u potpunosti regulisano reosiguranje, kao i u kojima je sudska praksa u ovoj oblasti siromašna. Naravno, navedeno stvara neizvesnost i za reosiguravača. Isto tako, kada se konsultuje strana sudska praksa, tada nije uvek sigurno šta treba primeniti u datom slučaju. Tada su sudije ili arbitri, ako se radi o arbitražnom rešavanju tih sporova, prepušteni sami sebi u tumačenju formulacija sadržanih u ugovoru. Sigurno je da bi navedeno moglo biti rešeno definisanjem jedinstvenih pravila u oblasti ugovornog prava o reosiguranju, uspostavljanjem jedinstvenog sistema i standardizovane terminologije u doslednom tumačenju ugovora o reosiguranju. No takva pravila još uvek ne postoje na prekograničnom nivou.[26]

1. Uticaj klauzula o saradnji i kontroli, kao i drugih sličnih klauzula na izvršenje obaveza po ugovoru o reosiguranju

Klauzule o kontroli i saradnji koje doprinose efikasnom izvršenju obaveza po ugovoru o reosiguranju od izuzetnog su značaja. S jedne strane, reosiguravač će imati pravo da zahteva dostavljanje informacija o osiguranom slučaju, a s druge, imaće pravo da bude konsultovan o namirenju zahteva za naknadu štete, tj. da

[26] Helmut Heiss, „From Contract Certainty to Legal Certainty for Reinsurance Transactions: The Principles of Reinsurance Contract Law (PRICL)", *Scandinavian Studies in Law*, vol. 64, 2018, 99.

odobri ili ne odobri isplatu. Naravno, to će, naročito, biti slučaj ako se radi o visokim iznosima štete ili kada je reosigurani deo rizika veliki. Naime, ako iznos zahteva prelazi određeni prag, reosiguravač ima pravo da preuzme njegovo rešavanje. S druge strane, preuzimanje rešavanja zahteva za naknadu od strane reosiguravača znači i da će reosiguranik imati njegovu podršku. Preuzimanjem rešavanja sporova od strane reosiguravača izbegavaju se budući sporovi i nesuglasice između reosiguranika i reosiguravača. Ti sporovi mogu nastati po različitim pitanjima, kao što su pokriće, trajanje pokrića, rokovi predviđeni u polisi itd.[27]

Ugovor o reosiguranju zasniva se na dobroj veri, ali klauzule o saradnji, kontroli, kao i druge koje proizlaze iz navedene dve, poput klauzule o praćenju poravnanja i sličnih, omogućavaju da se reosiguravač upozna s tačnim obimom rizika koje prima u reosiguravajuće pokriće. Upravo te klauzule omogućavaju da reosiguravač može raskinuti ugovor, ako mu određeni rizici nisu bili poznati u trenutku zaključenja ugovora o reosiguranju, kao i da utiče na sam postupak naknade štete, to jest na postupanje reosiguranika nakon nastanka osiguranog slučaja.[28]

Ako smatra da klauzula o saradnji ne pruža dovoljnu zaštitu kako reosiguravaču tako i reosiguraniku, reosiguravač može zahtevati da se u ugovor unese i klauzula o kontroli, koja mora sadržati elemente o obavezi reosiguranika da pruži obaveštenje reosiguravaču o svemu što se tiče nastale štete, zatim, o pravu reosiguravača da kontroliše sve pregovore u vezi s naknadom štete, a što se odnosi na imenovanje stručnjaka koji će veštačiti štetu i odrediti njen iznos. Najzad, klauzula mora sadržati i obavezu davanja izjave kojom će se utvrditi poštovanje svih navedenih obaveza.[29] Ako ugovor o reosiguranju ne sadrži klauzulu o saradnji, reosiguravač neće imati pravo da zahteva da bude obaveštavan i konsultovan o osiguranom slučaju.[30]

Kad ugovor sadrži obe klauzule, postavlja se pitanje može li doći do sukoba između njih, odnosno do mogućnosti da reosiguravač odbije isplatu i time osiguranik bude oštećen. Naime, po jednom mišljenju, ako su obe klauzule prisutne u ugovoru, reosiguravač će biti obavezan samo po zahtevu za naknadu koji je odobrio. Ovde je bitno pomenuti klauzulu o praćenju poravnanja, koja se naslanja na klauzulu o saradnji, odnosno sadrži neke njene elemente i koja, takođe, može biti uneta u ugovor i čije dejstvo može biti ugroženo postojanjem klauzule o kontroli. Naime, u takvom slučaju, reosiguravač ne mora da odobri poravnanje koje je dogovorio reosiguranik. Ali iako ono ne bi bilo odobreno od strane reosiguravača, on neće moći,

[27] Thiago Moutinho Ramos, *Reinsurance contracts and back to back presumption, A comparative study between English and Norwegian law,* Faculty of law, University of Oslo, Oslo 2013, 46.

[28] Larry Schiffer, Underwriting and Claims Clauses in Reinsurance Agreements, September 1, 2012 https://www.irmi.com/articles/expert-commentary/underwriting-and-claims-clauses-in-reinsurance-agreements, 11. 7. 2025.

[29] T. M. Ramos, 47.

[30] *Ibidem.*

s druge strane, da odbije isplatu po zahtevu za naknadu. Glavni razlog je upravo prisustvo klauzule o saradnji, odnosno klauzule o praćenju poravnanja. Međutim, postoje i suprotna mišljenja u kojima se ističe da je reosiguravač obavezan samo po poravnanjima koja je odobrio i da klauzule uopšte nisu u suprotnosti.[31]

Dakle, jedno od pitanja koje se postavlja u ovakvom slučaju jeste istovremeno egzistiranje ovih klauzula i mogućnost njihovog međusobnog poništenja. Inače, teret dokazivanja prebacuje se na reosiguranika ako ugovor o reosiguranju sadrži obe klauzule, jer će reosiguranik, kao osiguravač, morati da dokaže da je odgovoran po osnovnoj polisi osiguranja. Generalno, klauzule o saradnji u vezi sa štetama i kontroli šteta nameću obavezu saglasnosti reosiguravača. Međutim, ako iz bilo kog razloga klauzula utvrđena u ugovoru o reosiguranju ne nameće nikakvu obavezu saglasnosti, onda obim klauzule o praćenju poravnanja neće biti ugrožen postojanjem drugih klauzula.[32]

Moramo istaći da klauzula o kontroli daje reosiguravaču pravo da, u bilo kom trenutku, imenuje procenitelje štete ili bilo koje druge stručnjake ili veštake, kako bi u njegovo ime kontrolisali postupak procene štete, kao i rešavanja zahteva za naknadu. Ukoliko reosiguravač ne iskoristi svoje pravo po toj klauzuli, i pod uslovom da je reosiguranik dostavio sva obaveštenja o osiguranom slučaju, može se zaključiti da se reosiguravač odrekao svojih prava u postupku poravnanja. Tada reosiguranik neće biti odgovoran ako započne pregovore po svojim uslovima, nakon što reosiguravač nije odgovorio na njegova obaveštenja o šteti. Može se postaviti pitanje da li klauzula o kontroli dozvoljava reosiguravaču pravo učešća u eventualnoj parnici po zahtevu za naknadu, kao i u drugim vrstama sporova.[33]

S druge strane, ponovićemo da klauzula o saradnji podrazumeva potpunu saradnju reosiguravača i reosiguranika. Iako ta klauzula daje pravo reosiguravaču da se pridruži odbrani od zahteva za naknadu štete, on to čini o svom trošku. Klauzule o saradnji redovno se kombinuju s klauzulama o poravnanju (praćenju poravnanja), ali se mogu kombinovati i s drugim klauzulama, kao što je klauzula o obaveštenju – iako imaju širi obim od njih, s obzirom na činjenicu da kasno obaveštenje učinjeno reosiguravaču može sprečiti da se on uključi u postupak. Tada reosiguravač može zahtevati naknadu štete. Klauzula o saradnji sadrži najznačajniju obavezu koja se odnosi na potpunu saradnju u odbrani od osnovnih potraživanja. Klauzula o obaveštenju i klauzula o saradnji imaju mnoge sličnosti, ali klauzula o saradnji u vezi s postupanjem po zahtevu za naknadu može biti suprotna klauzuli o praćenju poravnanja.[34]

[31] *Ibid*., 51.

[32] *Ibid*., 52.

[33] William Sturge, Samantha Zaozirny, Claims Control Clauses – how much control do they give?, https://www.cpblaw.com/publications/2018/claims-control-clauses-%E2%80%93-how-much-control-do-they-give.pdf, 10. 7. 2025.

[34] Louis Torch, „An Examination of Reinsurers' Associations in Underlying Claims: The Iron Fist in the V on Fist in the Velvet Glove?" *The University of New Hampshire Law Review*, Vol. 3, No. 2/2005, 341–342.

Osim toga, moramo razlikovati i klauzulu o praćenju slučaja ili predmeta u odnosu na klauzulu o praćenju poravnanja. Naime, klauzula o praćenju predmeta opisuje osnovni odnos između reosiguranika i reosiguravača. Kod primene tih klauzula, veoma je bitno ponovo pomenuti da se one oslanjaju na dobru veru osiguravača kod rešavanja zahteva za naknadu.[35]

Osim toga, klauzula o saradnji javlja se i u osnovnim ugovorima o osiguranju. Naročito je značajna uloga te klauzule kod osiguranja od odgovornosti. Ona ima svrhu zaštite osiguravača, ali i sprečavanja posebnog dogovora osiguranika i oštećenog, bez znanja osiguravača. Kod tih ugovora, dotična klauzula se oslanja na pretnju ličnom odgovornošću osiguranika, kako bi se obezbedilo njegovo puno i aktivno učešće u postupku naknade štete. Osiguranik mora da doprinese da se interesi osiguravača ostvare tako što će obezbediti da sve relevantne činjenice, vezane za osigurani slučaj, budu dostupne. Ali da bi se saradnja osiguranika sa osiguravačem obezbedila u navedenom smislu, potrebano je ispuniti i ekonomski interes osiguranika.[36] Sigurno je da opšti uslovi osiguranja navedenu klauzulu moraju definisati detaljno. Klauzula o saradnji u navedenim ugovorima o osiguranju ima drugačiju funkciju i odnosi se na obavezu osiguranika, odnosno oštećenog. U svakom slučaju, značajna je sa stanovišta tačnog utvrđivanja okolnosti i iznosa štete i odgovornosti kako osiguranika tako i osiguravača.

2. Principi ugovornog prava reosiguranja

U ovom delu ćemo samo predstaviti pojedine odredbe Principa ugovornog prava reosiguranja iz 2019. godine (dalje: Principi),[37] koje regulišu pitanja vezana za odnos između reosiguravača i reosiguranika. Navedene odredbe imaju svoj osnov u pravilima koje definišu klauzule u ugovoru o reosiguranju, a koje smo, napred, naveli. Inače, grupa profesora sa fakulteta u Cirihu, Beču i Frankfurtu pokrenula je projekat izrade Principa sa ciljem objavljivanja i objašnjavanja običaja i već postojećih principa ugovornog prava reosiguranja.[38] U pitanju je Projektna grupa za principe ugovornog

[35] *Ibid*., 342–343.

[36] Nicholas J. Giles, „Rethinking the cooperation clause in standard liability insurance contracts", *University of Pennsylvania Law Review*, vol. 161, No. 2/2013, 594.

[37] Principi su objavljeni nakon odobrenja Upravnog saveta UNIDROIT na 98.sednici koja je održana u maju 2019. Istovremeno, Upravni savet je preporučio nastavak projekta u Radnom programu 2020–2022. kako bi se obezbedilo pokrivanje dodatnih tema koje su se smatrale relevantnim za ovaj akt. Preporuku je usvojila Generalna skupština na svojoj 78. sednici, a obnovila ju je Generalna skupština na svojoj 81. sednici u decembru 2022. godine na osnovu preporuke Upravnog saveta da se projekat zadrži u Radnom programu Instituta 2023–2025. do njegovog završetka do kraja 2024. godine, pošto je završetak instrumenta usporen tokom pandemije kada sastanci uživo nisu bili mogući. Sekretarijat UNIDROIT je nastavio aktivno da učestvuje u projektu; Principles of Reinsurance Contracts: Authorisation to proceed with publication, Governing Council, 105th session, UNIDROIT, Rome, 20–23 May 2025, 2.

[38] Mirjana Glintić, „Ograničenja izbora načela ugovornog prava reosiguranja kao merodavnog prava", *Pravni život,* br. 11/2019, 174.

prava reosiguranja koja je definisala Principe u saradnji s Međunarodnim institutom za unifikaciju privatnog prava (UNIDROIT).[39] Principi uključuju i jedinstvena pravila o opštem ugovornom pravu, koja se pozivaju na Principe međunarodnih komercijalnih ugovora, takođe donetih u okviru UNIDROIT.[40] Sadržina Principa oslikava koncept ugovornog prava reosiguranja koji se može izvući kao zajednički za većinu država. Očekuje se finalizacija ovog akta tokom 2025. godine.[41] Principi predstavljaju novi koncept definisanja ugovornog prava.[42] Principi sadrže 27 članova u pet glava: 1. Opšte odredbe; 2. Obaveze reosiguravača i reosiguranika; 3. Prava ugovornih strana; 4. Alokacija šteta; i 5. Akumulacija šteta.[43] Posvetićemo pažnju samo odredbama koje regulišu odnos reosiguravača i reosiguranika, odnosno u okviru tog dela, obavezama u vezi sa upravljanjem odštetnim zahtevima.

Pre svega, reosiguranik ima obavezu da reosiguravaču pošalje obaveštenje o verovatnim budućim zahtevima za isplatu štete. Navedeno omogućava reosiguravaču da napravi plan finansiranja i rezervisanja štete te da razmotri da li će i sa kojom pažnjom pratiti postupanje reosiguranika po navedenom zahtevu, a u skladu sa bilo kojom klauzulom o kontroli ovog procesa od strane reosiguravača.[44] Reosiguranik nije dužan da obavesti reosiguravača o svakom zahtevu u kome je navedeno potraživanje većeg iznosa, odnosno o svakoj kategoriji potraživanja koja u sebi sadrži mali rizik od podnošenja tužbe od strane više oštećenih. Ali reosiguranik je dužan da obavesti reosiguravača kada zna da postoji velika verovatnoća da će reosiguravač biti u obavezi da plati potraživanje.[45]

Principi definišu obavezu reosiguranika da postupa razumno i obazrivo prilikom rešavanja po zahtevima koji mogu da dovedu do aktiviranja ugovora o reosiguranju.[46] Već je rečeno da priroda reosiguranja stavlja u zavisni položaj reosiguravača u odnosu na reosiguranika. Čak i ako ugovor o reosiguranju sadrži odredbu o postupanju s potraživanjima koja daju prava reosiguravaču, činjenica je da reosiguranik odlučuje o tim zahtevima i da ima efektivnu kontrolu nad njima. Postupanje reosiguranika može da bude sankcionisano samo ako je prevarno, odnosno ako je

[39] *Principles of Reinsurance Contract Law (Principles),* Project Group on Principles of Reinsurance Contract Law, International Institute for the Unification of Private Law (UNIDROIT), Zurich, Vienna, Frankfurt am Main, 2019.

[40] Međunarodni institut za unifikaciju privatnog prava (UNIDROIT), https://www.unidroit.org/, 22. 7. 2025; *Principles*, III.

[41] „Principles of Reinsurance Contracts: Authorisation to proceed with publication", Governing Council, 105th session, UNIDROIT, Rome, 20–23 May 2025, 2.

[42] M. Glintić, 183.

[43] Slobodan Jovanović, Ozren Uzelac, „Fakultativna međunarodna pravila u oblasti ugovornog prava reosiguranja", *Evropska revija za pravo osiguranja*, br. 1/2021, 40.

[44] Principles, 52; art. 2.4.1.

[45] Principles, 52–53; S. Jovanović, O. Uzelac, 44.

[46] Principles, 2.4.2.

reosiguranik grubo prekršio pravila u postupku rešavanja po zahtevima za naknadu.[47] Osim toga, reosiguranik ima obavezu da uloži razumne napore da preduzme postupke za smanjenje štete, kao i da, ako se ispune uslovi, zahteva naknadu od trećih lica koja su činjenjem ili nečinjenjem doprinela nastanku osiguranog slučaja.[48]

Po odredbama Principa, reosiguranik je dužan da poštuje sva ograničenja koja su predviđena ugovorom o reosiguranju, što znači da se moraju poštovati klauzule o kontroli zahteva i saradnji u vezi s potraživanjima. Osim toga, reosiguranik je dužan da deli informacije sa reosiguravačem, koje su relevatne za rešavanje zahteva ili za tumačenje ugovora o reosiguranju. Te informacije se mogu odnositi na: iznos potraživanja, rezervisane iznose, iznose troškova rešavanja šteta, podatke o licima koja su ovlašćena za donošenje odluka u ovim situacijama, tumačenje polisa i drugih dokumenata, izveštaje stručnjaka, ispunjavanje dužnosti reosiguranika u dobroj veri, dokumente o pokretanju postupka pred sudom, sporazumima o poravnanju itd.[49] Reosiguranici moraju biti svesni da će, veoma često, njihove odluke uticati na pokriće reosiguranja. Ako reosiguranik izabere jedan od dva ili više metoda raspodele koja povećava raspoloživo pokriće reosiguranja, to, samo po sebi, ne krši njegove dužnosti, ali ako izabrana metoda nije opravdana ili se pokaže da je, pre svega, izabrana kako bi se maksimiziralo reosiguranje, tada će doći do povrede dužnosti od strane reosiguranika.[50]

Po Principima, reosiguravač ima pravo da se redovno informiše o postupanju reosiguranika, nakon nastupanja osiguranog slučaja, a u slučaju očekivanih gubitaka.[51] Ukoliko dođe do dogovora između reosiguranika, kao osiguravača i njegovog osiguranika, odnosno do mogućnosti zaključenja poravnanja, koncept koji je predviđen u principima predviđa da je reosiguravač dužan da prihvati poravnanje koje je zaključio reosiguranik. S druge strane, Principi predviđaju i koncept praćenja sreće, koji definiše da će reosiguravač biti „vezan" okolnostima koje su van kontrole reosiguranika.[52] No kod poravnanja moraju biti ispunjena dva zahteva. Prvi se odnosi na to da poravnanje mora biti pokriveno osnovnim ugovorom o osiguranju, a drugi na to da je ono pokriveno i u okviru pokrića ugovora o reosiguranju. Mora se voditi računa o tome da poravnanje nije zaključeno usled prevarnog postupanja reosiguranika,

[47] Principles, 54.
[48] Principles, 56.
[49] Principles, 57.
[50] Principles, 57.
[51] Principles, art. 2.4.3.
[52] Ovaj koncept je predviđen u članu 2.4.3. Principa, a odnosi se na reosiguranika i na njegovu sreću ili sudbinu u situacijama na koje ne može utiče. U SAD se koristi taj termin, kao i termin praćenja poravnanja, koji i mi pominjemo u radu. Ovaj termin se odnosi i na dobru veru reosiguranika, ali smatramo da ovaj termin ne možemo koristiti.
L. Schiffer, Understanding Reinsurance Terminology—Follow-the-Fortunes, https://www.irmi.com/articles/expert-commentary/understanding-reinsurance-terminology-follow-the-fortunes, 25. 7. 2025.

odnosno da nije došlo do njegove grube nepažnje. Ovde treba obratiti pažnju na rizike s kojima se reosiguranik može suočiti ako ne izvrši poravnanje, odnosno na postupanje reosiguranika, a koje mora biti pošteno i uz preduzimanje svih potrebnih koraka. Takođe, kod obaveze praćenja zaključenja poravnanja, relevantan zahtev je onaj koji je priznat zaključenjem poravnanja, i reosiguranik ne mora da dokazuje da zahtev spada u rizike koji su pokriveni reosiguranjem.[53]

Pomenuli smo koncept praćenja sreće. To se odnosi na situacije na koje reosiguranik ne može da utiče. Naime, odluka suda ili arbitraže su van njegove kontrole. To se primenjuje čak i kada se reosiguravač ne slaže sa strategijom odbrane reosiguranika u postupku. Ali ako reosiguranik nije izneo očigledne razloge koji idu njemu u korist (a samim tim i reosiguravaču), tada će se smatrati da je odluka doneta pod kontrolom reosiguranika. Tada se navedeni koncept ne primenjuje i prihvatanje zahteva od strane reosiguranika biće definisano u skladu s konceptom praćenja poravnanja. Ista je situacija i kada se odluka donese zbog izostanka. Koncept praćenja sreće se primenjuje i kod velikih promena deviznih kurseva. Ako se vrednost sume osiguranja koja treba da bude isplaćena uveća zbog tih promena, tada suma koju treba da isplati reosiguravač uključuje i povećane troškove koji su izazvani navedenim promenama. Ista je situacija i u slučaju promene zakona koji reguliše ugovor o osiguranju.[54] Npr. ako zakon ne definiše obavezu pokrića iznosa koji predstavlja kaznu, pa kasnije ta zabrana bude ukinuta promenom zakona, takva promena proširuje obavezu reosiguranika, pa time i reosiguravača.[55] Principi predviđaju da stranke u ugovoru o reosiguranju ne moraju predvideti ta dva principa, odnosno koncepta.[56]

Najzad, osvrnućemo se i na odredbu Principa koja se odnosi na dužnost reosiguranika da na pravilan način podnese reosiguravaču zahtev za isplatu, kao i na dužnost reosiguravača da isplati iznos po zahtevu, a koji je u skladu sa ugovorom o reosiguranju.[57] Strane mogu slobodno precizno da odrede uslove i vreme plaćanja.[58] Reosiguranik mora, osim zahteva, da podnese i odgovarajuću dokumentaciju kojom dokazuje da je potraživanje pokriveno. Kod primene pravila poravnanja, reosiguranik treba samo da dokaže da je postupao razumno i na način predviđen ugovorom. Reosiguravač ima obavezu da, u dobroj veri, isplati potraživanje što pre, ukoliko nema sporova u vezi s tom obavezom. Ukoliko reosiguravač i reosiguranik, u tom smislu, nemaju već postojeći konkretan sporazum, oni mogu da se pozovu na ustaljeni tok poslovanja između njih ili na odgovarajući običaj ili pravilo na tržištu reosiguranja.[59]

[53] Principles, 58.
[54] S. Jovanović, O. Uzelac, 45.
[55] Principles, 60.
[56] Principles, 61.
[57] S. Jovanović, O. Uzelac, 45.
[58] Principles, art. 2.4.4.
[59] Principles, 62.

U slučaju kašnjenja isplate potraživanja po zahtevu, reosiguranik ima pravo na razumnu i pravičnu kamatu koja se primenjuje od trenutka dospelosti plaćanja.[60]

V Zaključak

Definisanje klauzula o saradnji i klauzula o kontroli, kao i ostalih klauzula u ugovorima o reosiguranju, ima za cilj zaštitu ne samo reosiguravača i reosiguranika, odnosno samog ugovora o reosiguranju, već i osnovnog ugovora o osiguranju, kao i osiguranika čije će obeštećenje, veoma često, zavisiti kako od obima pokrića definisanog u ugovoru o reosiguranju tako i od same sadržine tog ugovora. Činjenica da reosiguravač može da bude obavešten o postupanju sa zahtevom za naknadu nakon nastanka osiguranog slučaja, kao i da može učestvovati u rešavanju tog zahteva, bez obzira na to da li se radi o postizanju sporazuma odnosno poravnanja, ili postupku pred sudom ili arbitražom, predstavlja mogućnost da zahtev za naknadu postavljen od strane osiguranika bude dvostruko kontrolisan. Time se ne umanjuju prava osiguranika, kao ni osiguravača, kao reosiguranika, već se štiti sam ugovorni odnos osiguranja. Sigurno je da, definisanjem navedenih klauzula, reosiguravač pre svega štiti svoj interes, ali se time štiti i sam odnos reosiguranja i poverenje između reosiguravača i reosiguranika. Takođe, definisanjem pojedinih navedenih klauzula, reosiguravač se pretvara u aktivnog subjekta u rešavanju zahteva za naknadu štete.

U Republici Srbiji se, osim u pojedinim odredbama ZO, ne reguliše reosiguranje. Sigurno je da bi u budućim odredbama koje bi regulisale ovaj institut morale da nađu mesto i navedene klauzule koje jasno definišu odnos reosiguravača i reosiguranika. Naravno, odredbe Principa bi trebalo da budu osnov za definisanje navedenih pravila. Njihovo detaljno regulisanje trebalo bi prepustiti opštim uslovima osiguranja odnosno reosiguranja, ali je sigurno da bi, na opšti način, morale biti regulisane i u zakonskom aktu.

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[60] Principles, 63; S. Jovanović, O. Uzelac, 45.

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THE REINSURER'S IMPACT ON THE INSURER'S DECISIONS FOLLOWING THE OCCURRENCE OF THE INSURED EVENT

REVIEW SCIENTIFIC PAPER

Summary

The function of the reinsurance contract is to provide coverage for excess risk, namely for losses that exceed the insurer's retention. Following the occurrence of an insured event, the reinsurer indemnifies the sum defined in the reinsurance contract. However, the question arises as to whether the reinsurer may influence the settlement of claims submitted by the insured, either through direct control and influence over such proceedings, or by having the right to be notified of the claim settlement process. Reinsurance contracts may incorporate clauses that define such rights of the reinsurer. One clause concerns cooperation (*Claims Cooperation Clause*), while the other addresses control (*Claims Control Clause*). The claims control clause grants broader authority upon the reinsurer. Practice demonstrates that other similar clauses are also used to specify the reinsurer's rights. This paper examines both the characteristics of these clauses and the Principles of Reinsurance Contract Law, which specifically regulate the relationship between the reinsurer and the insurer (the reinsured) following the occurrence of an insured event.

Keywords: reinsurance, reinsurer, reinsured, risk, retention, insured event, claims cooperation clause, claims control clause.

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I. Introduction

When an insurance company (the insurer) underwrites large risks, it often becomes necessary to enter into reinsurance contract. Such situations arise when the insurer determines that the occurrence of a potential loss, or more precisely, the occurrence of an insured event, may pose a threat to its financial stability. The conclusion of a reinsurance contract establishes a distinct contractual relationship between the insurer, as the reinsured, and the reinsurer, alongside the existing insurance relationship between the insurer and the insured, that is, in addition to the underlying insurance contract. The primary purpose of concluding an insurance contract is to provide insurance coverage against risks threatening the insured, while the objective of entering into a reinsurance contract is to ensure effective protection of the insurer by the reinsurer following the occurrence of an insured event. Consequently, reinsurance is referred to as insurance of the insurer, although this concept should be understood in a broader sense. The insurance contract and the reinsurance contract are independent; they constitute separate contracts. The insurer has obligations under the insurance contract, while the reinsurer has obligations under the reinsurance contract. Should an insured event occur, the insurer indemnifies the sum insured pursuant to the concluded insurance contract, and subsequently, under the reinsurance contract, the insurer, as the reinsured, seeks indemnification from the reinsurer. In practice, however, the situation differs. Many reinsurance contracts contain provisions enabling the reinsurer to influence the settlement of claims under the insurance policy, even during the insurer's claims handling process. Specifically, under such provisions, the insurer must notify the reinsurer of the insured event and may not adopt a final position on indemnification without coordinating with the reinsurer. This may result in delayed payment by the insurer and non-compliance with agreed timeframes, raising questions regarding the compatibility of such conduct with fundamental principles of insurance contract law.[2] However, as noted, for such obligations of the insurer as reinsured to exist, and for the reinsurer to be involved in claims settlement submitted by the insured, certain clauses must be contractually agreed upon, granting the reinsurer varying degrees of authority to intervene in the settlement of a claim arising from an insured event. The nature of the reinsurer's influence on claims settlement depends upon the type of clause negotiated. Two clauses are most commonly used to achieve this purpose. The first is the *Claims cooperation clause*, typically utilized in facultative reinsurance contracts. This clause requires the insurer to involve the reinsurer in settling the portion of the loss that exceeds the insurer's retention, while preserving the insurer's

[2] Marijan Ćurković, Claims Cooperation Clause: Utjecaj reosiguratelja na odnos „osiguratelj–osiguranik" kod rješavanja osiguranog slučaja (June 2, 2025), available at: *https://www.osiguranje.hr/ClanakDetalji.aspx?23319*, accessed on July 19, 2025.

autonomy to independently determine indemnification for the retained portion. The second is the *Claims control clause*. This clause is more restrictive for the insurer, as it prohibits the adoption of a position on indemnification without the reinsurer's prior consent. Moreover, it contradicts insurance contract law provisions that prescribe timeframes within which the insurer must either settle the claim or notify the insured that the claim is unfounded.[3]

II. Reinsurance as protection for the insurance contract

1. Reinsurance in general

Both natural and legal persons are increasingly exposed to numerous risks and pressures, which affect their demands as policyholders upon insurers, and through insurers upon reinsurers. These demands concern improved services from insurers and reinsurers, encompassing both the diversity of insurance offerings and higher standards of insurance coverage. This implies that the insurance sector must be prepared to respond to emerging challenges, as well as to assess its own expectations in conducting business operations. Insurers must continuously evaluate their business strategies.[4] The insurance market demonstrates a degree of inertia, despite mounting pressures from competition stemming from new insurers and reinsurers, as well as growing demands from policyholders. The insurance market cannot afford sluggishness in inevitable changes in its business operations.[5]

The insurer is obligated to reinsure liabilities under the insurance contract exceeding its retention. Retention represents the amount of underwritten risk that the insurer retains in its own coverage and that can be covered with its own funds. The insurer must always retain a portion of the risk in its retention.[6]

Reinsurance operates in a straightforward manner. The reinsured pays a premium to the reinsurer, and in return, the reinsurer covers a portion of the reinsured's liabilities as insurer toward the policyholder. The reinsured and reinsurer freely determine the contract terms, without the need to define provisions specifically protecting the interests of one contracting party, as is the case with insurance contracts, where the interests of the policyholder, as a natural person, are primarily protected.[7]

Two principal forms of reinsurance are distinguished. The first is facultative reinsurance, wherein the reinsurer individually makes a decision regarding the

[3] *Ibidem*.

[4] Robert Stude, "Promjena izgleda rizika u osiguranju/reosiguranju", *Zbornik Pravnog fakulteta u Zagrebu*, Vol. 58, Nos. 1–2/2008, 678.

[5] *Ibid*., 679.

[6] Vladimir Čolović, *Osiguravajuća društva – zakonodavstvo Srbije, pravo EU, uporedno pravo*, Institut za uporedno pravo, Belgrade 2010, 21.

[7] Jasna Pak, *Pravo osiguranja*, Belgrade 2011, 41.

insurance policy for which coverage is to be provided. This form is less flexible, but provides greater protection to the reinsurer. The second is treaty reinsurance, wherein an agreement is reached whereby the reinsurer accepts coverage of a specified type of risks. Under this form, the reinsurer accepts all policies within the designated risk categories. Treaty reinsurance is less flexible, but more efficient from the standpoint of insurance operations in general.[8]

Insurers must frequently underwrite individual risks that exceed their capacity in magnitude, as well as risks where the possibility exists for mass losses, accumulation of losses, and catastrophic losses, situations in which a single insurer cannot fulfill its obligations toward policyholders. However, through the conclusion of reinsurance contracts, insurers increase their capacity, thereby protecting both their solvency and the interests of the insured. Certain large risks exceed the insurer's retention, necessitating additional security in such cases. Conversely, reinsurance enables insurers to homogenize their portfolios, resulting in reduced volatility arising from significant deviations between incurred losses and earned premiums.[9]

Furthermore, the institution of reinsurance itself represents an indirect transfer of a portion of liabilities under the insurance contract without the involvement of the insured. Insurance constitutes a vertical division of risk, which in the relationship between insurer and insured remains unchanged, and may, but need not, terminate with a single reinsurer. It follows that reinsurance represents an indirect or secondary risk distribution from insurance; in other words, insurance of the insurer itself for the portion of liability it cannot cover independently.[10]

Likewise, reinsurance is not merely a legal but also an economic institution, and from an economic perspective, the most significant characteristic of reinsurance is the spatial dispersion of risk, which eliminates or mitigates enormous burdens on insurance funds.[11] The general rule is that the legal-economic relationship between the reinsurer and the insurer is entirely separate from the relationship between the insurer and the insured, notwithstanding that a portion of the risk under the insurance contract is ceded by the reinsurer.[12]

The reinsurance of a large number of insurers enables reinsurers to diversify risk in a manner unattainable by any individual insurer. This is achieved by permitting insurers to underwrite a greater number of large risks, while maintaining consideration for the geographical distribution of risks where feasible, as well as

[8] Reinsurance Uncovered: Spreading Risk and Safeguarding Solvency, available at; *https://accelerant.ai/resources/reinsurance-uncovered-spreading-risk-and-safeguarding-solvency*, accessed on July 15, 2025.

[9] Matea Spajić, "Modeli rizika u neživotnom osiguranju i reosiguranju", *Hrvatski časopis za osiguranje*, No. 2/2019, 172.

[10] Ratko Zelenika, "Relevantna obilježja reosiguranja", *Naše more, Scientific Journal for Sea and Maritime Affairs*, Vol. 43, Nos. 3–4/1996, 119.

[11] *Ibidem.*

[12] *Ibid*., 125.

reducing the effective magnitude of risk exposure. Similarly, reinsurance contributes to modifications in the structure of insurance portfolios.[13]

2. Reinsurance in the legislation of the Republic of Serbia

The Law of Contract and Torts (hereinafter: LCT)[14] does not regulate the institution of reinsurance. On the other hand, the Insurance Law of the Republic of Serbia (hereinafter: Insurance Law)[15] provides that the portion of risk exceeding the insurer's retention shall be transferred to reinsurance, that is, the insurer reinsures the portion of the risk which it would be unable to cover should an insured event occur. The Insurance Law also prescribes an exception pertaining to the possibility of reinsuring the entire risk amount in cases of property insurance against catastrophic risks, such as natural disasters, or insurance against financial losses resulting from adverse weather conditions. The Insurance Law does not address the relationship between the insured and the insurer, nor direct insurance. Likewise, the Insurance Law does not address the relationship between the insured and the reinsurer, i.e. circumstances under which the insured may approach the reinsurer directly for indemnification or payment of the sum insured.[16] Naturally, the function of the Insurance Law as a "status" law is not to regulate reinsurance as a contractual relationship between the reinsurer and the reinsured. Unfortunately, the Republic of Serbia has not enacted legislation governing insurance contract law, and consequently, reinsurance contract law.

III. The relationship between reinsurer and insurer as reinsured

It is essential to distinguish the relationship between the insurer and the reinsurer from that between the insurer and the insured. However, although no legal relationship exists between the policyholder under the underlying insurance contract and the reinsurer. Such relationship is significant for the policyholder's decision, as the policyholder will generally prefer insurance arrangements supported by reinsurance.[17] When the policyholder is aware that the insurer, with whom the

[13] Jean François Outreville, „Introduction to Insurance and Reinsurance", *Social Re-Insurance A New Approach to Sustainable Community Health Financing* (eds. David M. Dror, Alexander Preker), The International Bank for Reconstruction and Development, Washington-Geneva 2002, 12.

[14] The Law of Contract and Torts, *Official Gazette of the SFRY,* Nos. 29/78, 39/85, 45/89, and 57/89; *Official Gazette of the FRY,* No. 31/93; *Official Gazette of SCG,* No. 1/2003 – Constitutional Charter.

[15] Insurance Law, *Official Gazette of the Republic of Serbia,* Nos. 55/2004, 70/2004 – corr., 61/2005, 61/2005 – other law, 85/2005 – other law, 101/2007, 63/2009 – Constitutional Court Decision, 107/2009, 99/2011, 119/2012, 116/2013, and 139/2014 – other law.

[16] Vladimir Čolović, "Reosiguranje kao instrument zaštite osiguravača," *Pravna riječ*, No. 55/2018, 160.

[17] *Ibid.*, 16.

insurance contract has been concluded, will reinsure the subject matter of that contract, the policyholder's protection will be more comprehensive, given that the reinsurer also guarantees the insurer's obligations in the event of an insured event. It must be emphasized that the reinsurer is obligated solely to the insurer, i.e. the reinsured, who has ceded the insurance contract to it. Policyholders of the insurer possess no right to submit claims to the reinsurer, even though the policyholder is the party who will benefit from the reinsurance.[18]

There is a dilemma as to whether a reinsurance contract, from the insurer's perspective, constitutes a contract providing indemnity from the reinsurer or one covering the insurer's (reinsured's) liability. In this regard, the question arises as to whether the insurer (reinsured) pays a premium for potential loss, such that upon occurrence of an insured event, it receives indemnification for that loss, i.e. the sum insured. Certainly, it may be stated that the insurer pays premium to avoid sustaining potential loss; however, by its very nature, the reinsurance contract is concluded upon determining that a potential loss may exceed its retention. This means that the insurer will not face the risk of loss upon all insured events, but only when the amount exceeds its retention. Moreover, this cannot be characterized as an extension of insurance coverage, unless multiple insurers are engaged to cover a single risk or multiple risks within a specified time interval.[19]

For defining the relationship between insurer and reinsurer, it is essential that the reinsurance contract must exist concurrently with the direct insurance contract;[20] it represents, in fact, part of a set of contracts (both contracts) with the same causa. The reinsurance contract may relate to coverage provided under the insurance contract in its entirety, or may cover only a portion of the insurer's liability. The reinsurer is under no obligation to provide broader coverage than that stipulated in the insurance contract. Moreover, the reinsurance must relate to the same risk as the insurance contract.[21]

Finally, while the insurance contract may exist independently, the reinsurance contract cannot.[22] This very point explains the definition of clauses in the reinsurance contract previously mentioned, to which considerable attention will be devoted in the following sections. Namely, if the reinsurance contract cannot exist independently, that is, if it is dependent upon the insurance contract, then the question of the reinsurer's influence on loss settlement must be addressed.

[18] J. F. Outreville, 1.

[19] Larry Schiffer, Reinsurance Matters, available at: *https://www.irmi.com/articles/expert-commentary/reinsurance-matters*, accessed on July 20, 2025.

[20] The term "direct" insurance must be employed to distinguish between these two contracts, given that reinsurance also constitutes insurance.

[21] Nataša Petrović Tomić,. "Reosiguranje – suština, domašaj, značaj", *Anali Pravnog fakulteta u Beogradu,* No. 2/2015, 79.

[22] *Ibid.*, 80.

Thus, the reinsurer assumes the original risk transferred to it by the cedant, that is, the reinsured. However, according to general principles, the reinsurer is obligated to accept in good faith the decisions of the insurer as the reinsured concerning the general terms and conditions of insurance, as well as other elements constituting the underlying insurance. Such decisions may include insurance coverage, settlements between the insurer and the policyholder, negotiations between them, and acceptance of claims submitted by the policyholder or the injured party. Precisely because reinsurers are obligated to accept such decisions, they are liable for payment under the original policy, albeit within the scope of coverage provided under the reinsurance contract. However, the reinsurer is not obligated to accept settlements or admissions of liability falling outside policy provisions.[23]

IV. Claims cooperation clause and Claims control clause in reinsurance contracts

Both the claims cooperation clause and the claims control clause are today common and customary provisions in reinsurance contracts. The distinction between them is as follows. Pursuant to the claims control clause, which governs claims control, the reinsurer may require the reinsured, i.e. the insurer, to transfer liability for settling the claim to the reinsurer. Conversely, pursuant to the claims cooperation clause, the insurer (reinsured) is obligated merely to notify the reinsurer of the claim and to obtain its consent prior to final settlement, i.e. before any settlement or payment of indemnity is made.[24]

In certain cases, according to practice, these clauses required clarification in cases involving multiple insurers on one side, as well as settlements between the insurer and the policyholder. Consequently, these clauses may be defined in greater detail through obligations of both the reinsured and the reinsurer. Specifically, the reinsured would be obligated to notify the reinsurer of all circumstances that may give rise to submission of a claim, and it is advisable in any event to specify the timeframe within which such notice must be given. Furthermore, the reinsured must cooperate with the reinsurer in investigating and assessing any loss or circumstances that may lead to loss. Finally, no settlement may be reached, nor admission of liability made, without the reinsurer's prior approval.[25] Accordingly, these clauses, together with the obligations accompanying their implementation, must be understood as conditions precedent to defining coverage under the reinsurance contract.

[23] James A. Johnson, „Reinsurance – Follow the Settlements, What Practitioners Need to Know About Reinsurance", *The Journal of Insurance & Indemnity Law* 2023, 5.

[24] DLA Piper's Practical Guide for Claims Managers in 2022 – Part 10, available at; *https://www.dlapiper.com/en/insights/publications/practical-guide-for-claims-managers/2022/dla-pipers-practical-guide-for-claims-managers-in-2022-part-10*, accessed on July 16, 2025.

[25] *Ibidem*.

The burden of proof for breach of these clauses rests with the reinsurer. Insurers, that is, reinsureds, must proceed with care when claims are submitted against them, given that any breach of these clauses may result in forfeiture of rights against the reinsurer, even where the reinsurer's liability under the policy can be established. The question arises whether this will apply only when these clauses are defined as conditions precedent to reinsurance coverage, or generally. According to this interpretation, if such a condition is not clearly defined, the reinsured may then seek payment from the reinsurer upon proving its loss under the insured event.

In any event, the reinsured bears the duty to participate jointly with the reinsurer in examining all circumstances that led to the insured event, i.e. damage or loss. This duty is ongoing, such that cooperation is not subject to temporal limitations. When negotiations concerning a claim are conducted, of which reinsurers have been generally notified, they may, nevertheless, submit specific requests for information, to which the reinsured must respond. However, the reinsured's duty need not be absolute, as there are limitations on what the reinsurer may demand. Upon admission of liability or settlement agreements, the reinsured must obtain the reinsurer's approval. However, it must be noted that the reinsured should obtain such approval only in situations involving amounts defined in the reinsurance contract. Where lower amounts are involved, approval is not required.

Reinsurance contracts frequently contain a foreign element when insurers conclude them with reinsurers domiciled abroad. The definition of these clauses is then equally significant. Specifically, the reinsurer will often be subject to foreign law, that is, the law governing the reinsured (insurer), given that contracts are concluded in accordance with the law of the country where the insurer is domiciled. The insurer, on the other hand, is in a completely different position, as it concludes reinsurance contracts in accordance with its "own" law. However, this does not signify that the insurer enjoys complete legal certainty. This applies to legal systems in which reinsurance is not comprehensively regulated, as well as those in which case law in this area is limited. Naturally, this creates uncertainty for the reinsurer as well. Similarly, when foreign case law is consulted, it is not always certain what should be applied in the given situation. Judges or arbitrators, in cases where disputes are resolved through arbitration, are then left to their own devices in interpreting formulations contained in the contract. Certainly, this could be resolved through the definition of uniform rules in the field of reinsurance contract law, the establishment of a unified system and standardized terminology for consistent interpretation of reinsurance contracts. However, such rules do not yet exist at the cross-border level.[26]

[26] Helmut Heiss, „From Contract Certainty to Legal Certainty for Reinsurance Transactions: The Principles of Reinsurance Contract Law (PRICL)", *Scandinavian Studies in Law*, Vol. 64, 2018, 99.

1. The impact of claims cooperation and control clauses, and other similar clauses, on the performance of obligations under the reinsurance contract

Claims control and claims cooperation clauses, which contribute to efficient performance of obligations under reinsurance agreements, are of exceptional significance. On the one hand, the reinsurer will have the right to request the submission of information concerning the insured event, and on the other, will have the right to be consulted regarding the settlement of claims and to approve or disapprove payment. Naturally, this will be particularly relevant in cases involving high loss amounts or where the reinsured portion of the risk is significant. Specifically, if the claim amount exceeds a certain threshold, the reinsurer has the right to assume its settlement. Conversely, the reinsurer's assumption of claims handling signifies that the reinsured will have its support. The reinsurer's assumption of claim handling serves to prevent subsequent disputes between the reinsurer and the reinsured. Such disputes may arise concerning various matters, including coverage, duration of coverage, or policy deadlines etc.[27]

The reinsurance contract is founded on the principle of good faith, but claims cooperation and control clauses, along with others deriving from these two, such as follow the settlements clauses and similar provisions, enable the reinsurer to ascertain the precise scope of risks it assumes under reinsurance coverage. Precisely these clauses permit the reinsurer to rescind the contract if certain risks were not disclosed at the time of reinsurance contract conclusion, as well as to influence the loss adjustment process itself, i.e. the reinsured's conduct following occurrence of the insured event.[28]

If the reinsurer considers that the claims cooperation clause fails to provide adequate protection for both the reinsurer and the reinsured, the reinsurer may require incorporation of a claims control clause into the contract, which must contain elements concerning the reinsured's obligation to notify the reinsurer regarding all matters pertaining to the loss incurred, the reinsurer's right to control all negotiations concerning loss adjustment, which extends to appointment of experts who will assess the loss and determine its amount. Finally, the clause must contain the obligation to provide a declaration confirming compliance with all stated obligations.[29] If the reinsurance contract does not contain a claims cooperation clause, the reinsurer will have no right to demand notification of and consultation concerning the insured event.[30]

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[27] Thiago Moutinho Ramos, *Reinsurance contracts and back to back presumption, A comparative study between English and Norwegian law,* Faculty of law, University of Oslo, Oslo 2013, 46.

[28] Larry Schiffer, Underwriting and Claims Clauses in Reinsurance Agreements, September 1, 2012, available at: *https://www.irmi.com/articles/expert-commentary/underwriting-and-claims-clauses-in-reinsurance-agreement*s, accessed on July 11, 2025.

[29] T. M. Ramos, 47.

[30] *Ibidem.*

When the contract contains both clauses, the question arises whether a conflict may occur between them, or whether the reinsurer may refuse payment, thereby potentially leaving the policyholder uncompensated. According to one view, if both clauses are present in the contract, the reinsurer will be liable only for claims it has approved. Here it is important to mention the follow the settlements clause, which is grounded in the claims cooperation clause, and includes certain of its elements. This clause may also be included in the contract, whose effect may be compromised by the presence of a claims control clause. Specifically, in such circumstances, the reinsurer is not obliged to approve a settlement arranged by the reinsured. However, even if such a settlement is not approved by the reinsurer, it will not, conversely, be entitled to refuse payment of the claim. The principal reason is precisely the presence of the claims cooperation clause, or the follow the settlements clause. Nevertheless, contrary opinions hold that the reinsurer is liable only for settlements it has approved and that the clauses are not contradictory whatsoever.[31]

Thus, one question arising in such circumstances concerns the simultaneous existence of these clauses and the possibility of their mutual nullification. In any event, the burden of proof shifts to the reinsured where the reinsurance contract contains both clauses, as the reinsured, in its capacity as insurer, must prove its liability under the underlying insurance policy. Generally, claims cooperation and claims control clauses impose an obligation of reinsurer consent. However, if for any reason the clause established in the reinsurance contract imposes no consent requirement, then the scope of the follow the settlements clause will not be compromised by the existence of other clauses.[32]

It must be emphasized that the claims control clause grants the reinsurer the right, at any time, to appoint loss adjusters or any other experts to oversee the loss assessment process and claims settlement on its behalf. Should the reinsurer fail to exercise its rights under this clause, and provided the reinsured has delivered all notifications concerning the insured event, it may be concluded that the reinsurer has waived its rights in the settlement process. The reinsured will then bear no liability if it commences negotiations on its own terms after the reinsurer has failed to respond to notifications regarding the loss. The question may arise as to whether the claims control clause grants the reinsurer the right of participation in potential litigation concerning a claim, as well as in other types of disputes.[33]

On the other hand, we reiterate that the claims cooperation clause implies complete cooperation between the reinsurer and the reinsured. Although this clause grants the reinsurer the right to join the defense against claims, it does so at its own

[31] *Ibid.*, 51.

[32] *Ibid.*, 52.

[33] William Sturge, Samantha Zaozirny, Claims Control Clauses – how much control do they give?, available at: *https://www.cpblaw.com/publications/2018/claims-control-clauses-%E2%80%93-how-much-control-do-they-give.pdf*, accessed on July 10, 2025.

expense. Claims cooperation clauses are customarily combined with the follow the settlements clauses, but may be combined with other clauses as well, such as notice clauses. Although they have a broader scope, given that late notification to the reinsurer may prevent the reinsurer from participating in the claims process, in which case it may claim indemnity. The claims cooperation clause contains the most significant obligation concerning complete cooperation in defense against underlying claims. Notice clauses and claims cooperation clauses share numerous similarities, but the claims cooperation clause concerning claims handling may contradict the follow the settlements clause.[34] Moreover, we must distinguish between the follow the case clause and the follow the settlements clause. Specifically, the follow the case clause describes the fundamental relationship between the reinsured and the reinsurer. In applying these clauses, it is essential to reiterate that they rely upon the insurer's good faith in claims settlement.[35]

Furthermore, the claims cooperation clause also appears in underlying insurance contracts. The role of this clause is particularly significant in liability insurance. It serves to protect the insurer, while also preventing special arrangements between the policyholder and the injured party without the insurer's knowledge. Under such contracts, the clause in question relies upon the threat of personal liability to the policyholder to ensure full and active participation in the loss adjustment process. The policyholder must contribute to realization of the insurer's interests by ensuring that all relevant facts pertaining to the insured event are accessible. However, to secure the policyholder's cooperation with the insurer in this sense, the policyholder's economic interest must also be considered.[36] Certainly, the general terms and conditions of insurance must define this clause in detail. The claims cooperation clause in such insurance contracts serves a different function and relates to the obligation of the policyholder or injured party. In any event, it is significant from the standpoint of accurate determination of circumstances and loss amount and liability of both the policyholder and the insurer.

2. Principles of Reinsurance Contract law

In this section, we will present selected provisions of the Principles of Reinsurance Contract Law from 2019 (hereinafter: the Principles)[37] that regulate matters

[34] Louis Torch, „An Examination of Reinsurers' Associations in Underlying Claims: The Iron Fist in the V on Fist in the Velvet Glove?" *The University of New Hampshire Law Review*, Vol. 3, No. 2/2005, 341–342.

[35] *Ibidem*.

[36] Nicholas J. Giles, „Rethinking the cooperation clause in standard liability insurance contracts", *University of Pennsylvania Law Review*, Vol. 161, No. 2/2013, 594.

[37] The Principles were published following approval by the UNIDROIT Governing Council at its 98th session held in May 2019. Simultaneously, the Governing Council recommended continuation of the project in the 2020–2022 Work Program to cover additional topics deemed relevant to this instrument.

concerning the relationship between the reinsurer and the reinsured. These provisions are based on rules defining clauses in the reinsurance contract, as previously discussed. A group of professors from universities in Zurich, Vienna, and Frankfurt initiated the project to draft the Principles with the aim of publishing and explaining customs and existing principles of reinsurance contract law.[38] This initiative, the Project Group on the Principles of Reinsurance Contract Law, defined the Principles in collaboration with the International Institute for the Unification of Private Law (UNIDROIT).[39] The Principles incorporate uniform rules on general contract law, referencing the UNIDROIT Principles of International Commercial Contracts.[40] The content of the Principles reflects a concept of reinsurance contract law that may be extracted as common to most jurisdictions. Finalization of this instrument is expected in 2025.[41] The Principles represent a novel concept for defining contract law.[42] The Principles consist of 27 articles organized into five chapters: 1. General Provisions; 2. Obligations of the Reinsurer and the Reinsured; 3. Rights of the Contracting Parties; 4. Loss Allocation; and 5. Loss Accumulation.[43] Here, we will focus specifically on provisions regulating the relationship between the reinsurer and the reinsured, particularly those concerning obligations related to claims handling.

First and foremost, the reinsured is obligated to notify the reinsurer of anticipated future claims. This enables the reinsurer to develop a financing and reserving plan for losses and to consider whether and to what extent it will monitor the reinsured's claims handling, in accordance with any claims control clause of this process.[44] The reinsured is not obligated to notify the reinsurer of every claim asserting a higher amount, nor of every category of claims that involves a minimal risk of litigation by multiple injured parties. However, the reinsured is obligated

This recommendation was adopted by the General Assembly at its 78th session and reaffirmed at its 81st session in December 2022, based on the Governing Council's advice to maintain the project in UNIDROIT's 2023–2025 Work Program until its completion by the end of 2024, as progress had been delayed during the pandemic when in-person meetings were not feasible. The UNIDROIT Secretariat continued to actively participate in the project; Principles of Reinsurance Contracts: Authorisation to proceed with publication, Governing Council, 105th session, UNIDROIT, Rome, 20–23 May 2025, 2.

[38] Mirjana Glintić, "Ograničenja izbora načela ugovornog prava reosiguranja kao merodavnog prava," *Pravni život*, No. 11/2019, 174.

[39] *Principles of Reinsurance Contract Law (Principles),* Project Group on Principles of Reinsurance Contract Law, International Institute for the Unification of Private Law (UNIDROIT), Zurich, Vienna, Frankfurt am Main 2019.

[40] International Institute for the Unification of Private Law (UNIDROIT), available at: *https://www.unidroit.org/*, accessed on July 22, 2025; Principles, III.

[41] „Principles of Reinsurance Contracts: Authorisation to proceed with publication", Governing Council, 105th session, UNIDROIT, Rome, 20–23 May 2025, 2.

[42] M. Glintić,183.

[43] Slobodan Jovanović, Ozren Uzelac, „Fakultativna međunarodna pravila u oblasti ugovornog prava reosiguranja", *Evropska revija za pravo osiguranja*, No. 1/2021, 40.

[44] Principles, 52; Article 2.4.1.

to notify the reinsurer when there exists a substantial probability that the reinsurer will be obligated to indemnify the claim.[45]

The Principles define the reinsured's obligation to act reasonably and prudently when settling claims that may trigger the reinsurance contract.[46] As previously stated, the nature of reinsurance places the reinsurer in a dependent position relative to the reinsured. Even where the reinsurance contract contains provisions concerning claims handling, granting rights to the reinsurer, the fact remains that the reinsured decides such claims and maintains effective control over them. The reinsured's conduct may be sanctioned only if it is fraudulent, or if the reinsured has committed a gross breach of rules in the claims settlement process.[47] Furthermore, the reinsured is obliged to undertake reasonable efforts to take loss mitigation measures, as well as to seek recovery from third parties whose acts or omissions contributed to the occurrence of the insured event, where the conditions are met.[48]

Pursuant to the Principles, the reinsured is obligated to comply with all limitations stipulated in the reinsurance contract, meaning that claims control and cooperation clauses must be respected. Additionally, the reinsured is obligated to share with the reinsurer information relevant to claims settlement or interpretation of the reinsurance contract. Such information may concern: claim amounts, reserved amounts, claims handling expense amounts, information regarding persons authorized to render decisions in such situations, interpretation of policies and other documents, expert reports, fulfillment of the reinsured's duties in good faith, documents concerning the institution of court proceedings, settlement agreements, and more.[49] Reinsureds must be aware that their decisions will often affect reinsurance coverage. If the reinsured selects one of two or more allocation methods, that increase available reinsurance coverage, this alone does not violate its duties; however, if the selected method is unjustified or proves to have been selected primarily to maximize reinsurance, a breach of duty by the reinsured will arise.[50]

According to the Principles, the reinsurer is entitled to be regularly informed of the reinsured's conduct following the occurrence of the insured event and in cases of expected losses.[51] Where an agreement is reached between the reinsured, as insurer, and its policyholder, where settlement may be concluded, the concept provided in the Principles stipulates that the reinsurer is obligated to accept the settlement concluded by the reinsured. On the other hand, the Principles also provide

[45] Principles, 52–53; S. Jovanović, O. Uzelac, 44.
[46] Principles, Article 2.4.2.
[47] Principles, 54.
[48] Principles, 56.
[49] Principles, 57.
[50] Principles, 57.
[51] Principles, Article 2.4.3.

for the follow the fortunes concept, which defines that the reinsurer will be "bound" by circumstances beyond the reinsured's control.[52] However, two requirements must be satisfied for a settlement. The first concerns the settlement being covered by the underlying insurance contract, and the second concerns its coverage within the scope of reinsurance coverage. Consideration must be given to ensuring the settlement was not concluded as a result of fraudulent conduct by the reinsured or that it did not result from gross negligence. Attention must be paid here to risks the reinsured may face if settlement is not concluded, as well as to the reinsured's conduct, which must be fair and undertaken with all necessary steps. Additionally, under the obligation to follow settlements, the relevant claim is the one recognized by settlement conclusion, and the reinsured does not need to prove that the claim falls within risks covered by the reinsurance.[53]

We have mentioned the follow the fortunes concept. This relates to situations the reinsured cannot control. Specifically, court or arbitral decisions fall outside its control. This applies even where the reinsurer disagrees with the reinsured's defense strategy in proceedings. However, if the reinsured failed to present obvious arguments in its favour (and thereby in favour of the reinsurer), the decision will be deemed rendered under the reinsured's control. The concept then does not apply, and acceptance of the claim by the reinsured will be defined in accordance with the follow the settlements concept. The same applies when a decision is rendered by default. The follow the fortunes concept also applies to substantial changes in exchange rates. If the value of the sum insured to be paid increases due to such changes, the reinsurer's liability also includes the additional costs arising from these changes. The situation is identical in cases of amendments to legislation governing the insurance contract.[54] For instance, if the law does not define an obligation to cover punitive amounts, and this prohibition is later repealed by legislative amendment, such a change extends the reinsured's obligation, and thereby the reinsurer's.[55] The Principles provide that the parties to the reinsurance contract are not required to include these two concepts.[56]

Finally, reference will be made to the Principle provision concerning the reinsured's duty to properly submit a claim for payment to the reinsurer, as well as

[52] This concept is set out in Article 2.4.3 of the Principles and relates to the reinsured and to its "fortunes" or "fate" in situations over which it has no control. In the USA, this term is used, as well as the term *follow-the-settlements*, which we also refer to in this paper. The term is likewise connected with the reinsured's duty of utmost good faith; however, we consider that the term itself cannot be used in our context. See L. Schiffer, "Understanding Reinsurance Terminology – Follow-the-Fortunes", available at: *https://www.irmi.com/articles/expert-commentary/understanding-reinsurance-terminology-follow-the-fortunes*.

[53] Principles, 58.

[54] S. Jovanović, O. Uzelac, 45.

[55] Principles, 60.

[56] Principles, 61.

the reinsurer's duty to indemnify the claim amount in accordance with the reinsurance contract.[57] The parties may freely specify the precise conditions and timing of payment.[58] In addition to the claim, the reinsured must submit appropriate documentation proving the claim is covered. When applying settlement rules, the reinsured is required only to prove that it acted reasonably and in accordance with the contract. The reinsurer bears an obligation to indemnify the claim in good faith as promptly as possible, if there is no dispute regarding the obligation. If the reinsurer and the reinsured do not have an existing, specific agreement in this regard, they may invoke established course of dealing between them or relevant custom or rule in the reinsurance market.[59] In cases of delayed payment of claims, the reinsured is entitled to reasonable and equitable interest applicable from the payment due date.[60]

V. Conclusion

The definition of claims cooperation and control clauses, together with other clauses in reinsurance contracts, serves to protect not only the reinsurer and the reinsured, that is, the reinsurance contract itself, but also the underlying insurance contract and the policyholder, whose indemnification often depends on both the scope of coverage defined in the reinsurance contract and the terms of that agreement. The fact that the reinsurer may be notified of claims handling following the occurrence of the insured event, as well as participate in settlement of such claims, whether involving achievement of agreement or settlement, or proceedings before a court or arbitral tribunal, represents an opportunity for dual control of claims submitted by the policyholder. This does not diminish the rights of the policyholder, nor those of the insurer as reinsured, but rather protects the insurance contractual relationship itself. Certainly, through the definition of these clauses, the reinsurer primarily protects its own interests, but this simultaneously protects the reinsurance relationship and the trust between the reinsurer and the reinsured. Additionally, through the definition of certain specified clauses, the reinsurer is transformed into an active participant in claims settlement.

In the Republic of Serbia, apart from certain provisions of the Insurance Law, reinsurance is not regulated. Certainly, future provisions regulating this institution should incorporate these clauses that clearly define the relationship between the reinsurer and the reinsured. Naturally, the provisions of the Principles should constitute the foundation for defining such rules. Their detailed regulation should be entrusted to general insurance or reinsurance conditions; however, they should certainly be regulated in general terms within statutory legislation.

[57] S. Jovanović, O. Uzelac, 45.
[58] Principles, Article 2.4.4.
[59] Principles, 62.
[60] Principles, 63; S. Jovanović, O. Uzelac, 45.

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REGULISANJE VEŠTAČKE INTELIGENCIJE U EVROPSKOJ UNIJI U OBLASTI OSIGURANJA

PREGLEDNI NAUČNI RAD

Apstrakt

Ovaj rad pruža konciznu pravnu analizu primene veštačke inteligencije (VI) u sektoru osiguranja unutar Evropske unije (EU), s posebnim osvrtom na relevantnost i korisnost za regulatorni pristup dotičnoj oblasti u Srbiji – njen budući regulatorni okvir. VI utiče i menja niz delatnosti, a delatnost osiguranja predstavlja značajno polje primene novih tehnologija, uključujući automatizaciju obrade šteta, personalizaciju usluga i prevenciju prevara. Jezgro ovog istraživanja obuhvata harmonizaciju dinamičnog razvoja VI sa postojećim regulatornim okvirom u EU, uz postavljanje pitanja transparentnosti algoritama, pravne odgovornosti i zaštite ličnih podataka. U radu se detaljno razmatra Akt o veštačkoj inteligenciji EU, koji klasifikuje sisteme VI prema nivou rizika, pri čemu su sistemi namenjeni za procenu rizika i određivanje cena klasifikovani kao visokorizični u životnom i zdravstvenom osiguranju. Ističe se potreba za kontinuiranim nadgledanjem usklađenosti osiguravača, povećanjem pismenosti zaposlenih u pogledu korišćenja VI, te za značajnim sankcijama za nepoštovanje regulative.

Ključne reči: veštačka inteligencija, osiguranje, regulisanje, Akt o veštačkoj inteligenciji EU.

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I Uvodna razmatranja

Glavni cilj rada jeste analiza sadašnjeg stanja i perspektiva regulacije VI u sektoru osiguranja Evropske unije. Posebno i detaljno razmatra se pristup identifikovanja ključnih regulatornih izazova i potencijalnih implikacija za osiguravajuće kuće i korisnike usluga osiguranja, te se na tom tragu istražuju relevantne inicijative i propisi EU koji se odnose na primenu VI. To je pre svega Akt o veštačkoj inteligenciji (AVI), uz procenu potencijalnog uticaja na inovacije i zaštitu prava u sektoru osiguranja. Pitanje pravne odgovornosti i zaštite ličnih podataka naročito je značajno u oblasti osiguranja i primene veštačke inteligencije u kontekstu Opšte uredbe o zaštiti podataka (*General Data Protection Regulation* – GDPR).[2] Konačno, rad nastoji da, u značajno manjoj meri, pruži uvide koji mogu biti korisni za razmatranje budućeg regulatornog okvira u Srbiji u ovoj oblasti.

U svrhu ostvarivanja prethodno definisanih ciljeva istraživanja, u radu se koristi kombinacija kvalitativnih istraživačkih metoda. Prvenstveno je sprovedena analiza relevantnih propisa i pravnih akata EU. Primarno je razmatrana usvojena verzija Akta o veštačkoj inteligenciji, kao i druge sektorske regulative koje indirektno utiču na primenu VI u osiguranju. Izvršena je analiza odabranih pristupa i rešenja u EU u vezi s regulacijom VI u osiguranju, na osnovu dostupnih studija, izveštaja i akademske i stručne literature, kao i izveštaja institucija EU i drugih međunarodnih organizacija koje se bave pitanjima veštačke inteligencije i osiguranja.

II Pravni okvir veštačke inteligencije u Evropskoj uniji i sektor osiguranja

Pristup EU veštačkoj inteligenciji zasnovan je na izvrsnosti i poverenju, gde Evropska unija VI sagledava kao „deo našeg života".[3] Građani i kompanije treba da koriste VI, sa svim njenim prednostima, ali uz istovremeni osećaj bezbednosti i zaštite, kao i zaštite osnovnih prava. Čini nam se da prethodna rečenica ima veliki značaj u sektoru osiguranja. Pre nego što je usvojen Akt o veštačkoj inteligenciji, EU je usvojila je niz dokumenata, odnosno konkretnih pravila i mera koji omogućavaju realizaciju navedenog pristupa (primera radi, doneta je Rezolucija Evropskog parlamenta o veštačkoj inteligenciji u digitalnom dobu iz 2022. godine, a Evropska centralna banka, među ostalim institucijama, dala je Mišljenje o Aktu o veštačkoj inteligenciji).[4]

[2] Uredba (EU) 2016/679 o zaštiti pojedinca u vezi sa obradom ličnih podataka i slobodnom kretanju takvih podataka, *OJ L 119* 4. 5. 2016.

[3] https://digital-strategy.ec.europa.eu/en/policies/european-approach-artificial-intelligence, 17. 9. 2025.

[4] European Parliament resolution of 3 May 2022 on artificial intelligence in a digital age (2020/2266(INI)), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022IP0140; European Central Bank,

Kominike Komisije EU u dokumentu „Veštačka inteligencija za Evropu" naglašava sledeće: „Veštačka inteligencija olakšava život i pomaže u rešavanju nekih od najvećih svetskih problema."[5] Bela knjiga o veštačkoj inteligenciji EU upućuje na to da je fokus upotrebe VI upravo na onim sektorima u kojima bi Evropa trebalo da postane svetski predvodnik, poput automobilske industrije, zdravstva, energetike, poljoprivrede, i, što je naročito značajno u kontekstu ovog rada, finansijskih usluga.[6]

Evropska komisija je 2018. godine osnovala Visoku stručnu grupu o veštačkoj inteligenciji (AI HLEG) koja je usvojila Etičke smernice za pouzdanu veštačku inteligenciju. Etičke smernice određuju pojam pouzdane veštačke inteligencije i njene tri komponente, koje treba da budu poštovane tokom celog životnog ciklusa sistema: 1) zakonita VI – poštovanje svih zakona i propisa koji se primenjuju; 2) etička VI – poštovanje etičkih načela i vrednosti i 3) otporna (robustna) VI sa tehničkog i socijalnog aspekta, jer veštačka inteligencija može prouzrokovati štetu i sa dobrim namerama.[7] U tom smislu, veoma je značajno pomenuti i izveštaj savetodavne stručne grupe EIOPA (Evropsko nadzorno telo za osiguranje i profesionalne penzije) – Načela upravljanja veštačkom inteligencijom: prema etičkoj i pouzdanoj veštačkoj inteligenciji u evropskom sektoru osiguranja. Načela upravljanja veštačkom inteligencijom koje je iznela EIOPA sumiraju određene etičke i pouzdane principe VI u osiguranju, upravo zbog njenog širenja u ovom sektoru, uz niz prednosti za osiguravajuća društva (detaljnije procene rizika i prakse određivanja cena, delotvornije upravljanje odštetnim zahtevima, efikasna borba protiv prevara, tačnost predviđanja, automatizacija, novi proizvodi i usluge, smanjenje troškova i dr.).[8] No, neophodno je obezbediti pravičnost, transparentnost, nediskriminaciju, pružanje adekvatnih objašnjenja, što za osiguravajuća društva nije lak posao.

Zato EIOPA predviđa principe za osiguravajuća društva, čija primena nije obavezna, uz napomenu da postoji permanentna potreba njihove revizije u budućnosti. Principi za osiguravače kada koriste sisteme VI tokom celokupnog životnog ciklusa su sledeći: Proporcionalnost – mere upravljanja proporcionalne potencijalnom

Opinion on the AI Act, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021AB0040, 17. 9. 2025;

[5] Communication from the Commission to the European Parliament, the European Council, The Council, The European Economic and Social Committee and the Committee of the Regions Artificial Intelligence for Europe, COM/2018/237, https://eur-lex.europa.eu/legal-content/HR/ALL/?uri=CELEX%3A52018DC0237, 18. 9. 2025, 1.

[6] European Commision, White Paper On Artificial Intelligence – A European approach to Excellence and Trust, Directorate-General for Communications Networks, Content and Technology, https://op.europa.eu/en/publication-detail/-/publication/ac957f13-53c6-11ea-aece-01aa75ed71a1, 18. 9. 2025, 3.

[7] High-Level Expert Group on Artificial Intelligence, Ethics Guidelines for Trustworthy AI, https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=60419, 18. 9. 2025, 2.

[8] EIOPA, Artificial Intelligence Governance Principles (EIOPA Principles): Towards Ethical and Trustworthy Artificial Intelligence in the European Insurance Sector, 2021, https://www.eiopa.europa.eu/eiopa-publishes-report-artificial-intelligence-governance-principles-2021-06-17_en, 18.09.2025.

uticaju određenog slučaja upotrebe VI na potrošače i/ili osiguravajuće kuće u cilju postizanja etičke i pouzdane upotrebe VI; Pravičnost i nediskriminacija – razmatranje rezultata sistema VI, uz uravnotežene interese svih uključenih zainteresovanih strana; treba izbeći pojačavanje postojećih nejednakosti, razmotriti pitanja finansijske inkluzije, ublažiti uticaj faktora rejtinga (npr. kreditni rezultati), izbeći prakse poput „spremnosti potrošača da plate", poštovati princip ljudske autonomije, koristiti objašnjive algoritme i dr.; Transparentnost i objašnjivost – koristiti objašnjive modele VI, omogućiti pristup adekvatnim mehanizmima za pravnu zaštitu, a objašnjenja treba da budu smislena i laka za donošenje informisanih odluka zainteresovanih strana; osiguravači moraju objasniti odluke koje su donete uz pomoć VI; Ljudski nadzor – uspostaviti adekvatne nivoe ljudskog nadzora, organizacionu strukturu osiguravača sa jasnim ulogama, odgovornost zaposlenih i praksu obuke za zaposlene; Upravljane podacima i vođenje evidencija – dobro upravljanje podacima na osnovu zakona koji se odnose na zaštitu podataka, podaci dobro zaštićeni i čuvani, vođenje odgovarajuće evidencije; omogućiti praćenje i reviziju; Robustnost i performanse – sistemi VI otporni i robustni; analizirati potencijal za prouzrokovanje štete, pratiti i kontinuirano procenjivati performanse; obezbediti zaštitu od sajber napada, te primenu VI u bezbednim IT infrastrukturama.[9]

1. Akt o veštačkoj inteligenciji Evropske unije i sektor osiguranja

Ovaj segment rada je usko fokusiran na detaljnu analizu Akta o veštačkoj inteligenciji, kao i njegovih ključnih odredaba relevantnih za osiguranje, počev od klasifikacije rizika i zaključno sa obavezama uspostavljanja i održavanja obaveza za visokorizične sisteme u osiguranju.

Akt (zakon) o veštačkoj inteligenciji EU (Artificial Intelligence Act – AI Act)[10] inicijalno je predložen aprila 2021. godine od strane Evropske komisije. Navedeni akt pretenduje da, na globalnom nivou, bude vodeći i sveobuhvatan pravni okvir za veštačku inteligenciju i rizike koje ona nosi. Finalizovan je 2024. godine, kada je i stupio na snagu, dok je njegova potpuna primena predviđena u roku od 24 meseca nakon stupanja na snagu. Intencija je da se reguliše razvoj i primena sistema veštačke inteligencije u različitim sektorima, uključujući osiguranje.[11] Akt kategorizuje sisteme VI prema nivou rizika (neprihvatljiv – zabranjen; visok, ograničen – rizik transparentnosti;

[9] EIOPA, Artificial intelligence governance principles: towards ethical and trustworthy artificial intelligence in the European insurance sector, https://www.eiopa.europa.eu/document/download/30f4502b-3fe9-4fad-b2a3-aa66ea41e863_en?filename=Artificial%20intelligence%20governance%20principles.pdf, 18. 9. 2025, 8.

[10] Akt o veštačkoj inteligenciji (Uredba (EU) 2024/1689 o utvrđivanju usklađenih pravila o veštačkoj inteligenciji), *OJ L, 2024/1689, 12. 7. 2024,* http://data.europa.eu/eli/reg/2024/1689/oj, 9. 5. 2025.

[11] EU Commission, EU Artificial Intelligence Act: Up-to-date developments and analyses of the EU AI Act, https://artificialintelligenceact.eu/, 9. 5. 2025.

minimalan).[12] Evropska komisija je pokrenula niz aktivnosti u kojima izražava potrebu odnosno traži ugovarače (podizvođače) – treće strane za *tehničku pomoć u sferi bezbednosti VI*. Ključne oblasti su: visokotehnološki kriminal, bezbednost VI, gubitak kontrole, manipulacija, ublažavanje rizika od hemijskog, biološkog, radiološkog i nuklearnog materijala (eng. *Chemical, Biological, Radiological and Nuclear Materials Risk* – CBRN) i sa prethodnim aspektima povezani rizici.[13]

Akt o veštačkoj inteligenciji sistem VI definiše kao:„… mašinski sistem oblikovan za rad s promenljivim nivoima autonomije koji nakon uvođenja može prikazati prilagodljivost, te koji, za eksplicitne ili implicitne ciljeve, iz ulaznih vrednosti koje prima, zaključuje kako valja generisati izlazne vrednosti kao što su predviđanja, sadržaj, preporuke ili odluke koje mogu uticati na fizička ili virtuelna okruženja".[14] Sistemi VI u osiguranju koji su u suprotnosti s vrednostima i principima EU biće zabranjeni, uz eliminisanje onih sistema VI u oblasti zdravlja koji predstavljaju značajne rizike po zdravlje, bezbednost i prirodnu sredinu (kritična infrastruktura, obrazovanje, zaposlenost, sprovođenje zakona, biometrijska identifikacija).[15]

Osnovni princip navedenog akta predstavlja pristup zasnovan na riziku – regulativa proporcionalna riziku u odnosu na različite sektore privrede, okolnosti i specifične primene i korišćenja i nivoa tehnološkog razvoja.[16] Sistemi VI ograničenog rizika pripadaju posebnoj kategoriji, uz izbegavanje manipulativnih sadržaja, širenje informacija posredstvom komunikacionih tehnologija ili pak zloupotrebu prepoznavanja emocionalnog statusa. Opšte pravilo vezuje se za transparentnost dobavljača određenih sistema VI i subjekte koji ih uvode, gde fizička lica dobijaju obaveštenje da su u interakciji sa sistemom VI.[17] Osiguravači moraju transparentno obaveštavati potencijalne i stvarne klijente o tome koje tehnologije VI koriste, kako su usklađeni s jednostavnim mehanizmima za osiguranike da raskinu ugovore.

Sistemi VI s minimalnim rizikom pripadaju grupi za koju se smatra da može prouzrokovati minimalan negativni efekt na ljude, okruženje. To, na primer, može biti zloupotreba video igara, filteri za spem koji u suštini eliminišu stvarne informacije i komunikaciju, specijalni zahtevi za dodatnu registraciju osiguranja kod lokalnih organa vlasti.[18]

[12] Akt o veštačkoj inteligenciji (AVI), čl. 1.

[13] EU CBRN Risk Mitigation – European Union, https://cbrn-risk-mitigation.network.europa.eu/index_en#:~:text=The%20acronym%20'CBRN'%20defines%20chemical,release,%20dissemination,%20or%20impacts, 19. 5. 2025.

[14] AVI, čl. 3, st. 1.

[15] EIOPA, Regulatory Framework Applicable to AI Systems in the Insurance Sector, https://www.eiopa.europa.eu/document/download/b53a3b92-08cc-4079-a4f7-606cf309a34a_en?filename=Factsheet-on-the-regulatory-framework-applicable-to-AI-systems-in-the-insurance-sector-july-2024.pdf, 2024, 23. 5. 2025.

[16] AVI, uvodna izjava 26.

[17] AVI, čl. 50.

[18] European Commission, Shaping Europe`s digital future, https://digital-strategy.ec.europa.eu/en/policies/regulatory-framework-ai, 23. 5. 2025.

Akt o veštačkoj inteligenciji osiguranje određuje kao visokorizični sistem u pogledu korišćenja VI, – posredi su sistemi VI namenjeni za procenu rizika i određivanje cena u odnosu na fizička lica u slučaju životnog i zdravstvenog osiguranja, dakle ne direktno u okviru pravila o klasifikaciji visokorizičnih sistema VI (čl. 6 Akta). Razlog je značajan uticaj na dobrobit i egzistenciju pojedinaca i osnovna ljudska prava – navedeni osetljivi sistemi moraju biti usklađeni s naglašeno strogim i preciznim zahtevima regulative.

Shodno tome, za visokorizične sisteme veštačke inteligencije primenjuje se niz pravila koja obuhvataju obaveze za sisteme VI u osiguranju koje se odnose na procene njihovog uticaja na osnovna prava, sisteme upravljanja rizikom, podatke i upravljanje podacima, tehničku dokumentaciju, čuvanje evidencije, transparentnost i pružanje informacija subjektima koji uvode sistem, upravljanje kvalitetom, ljudski nadzor i dr.[19]

Korišćenje sistema VI u sektoru osiguranja nameće još niz specifičnih zahteva, pre svega u pogledu dobavljača razvijenih sistema veštačke inteligencije, poput sistema upravljanja kvalitetom dobavljača, njihovih obaveza u vezi s dokumentacijom (osiguravajuća društva koja koriste VI sisteme moraju održavati tehničku dokumentaciju, u sklopu postojeće dokumentacije); finansijske institucije čuvaju evidenciju koju automatski generiše visokorizični sistem VI u sklopu dokumentacije koja se čuva na osnovu relevantnog prava EU o finansijskim uslugama.[20] Dobavljači za sisteme VI visokog rizika, u skladu sa čl. 72 Akta, uspostavljaju sistem praćenja nakon stavljanja na tržište (posttržišni monitoring) i kreiraju dokumentaciju za sistem (proporcionalno prirodi i rizicima sistema VI). Finansijske institucije koje već imaju svoj sistem i plan posttržišnog monitoringa mogu ih integrisati u svoje postojeće procese, u cilju obezbeđenja doslednosti, tačnosti i smanjenja opterećenja.

Akt o veštačkoj inteligenciji (AVI), nadalje, zabranjuje upotrebu sistema VI kojima se namerno manipuliše ljudskim ponašanjem (manipulativne ili obmanjujuće tehnike) ili iskorišćava slabost osetljivih društvenih grupa.[21] Strogo je se zabranjena primena skala i bodovanja građana kao i zloupotreba biometrijskih podataka u svrhe koje su nedozvoljene (npr. izvođenje zaključka o članstvu u sindikatu, njihovoj rasi i dr.). Ta regulativa konsekventno tretira upotrebu biometrijskih podataka u osiguranju klasifikujući je kao visokorizičnu ili je potpuno zabranjuje. Akt o digitalnim uslugama (*Digital Services Act – DSA*) i Akt o digitalnim tržištima (*Digital Markets Act – DMA*) usmereni su da kreiraju bezbedniji i sigurniji digitalni prostor u EU, uz zaštitu osnovnih prava korisnika i formiranje stabilnosti tržišta koje nudi izjednačene uslove za sve učesnike.[22]

[19] AVI, Odeljak 2. – Zahtevi za visokorizične sisteme VI.
[20] Analiza prema čl. 8 do 23, AVI Odeljak 2.
[21] AVI, čl. 5.
[22] European Commission, „The Digital Services package", https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package, 25. 5. 2025.

Važno je naglasiti i aktivnosti drugih međunarodnih organizacija u oblasti VI. Organizacija za međunarodnu saradnju i razvoj (OECD) usvojila je Principe koji se odnose AI, koji nisu pravno obavezujući, a sa Evropskom komisijom sarađuje u pogledu globalnog monitoringa i analize razvoja VI.[23] Ujedinjene nacije, takođe, promovišu globalnu kooperaciju u regulativi VI, i usvojile su niz dokumenata u ovoj oblasti, kao i Savet Evrope.[24]

2. Primena i izazovi regulative veštačke inteligencije u osiguranju

Izazovi i rizici u sektoru osiguranja odnose se na transparentnost, pravičnost i nediskriminaciju, a osiguravajuća društva imaju široku slobodu pri izboru mera upravljanja u konkretnim slučajevima upotrebe VI tokom celog životnog ciklusa sistema veštačke inteligencije, sve u cilju ostvarivanja prednosti koje nudi (brža i automatska obrada odštetnih zahteva, preciznija i detaljnija procena rizika, delotvorna borba protiv prevara). Prema EIOPA Principima za osiguravače, osiguravajuća društva treba da imaju u vidu sledeće: pojedine linije osiguranja su značajne za društvenu i finansijsku inkluziju (korporativna društvena odgovornost osiguravajućih društava) – postupanje na odgovarajući način i procena ishoda sistema VI, kako VI ne bi dodatno pojačala nejednakosti nesrazmernim uticajem na potrošače koji su u ranjivoj situaciji zbog ličnih okolnosti; koristiti objašnjive sisteme VI; uspostaviti ljudski nadzor (imenovanje zaposlenog to jest službenika za zaštitu ličnih podataka i za VI); definisanje jasnih uloga i odgovornosti zaposlenih, kao i obezbeđenje obuka zaposlenih; u cilju obezbeđenja odgovornosti osiguravajućih društava, neophodno je eliminisati pristrasnost u podacima za obuku, voditi evidenciju o korišćenim metodologijama modeliranja i načinu na koji su skupovi podataka obrađeni; primena sistema VI u otpornim i bezbednim IT infrastrukturama, praćenje tačnosti predviđanja sistema VI; pridržavanje važećih zakona, a konkretno zakonodavstvo utiče na izbor mera upravljanja veštačkom inteligencijom.[25]

Relevantno pravno analiziranje aplikacije veštačke inteligencije (VI) u sektoru osiguranja u Evropskoj uniji značajno je zbog činjenice da će se takav pravno-regulatorni pristup transplantirati u segmentu regulative u ovoj oblasti u Srbiji. Novi odnosi koji će nastati u našoj zemlji povodom primene veštačke inteligencije u različitim sektorima zahtevaju i novo normiranje, odnosno pravno uređenje. Vlada Republike Srbije usvojila je, drugu po redu, Strategiju za razvoj veštačke inteligencije za period

[23] https://ai-watch.ec.europa.eu/about/collaborations/oecd-ai-policy-observatory_en, 18. 9. 2025.
[24] https://unric.org/en/artificial-intelligence-in-the-international-sphere/; https://www.coe.int/en/web/artificial-intelligence/the-framework-convention-on-artificial-intelligence, 19. 9. 2025.
[25] EIOPA Opinion on AI Governance And Risk Management, 2025, https://www.eiopa.europa.eu/document/download/88342342-a17f-4f88-842f-bf62c93012d6_en?filename=Opinion%20on%20Artificial%20Intelligence%20governance%20and%20risk%20management.pdf, 17. 9. 2025, 5–17.

od 2025. do 2030. godine, koja sadrži nove ciljeve i mere, kako bi se obezbedio jasan i funkcionalan institucionalni i pravni okvir VI, unapredilo obrazovanje u toj oblasti, primenila rešenja veštačke inteligencije u javnom i privatnom sektoru i dr. Pomenuta Strategija određuje i rizike koje VI nosi, pogotovo u postupcima ostvarivanja prava kao što su npr. kreditiranje, zapošljavanje, osiguranje i dr., kao i rizike u pogledu povrede prava na privatnost kada se prikupljaju i obrađuju velike količine podataka.[26]

VI transformiše brojne industrije, sektore i delatnosti u EU. Jedna od najznačajnijih oblasti je svakako sektor osiguranja kao okosnica finansijskog i bankarskog sistema Evropske unije, i na nacionalnom nivou zemalja članica. Sektor osiguranja u Srbiji je dominantno u stranom vlasništvu krupnih osiguravajućih društava iz EU, što uz paralelni proces pristupanja Srbije Evropskoj uniji zahteva da pravo osiguranja naročito blisko prati navedeni nastanak i razvoj nove regulative. Uočava se proces automatizacije obrade šteta. Ponuda usluga osiguranja je rastuće personalizovana. Koriste se modeli za sofisticiranu kvantitativni i kvalitativnu procenu rizika, kao i prevenciju prevara. Osiguravačima su tako ponuđene neslućene perspektive unapređenja poslovne efikasnosti, uz stalno snižavanje troškova i ostvarivanje ušteda, i jednako važno unapređenje korisničkog iskustva. Time VI uvodi sledeću tehnološku revoluciju, ali i određene nepoznanice i rizike, koji će biti naročito kompleksni u sferi regulative, etike i zaštite ličnih podataka korisnika osiguranja.

Različite izazove odredиće različite situacije njenog korišćenja. Uticaj veštačke inteligencije je poput lavine nezaustavljivih i dubokih promena, čiji se krajnji tokovi, ciljevi i efekti ne mogu dovoljno precizno spoznati u sadašnjosti. Pravna regulativa VI u EU određuje čitav set pravila kojih će morati da se pridržavaju nacionalne vlade (kreiranje i sprovođenje propisa, izricanje kazni), kompanije korisnici VI (identifikovati sisteme veštačke inteligencije koji se koriste, odrediti rizike, voditi dokumentaciju za one visokorizične sisteme, ostvariti transparentnost, obezbediti ljudsku kontrolu i dr.), potrošači odnosno građani u pogledu informisanosti i zaštite) i dr. Prema Aktu o VI **(čl. 77, st. 2)**, svaka država **članica određuje javne organe,** to jest javna tela koja će nadzirati i sprovoditi obaveze u vezi sa zaštitom osnovnih prava pri korišćenju visokorizičnih sistema VI.[27] Takođe, osnivaju se i nacionalna nadležna tela i jedinstvene kontaktne tačke[28] koje sprovode prijavljivanje, nadziru tržište i preduzimaju odr**eđene mere u pogledu odgov**arajućeg nivoa kibernetičke bezbednosti.[29]

[26] Strategija razvoja veštačke inteligencije za period od 2025. do 2030. godine, https://www.srbija.gov.rs/extfile/sr/437304/strategija_vestacka_inteligencija054_cyr6.zip, 18. 9. 2025, 2.1

[27] Tako je, npr. Hrvatska imenovala različite ombudsmane i agencije u cilju zaštite osnovnih prava građana u kontekstu razvoja i primene veštačke inteligencije, https://mpudt.gov.hr/news-25399/list-of-competent-authorities-under-artificial-inteligence-act-notified/29658, 17. 9. 2025.

[28] Više o prenošenju zahteva za sprovođenje Akta o VI na primeru Italije, Nemačke, Luksemburga i Španije: Theodoros Karathanasis, „The AI Act: Balancing Implementation Challenges and the EU's Simplification Agenda", http://dx.doi.org/10.2139/ssrn.5311501, 2025, 10. 5. 2025, 4–9.

[29] AVI, čl. 70.

Na toj platformi definisali smo ključni problem istraživanja koji nastaje iz same potrebe za harmonizacijom dinamičnog razvoja VI sa postojećim regulatornim okvirom i praksom u EU koja je tek na startu. Na nivou EU veoma je značajna saradnja između tela EU i država članica, razmena informacija, bolja saradnja, kao i razmatranje pojednostavljenja propisa u ovoj oblasti, uz oprez da regulatorna zaštita koju obezbeđuje AVI ostane nepromenjena.[30] Važno je pitanje transparentnosti algoritama, njihove javne provere, odnosno ko će ih revidirati i potvrđivati valjanost i ispravnost.[31] Sledeće pitanje jeste ko je pravno i stvarno odgovoran za odluke donete korišćenjem VI. U praksi će nastajati problemi potencijalne diskriminacije osiguranika, otvaraće se pitanje kako efikasno zaštititi osetljive vitalne podatka klijenata.

Osiguravajuća društva koja potiču iz EU će svakako morati da se pridržavaju Akta. No, isto će važiti i za kompanije koje nude usluge građanima EU (npr. osiguravači iz Velike Britanije, ukoliko planiraju da na jedinstvenom tržištu u poslovnim operacijama koriste sisteme VI ili ih samo postavljaju za korišćenje na teritoriji EU, bez obzira na stvarnu fizičku lokaciju kompanije). Velika Britanija se posle Bregzita sve više približava i harmonizuje u većini regulative, na skoro svim poljima sa EU, ili kroz sporazume o regulatornoj saradnji, ali uz određeno odgađanje primene Akta. No, moguće je da će ga uskoro formalno usvojiti, i pored toga što ima mnoštvo svojih zakonskih rešenja i propisa koji regulišu ovu oblast, kroz „blagi regulatorni pristup".[32]

Harmonizacija sa Aktom o veštačkoj inteligenciji je sledeći korak za osiguravače, te procena rizika sistema VI u praksi, obavljanje pregleda potrebnih mera i sprovođenje regulatornog kontinuiranog monitoringa njihove primene. Zaposleni u osiguranju treba da se obrazuju i informišu o korišćenju VI, o svim sistemima veštačke inteligencije, ne samo o visokorizičnim, već i sistemima ograničenog rizika primene.

Akt predviđa stroge sankcije za nepoštovanje. Novčane kazne se mogu kretati do sedam posto globalnog godišnjeg prometa kompanije za prethodnu finansijsku godinu za kršenje odredaba o zabranjenim aplikacijama VI, do tri posto za kršenje drugih obaveza, i do 1,5 posto za davanje netačnih, nepotpunih ili obmanjujućih informacija.[33]

AVI EU kreiran je kako bi se osigurala odgovorna i pouzdana upotreba veštačke inteligencije. Akt stimuliše regulatorni okvir koji koristi svima uz istovremeno rešavanje mogućih pretnji zdravlju, sigurnosti i osnovnim ljudskim pravima. U kontekstu izricanja kazni, značajna je uloga tela koja nadziru tržište u državama

[30] T. Karathanasis, 20–23.

[31] EIOPA, Impact Assessment of EIOPA's Opinion on AI governance and risk management, 2025, dostupno na adresi: *https://www.eiopa.europa.eu/document/download/197892cf-5100-4cba-9f10-143b5e893559_en?filename=EIOPA-BoS-25-008%20-%20AI%20Opinion%20-%20Impact%20Assessment.pdf&prefLang=bg*, 20. 5. 2025.

[32] European Parliament, The United Kingdom and artificial intelligence, https://www.europarl.europa.eu/RegData/etudes/ATAG/2024/762285/EPRS_ATA(2024)762285_EN.pdf, 2024., 19. 5. 2025.

[33] AVI, čl. 99.

članicama EU. Ukoliko su u pitanju visokorizični sistemi koje koriste finansijske institucije, uključiće se i nacionalno telo koje ih finansijski nadzire.[34]

III. Pravno regulisanje specifičnih problema upotrebe veštačke inteligencije u osiguranju

Regulativa AVI je rezultat dugog procesa i kumuliranih napora i investiranja. Sledeći korak je da je osiguravajuća društva prihvate i razvijaju u okviru svog lanca kreiranja vrednosti.[35] Cilj Komisije je da budućnost osiguranja bude zasnovana na javnom poverenju, poštovanju ljudskih vrednosti i građanskih prava, uz oslonac na nove metode procene rizika, te unapređenje bezbednosti ljudi, prava i sloboda. AVI uvodi nove standarde korporativnog upravljanja, s ciljem da Komisija i Evropski odbor za veštačku inteligenciju valjano sarađuju u sprovođenju zakonske regulative gde će se većina zakonskih rešenja primenjivati od 2. avgusta 2026. godine.

VI će uticati na mehanizme i politiku cena, kao i na procene rizika, ali i pružanje određenih garancija u oblasti osiguranja. Precizni regulatorni zahtevi odnose se na kvalitet podataka, računovodstveni koncept „istinito i pošteno" prikazivanje, tehničku dokumentaciju, striktni nadzor koji sprovode ljudska bića. Sistemi VI će morati da poseduju određeni sistem autonomije od nepotrebne ljudske intervencije, sposobnost samoučenja i samorazvoja, sposobnost promene i prilagođavanja. Kompleksni aktuarski modeli u praksi postaće deo budućih AI klasifikovanih kao visokorizični modeli koji će morati da imaju tehničku mogućnost da ih koristi interna i eksterna revizija. Analitičari velikih podataka ulaze na širom otvoreno tržište VI u sektoru osiguranja.

Jedan od prvih koraka koji čeka osiguravače u EU jeste procena nivoa rizika postojećih i planiranih aplikacija VI, uz kreiranje novih modela korporativnog upravljanja, menadžmenta rizika u osiguranja i procenjivanja šteta. Predviđa se da će mnoge osiguravajuće kompanije formirati odbor za korporativno upravljanje veštačkom inteligencijom sa zadatkom da kreira i nadgleda implementacije razvojne strategije VI kroz njen životni ciklus. Uz AVI, relevantno je i sledeće zakonodavstvo: Direktiva o distribuciji osiguranja[36] u kontekstu poboljšanja standarda zaštite potrošača, direktiva Solventnost II,[37] kao i zakonska rešenja za institucije strukovnih

[34] AVI, čl. 74.

[35] EIOPA, Consultation Paper on Opinion on Artificial Intelligence Governance and Risk Management, https://www.eiopa.europa.eu/document/download/8953a482-e587-429c-b416-1e24765ab250_en?filename=EIOPA-BoS-25-007-AI%20Opinion.pdf, 2025, 23. 5. 2025, 3.

[36] Directive on insurance distribution, *OJ L 26, 02/02/2016*, http://data.europa.eu/eli/dir/2016/97/oj, 24. 5. 2025.

[37] Više: Iva Tošić, „Poslovanje osiguravajućih društava u digitalnom okruženju – Šta nam donosi DORA?", *Tokovi osiguranja*, br. 1/2025, 73.

(profesionalnih) penzijskih fondova, kao i veoma značajna i dalekosežna Direktiva o suzbijanju pranja novca.

U delatnosti osiguranja EU na velika vrata s pompom ulaze sistemi veštačke inteligencije zasnovani na algoritmima. Prethodno se od delatnosti osiguranja traži da se ubrzano prilagođava, da prihvata i dalje razvija sisteme VI, koristi mašinsko učenje, baze tekstualnih podataka (veliki jezički modeli), pogotovo u oblasti primene takozvanih „pametnih ugovora" u osiguranju.[38]

Proces ubrzane i možda preteći haotične transformacije osiguranja u EU započet je uvođenjem veštačke inteligencije. Da li će to biti kontrolisan ili delimično kontrolisan tok, odgovoriće budućnost.[39] Svakako se pred našim očima razvija revolucija uvođenja VI u osiguranje i ubrzano napuštanje značajnih segmenata tradicionalnog osiguranja kakvo je sada. Krucijalne promene procesa kvantifikacije i menadžmenta rizika su u toku. Razvijaju se nove usluge u delatnosti osiguranja. Unapređenje kvaliteta i obima komunikacije s klijentima postaje zapovest za osiguravače. U praksi se javljaju novi modeli analize informacija i podataka, koriste se prediktivne tehnike donošenja, sprovođenja i monitoringa poslovnih operacija osiguranja. Cilj je efikasno upravljanje rizikom, kao i formulisanje novih pristupa pružanju visoko personalizovanih osiguravajućih usluga.

Učešće veštačke inteligencije u lancu kreiranja vrednosti u osiguranju raste počev od procesa automatizacije, personalizacije usluga, prevencije prevara, metoda procena i upravljanja rizikom.[40] Regulatorni sistem VI u osiguranju u EU se usmerava da kreira solidan, stabilan i koherentan pravni okvir koji se efikasno bavi rizicima, na jednoj strani. Na drugoj strani, u naučnoj i opštoj javnosti raste strah i ističe se potreba zaštite i bezbednosti ličnih podataka, aspekata poverljivosti, a javlja se i strah od gubitka privatnosti i lične sigurnosti. Strateški put razvoja ide kroz jačanje i investiranje u IT, proširivanje mogućnosti dobijanja novih analitičkih uvida u podatke, uz aktivnu participaciju osiguranika u razvoju tehnologije VI.

Odnos i interakcija Akta o veštačkoj inteligenciji EU u delatnosti osiguranja i interakciji sa GDPR-om jeste odnos povratnih sprega, ali i nedorečenosti kontradiktornih aspekata regulative, jer pitanja nisu harmonizovana u procesu formiranja ova dva značajna segmenta.[41] VI u osiguranju će kreirati nove reke podataka koje će biti moguće obuhvatati, sistematizovati, analizirati i na toj osnovi donositi efikasne odluke i uspešno voditi poslovne operacije u osiguranju u skladu s regulativom. To je upravo

[38] Angelo Borselli, „Osiguranje putem algoritma", *Časopis za teoriju i praksu osiguranja,* br. 2/2018, 35–38.
[39] Branko Pavlović, Vesna Minić-Pavlović, „Snagom podataka do osiguranja budućnosti", *Zbornik radova SORS*, 33. susret osiguravača i reosiguravača Sarajevo, 2022, http://sors.ba/UserFiles/file/SorS/2022/Zbornik/03%20Sors%202022%20-%20Zbornik%20radova%20-%20Pavlovic.pdf, 20. 5. 2025, 153–182.
[40] Za više vid. Mihovil Anđelinović, „Potencijal primjene umjetne inteligencije u osiguranju", *Croatian Insurance Journal*, No. 10/2024, dostupno na adresi: https://hrcak.srce.hr/317516, 16. 5. 2025, 95–107.
[41] Maja Nisevic, Arno Cuypers, Jan De Bruyne, „Explainable AI: Can the AI Act and the GDPR go out for a Date?" January 15, 2024, SSRN: https://ssrn.com/abstract=5056022, 24. 5. 2025.

zbog činjenice da će uvođenje sistema VI u domenu procene rizika i determinisanja cena životnog i zdravstvenog osiguranja podrazumevati klasifikaciju visokog rizika.

Povratna sprega AVI i Opšte uredbe o zaštiti podataka je ključna. Uredba je primarno usmerena da ostvari ciljeve zaštite ličnih podataka i prava individua, dok se AVI bavi aspektima bezbednosti – sigurnosti i pouzdanosti samih sistema veštačke inteligencije. Akt precizira aspekte komplementarnosti kroz specificiranje tehničkih i organizacionih zahteva za visokorizične sisteme veštačke inteligencije u osiguranju. Pristup podrazumeva da se kroz primenu zahteva GDPR-a obezbeđuje zakonitost u procesima obrade podataka osiguranika, što znači minimiziranje podataka, jasnu i transparentnu svrhu obrade, limitiranje prava osiguravača na period čuvanja podataka, pojačanu zaštitu podataka i privatnosti.

U Hrvatskoj, državi članici EU, delatnost osiguranja prolazi kroz buru prave digitalne revolucije, gde nove softverske aplikacije i druge IT tehnologije unapređuju kvalitet usluga i ubrzavaju komunikaciju s klijentima,[42] sve u funkciji maksimizacije profita. Vlasnici vozila u Hrvatskoj već sada mogu pomoću mobilnog telefona ili tableta da procene štetu uz asistenciju stručnjaka za osiguranje na daljinu, a sam proces ne traje dugo.[43] Primera radi, „Croatia osiguranje" je razvilo posebnu aplikaciju koja omogućava brzo rešavanje manjih šteta i isplatu bez kašnjenja na licu mesta.[44] Prednost je valjanije i konkurentno formiranje cena, ali i prevencija prevara u isplati šteta. Istovremeno, VI pomaže u kreiranju visoko prilagođene ponude potrebama klijenata, onlajn kupovinu polisa, samostalni unos podataka i pristup, rezervisanje termina za medicinske preglede u okviru polisa zdravstvenog osiguranja i dr. Posebna pažnja osiguravajućih društava u Hrvatskoj usmerena je na aspekte bezbednosne zaštite podataka zbog činjenice da raste učestalost napada koji su sve više rizični.

Dobar primer korišćenja veštačke inteligencije u sektoru osiguranja u Sloveniji predstavlja jedna od najvećih kompanija Zavarovalnica „Triglav", koja primenjuje četbot pod nazivom AI TRIA u cilju pružanja podrške klijentima i odgovaranja na česta pitanja; VI koji upućuje zahteve odgovarajućim sektorima, VI za obradu i analizu dokumenata, VI za procenu štete, VI za analizu podataka o klijentima i dr.[45] Studija Evropskog parlamenta navodi upotrebu VI u sektoru osiguranja još pre usvajanja AVI. Tako kompanija „Royal Dutch Touring Club ANWB" obezbeđuje popust

[42] Zoran T. Ćirić, „Važnost komunikacije s klijentima u delatnosti osiguranja", *Tokovi osiguranja*, br. 1/2024, 211–212.

[43] „Croatia osiguranje", https://www.netokracija.com/osiguranje-digitalizacija-croatia-osiguranje-233536, 16. 5. 2025.

[44] Insurance Europe, Consumer hub, dostupno na adresi: https://www.insuranceeurope.eu/priorities/2943/consumer-hub; https://www.osiguranje.hr/ClanakDetalji.aspx?22482, 16. 5. 2025.

[45] https://www.triglav.eu/en/media/press-releases/press-release/when-ai-tria-speaks#:~:text=Last%20year %2C%20Trig lav%20also%20started,time%20via%20a%20voice%20interface; https://www.microsoft.com/en/customers/story/175 2754742424851 91-zavarovalnica-triglav-azure-openai-service-insurance-en-slovenia#:~:text=%E2%80%9CT he%20AI%20initiatives%20have%20saved,An%20even%20smoother%20customer%20experience, 17. 9. 2025.

u osiguranju automobila ukoliko vozači preuzmu aplikaciju koja će pratiti njihov stil vožnje. U drugim kompanijama razvijene su aplikacije koje prate aktivnost kupaca i njihov način života, čime se obezbeđuje popust na zdravstveno osiguranje; sporna primena VI kod kompanije „WeSee" predstavlja aplikacija za detektovanje emocija u cilju otkrivanja prevara u osiguranju i dr.[46]

Postavljaće se i pitanje koje će upotrebe VI od strane osiguravajućih društava biti sporne. Zato se delatnost osiguranja u zemljama EU veoma seriozno priprema za digitalnu transformacije primene veštačke inteligencije.[47] Nastaju nove forme osiguravajućih kuća, usko specijalizovanih za informacione tehnologije u osiguranju koje se bave digitalizacijom procesa i usluge (engl. *InsurTech*), ali i novi rizici.[48] Ta vrsta kompanija se može definisati kao inovativno korišćenje tehnologije u osiguranju i kao podgrupa u okviru FinTech-a, kompanija usmerenih na finansijsku tehnologiju.[49] Takve kompanije razvijaju rešenja u sferi usluga digitalnog osiguranja. „Veliki podaci" (engl. *Big data*) od ključnog su i rastućeg značaja kao primarni izvori informacija za osiguranje koje ih koristi za mašinsko učenje i formiranje modela VI. U analizama ima i suprotnih stavova da će VI, ne smanjiti, već povećati radno opterećenje zaposlenih. Mera poslovne efikasnosti i uspeha biće kapacitet zadržavanja postojećih i privlačenja novih klijenata, što će povratno zahtevati rastuća ulaganja u IT infrastrukturu i stalne obuke zaposlenih uz rastuće prisustvo InsurTech kompanija na tržištu osiguranja.[50] Klimatski rizici, o kojima se ne zna dovoljno, predstavljaju najveće rizike za poslovne modele i stabilnosti tržišta osiguranja, kao fizički rizici koji kreiraju nove izazove, uz astronomski rast različitih likvidiranih šteta.[51] Sve to povratno zahteva jačanje uloge osiguranja i zaštite osiguranika. Aspekti utvrđivanja pravne odgovornosti za štetu u eri veštačke inteligencije zahtevaju adekvatan regulatorni okvir. EU se opredeljuje za ujednačena pravna rešenja, što je ispravan put, pri čemu se težište regulatornog odgovora pomera ka razvojnim programerima u osiguranju, uz jačanje i preciziranje pravne odgovornosti.[52]

[46] European Parliament, Regulatory divregences in the draft AI act, Differences in public and private sector, 2022, https://www.europarl.europa.eu/thinktank/en/document/EPRS_STU(2022)729507, 17. 9. 2025, 17; 22.
[47] Martina Perković, „Umjetna inteligencija i big data tehnologija u industriji osiguranja", *Ilab Working Papers Series*, No. 01-05/2021, 4 i dalje.
[48] Anat Keller, Clara Martins Pereira, Martinho Lucas Pires , "The European Union's Approach to Artificial Intelligence and the Challenge of Financial Systemic Risk", *Multidisciplinary Perspectives on Artificial Intelligence and the Law* (eds. Henrique Sousa Antunes *et al.),* Springer, Cham, 2024, 415–416.
[49] Sonja D. Radenković, Azra Sućeska, Hasan Hanić, „Technological Foundations of Fintech", *Fintech in the Context of the Digital Economy Opportunity and Challenges* (ed. Hasan Hanić, Radislav Jovović), 2023, 98–99.
[50] Rastko Filipović, Integracija veštačke inteligencije u svakodnevnost osiguranja, https://www.deloitte.com/ce/en/about/story/our-markets/deloitte-serbia/integracija-ve-take-inteligencije-u-svakodnevnost-osiguranja.html, 20. 5. 2025.
[51] EIOPA, „The role of insurers in tackling climate change: challenges and opportunities", *The EUROFI Magazine, Stochkolm,* 2023, dostupno na adresi: https://www.eiopa.europa.eu/publications/role-insurers-tackling-climate-change-challenges-and-opportunities_en, 21. 5. 2025.
[52] Ivana. B. Ljutić, „Legal Implications of Fintech", *Fintech in the Context of the Digital Economy Opportunity and Challenges,* 2023, 194-208.

Pitanje pravila i pravnih rešenja vanugovorne odgovornosti s obzirom na veštačku inteligenciju predstavlja značajan izazov u Evropskoj uniji, pogotovo u svetlu suzbijanja rizika povezanih sa upotrebom VI, ali i upućivanja na njeno korišćenje.[53] U tom smislu, ključni elementi pravne regulative vanugovorne odgovornosti u pogledu VI jesu pravila koja se odnose na teret dokazivanja, prikupljanje informacija o visokorizičnim sistemima veštačke inteligencije od strane lica koja traže naknadu štete, objektivna odgovornost u pojedinim slučajevima,[54] prilagođavanje nacionalnih pravila država članica u pogledu građanskopravne odgovornosti koja se vezuje za VI, stroža regulativa i jača međunarodna saradnja, procena i osiguranje izloženosti odgovornosti kompanija, osiguranje od odgovornosti za sisteme VI, pravna sigurnost i dr.[55]

Pravni i etički izazovi primene VI u osiguranju se nižu. Automatizacija procena i isplata šteta otvoriće rastuće potencijale za osiguranje, pogotovo za osiguranje putnika. Turista će moći da pošalje račun za popravku preko mobilne aplikacije, uz korišćenje NLP-a (neurolingvističko programiranje) i kompjuterskog vida, identifikuje relevantne podatke (iznos, datum, vrsta usluge). Zatim sledi upoređivanje sa uslovima polise i automatsko odobravanje isplata ili preusmeravanje kompleksnih slučajeva zaposlenom operateru. Tu nastaju novi izazovi i rizici počev od regulative koja se odnosi na zaštitu ličnih podataka i Opšte uredbe o zaštiti podataka (GDPR).[56] Sistem će morati da obezbeđuje sigurnost podataka osiguranika u svim fazama (zakonito, transparentno, pošteno obrađivanje podataka, ograničenje na nužno u odnosu na svrhu obrađivanja, tačnost i ažurnost, arhiviranje samo koliko je potrebno u skladu sa svrhom obrade i dr.).[57] Budući koraci su anonimiziranje podataka korišćenjem pseudoimenovanja (pseudonimizacija) svuda gde je moguće, uz nužnu eksplicitnu saglasnost osiguranika za obradu ličnih podataka kroz VI.

Osiguravači će se susretati sa određenom dozom skepse i strahom da će klijenti gubiti poverenje i biti skloni pokretanju sporova. Rešenje je da se jasno i efikasno rešavaju žalbe bez upotrebe VI. Očekuje se i predviđa sve veća personalizacija polisa osiguranja. Za vozila će se koristiti telemetrijski podaci: brzina, pređeni kilometri, stil vožnje. VI će nuditi niže premije na osnovu procene rizika za dobre

[53] Liability Rules for AI, https://commission.europa.eu/business-economy-euro/doing-business-eu/contract-rules/digital-contracts/liability-rules-artificial-intelligence_en, 9. 5. 2025.

[54] Emmanuela Truli, „Non-contractual Liability in the Context of Artificial Intelligence: The Long Way to New EU Legislative Tools", *European Review of Private Law*, Vol. 31, No. 1/2023, https://www.researchgate.net/publication/382114755_Non- contractual_Liability_in_the_Context_of_Artificial_Intelligence_The_Long_Way_to_New_EU_Legislative_Tools, 23. 5. 2025, 47.

[55] European Commission, Proposal for a Directive of The European Parliament And of The Council on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive), COM/2022/496 final.

[56] European Parliament, The impact of General Data Protection Regulation (GDPR) on artificial intelligence, 2020, https://www.europarl.europa.eu/RegData/etudes/STUD/2020/641530/EPRS_STU(2020)641530_EN.pdf, 23. 5. 2025.

[57] Opšta uredba o zaštiti podataka, čl. 5.

vozače, pri čemu će neke kompanije nuditi atraktivnije (jeftinije) polise vozačima koji u određenom periodu prelaze manji broj kilometara.

Primena VI pokreće niz etičkih pitanja iz aspekta primene regulative GDPR-a, od pitanja saglasnosti osiguranika, jednakog tretmana osiguranika, npr. u različito naseljenim područjima, da li su navike „oštrijih i ofanzivnih" vozača unapred tretirane kao povećani rizik i dr. (poštovanje autonomije fizičkih lica, sprečavanje štete, transparentnost, bezbednost, zabrana diskriminacije i dr.).[58] Otvara se pitanje regulatorne usklađenosti na nacionalnom nivou – da li je u svim zemljama isti tretman osiguranika. Sistemi VI već pohranjuju ogromne količine podataka koji pružaju mogućnost analize i preventivne identifikacije sumnjivih odštetnih zahteva, česte prijave sličnih šteta, korišćenje usluga sumnjivih servisa.

IV Uticaj regulative Evropske unije u sferi veštačke inteligencije i budućnost u sektoru osiguranja

EU se u sferi regulisanja VI suočava sa izazovima lažnih pozitivnih rezultata. Konkretno, nastaje rizik da se legitimni zahtevi za naknadu štete pogrešno detektuju kao prevare. To povratno izaziva nezadovoljstvo osiguranika i povećava rizik od potencijalnih sudskih sporova. Regulativa i praksa treba da omoguće i uspostave ravnotežu između efikasnosti osiguranja i preciznosti naknade šteta. Algoritmi mogu biti pristrasni i nacionalno determinisani određenim podacima, kulturološkim elementima i društvenim normama, a socijalna objektivnost je nužan uslov.[59] Algoritmi u budućnosti moraće biti transparentni i omogućavati konstantnu reviziju, a sistemi VI moraju brže da se prilagođavaju kako bi održali efikasnost. Budući razvoj VI u osiguranju ima perspektivu jedino uz modele bolje procene rizika i razvoja usluga osiguranja.[60] U tome su naročito značajne procene rizika prirodno **i veštački izazvanih katastrofa s ljudskim faktorom (poplave, zemljotresi, požari u prirodi,** cunami itd.). VI će analizirati geolokacijske i klimatske podatke, istorijske vremenske serije, topografiju, demografske tokove i dr. Korišćenje VI u prethodnom kontekstu rezultira boljim i preciznijim kreiranjem polisa. Značajna je regulatorna saglasnost i monitoring regulatornih tela, rast poverenja klijenata i strogo poštovanje etičkih uslova, uz naglašenu transparentnost usluga osiguranja.

[58] The impact of General Data Protection Regulation (GDPR) on artificial intelligence, 50, 73 i dalje.

[59] EIOPA, Final Report on the Prudential Treatment of Sustainability Risks for Insurers, 2024, dostupno na adresi: https://www.eiopa.europa.eu/publications/final-report-prudential-treatment-sustainability-risks-insurers_en, 23. 5. 2025. 103–121.

[60] Petra Hielkema, „The Future of Cloud Computing and AI in the EU Insurance Sector", *Contribution to the Eurofi Magazine*, September 2024, https://www.eiopa.europa.eu/publications/future-cloud-computing-and-ai-eu-insurance-sector_en, 23. 5. 2025.

Implementacija AVI će imati duboke i dalekosežne pozitivne, ali i negativne efekte na delatnost osiguranja u EU, jer primena već postoji u praksi.[61] Jedna od vodećih osiguravajućih kuća „Munich Re" se u produženom periodu priprema i investira za razvoj VI. U kratkim crtama kroz naredne paragrafe parafraziraćemo taj, po našem mišljenju veoma značajan pristup oslonjen na citirani izvor. Smatraju da osiguravač može da unapređuje svoju operativnu efikasnost korišćenjem VI, mašinskog učenja i standardizovanjem poslovnih procesa. U procesu ugovaranja osiguranja, podaci velikog obima se upotrebljavaju u funkciji unapređenja tačnosti modela predviđanja rizika, usmeravaju namere i raspoloženje osiguravača, identifikuju se nove mogućnosti unakrsne ponude i prodaje usluga osiguranja, uz zadovoljne korisnike koji ostvaruju pozitivno iskustvo. Postojeći *know-how*, iskustvo i resursi nisu više adekvatni da pružaju mogućnost osiguravačima da koriste enormne obime podataka.

Negativne kritike u kontekstu složenosti primene Akta o VI su brojne u literaturi, počevši od složenosti samog propisa, brojnih izazova u njegovoj implementaciji, potencijalnih administrativnih opterećenja i dr.[62] Komisija je u februaru 2025. godine objavila Smernice o definiciji sistema VI, upravo u cilju pojednostavljenja Akta. U tim smernicama data je praktična primena pravnog koncepta predviđena Aktom o veštačkoj inteligenciji, kao svojevrsna pomoć dobavljačima i svim uključenim osobama u ovoj oblasti, zbog obezbeđenja delotvorne primene. Navedene smernice objavljene su zajedno sa Smernicama o zabranjenim praksama VI. Jačanje inicijativa na nivou EU, pogotovo Akcijskim planom za kontinent VI iz aprila 2025. godine, u toku je. Evropa nastoji da postane globalni predvodnik u oblasti VI.[63]

Prihvatanje, razvoj i uspešna aplikacija AI će biti pravi izazov za osiguravače u EU, a i za zemlje van EU u Evropi, pogotovo za zemlje kandidate. Razlog leži u činjenici nerazvijene institucionalne i regulatorne infrastrukture i prakse, na nižem nivou po svim kriterijumima o odnosu na članice EU.

V Implikacije i preporuke za Srbiju

Budućnost za Srbiju, kao zemlju u statusu kandidata za članstvo u EU, i činjenicu da su dominantna osiguravajuća društva u stranom vlasništvu, naročito iz

[61] Patric Greene, „AI transformation in insurance underwriting: Unlocking the power of predictive models", July 2024, https://automation-solutions.munichre.com/AI-Insurance-ebook.html?utm_source=website_medium=CTA-blog&utm_campaign=AI-underwriting-blogpost&utm_content=GC, 25. 5. 2025.

[62] Nuno Sousa e Silva, The Artificial Intelligence Act: Critical Overview, 2024, https://ssrn.com/abstract=4937150; Sandra Wachter, „Limitations and Loopholes in the EU AI Act and AI Liability Directives: What This Means for the European Union, the United States, and Beyond", *Yale Journal of Law & Technology*, Vol. 26, No. 3/2024, Almada, Marco, The EU AI Act in a Global Perspective, 2025, SSRN: https://ssrn.com/abstract=5083993, 17. 9. 2025.

[63] https://digital-strategy.ec.europa.eu/en/library/commission-publishes-guidelines-prohibited-artificial-intelligence-ai-practices-defined-ai-act; https://digital-strategy.ec.europa.eu/en/factpages/ai-continent-action-plan, 17. 9. 2025.

EU, jesu prediktivni modeli procena rizika, te upravljanja operacijama. Harmonizacija sa Aktom o veštačkoj inteligenciji EU je od izuzetnog značaja. Kada prethodno navedena regulativa bude usvojena, osiguravači će, takođe, s njom morati da se usklade. Veštačka inteligencija će srpskim osiguravačima otvarati nove mogućnosti obavljanja zadataka, na brži i efikasniji način, uštedu troškova i naročito efektivnije korišćenje ljudskog faktora. Modeli VI će učiniti procese reosiguranja bržim. Otvoriće se nove mogućnosti marketinških kampanja koje su visoko personalizovane. Procesi prijave štete, procene i naplate će biti pojednostavljeni i valjaniji uz veće zadovoljstvo osiguranika, manje sporova, zloupotreba i pronevera. Ljudski potencijali – zaposleni u osiguranju, biće efikasnije korišćeni kao vrsta pružanja kompleksne pomoći u procesu finalne verifikacije odluka VI. Iskustva osiguranika će se unapređivati. Personalizovane ponude i praćenje tokom životnog veka polise učiniće da mnoge neprijatne instance u tom procesu budu opravdano eliminisane. Planovi će biti bolje prilagođeni potrebama osiguranika i razvoju tržišta, uz zaštitu privatnosti i eliminisanje rasprostranjenosti agenata osiguranja. Detekcija prevara će sniziti potrebe za skupim eksternim sistemima s ljudskim faktorom. Glavni izazovi će biti u procesu kreiranja novih alata, pri čemu će osiguravajuće kuće u Srbiji u većini dobiti već standardni alat koji koriste centrale i grupe u EU, što će zahtevati angažovanje talenata kao jedan skup, osetljiv i dugotrajan proces.

Osiguravajuća društva u EU i u Srbiji već dugo posluju u veoma složenom okruženju pravnih i regulatornih normi i sistema. Realno je očekivati da će uvođenje VI povećati angažovanje regulatora, ne samo u EU već i na globalnom nivou. Budućnost pripada etičkoj primeni VI, transparentnoj od modela donošenja odluka do praćenja ciklusa osiguranja i zaštite bezbednosti podataka. Osiguravači u Srbiji moraće da obezbede odgovorno korišćenje VI, uz promociju poštene primene, korporativne odgovornosti i kredibilnosti, transparentnosti i potpune pravne usaglašenosti. Svakako da taj pristup otvara seriju važnih pitanja harmonizacije regulative u Srbiji sa onom u EU.[64]

Nacionalna asocijacija komesara za osiguranje odredila je da svi učesnici u tom procesu (osiguravači, entiteti posrednici, oni što igraju aktivnu ulogu u ovom procesu tokom životnog ciklusa VI, rejting agencije, pružaoci usluga o podacima, savetodavne organizacije, promoteri i dr.) treba da poštuju principe o veštačkoj inteligenciji.[65] Ti principi predstavljaju smernice za učesnike na relaciji veštačka inteligencija – osiguranje, mada nemaju težinu zakonske obaveze, jer primena nije pravno

[64] Ivana B. Ljutić *et al.*, „European Sustainability Reporting Standards: Lack of Progress, Alignement, and Harmonization in Western Balkans", *Economic Analysis: Applied Research in Emerging Markets. Special issue articles.* Vol. 57, No. 2/2024, 45–46.

[65] NAIC, „National Association of Insurance Commissioners (NAIC) Principles on Artificial Intelligence (AI)", Aug- 14, 2020, https://content.naic.org/sites/default/files/inline-files/AI%20principles%20as%20Adopted%20by%20the%2 0TF_0807.pdf, 25. 5. 2025.

obavezna. Smisao je da princip informiše i uspostavlja generalna očekivanja od svih učesnika i sistema VI osnaživanjem koncepata odgovornosti poslovanja, regulatorne usaglašenosti, transparentnosti, bezbednosti i poštenih ali i robustnih rezultata. Razvoj dopunskog održivog zdravstvenog osiguranja u Srbiji će se u značajnoj meri bazirati na uvođenju VI kao komplementarne usluge obaveznom zdravstvenom osiguranju, uz otvaranja perspektiva efikasnog upravljanja zdravstvenim rizikom.[66]

Unapređenje prekogranične interdisciplinarne saradnje će uvođenjem veštačke inteligencije dobiti novi zamah i eksponencijalno povećavati broj istraženih slučajeva. Napredne metode i tehnologije koje uvodi VI biće nezamenljiv alat u efikasnoj borbi protiv prevara u domenu osiguranja.[67] Osiguravajuća društva u Srbiji će kroz intenzivno korišćenje VI povećavati promet, učiniti usluge osiguranja dostupnim širem krugu korisnika, uz kontinuirano snižavanje troškova, pogotovo u sferi digitalne operativne otpornosti (DORA), GDPR i AVI.

VI Zaključak

Primena veštačke inteligencije (VI) u sektoru osiguranja u Evropskoj uniji predstavlja fundamentalnu transformaciju koja donosi značajne operativne prednosti, ali istovremeno postavlja složene pravne i etičke izazove. Akt o veštačkoj inteligenciji (AVI) EU pruža sveobuhvatan regulatorni okvir koji ima za cilj da osigura odgovornu, pouzdanu i etičku upotrebu VI, pogotovo u visokorizičnim segmentima osiguranja, kao što su određivanje cena i procena rizika. Analiza je pokazala da je transparentnost algoritama, pravna odgovornost za odluke donete uz pomoć VI, te zaštita ličnih podataka (u skladu sa GDPR-om) od ključnog značaja za izgradnju poverenja korisnika i stabilnost tržišta. Implementacija AVI zahteva od osiguravajućih društava procenu nivoa rizika postojećih i planiranih aplikacija veštačke inteligencije, uspostavljanje novih modela korporativnog upravljanja i menadžmenta rizika, kao i kontinuirani monitoring usklađenosti. Iako VI obećava povećanu efikasnost, personalizaciju usluga i efikasniju prevenciju prevara, izazovi poput potencijalne diskriminacije osiguranika i potrebe za nezavisnom revizijom algoritama moraju biti rešeni. Za Srbiju, kao zemlju kandidata za članstvo u EU, sa dominantnim osiguravajućim društvima u stranom vlasništvu iz EU, prihvatanje i harmonizacija s regulativom EU u oblasti VI je imperativ. To podrazumeva ne samo usvajanje relevantnih zakonskih rešenja, već i jačanje IT infrastrukture, kontinuiranu obuku zaposlenih i razvoj sopstvenih eksperata. Budućnost osiguranja leži u etičkoj i transparentnoj primeni VI, koja će omogućiti brže i efikasnije procese, od ugovaranja polisa do rešavanja šteta,

[66] Nataša Petrović Tomić, „Dopunsko zdravstveno osiguranje u funkciji doprinosa razvoju održivog sistema zdravstvene zaštite u Republici Srbiji", *Tokovi osiguranja,* br. 1/2024, 7 i dalje.

[67] Miloš M. Petrović, „Neophodnost bliže međunarodne saradnje različitih ustanova u borbi protiv prevara osiguranja", *Tokovi osiguranja,* br. 3/2020, 57–66; I. Tošić, 69–85.

uz istovremenu zaštitu prava i privatnosti osiguranika. Regulatorna tela, kako u EU tako i u Srbiji, imaće ključnu ulogu u kreiranju dinamičke ravnoteže između inovacija i neophodne zaštite, osiguravajući da razvoj VI u osiguranju služi dobrobiti društva.

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REGULATION OF ARTIFICIAL INTELLIGENCE IN THE EUROPEAN UNION IN THE FIELD OF INSURANCE

REVIEW SCIENTIFIC PAPER

Summary

This paper provides a concise legal analysis of the deployment of artificial intelligence (AI) in the insurance sector within the European Union (EU), with a particular focus on its relevance and utility for the regulatory approach to this area in Serbia – the future regulatory framework. AI influences and transforms a range of industries, and the insurance industry represents a significant field for the application of new technologies, including claims processing automation, service personalization, and fraud prevention. The key research problem focuses on harmonizing the dynamic development of AI with the existing regulatory framework in the EU, raising questions of algorithm transparency, legal liability, and personal data protection. The paper thoroughly examines the EU Artificial Intelligence Act, which classifies AI systems according to risk level, with systems intended for risk assessment and pricing classified as high-risk in life and health insurance. The need for continuous monitoring of insurers' compliance, increasing employee literacy regarding AI use, and significant penalties for non-compliance with regulations are emphasized.

Keywords: artificial intelligence, insurance, regulation, EU AI Act.

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I. Introductory considerations

The primary objective of this paper is to analyze the current state and prospects of AI regulation in the insurance industry of the European Union. The paper specifically and comprehensively examines the approach to identifying key regulatory challenges and potential implications for insurance companies and insurance service users, and consequently investigates relevant EU initiatives and regulations relating to the deployment of AI. This primarily concerns the Artificial Intelligence Act (AI Act), together with an assessment of its potential impact on innovation and the protection of rights in the insurance industry. The issue of legal liability and personal data protection is particularly significant in the field of insurance and the deployment of artificial intelligence in the context of the General Data Protection Regulation (GDPR).[2] Finally, the paper seeks, to a significantly lesser extent, to provide insights that may be useful for consideration of the future regulatory framework in Serbia in this field.

To achieve the previously defined research objectives, the paper employs a combination of qualitative research methods. Primarily, an analysis of relevant EU regulations and legal acts was conducted. The adopted version of the Artificial Intelligence Act was examined as the primary focus, along with other sector-specific regulations that indirectly affect the deployment of AI in insurance. An analysis of selected approaches and solutions in the EU regarding the regulation of AI in insurance were analysed, based on available studies, reports, academic and professional literature, as well as reports from EU institutions and other international organizations dealing with issues of artificial intelligence and insurance.

II. Legal framework for AI in the European Union and the insurance sector

The EU approach to artificial intelligence is based on excellence and trust, where the European Union views AI as "part of our lives".[3] Citizens and companies should be able to use AI and benefit from its advantages while enjoying a sense of safety, protection, and respect for fundamental rights. It appears to us that the preceding sentence holds great significance in the insurance sector. Prior to the adoption of the Artificial Intelligence Act, the EU adopted a series of documents, i.e. specific rules and measures that enable the realization of the stated approach (for example, the European Parliament Resolution on AI in the digital age was adopted

[2] Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, *OJ L 119*, 4. 5. 2016.

[3] *https://digital-strategy.ec.europa.eu/en/policies/european-approach-artificial-intelligence,* accessed on September 17, 2025.

in 2022, and the European Central Bank, among other institutions, issued its Opinion on the Artificial Intelligence Act).[4]

The European Commission Communication in the document "Artificial Intelligence for Europe2 emphasizes the following: "Artificial intelligence makes life easier and helps to solve some of the world's biggest challenges."[5] The EU White Paper on Artificial Intelligence indicates that the focus of AI use is precisely on those sectors in which Europe should become a global leader, such as the automotive industry, healthcare, energy, agriculture, and, particularly significant in the context of this paper, financial services.[6]

In 2018, the European Commission established the High-Level Expert Group on Artificial Intelligence (AI HLEG), which adopted Ethics Guidelines for Trustworthy Artificial Intelligence. The Ethics Guidelines define the concept of trustworthy artificial intelligence and its three components, which should be respected throughout the entire lifecycle of the system: 1) lawful AI – compliance with all applicable laws and regulations; 2) ethical AI – respect for ethical principles and values; and 3) robust AI from both technical and social aspects, as AI systems can cause harm even with good intentions.[7] In this regard, it is highly significant to mention the report of the EIOPA (European Insurance and Occupational Pensions Authority) expert advisory group – Artificial Intelligence Governance Principles: Towards Ethical and Trustworthy Artificial Intelligence in the European Insurance Sector. The Artificial Intelligence Governance Principles presented by EIOPA summarize certain ethical and trustworthy AI principles in insurance, precisely due to its proliferation in this sector, with numerous advantages for insurance companies (more detailed risk assessments and pricing practices, more effective claims management, efficient fraud prevention, predictive accuracy, automation, new products and services, cost reduction, etc.).[8] However, it

[4] European Parliament resolution of 3 May 2022 on artificial intelligence in a digital age (2020/2266(INI)), available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022IP0140; European Central Bank, Opinion on the AI Act, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021AB0040, accessed on September 17, 2025.

[5] Communication from the Commission to the European Parliament, the European Council, The Council, The European Economic and Social Committee and the Committee of the Regions Artificial Intelligence for Europe, available at: COM/2018/237, *https://eur-lex.europa.eu/legal-content/HR/ALL/?uri=CELEX%3A52018DC0237*, accessed on September 18, 2025, 1.

[6] European Commission, White Paper On Artificial Intelligence – A European approach to Excellence and Trust, , Directorate-General for Communications Networks, Content and Technology, available at: *https://op.europa.eu/en/publication-detail/-/publication/ac957f13-53c6-11ea-aece-01aa75ed71a1*, accessed on September 18, 2025, 3.

[7] High-Level Expert Group on Artificial Intelligence, Ethics Guidelines for Trustworthy AI, available at: *https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=60419*, accessed on September 18, 2025, 2.

[8] EIOPA, Artificial Intelligence Governance Principles (EIOPA Principles): Towards Ethical and Trustworthy Artificial Intelligence in the European Insurance Sector, 2021, available at *https://www.eiopa.europa.eu/eiopa-publishes-report-artificial-intelligence-governance-principles-2021-06-17_en*, accessed on September 18, 2025.

is necessary to ensure fairness, transparency, non-discrimination, and the provision of adequate explanations, which is not an easy task for insurance companies.

Therefore, EIOPA sets out principles for insurance companies using AI systems throughout their entire lifecycle. Although these principles are not binding, EIOPA notes that they will require ongoing revision in the future. The principles for insurers when using AI systems throughout the entire lifecycle are as follows: Proportionality – governance measures proportionate to the potential impact of a particular AI use case on consumers and/or insurance companies in order to achieve ethical and trustworthy use of AI; Fairness and non-discrimination – consideration of AI system outcomes, with balanced interests of all involved stakeholders; existing inequalities should not be reinforced, financial inclusion issues should be considered, the impact of rating factors (e.g. credit scores) should be mitigated, practices such as "willingness to pay" should be avoided, the principle of human autonomy should be respected, explainable algorithms should be used, etc.; Transparency and explainability – use of explainable AI models, provision of access to adequate mechanisms, and explanations should be meaningful and easily understood so as to enable stakeholders to make informed decisions; insurers must explain decisions made with the assistance of AI; Human oversight – establishment of adequate levels of human oversight, organizational structure with clearly defined roles and responsibilities, and provide training for employees; Data governance and record-keeping – insurers must ensure proper data governance in line with data protection legislation; data must be securely protected and stored; appropriate records must be kept to enable monitoring and auditing; Robustness and performance – AI systems resilient and robust; analyze potential for causing harm, monitor and continuously evaluate system performance; ensure protection against cyberattacks and the AI deployment in secure IT infrastructures.[9]

1. The European Union AI act and the insurance sector

This section of the paper is narrowly focused on a detailed analysis of the Artificial Intelligence Act, as well as its key provisions relevant to insurance, starting from risk classification and concluding with the obligations to establish and maintain requirements for high-risk systems in insurance.

The EU Artificial Intelligence Act (AI Act)[10] was initially proposed in April 2021 by the European Commission. This Act aspires to be, at the global level, the leading

[9] EIOPA, Artificial intelligence governance principles: towards ethical and trustworthy artificial intelligence in the European insurance sector, available at: *https://www.eiopa.europa.eu/document/download/30f4502b-3fe9-4fad-b2a3-aa66ea41e863_en?filename=Artificial%20intelligence%20governance%20principles.pdf*, accessed on September 18, 2025, 8.

[10] Artificial Intelligence Act (Regulation (EU) 2024/1689 laying down harmonised rules on artificial intelligence), *OJ L 2024/1689*, 12 July 2024, available at: *http://data.europa.eu/eli/reg/2024/1689/oj*, accessed on May 9, 2025.

and comprehensive legal framework for AI and the risks it entails. It was finalized in 2024, when it also entered into force, while its full application is scheduled within 24 months of its entry into force. The intention is to regulate the development and deployment of AI systems in various sectors, including insurance.[11] The Act categorizes AI systems according to the level of risk they pose (unacceptable – prohibited; high; limited – transparency risk; minimal).[12] The European Commission has launched a series of activities expressing the need for, or seeking, contractors (subcontractors) – third parties to provide *technical assistance in the field of AI safety*. Key areas are: high-tech crime, AI safety, loss of control, manipulation, mitigation of Chemical, Biological, Radiological and Nuclear Materials Risk (CBRN) and related risks.[13]

The Artificial Intelligence Act defines an AI system as: "...a machine-based system designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers from the input it receives how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments".[14] AI systems in insurance that are contrary to EU values and principles shall be prohibited, along with the elimination of those AI systems in the healthcare sector that pose significant risks to health, safety and the natural environment (critical infrastructure, education, employment, law enforcement, biometric identification).[15]

The fundamental principle of the said Act is the risk-based approach – regulation proportionate to the risk in relation to different economic sectors, circumstances and specific applications and uses and levels of technological development.[16] Limited-risk AI systems belong to a special category, with avoidance of manipulative content, dissemination of information through communication technologies, or the misuse of emotion-recognition systems. The general rule relates to the transparency of providers of certain AI systems and of deployers, whereby natural persons receive notification that they are interacting with an AI system.[17] Insurers are required to inform potential and existing clients transparently about the AI technologies they use, and how they comply with simple mechanisms for policyholders to terminate contracts.

[11] EU Commission, EU Artificial Intelligence Act: Up-to-date developments and analyses of the EU AI Act, available at: *https://artificialintelligenceact.eu/*, accessed on May 9, 2025

[12] Artificial Intelligence Act (AI Act), Art. 1.

[13] EU CBRN Risk Mitigation – European Union, available at: *https://cbrn-risk-mitigation.network.europa.eu/index_en#:~:text=The%20acronym%20'CBRN'%20defines%20chemical,release,%20dissemination,%20or%20impacts*, accessed on May 19, 2025.

[14] AI Act, Art. 3(1).

[15] EIOPA, Regulatory Framework Applicable to AI Systems in the Insurance Sector, available at: *https://www.eiopa.europa.eu/document/download/b53a3b92-08cc-4079-a4f7-606cf309a34a_en?filename=Factsheet-on-the-regulatory-framework-applicable-to-AI-systems-in-the-insurance-sector-july-2024.pdf*, 2024, accessed on May 23, 2025.

[16] AI Act, Recital 26.

[17] AI Act, Art. 50.

Minimal-risk AI systems belong to the group considered to potentially cause minimal negative effects on people and the environment. This may be, for example, misuse of video games, spam filters that essentially eliminate actual information and communication, special requirements for additional insurance registration with local authorities.[18]

The Artificial Intelligence Act classifies insurance as a high-risk system with regard to the use of AI – specifically, AI systems intended for risk assessment and pricing in relation to natural persons in the case of life and health insurance, thus not directly within the rules on classification of high-risk AI systems (Article 6 of the Act). The reason is the significant impact on the well-being and livelihood of individuals and fundamental human rights – these sensitive systems must comply with strict and precise regulatory requirements.

Accordingly, a set of rules applies to high-risk artificial intelligence systems, encompassing obligations for AI systems in insurance relating to fundamental rights impact assessments, risk management systems, data and data governance, technical documentation, record-keeping, transparency and provision of information to deployers, quality management, human oversight, etc.[19]

The use of AI systems in the insurance sector imposes a number of additional specific requirements, primarily regarding providers of developed AI systems, such as provider quality management systems, their obligations concerning documentation (insurance companies using AI systems must maintain technical documentation as part of existing documentation); financial institutions keep records automatically generated by the high-risk AI system as part of the documentation retained pursuant to the relevant EU financial services legislation.[20] Providers of high-risk AI systems, pursuant to Article 72 of the Act, establish a post-market monitoring system and create documentation for the system (proportionate to the nature and risks of the AI system). Financial institutions that already have their own post-market monitoring system and plan may integrate them into their existing processes, in order to ensure consistency, accuracy and reduce burden.

Furthermore, the Artificial Intelligence Act (AI Act) prohibits the use of AI systems that deliberately manipulate human behavior (manipulative or deceptive techniques) or exploit vulnerabilities of sensitive social groups.[21] The application of social scoring and citizen scoring is strictly prohibited, as is the misuse of biometric data for impermissible purposes (e.g. inferring trade union membership, race, etc.). This regulation consequently treats the use of biometric data in insurance as either

[18] European Commission, Shaping Europe`s digital future, available at: *https://digital-strategy.ec.europa.eu/en/policies/regulatory-framework-ai*, accessed on May 23, 2025.
[19] AI Act, Section 2 – Requirements for high-risk AI systems.
[20] Analysis pursuant to Articles 8 to 23 of the AI Act, Section 2.
[21] AI Act, Art. 5.

high-risk or entirely prohibited. The *Digital Services Act (DSA)* and the *Digital Markets Act (DMA)* aim to create a safer and more secure digital environment in the EU, ensuring the protection of users' fundamental rights and establishing market stability that offers a level playing field for all participants.[22]

It is also important to emphasize the activities of other international organizations in the field of AI. The Organisation for Economic Co-operation and Development (OECD) adopted AI Principles, which are not legally binding, and cooperates with the European Commission regarding global monitoring and analysis of AI development.[23] The United Nations also promotes global cooperation on AI regulation, and has adopted a series of documents in this area, as has the Council of Europe.[24]

2. Application and challenges of AI Regulation in Insurance

The challenges and risks in the insurance sector relate to transparency, fairness and non-discrimination, and insurance companies have broad discretion in selecting governance measures in specific AI use cases throughout the entire lifecycle of the AI system, all with the aim of achieving the advantages it offers (faster and automated claims processing, more precise and detailed risk assessment, effective fraud prevention). According to the EIOPA Principles for Insurers, insurance companies should consider the following: certain lines of insurance are significant for social and financial inclusion (corporate social responsibility of insurance companies) – acting appropriately and assessing AI system outcomes, so that AI does not further reinforce inequalities through disproportionate impact on consumers in vulnerable situations due to personal circumstances; using explainable AI systems; establishing human oversight (appointing an employee, i.e. a data protection officer and an AI officer); defining clear roles and responsibilities of employees, as well as ensuring employee training; in order to ensure accountability of insurance companies, it is necessary to eliminate bias in training data, keep records of the modeling methodologies used and the manner in which datasets are processed; applying AI systems in resilient and secure IT infrastructures, monitoring the accuracy of AI system predictions; adhering to applicable laws, as legislation specifically influences the selection of AI governance measures.[25]

[22] European Commission, „The Digital Services package", available at: *https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package*, accessed on May 25, 2025.

[23] *https://ai-watch.ec.europa.eu/about/collaborations/oecd-ai-policy-observatory_en*, accessed on September 18, 2025.

[24] https://unric.org/en/artificial-intelligence-in-the-international-sphere/; https://www.coe.int/en/web/artificial-intelligence/the-framework-convention-on-artificial-intelligence, accessed on September 19, 2025.

[25] EIOPA Opinion on AI Governance And Risk Management, 2025, available at: *https://www.eiopa.europa.eu/document/download/88342342-a17f-4f88-842f-bf62c93012d6_en?filename=Opinion%20on%20Artificial%20Intelligence%20governance%20and%20risk%20management.pdf*, accessed on September 19, 2025, 5–17.

Relevant legal analysis of the application of artificial intelligence (AI) in the insurance sector in the EU is significant due to the fact that such a legal-regulatory approach will be transplanted into the regulatory segment in this area in Serbia. The new relationships that will arise in our country regarding the deployment of AI in various sectors require new regulation, i.e. legal framework. The Government of the Republic of Serbia has adopted the second Artificial Intelligence Development Strategy for the period from 2025 to 2030, which contains new objectives and measures to ensure a clear and functional institutional and legal AI framework, improve education in this field, apply AI solutions in the public and private sectors, etc. The aforementioned Strategy also identifies risks associated with AI, especially in procedures for exercising rights such as credit provision, employment, insurance, etc., as well as risks related to privacy violations when large volumes of data are collected and processed.[26]

AI is transforming numerous industries, sectors and activities in the EU. One of the most significant areas is certainly the insurance sector, which serves as a cornerstone of the European Union's financial and banking system, and at the national level of member states. The insurance sector in Serbia is predominantly under foreign ownership of major insurance companies from the EU, which, along with the parallel process of Serbia's accession to the EU, requires that insurance law particularly closely follows the emergence and development of this new regulation. Automation of claims processing is becoming evident. The insurance services offering is increasingly personalized. Models are used for sophisticated quantitative and qualitative risk assessment, as well as fraud prevention. Insurers are offered unprecedented opportunities for improving operational efficiency, with continuous cost reduction and achieving savings, and equally importantly, improving customer experience. Thus, AI introduces the next technological revolution, but also certain unknowns and risks, which will be particularly complex in the sphere of regulation, ethics, and protection of insurance users' personal data.

Different challenges will be determined by different situations of its use. The impact of AI is like an avalanche of unstoppable and profound changes, whose ultimate course, objectives and effects cannot be precisely understood at present. EU AI legal regulation establishes an entire set of rules that national governments (creating and implementing regulations, imposing penalties), AI user companies (identifying AI systems in use, assessing risks, maintaining documentation for high-risk systems, ensuring transparency, ensuring human oversight, etc.), consumers or citizens regarding information and protection), and others. According to the AI Act (Art. 77, paragraph 2), each Member State designates public authorities, i.e. public

[26] Strategy for the Development of Artificial Intelligence for the Period 2025–2030, available at: *https://www.srbija.gov.rs/extfile/sr/437304/strategija_vestacka_inteligencija054_cyr6.zip*, accessed on September 18, 2025, 2.

bodies that will monitor and enforce obligations related to the protection of fundamental rights when using high-risk AI systems.[27] Additionally, national competent authorities and single points of contact are established[28] to handle notifications, monitor the market and take certain measures regarding the appropriate level of cybersecurity.[29]

On this platform, we have defined the key research problem arising from the very need to harmonize the dynamic development of AI with the existing regulatory framework and practice in the EU, which is still in its early stages. At the EU level, cooperation between EU bodies and member states, information exchange, better cooperation, as well as consideration of regulatory simplification in this area is very significant, with caution that the regulatory protection provided by the AI Act remains unchanged.[30] An important issue is the transparency of algorithms, their public verification, i.e. who will review them and confirm their validity and correctness.[31] The next question concerns who is legally and actually responsible for decisions made using AI. In practice, problems of potential discrimination of policyholders will arise, raising the question of how to effectively protect clients' sensitive and vital data.

Insurance companies originating from the EU will certainly have to comply with the AI Act. However, the same applies to companies providing services to EU citizens (e.g. insurers from the United Kingdom, if they plan to use AI systems in business operations on the single market or merely make them available for use on EU territory, regardless of the actual physical location of the company). After Brexit, the UK is increasingly aligning and harmonizing most of its regulation in almost all fields with the EU, either through regulatory cooperation agreements, albeit with certain delays in applying the AI Act. However, a formal adoption is expected in the near future, despite having a multitude of its own legal solutions and regulations governing this area, through a "light-touch regulatory approach".[32]

[27] For example, Croatia has appointed various ombudsmen and agencies to protect citizens' fundamental rights in the context of AI development and deployment, available at: *https://mpudt.gov.hr/news-25399/list-of-competent-authorities-under-artificial-inteligence-act-notified/29658*, accessed on September 17, 2025.

[28] For more on the transposition of AI Act enforcement requirements in Italy, Germany, Luxembourg, and Spain: Theodoros Karathanasis, The AI Act: Balancing Implementation Challenges and the EU's Simplification Agenda, available at: *http://dx.doi.org/10.2139/ssrn.5311501*, 2025, accessed on May, 2025, 4–9.

[29] AI Act, Art. 70.

[30] T. Karathanasis, 20–23.

[31] EIOPA, Impact Assessment of EIOPA's Opinion on AI governance and risk management, 2025, available at: *https://www.eiopa.europa.eu/document/download/197892cf-5100-4cba-9f10-143b5e893559_en?filename=EIOPA-BoS-25-008%20-%20AI%20Opinion%20-%20Impact%20Assessment.pdf&prefLang=bg*, accessed on May 20, 2025.

[32] European Parliament, The United Kingdom and artificial intelligence, available at: *https://www.europarl.europa.eu/RegData/etudes/ATAG/2024/762285/EPRS_ATA(2024)762285_EN.pdf*, accesed on May 19, 2025.

Harmonization with the AI Act is the next step for insurers, including risk assessment of AI systems in practice, conducting reviews of necessary measures and implementing continuous regulatory monitoring of their application. Insurance employees should be educated and informed about the use of AI, about all AI systems, not only high-risk ones, but also limited-risk application systems.

The Act stipulates strict sanctions for non-compliance. Financial penalties may reach up to 7% of the company's total global annual turnover for the preceding financial year for violations of provisions on prohibited AI applications, up to 3% for breaches of other obligations, and up to 1.5% for providing inaccurate, incomplete or misleading information.[33]

The EU AI Act was created to ensure responsible and trustworthy use of artificial intelligence. The EU AI Act is designed to ensure responsible and trustworthy AI use. The Act promotes a regulatory framework that benefits everyone while simultaneously addressing potential risks to health, safety and fundamental human rights. In the context of imposing penalties, the role of market supervisory authorities in EU member states is significant. In the case of high-risk systems used by financial institutions, the national body that provides financial supervision over them will also be involved.[34]

III. Legal regulation of specific issues in the use of AI in insurance

The AI Act regulation is the result of a lengthy process and cumulative efforts and investment. The next step is for insurance companies to adopt it and develop it within their value creation chain.[35] The Commission's objective is to ensure that the future of insurance is based on public trust, respect for human values and civil rights, with reliance on new risk assessment methods and enhancement of human safety, rights and freedoms. The AI Act introduces new corporate governance standards, with the aim that the Commission and the European AI Board cooperate effectively in implementing legal regulation, where most legal solutions will apply from August 2, 2026.

AI will impact pricing mechanisms and policies, risk assessments, as well as the provision of certain guarantees in the field of insurance. Specific regulatory requirements relate to data quality, the accounting concept of "true and fair" pre-

[33] AI Act, Art. 99.

[34] AI Act, Art. 74.

[35] EIOPA, Consultation Paper on Opinion on Artificial Intelligence Governance and Risk Management, 2025, available at: *https://www.eiopa.europa.eu/document/download/8953a482-e587-429c-b416-1e24765ab250_en?filename=EIOPA-BoS-25-007-AI%20Opinion.pdf*, 2025, accessed on May 23, 2025, 3.

sentation, technical documentation, and strict human oversight. AI systems will have to possess a certain system of autonomy from unnecessary human intervention, self-learning and self-development capabilities, and the ability to change and adapt. Complex actuarial models in practice will become part of future AI systems classified as high-risk models that will have to have the technical capability to be used by internal and external audits. Big data scientists are entering through wide-open doors of AI in insurance.

One of the first steps awaiting insurers in the EU is the assessment of the risk level of existing and planned AI applications, along with the creation of new corporate governance models, insurance risk management and claims assessment processes. Many insurance companies are expected to establish AI corporate governance boards tasked with creating and overseeing the implementation of an AI development strategy throughout its lifecycle. Alongside the AI Act, the following legislation is also relevant: the Insurance Distribution Directive[36] in the context of improving consumer protection standards, the Solvency II Directive,[37] as well as legal solutions for occupational retirement institutions, and the highly significant and far-reaching Anti-Money Laundering Directive.

In the EU insurance sector, algorithm-based AI systems are entering in full force. Previously, the insurance sector is required to adapt rapidly, to adopt and further develop AI systems, use machine learning, textual databases (large language models), especially in the application of so-called "smart contracts" in insurance.[38]

The process of accelerated and perhaps excessively chaotic transformation of insurance in the EU has begun with the introduction of AI. Whether this will be a controlled or partially controlled course remains to be seen.[39] Certainly, a revolution in the introduction of AI in insurance and the rapid abandonment of significant segments of traditional insurance as it is now is unfolding before our eyes. Crucial changes in the quantification and risk management process are underway. New insurance services are being developed in the insurance sector. Improving the quality and scope of communication with clients is becoming imperative for insurers. In practice, new models of information and data analysis are emerging, predictive techniques are being used for making, implementing and monitoring insurance

[36] Directive on insurance distribution, *OJ L 26, 02/02/2016*, available at: *http://data.europa.eu/eli/dir/2016/97/oj*, accessed on May 24, 2025.

[37] Iva Tošić, "Poslovanje osiguravajućih društava u digitalnom okruženju – Šta nam donosi DORA?", *Tokovi osiguranja*, No. 1/2025, 73.

[38] Angelo Borselli, "Osiguranje putem algoritma", *Časopis za teoriju i praksu osiguranja,* No. 2/2018, 35–38.

[39] Branko Pavlović, Vesna Minić-Pavlović, „Snagom podataka do osiguranja budućnosti", *Coolection of Papers SORS*, 33rd Meeting of Insurers and Reinsurers, 2022, available at: *http://sors.ba/UserFiles/file/SorS/2022/Zbornik/03%20Sors%202022%20-%20Zbornik%20radova%20-%20Pavlovic.pdf*, accessed on May 20, 2025, 153–182.

business operations. The objective is effective risk management, as well as the development of new approaches to delivering highly personalized insurance services.

AI participation in the insurance value chain is growing, starting from automation processes, service personalization, fraud prevention, and risk assessment and management methods.[40] The AI regulatory system in insurance in the EU is aimed at creating a solid, stable and coherent legal framework that effectively addresses risks. On the other hand, concerns are growing in the scientific and general public regarding personal data protection, confidentiality, privacy loss, and personal security. The strategic development pathway goes through strengthening and investing in IT, expanding the possibilities of obtaining new analytical insights into data, with active participation of policyholders in the development of AI technology.

The relationship and interaction of the EU AI Act in the insurance sector and the GDPR is one of feedback loops, but also of unresolved and contradictory regulatory elements, as the issues were not harmonized during the development of these two significant frameworks.[41] AI in insurance will create new data streams that will be possible to collect, systematize, analyze and used for effective decision-making and operational management in insurance in accordance with regulation. This is precisely due to the fact that the introduction of AI systems used for life and health insurance risk assessment and pricing will be classified as high-risk.

The feedback loop between the AI Act and the GDPR is crucial. The Regulation is primarily aimed at achieving the objectives of personal data protection and individual rights, while the AI Act addresses AI system safety, security, and reliability. The Act specifies aspects of complementarity by setting out the technical and organizational requirements for high-risk AI systems in insurance. The approach implies that through the application of GDPR requirements, lawfulness is ensured in policyholder data processing, which means data minimization, clear and transparent purpose of processing, limitation of insurers' rights to the data retention period, enhanced data and privacy protection.

In Croatia, an EU member state, the insurance sector is going through the storm of a true digital revolution, where new software applications and other IT technologies improve service quality and accelerate communication with clients,[42] all in the function of profit maximization. Vehicle owners in Croatia can already assess damage using a mobile phone or tablet, with remote assistance from an insurance

[40] Mihovil Anđelinović, "Potencijal primjene umjetne inteligencije u osiguranju", *Croatian Insurance Journal*, No. 10/2024, 95–107.

[41] Maja Nisevic, Arno Cuypers, Jan De Bruyne, "Explainable AI: Can the AI Act and the GDPR go out for a Date?", SSRN, 15 January 2024, available at: *https://ssrn.com/abstract=5056022*, accessed on May 24, 2025.

[42] Zoran T. Ćirić, „Važnost komunikacije s klijentima u delatnosti osiguranja", *Tokovi osiguranja*, No. 1/2024, 211–212.

expert, and the process is completed quickly.[43] For example, "Croatia osiguranje" has developed a special application that enables quick settlement of minor claims and on-the-spot payment without delay.[44] The advantage is better and more competitive pricing, but also fraud prevention in claims payment. At the same time, AI helps in creating highly customized offers tailored to client needs, online policy purchases, self-service data entry and access, appointment scheduling for medical examinations within health insurance policies, etc. Special attention among insurance companies in Croatia is directed toward aspects of data security protection, given the growing frequency of attacks and they are becoming increasingly risky.

A good example of the use of AI in the insurance sector in Slovenia is one of the largest companies, Zavarovalnica "Triglav", which uses a chatbot called AI TRIA with the aim of providing customer support and answering FAQs; AI that directs requests to appropriate sectors, AI for document processing and analysis, AI for damage assessment, AI for customer data analysis, etc.[45] A study by the European Parliament cites the use of AI in the insurance sector even prior to the adoption of the AI Act. Thus, the company "Royal Dutch Touring Club ANWB" provides a discount on car insurance to drivers who download an application that will monitor their driving behavior. In other companies, applications have been developed that track customer activity and lifestyle, thereby providing a discount on health insurance. A particularly controversial use of AI is found in the company 'WeSee,' which employs an emotion-recognition application aimed at detecting insurance fraud and similar practices.[46]

The question will also arise as to which uses of AI by insurance companies will be considered disputable. Therefore, the insurance sector in EU countries is very seriously preparing for the digital transformation of deployment of artificial intelligence.[47] New forms of insurance companies are emerging, narrowly specialized in information technologies in insurance that deal with digitalisation of processes and services (*InsurTech*), but also new risks.[48] This type of company can be defined as

[43] "Croatia osiguranje", available at: *https://www.netokracija.com/osiguranje-digitalizacija-croatia-osiguranje-233536*, accessed on May 16, 2025.

[44] Insurance Europe, Consumer hub, available at: *https://www.insuranceeurope.eu/priorities/2943/consumer-hub*; *https://www.osiguranje.hr/ClanakDetalji.aspx?22482*, accessed on May 16, 2025.

[45] *https://www.triglav.eu/en/media/press-releases/press-release/when-ai-tria-speaks*; *https://www.microsoft.com/en/customers/story/1752754742242485191-zavarovalnica-triglav-azure-openai-service-insurance-en-slovenia*, accessed on September 17, 2025.

[46] European Parliament, Regulatory divergences in the draft AI act, Differences in public and private sector, 2022, available at: *https://www.europarl.europa.eu/thinktank/en/document/EPRS_STU(2022)729507*, accessed on September 17, 2025, 17-22.

[47] Martina Perković, "Umjetna inteligencija i big data tehnologija u industriji osiguranja", *Ilab Working Papers Series*, No. 01-05, available at: *https://iilab.efzg.hr/images/Istrazivanja/iilab-wp-2021-5.pdf*, accessed on May, 2025, 4 *et seq.*

[48] Anat Keller, Clara Martins Pereira, Martinho Lucas Pires , "The European Union's Approach to Artificial Intelligence and the Challenge of Financial Systemic Risk", *Multidisciplinary Perspectives on Artificial Intelligence and the Law* (eds. Henrique Sousa Antunes *et. al.),* Springer, Cham, 2024, 415–416.

innovative use of technology in insurance and as a subset within FinTech, companies focused on financial technology.[49] Such companies develop solutions in the sphere of digital insurance services. Big data is of crucial and increasing importance as primary sources of information for insurance, being utilized for machine learning and the development of AI models. In analyses, there are also contrary views that AI will not reduce, but increase the workload of employees. Business efficiency and success will be measured by client retention and acquisition, which will in turn require growing investments in IT infrastructure and continuous employee training with the growing presence of InsurTech companies in the insurance market.[50] Climate risks, which are largely unknown, represent the greatest risks for business models and insurance market stability, as physical risks that create new challenges, with an exponential increase in various settled claims.[51] All of this, in turn, requires strengthening the role of insurance and policyholder protection. Aspects of establishing legal liability for damage in the era of AI require an adequate regulatory framework. The EU opts for harmonized legal solutions, which is the correct path, whereby the focus of the regulatory response shifts toward developers in insurance, alongside the strengthening and clarification of legal liability.[52]

Rules and regulations on non-contractual liability concerning AI represents a significant challenge in the EU, especially in light of mitigating risks associated with the use of AI and its deployment.[53] In this regard, the key elements of legal regulation of non-contractual liability regarding AI are rules relating to the burden of proof, collection of information about high-risk AI systems by persons seeking compensation for damage, strict liability in certain cases,[54] adaptation of national civil liability rules for AI, stricter regulation and stronger international cooperation, assessment and insurance of company liability exposure, AI system liability insurance, legal certainty, and more.[55]

Legal and ethical challenges of AI deployment in insurance are numerous. Automation of claims assessment and payment will open growing potentials for

[49] Sonja D. Radenković, Azra Sućeska, Hasan Hanić, "Technological Foundations of Fintech", *Fintech in the Context of the Digital Economy Opportunity and Challenges* (ed. Hasan Hanić, Radislav Jovović), 2023, 98–99.
[50] Rastko Filipović, "Integracija veštačke inteligencije u svakodnevnost osiguranja", available at: *https://www.deloitte.com/ce/en/about/story/our-markets/deloitte-serbia/integracija-ve-take-inteligencije-u-svakodnevnost-osiguranja.html*, accessed on May 20, 2025.
[51] EIOPA, "The role of insurers in tackling climate change: challenges and opportunities", *The EUROFI Magazine, Stochkolm,* 2023, available at: *https://www.eiopa.europa.eu/publications/role-insurers-tackling-climate-change-challenges-and-opportunities_en*, accessed on May 21, 2025.
[52] Ivana. B. Ljutić, "Legal Implications of Fintech", *Fintech in the Context of the Digital Economy Opportunity and Challenges,* 2023, 194-208.
[53] Liability Rules for AI, available at: *https://commission.europa.eu/business-economy-euro/doing-business-eu/contract-rules/digital-contracts/liability-rules-artificial-intelligence_en*, accessed on May 9, 2025.
[54] Emmanuela Truli, "Non-contractual Liability in the Context of Artificial Intelligence: The Long Way to New EU Legislative Tools", *European Review of Private Law*, Vol. 31, No. 1/2023, 47.
[55] European Commission, Proposal for a Directive of The European Parliament And of The Council on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive), COM/2022/496 final.

insurance, especially for travel insurance. A tourist will be able to submit a repair receipt via mobile application, using NLP (natural language processing) and computer vision, identify relevant data (amount, date, type of service). This is followed by comparison with policy conditions and automatic approval of payouts or redirection of complex cases to an employee operator. New challenges and risks arise here, particularly related to personal data protection and the General Data Protection Regulation (GDPR).[56] The system will have to ensure policyholder data security at all stages (lawful, transparent, fair data processing, limitation to what is necessary in relation to the purpose of processing, accuracy and timeliness, archiving only as long as necessary in accordance with the purpose of processing, etc.).[57] Future steps are data anonymization using pseudonymization wherever possible, with necessary explicit policyholder consent for processing personal data through AI.

Insurers will encounter a certain degree of skepticism and concern that clients may lose trust and be inclined to initiate disputes. The solution is to resolve complaints clearly and effectively without using AI. An increasing level of policy personalization is anticipated. For vehicles, telematic data will be used: speed, kilometers traveled, driving style. AI will offer lower premiums based on risk assessment for good drivers, whereby some companies will offer more attractive (cheaper) policies to drivers who travel fewer kilometers in a certain period.

The deployment of AI raises a series of ethical issues from the aspect of applying GDPR regulation, including policyholder consent, equal treatment of policyholders, e.g. in differently populated areas, whether the habits of "sharper and more offensive" drivers are pre-classified as increased risk, and more (respect for the autonomy of natural persons, harm prevention, transparency, security, prohibition of discrimination, etc.).[58] The question of national-level regulatory alignment arises – whether policyholders are treated consistently across all countries. AI systems already store enormous amounts of data that provide the possibility of analysis and preventive identification of suspicious claims, frequent reports of similar claims, and use of potentially fraudulent service providers.

IV. The impact of European Union regulation in the field of AI and the future in the insurance sector

In the sphere of AI regulation, the EU faces challenges of false positives. Specifically, there is a risk that legitimate claims insurance claims may be incorrectly

[56] European Parliament, The impact of General Data Protection Regulation (GDPR) on artificial intelligence, 2020, available at: *https://www.europarl.europa.eu/RegData/etudes/STUD/2020/641530/EPRS_STU(2020)641530_EN.pdf*, accessed on May 23, 2025.

[57] GDPR, Art. 5.

[58] The impact of GDPR on artificial intelligence, 50, 73 *et seq.*

flagged as fraudulent. This, in turn, causes policyholder dissatisfaction and increases the risk of potential legal disputes. Regulation and practice should enable and establish a balance between insurance efficiency and accuracy of claims compensation. Algorithms can be biased and nationally determined by specific data, cultural elements and social norms, and social objectivity is a necessary condition.[59] Algorithms in the future will have to be transparent and enable continuous revision, and AI systems must adapt more quickly in order to maintain efficiency. The future development of AI in insurance has prospects only with models of better risk assessment and development of insurance services.[60] Particularly significant in this regard are risk assessments of natural and artificially caused disasters with human factors (floods, earthquakes, wildfires, tsunamis, etc.). AI will analyze geolocation and climate data, historical time series, topography, demographic flows, and more. The use of AI in the previous context results in better and more precise policy design. Regulatory compliance and oversight by supervisory authorities, increased client trust, and strict adherence to ethical standards, and enhanced transparency of insurance services are all of critical importance.

The implementation of the AI Act will have profound and far-reaching positive, but also negative effects on the insurance sector in the EU, as application already exists in practice.[61] One of the leading insurance companies, "Munich Re", has been preparing and investing in AI development over an extended period. In brief, through the following paragraphs we will paraphrase this approach, which, in our opinion, is very significant and based on the cited source. They believe that an insurer can improve its operational efficiency by using AI, machine learning and standardizing business processes. In the insurance contracting process, big data is used to enhance the accuracy of risk prediction models, guide the intentions and behavior of insurers, identify new cross-selling opportunities and insurance services sales, all while ensuring a positive experience for satisfied policyholders. Existing *know-how*, experience and resources are no longer adequate for insurers to fully exploit vast datasets.

Negative critiques in the context of the complexity of AI Act implementation are numerous in the literature, starting from the complexity of the regulation itself,

[59] EIOPA, Final Report on the Prudential Treatment of Sustainability Risks for Insurers, 2024, available at: *https://www.eiopa.europa.eu/publications/final-report-prudential-treatment-sustainability-risks-insurers_en*, accessed on May 23, 2025, 103–121.

[60] Petra Hielkema, "The Future of Cloud Computing and AI in the EU Insurance Sector", *Contribution to the Eurofi Magazine*, September 2024, available at: *https://www.eiopa.europa.eu/publications/future-cloud-computing-and-ai-eu-insurance-sector_en*, accessed on May 23, 2025.

[61] Patric Greene, "AI transformation in insurance underwriting: Unlocking the power of predictive models," July 2024, available at:
https://automation-solutions.munichre.com/AI-Insurance-ebook.html?utm_source=website_medium=CTA-blog&utm_campaign=AI-underwriting-blogpost&utm_content=GC, accessed on May 25, 2025.

numerous challenges in its implementation, potential administrative burdens, and more.[62] In February 2025, the Commission published Guidelines on the definition of AI systems, precisely with the aim of simplifying the Act. These guidelines provide practical application of the legal concept outlined in the AI Act, as a kind of assistance to providers and all persons involved in this area, to ensure effective implementation. The aforementioned guidelines were published together with the Guidelines on prohibited AI practices. Strengthening of EU-level initiatives, especially through the AI Continent Action Plan from April 2025, is currently underway. Europe strives to become a global leader in the field of AI.[63]

The adoption, development and successful deployment of AI will be a major challenge for insurers in the EU, as well as for non-EU European countries, particularly candidate countries. This is due to the underdeveloped institutional and regulatory infrastructure and practices, which remain at a lower level by all criteria compared with EU members.

V. Implications and recommendations for Serbia

The future outlook for Serbia, as a candidate country for EU membership, and the fact that dominant insurance companies are under foreign ownership, particularly from the EU, lies in predictive risk assessment models and operations management. Harmonization with the EU Artificial Intelligence Act is of exceptional importance. When the aforementioned regulation is adopted, insurers will also have to comply with it. Artificial intelligence will open new possibilities for Serbian insurance companies to perform tasks in a faster and more efficient manner, achieve cost savings and enable particularly more effective utilization of human resources. AI-based models will make reinsurance processes faster. New opportunities will open for highly personalized marketing campaigns. Claims reporting, assessment and settlement processes will be simplified, resulting in higher policyholder satisfaction, fewer disputes, abuses and frauds. Human resources – employees within the insurance sector, will be deployed more efficiently, providing complex support in the final verification of AI-driven decisions. Policyholder experiences will be improved. Personalized offers and monitoring throughout the policy lifecycle will ensure that many unpleasant instances in this process are justifiably eliminated. Plans will be

[62] Patric Greene, "AI transformation in insurance underwriting: Unlocking the power of predictive models", July 2024, available at: *https://automation-solutions.munichre.com/AI-Insurance-ebook.html?utm_source=website_medium=CTA-blog&utm_campaign=AI-underwriting-blogpost&utm_content=GC*, accessed on May 25, 2025.

[63] *https://digital-strategy.ec.europa.eu/en/library/commission-publishes-guidelines-prohibited-artificial-intelligence-ai-practices-defined-ai-act*; *https://digital-strategy.ec.europa.eu/en/factpages/ai-continent-action-plan*, accessed on September 17, 2025.

better aligned with policyholder needs and market development, while ensuring privacy protection and elimination of the prevalence of insurance agents. Fraud detection will reduce the need for expensive external systems with human factors. The main challenges will be in the process of creating new tools, whereby insurance companies in Serbia will in most cases receive already standard tools used by their EU-based parent companies and groups. This will require engagement of talent as a sensitive and long-term process.

Insurance companies in the EU and in Serbia have long operated in a highly complex environment of legal and regulatory norms and systems. It is reasonable to expect that the deployment of AI will increase regulatory engagement, not only in the EU but also at the global level. The future belongs to ethical AI deployment, transparent from decision-making models to monitoring of the insurance cycle and data-security protection. Insurers in Serbia will have to ensure responsible use of AI, promoting fairness, corporate responsibility and credibility, transparency, and full legal compliance. This approach certainly opens a series of important questions relating to Serbia's regulatory harmonization with the EU framework.[64]

The National Association of Insurance Commissioners has determined that all participants in this process (insurers, intermediary entities, those playing an active role in this process throughout the AI lifecycle, rating agencies, data-service providers, advisory organizations, promoters, and others) should respect the principles on AI.[65] These principles represent guidelines for participants operating at the intersection of AI and insurance, although they do not impose legally binding obligations, as deployment is not legally compulsory. Their purpose is to inform and establish general expectations for all participants and AI systems by strengthening the concepts of responsible business conduct, regulatory compliance, transparency, security and fair yet robust results. The development of supplementary voluntary health insurance in Serbia will be significantly based on the introduction of AI as a complementary service to compulsory health insurance, opening perspectives for effective health risk management.[66]

Enhancement of cross-border interdisciplinary cooperation will gain new momentum through AI deployment, and exponentially increase the number of investigated cases. Advanced methods and technologies introduced through AI will be

[64] Ivana B. Ljutić *et al*., "European Sustainability Reporting Standards: Lack of Progress, Alignment, and Harmonization in Western Balkans", *Economic Analysis: Applied Research in Emerging Markets, Special Issue articles,* Vol. 57, No. 2/2024, 45–46.

[65] NAIC, "National Association of Insurance Commissioners (NAIC) Principles on Artificial Intelligence (AI)," Aug. 14, 2020, available at: *https://content.naic.org/sites/default/files/inline-files/AI%20principles%20as%20Adopted%20by%20the%20TF_0807.pdf,* accessed on May 25, 2025.

[66] Nataša Petrović Tomić, "Dopunsko zdravstveno osiguranje u funkciji doprinosa razvoju održivog sistema zdravstvene zaštite u Republici Srbiji", *Tokovi osiguranja*, No. 1/2024, 7 *et seq*.

an indispensable tool in the effective fight against fraud in the insurance domain.[67] Insurance companies in Serbia will, through intensive use of AI, increase turnover, make insurance services available to a wider range of users, with continuous cost reduction, especially in the domains of digital operational resilience (DORA), GDPR and the AI Act.

VI. Conclusion

The deployment of artificial intelligence (AI) in the insurance sector in the European Union represents a fundamental transformation that brings significant operational advantages, but simultaneously poses complex legal and ethical challenges. The EU Artificial Intelligence Act (AI Act) provides a comprehensive regulatory framework aimed at ensuring responsible, trustworthy and ethical use of AI, especially in high-risk insurance areas, such as pricing and risk assessment. The analysis has demonstrated that algorithmic transparency, legal liability for decisions made with the assistance of AI, and the protection of personal data (in accordance with the GDPR) are of crucial importance for building user trust and market stability. Implementation of the AI Act requires insurance companies to assess the risk level of existing and planned AI deployment, establish new corporate governance and risk management models, as well as to ensure continuous compliance monitoring. Although AI promises increased efficiency, service personalization, and more effective fraud prevention, challenges such as potential discrimination of policyholders and the need for independent algorithm auditing must be addressed. For Serbia, as an EU candidate country, with dominant insurance companies under foreign ownership from the EU, alignment with EU regulation in the field of AI is imperative. This implies not only the adoption of relevant legal solutions, but also strengthening of IT infrastructure, continuous employee training and development of domestic experts. The future of insurance lies in the ethical and transparent deployment of AI, which will enable faster and more efficient processes, from policy underwriting to claims settlement, with simultaneous protection of policyholder rights and privacy. Regulatory bodies, both in the EU and in Serbia, will have a crucial role in creating a dynamic balance between innovation and necessary protection, ensuring that the development of AI in insurance serves the welfare of society.

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IZAZOVI UPRAVLJANJA LJUDSKIM RESURSIMA U INDUSTRIJI OSIGURANJA U SRBIJI

PREGLEDNI NAUČNI RAD

Apstrakt

Trenutno stanje i izazovi sa kojima se suočava industrija osigiranja u Srbiji u najvećoj meri je vidljiva u kompleknosti upravljanja ljudskim resursa zbog različitih uticaja i promena. Promene su vidljive u tehnologiji, regulativi, digitalizaciji i svakako u samom tržištu radne snage. Ovim radom želimo da ukažemo na sve bitne segmente upravljanja ljudskim resursima u takvim uslovima poslovanja sa posebnim osvrtom na industriju osiguranja u Srbiji. U radu ćemo da sagledamo sve postojeće prakse i daćemo smernice i okvire za dalja unapređenja. U anlizi ćemo koristiti različite sekundarne izvore, mnogo postojećih praksi i svakako ćemo predložiti različite pravce unapređenja upravljanja ljudskih resursa, njihovog razvoja, zadržavanja talenata i organizacione kulture u kompanijama koje posluju u sektoru osiguranja u Srbiji.

Ključne reči: ljudski resursi, osiguranje, strategija, izazovi, digitalizacija.

I UVOD

Savremeno poslovno okruženje u industriji osiguranja u Srbiji oblikovano je dinamičnim promenama koje značajno utiču na poslovanje kompanija u ovom sektoru.

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Promene obuhvataju procese pripreme ponuda proizvoda i usluga, komunikaciju sa klijentima, kao i unutrašnju organizaciju rada. U takvom okruženju ljudski resursi imaju ključnu ulogu u rastu, razvoju i održivosti organizacija. Kompetencije, znanja i veštine zaposlenih direktno se odražavaju na kvalitet usluga i efikasnost poslovanja.

Tržišne promene podstiču kompanije da stvaraju bolje uslove za privlačenje novih kandidata, razvoj i zadržavanje postojećih zaposlenih, kao i kreiranje radnog okruženja pogodnog za profesionalni rast i napredovanje. Upravljanje ljudskim resursima u osiguravajućim društvima karakterišu brojni izazovi, među kojima su manjak kvalifikovanih kadrova sa specifičnim znanjima i veštinama u oblasti osiguranja, visoka fluktuacija zaposlenih – naročito generacije Z, smena generacija, kao i sve izraženija potreba za digitalnim kompetencijama.

Ove izazove dodatno komplikuje regulatorni okvir koji zahteva usklađivanje sa zakonskim standardima i profesionalnim praksama. Istovremeno, zaposleni sve češće postavljaju zahteve u vezi sa ravnotežom između poslovnog i privatnog života, većom transparentnošću i učešćem u procesima odlučivanja. Digitalna transformacija dodatno menja sektor osiguranja kroz uvođenje novih IT rešenja, automatizaciju procesa i razvoj digitalnih kanala komunikacije.

U takvim uslovima nameće se potreba za kontinuiranim razvojem zaposlenih i jačanjem strateške uloge funkcije ljudskih resursa. HR sektori moraju prevazići tradicionalne administrativne zadatke i preuzeti ulogu strateškog partnera poslovanja. Njihova uloga podrazumeva kreiranje organizacione klime i kulture, razvoj zaposlenih i liderstva, unapređenje zadovoljstva zaposlenih i njihovih kompetencija, kao i oblikovanje radnog okruženja koje privlači i zadržava talente.

Cilj ovog rada jeste da pruži pregled ključnih izazova u funkciji upravljanja ljudskim resursima u osiguravajućim društvima u Srbiji, da sagleda postojeće prakse i literaturu, te da ponudi smernice za unapređenje HR strategija u skladu sa zahtevima savremenog tržišta rada i transformacijom industrije osiguranja.

II TEORIJSKI OKVIR

U literaturi funkcija upravljanja ljudskim resursima (HRM – Human Resource Management) obuhvata sistemski i sveobuhvatni pristup koji uključuje planski pristup u planiranju broja zaposlenih, njihovoj selekciji i regrutaciji, onboardingu i uvođenju u posao, motivaciji i svakodnevnoj podršci u ostvarivanju ličnih i kompanijskih ciljeva, sa ciljem maksimiziranja organizacionog uspeha.[3] Funkcija ljudskih resursa u svakoj industriji ima veoma važnu i dominantnu ulogu. U industrijama koje su okrenute ka uslugama, njihova uloga je još izraženija, što je posebno vidljivo u sektoru osiguranja, tj. finansijskim institucijama.

[3] John Bratton, Jeff Gold, *Human resource management: Theory and practice* (7th ed.). Macmillan International Higher Education, 2019, 79.

Uloga funkcije HRM-a se ogleda kroz ostvarivanje konkurentske prednosti koju stvaraju zaposleni prema tržištu i klijentima, tj. kvalitet njihove uloge zavisi od kompetencija i znanja zaposlenih koji pružaju usluge.[4] Funkcija upravljanja ljudskim resursima je danas više strateška nego administrativna, služeći kao spona između zaposlenih i kompanije, odnosno između njihovih znanja, veština i kompetencija sa jedne strane, i strategije i vizije rasta i razvoja kompanije sa druge strane.[5] Osiguravajuća društva sve više prepoznaju značaj HR funkcije u kreiranju vrednosti poslovanja kroz svoje zaposlene.

Različiti modeli upravljanja ljudskim resursima ukazuju na važnost usklađivanja HR strategije sa opštim ciljevima organizacije.[6] Da bi osiguravajuća društva bila uspešnija i konkurentnija na tržištu, sve više se primenjuje model kompetencija, koji identifikuje i razvija veštine presudne za efikasno funkcionisanje u različitim sektorima organizacije.[7] Unapređenje veština obuhvata tehnička znanja kao i interpersonalne veštine,[8] digitalnu pismenost i razumevanje regulatornih zahteva.[9]

Osiguravajuća društva u Srbiji su poslovanja uskladila sa pravno-institucionalnim okvirom, koji takođe utiče na funkcionisanje HR sektora. Različiti zakonski i podzakonski akti,[2] pored Zakona o radu i Zakona o osiguranju, kao i pravilnici koje donose Agencija za osiguranje i Narodna banka Srbije,[10] daju obavezujuće smernice u pogledu obuka, licenciranja i nadzora nad ljudskim kapitalom.[11] Ovi regulatorni zahtevi dodatno oblikuju ulogu HR funkcije u organizacijama, posebno u domenu kontinuirane edukacije, razvoja kompetencija i usklađivanja sa evropskim standardima.[12]

Pored domaćeg, imamo i na međunarodnom nivou smernice EIOPA-e koje takođe daju odgovarajuće okvire za uspostavljanje adekvatnog i predvidivog korporativnog upravljanja, sa fokusom na razvoj liderstva i profesionalne etike. Sve gore navedene promene, zahtevi i regulatorni okviri ukazuju da funkcija upravljanja ljudskim resursima mora iskoračiti iz operativne uloge i administrativne podrške ka ulozi strateškog partnera, koji u velikoj meri utiče na kompetentnost zaposlenih, kreiranje

[4] John Purcell, Peter Boxall, J., *Strategy and human resource management (4th ed.).* Palgrave Macmillan, 2018, 98.

[5] David E. Guest, *Human resource management and performance: A review and research agenda. International Journal of Human Resource Management*, 8(3), 1997, 263–276.

[6] Biljana Bogićević Milikić, Nebojša Janićijević, Božidar Cerović *Two decades of post-socialism in Serbia: Lessons learned and emerging issues in human resource management.* Journal for East European Management Studies, 2012, 445–463.

[7] Nitin Vazirani, *Competency-based human resource management*. SAGE Publications, 2010, 78.

[8] Claire Buchan Bhawra, Jasmin Bhawra, Tarun Reddy Katapally, *Navigating the digital world: Development of an evidence-based digital literacy program and assessment tool for youth*. Smart Learning Environments, 2024, 11(1), 8.

[9] CIPD, People profession 2023: International survey report, 2023.

[10] OECD, Business and Finance Outlook 2021

[11] EIOPA, EIOPA annual report 2022. European Insurance and Occupational Pensions Authority, 2022.

[12] Deloitte, Global human capital trends 2023: Leading in the new era. Deloitte Insights, 2023.

odgovarajuće organizacione klime i kulture,[13] kao i kreiranje organizacije koja uči i prilagođava se svim regulatornim zahtevima i promenama sa tržišta. Funkcija ljudskih resursa treba da bude strateška, sa posebnim fokusom na razvoj zaposlenih i organizacione kulture učenja, s velikom agilnošću u procesima i upravljanju promenama.

Sami rezultati osiguravajućih društava će u budućnosti zavisiti od sposobnosti HR sektora da u potpunosti odgovori na zahteve tržišta, prati digitalne i tehnološke promene, kao i da bude spreman za primenu veštačke inteligencije u poslovanju.[14] U prethodnom periodu, naročito nakon pandemije COVID-19, uočljive su ozbiljne transformacije u gotovo svim osiguravajućim društvima u Republici Srbiji. Tu prevashodno mislimo na promene pod uticajem digitalizacije, većih potreba klijenata i zahtevnijih regulatornih tela.[15]

Savremeni izazovi u upravljanju ljudskim resursima (Human Resource Management – HRM) zahtevaju da se analizira i uticaj socijalnih faktora na kompetencije zaposlenih, pri čemu drugi autori ističu značaj pola, starosne strukture i socio-ekonomskog statusa na digitalne veštine učenja.[16] U tom kontekstu se naglašava posebno potreba za usklađivanjem HR politika sa strateškim ciljevima organizacije i stalnim unapređenjem praksi upravljanja zaposlenima.

U kontekstu srpskog tržišta,[17] vidljive su razlike između privatnog i javnog sektora u HR praksama, uključujući privlačenje, razvoj i zadržavanje talenata. Drugi autori,[18] navode da zadovoljstvo zaposlenih u neprofitnim organizacijama direktno utiče na performanse i motivaciju. Pored tog zapažanja vidljiva je i transformacija HRM praksi u post-socijalističkim državama i potreba za modernizacijom strategija upravljanja ljudskim resursima.[19] Tako se povezuje HRM funkcije sa ukupnim performansama organizacije i naglašava istraživački značaj usklađivanja HR praksi sa ciljevima organizacije.

U drugim izvorima se navodi da se tako daju sveobuhvatni pregledi teorijskih okvira HRM-a i implementacija praksi u različitim industrijama.[20] Tu pre svega vidimo važnost razvoja digitalne pismenosti i evaluacije programa za mlade, što može biti primenjivo i u korporativnim trening programima. Pojedini autori takođe pokazuju kako studenti koriste digitalne tehnologije i doživljavaju njihovu korisnost, što je relevantno za razvoj digitalnih kompetencija zaposlenih.[21]

[13] Michael Armstrong, *A handbook of human resource management practice* (10th ed.), Kogan Page, 2006, 95.
[14] Buchan, M. C., Bhawra, J., Katapally, T. R. (2024), 8.
[15] Korn Ferry, *Future of work trends 2021: The new era of humanity*, 2021, 78.
[16] Bratton, J., Gold, J (2019), 97.
[17] Nemanja Berber, Agneš Slavić, *„HRM in private and public organizations in Serbia"*. Journal of Engineering Management and Competitiveness (JEMC), 6(2), 2016, 75–83.
[18] Matthias Benz, *Not for the profit, but for the satisfaction? Evidence on worker well-being in non-profit firms.* Kyklos, 58(2), 2005, 155–176.
[19] Milikić, B. B., Janićijević, N.,Cerović, B.(2012), 445–463.
[20] Bratton, J., & Gold, J (2019), 85.
[21] Anat Cohen, Tal Soffer, Michael Henderson, *Students' use of technology and their perceptions of its usefulness in higher education: International comparison,* Journal of Computer Assisted Learning, 38(1), 2022, 1–14.

Deloitte takođe identifikuje trendove u digitalnoj transformaciji HR funkcije u jugoistočnoj Aziji, i izdvaja one koje mogu biti komparativno korisni za implementaciju u Srbiji.[22] Dukić sa drugim autorima naglašava kako primena HRM praksi direktno utiče na performanse u proizvodnim firmama i održivi razvoj.[23] Hamlin i saradnici prikazuju da virtuelno učenje može imati značajan uticaj na ruralna područja, što sugeriše i na mogućnosti e-learning platformi u HR obukama.[24]

Predviđa se da će budućnost rada zahtevati visoku agilnost i digitalne kompetencije, posebno u upravljanju promenama. Lazarević i drugi ukazuju da demografske razlike značajno utiču na zadovoljstvo zaposlenih pogodnostima i beneficijama. [25] Svi ovi nalazi dodatno potvrđuju da industrija osiguranja u Srbiji i šire mora kontinuirano investirati u razvoj kompetencija, digitalnih veština i agilnog liderstva kako bi HR funkcija postala strateški partner organizacije.

U tim promenama, dominantan izazov je nedostatak kvalifikovane radne snage. Problem je izražen u prethodnim godinama i trend je teško zaustaviti. Nedostatak potencijalnih zaposlenih sa specifičnim znanjima iz oblasti osiguranja, posebno u oblastima kao što su aktuarstvo, underwriting, reosiguranje i upravljanje rizicima, predstavlja ozbiljan izazov. Pored pronalaska novih kadrova, postoji problem i zadržavanja postojećih zaposlenih sa specifičnim znanjima.

Svi ovi problemi su povezani sa slabije razvijenim formalnim obrazovanjem u oblasti osiguranja, što zahteva od osiguravajućih društava da značajno ulažu u edukaciju i razvoj kompetencija zaposlenih. Još jedan prepoznat problem je visoka stopa fluktuacije, posebno kod mladih profesionalaca.[26] Mladi stručnjaci ne vide dovoljno izazova u industriji osiguranja i traže karijerne mogućnosti u brzorastućim sektorima poput IT-a, dok internacionalizacija tržišta omogućava emigraciju visokoobrazovanih kadrova, što utiče na održivost domaćeg HR potencijala.[27]

U osiguravajućim društvima je prisutno pet generacija zaposlenih – od baby boomera do generacija Y/Z – što zahteva dodatno usaglašavanje očekivanja, motivacije i radnog ambijenta navodi se u različitim izveštajima McKinsey-a.[28] HR prakse moraju da uključuju fleksibilne oblike rada, mentorstvo, onboarding i podršku kroz različite programe obuka.

[22] Deloitte, Digital HR transformation survey 2022: Southeast Asia. Deloitte, 2023.

[23] Mijatović, Marijana Dukić, Ozren Uzelac, and Aleksandra Stoiljković. „Effects of human resources management on the manufacturing firm performance: Sustainable development approach". *International Journal of Industrial Engineering and Management* 11.3 (2020): 205-212.

[24] Hamlin, D., Adigun, O., & Adams, C. (2023). *Do virtual schools deliver in rural areas? A longitudinal analysis of academic outcomes*. Computers & Education, 199, 104789.

[25] Anđela Lazarević, Ivana Marinović Matović, *The impact of demographic differences on employee satisfaction with benefits and perks: Evidence from Serbian financial sector*. Facta Universitatis, 19(2), 2022, 233–245.

[26] Gallup, State of the Global Workplace 2023 Report. Gallup, Inc. Retrieved from https://www.gallup.com/workplace/349484/state-of-the-global-workplace.aspx, 2023.

[27] World Bank, Human Capital Umbrella Program Annual Report 2022, 2022.

[28] McKinsey & Company, How generational differences will impact the future workforce, 2020.

Digitalizacija stvara nove profile zaposlenih, kao što su data analitičari, IT stručnjaci, stručnjaci za digitalni marketing, korisničko iskustvo i informacionu bezbednost. Za ove pozicije postojeća znanja nisu dovoljna, pa se javlja potreba za hibridnim zaposlenima koji kombinuju tehnička i poslovna znanja sa industrijskim kompetencijama navodi se u izveštaju PwC-a.[29] Pored toga, postoji sve veći zahtev za usaglašavanje sa evropskim standardima, uključujući Solventnost II, GDPR i ESG principe. Zbog toga je kontinuirano stručno usavršavanje i razvoj kompetencija zaposlenih ključ za održivost i konkurentnost osiguravajućih društava.

III METODOLOGIJA

Ovaj rad je koncipiran kao pregledni naučni rad, sa ciljem da sistematizuje postojeća saznanja o izazovima upravljanja ljudskim resursima u industriji osiguranja, sa posebnim fokusom na tržište Republike Srbije i komparativno na slične ekonomske sisteme.

Metodološki pristup zasniva se na deskriptivno-analitičkoj obradi i kvalitativnoj analizi sekundarnih izvora podataka. Primarni izvori podataka uključuju naučne radove i članke objavljene u relevantnim međunarodnim i domaćim časopisima, dok sekundarni izvori obuhvataju izveštaje i publikacije regulatornih tela EIOPA i NBS stručne analize i izveštaje međunarodnih konsultantskih kompanija Deloitte, PwC, i Korn Ferry-ja.

Analitička procedura uključuje sistematsku analizu sadržaja relevantne literature, identifikaciju ključnih tema i obrazaca u HR praksama osiguravajućih društava, kao i evaluaciju uticaja regulatornih i tržišnih faktora na funkciju HR sektora. Poseban fokus stavljen je na izazove digitalizacije, fluktuacije zaposlenih, međugeneracijsku raznolikost i razvoj digitalnih kompetencija.

Proces validacije podataka sproveden je kroz triangulaciju izvora, poređenjem nalaza iz akademskih radova, institucionalnih izveštaja i profesionalnih studija slučaja. Ovaj pristup omogućava povećanje pouzdanosti interpretacija i relevantnosti zaključaka, smanjujući potencijalnu pristrasnost pojedinačnih izvora.

Ograničenja metodologije proizilaze iz činjenice da istraživanje ne uključuje primarne empirijske podatke iz domaćih osiguravajućih društava. Zbog toga se preporučuje da buduća istraživanja primene kvantitativne instrumente (upitnici, ankete) za mapiranje stavova i percepcija zaposlenih, kao i kvalitativne tehnike (polustrukturisani intervjui, fokus grupe) za dublje razumevanje organizacione kulture i HR strategija. Takođe, dodatna ograničenja proizilaze iz regionalnih specifičnosti i različitih nivoa digitalne zrelosti kompanija, što može uticati na prenosivost nalaza na druge zemlje ili sektore.

[29] PwC., Insurance 2025 and beyond: Preparing talent for the future. PwC,2021.

Ovaj metodološki okvir omogućava sistematski pregled i integraciju postojećih saznanja, identifikaciju ključnih izazova i razvoj preporuka za unapređenje HR praksi u osiguravajućim društvima Srbije i širem regionalnom kontekstu.

IV ANALIZA REZULTATA

U analizi su korišćeni brojni relevantni domaći i međunarodni izvori koji obuhvataju različite segmente upravljanja ljudskim resursima u industriji osiguranja. Poseban fokus stavljen je na procese privlačenja talenata, njihov razvoj i zadržavanje, kao i na uticaj digitalizacije na organizacije, uključujući automatizaciju i njene implikacije na HR funkcije. Sve navedene promene značajno oblikuju organizacionu klimu i kulturu.

Pored specifičnih karakteristika koje utiču na ljudske resurse, analiziran je i proces transformacije same HR funkcije u industriji osiguranja kroz dostupne istraživačke radove i izveštaje koje su objavili PwC, Deloitte, EIOPA i OECD.

Prema istraživanju PwC – Insurance 2025 and Beyond,[30] koje je obuhvatilo više od 200 učesnika, pretežno na rukovodećim pozicijama u 35 zemalja, uključujući i zemlje regiona, čak 80% ispitanika navelo je da će glavni izazov u narednom periodu biti pronalazak zaposlenih sa adekvatnim digitalnim veštinama. Istovremeno, više od polovine učesnika ukazalo je na nedostatak lidera spremnih da preuzmu veće odgovornosti, što potvrđuje potrebu za agilnim i strateškim pristupom HR funkcije.

Slično, longitudinalno istraživanje koje je uradio Deloitte,[31] sa uzorkom od preko 10.000 HR profesionalaca i lidera pokazalo je da je industrija osiguranja na niskoj lestvici agilnosti u upravljanju zaposlenima, uprkos značajnim promenama u zahtevima korisnika i digitalnim kanalima komunikacije. Rezultati pokazuju da čak 41% osiguravajućih društava nema razvijene programe obuka za sticanje digitalnih veština, dok 55% i dalje koristi tradicionalne modele performance managementa, što nije u skladu sa očekivanjima generacija Y i Z.

U analizi koju je sproveo OECD – Human Resource Challenges in Financial Services,[32] koja obuhvata bankarski i osiguravajući sektor u članicama OECD-a, identifikovan je dominantan hijerarhijski sistem upravljanja i visoka fluktuacija zaposlenih u prodajnim sektorima, koja u nekim zemljama dostiže i do 35%.

Prema podacima Narodne banke Srbije[2], u prvom kvartalu 2025. godine broj zaposlenih u sektoru osiguranja iznosio je 11.297, što predstavlja blago smanjenje od 1,2% u odnosu na isti period prethodne godine. Pored toga, NBS u svojim regulatornim smernicama ističe da društva za osiguranje moraju da obezbede da lica

[30] PwC, Insurance 2025 and beyond: Preparing talent for the future. PwC, 2021.
[31] Deloitte, Digital HR transformation survey 2022: Southeast Asia. Deloitte, 2023.
[32] OECD, Business and Finance Outlook 2021.

koja obavljaju poslove prodaje osiguranja budu adekvatno pripremljena i edukovana kako bi odgovorila na potrebe građana i privrede. U skladu sa tim, Privredna komora Srbije propisuje da posrednici i zastupnici u osiguranju imaju obavezu da godišnje učestvuju u najmanje 15 školskih časova stručnog usavršavanja.[33]

Takođe, EIOPA – Conduct Risk Report 2022,[34] ukazuje na manjak odgovarajućih treninga i obuka iz oblasti zakonodavstva i zaštite korisnika osiguravajućih društava, što direktno utiče na pravne i tržišne rizike. Preporuke EIOPA-e ističu da se kontinuirano učenje i razvoj zaposlenih integriše direktno u HR funkcije i compliance, čime se povećava otpornost organizacije na regulatorne promene.

Izveštaj World Economic Forum – The Future of Jobs Report 2020,[35] naglašava da će do 2030. godine 50% radnih pozicija zahtevati unapređenje ili sticanje novih veština, pri čemu su industrije poput osiguranja posebno ugrožene digitalizacijom i automatizacijom, što dodatno potvrđuje značaj HR funkcije u održavanju konkurentnosti.

Na osnovu svih analiziranih izvora, može se zaključiti da je ključni izazov za industriju osiguranja u Srbiji i regionu pronalaženje i zadržavanje kvalifikovanih kadrova, posebno onih sa digitalnim kompetencijama i sposobnošću preuzimanja liderskih uloga. Transformacija HR funkcije u strateškog partnera je neophodna kako bi se odgovorilo na sve veće zahteve tržišta, digitalizaciju, međugeneracijski jaz i regulatorne promene.

Ograničenja analize proizilaze iz nedostatka primarnih empirijskih podataka iz domaćih osiguravajućih društava, kao i iz ograničene dostupnosti nekih regulatornih izveštaja u realnom vremenu, što može uticati na potpunost i preciznost podataka. Ova ograničenja naglašavaju potrebu za budućim istraživanjima koja kombinuju kvantitativne (upitnici, ankete) i kvalitativne (polustrukturisani intervjui) metode za detaljnije mapiranje HR izazova i praksi.

V DISKUSIJA

Analizom svih dostupnih izvora i sekundarne literature, došli smo do saznanja da je sektor osiguranja u Srbiji u fazi intenzivnih promena, koje se ogledaju u adaptaciji i unapređenju ljudskih resursa kroz razvoj i nadogradnju kompetencija, kao i u promenama organizacione strukture, načina upravljanja i organizacione klime i kulture unutar osiguravajućih društava.

S tim u vezi, prikazaćemo ključne oblasti gde su vidljivi izazovi, uz dopunu sa dodatnim istraživanjima koja potvrđuju prethodno navedene nalaze. Prema izveštaju Deloitte – Global human capital trends 2023,[36] proces digitalne transformacije

[33] Narodna banka Srbije, „Osiguranje – opšti pregled", https://www.nbs.rs/sr/finansijske-institucije/osiguranje 2025.
[34] EIOPA, EIOPA annual report 2022. European Insurance and Occupational Pensions Authority, 2022.
[35] World Bank, Human Capital Umbrella Program Annual Report 2022, 2022.
[36] Deloitte, Global human capital trends 2023: Leading in the new era. Deloitte Insights, 2023.

u osiguravajućim društvima je nužnost, a ne opcija, te zahteva značajno ulaganje u trening i razvoj zaposlenih. Procesi digitalne transformacije više nisu opcija razvoja, već predstavljaju neophodnost za opstojnost i konkurentnost organizacija. Samo one organizacije koje sprovedu efikasnu digitalizaciju mogu uspešno ući u proces transformacije.

Ovaj proces zahteva paralelno ulaganje u obuke zaposlenih, promenu organizacione kulture i strateško planiranje HR funkcije. Pored toga, izveštaj McKinsey & Company[37] pokazuje da više od 60% digitalnih inicijativa u osiguravajućim društvima ne donosi očekivane rezultate, što se prepisuje otpornosti zaposlenih, lošoj primeni i nedovoljnoj komunikaciji, kao i slaboj viziji menadžmenta. Na osnovu ovih uvida, može se zaključiti da je uvođenje novih IT alata i digitalizacije usko povezano sa transformacijom HR funkcije, koja mora evoluirati iz administrativne u strateškog partnera u poslovanju i kreiranju vizije organizacije.

Narodna banka Srbije u svom pregledu[38] navodi da postoji značajan disbalans između potreba tržišta rada i dostupnosti stručnih kandidata, naročito u prodajnim i tehničkim funkcijama. Slične nalaze pruža i EIOPA,[39] koja ukazuje da je stopa fluktuacije u osiguravajućim društvima iznad proseka finansijskog sektora, zbog nedostatnih modela nagrađivanja i nejasnih karijernih puteva.

U tom kontekstu, HR funkcija mora razviti celovite strategije koje omogućavaju kreiranje sigurnog i motivišućeg ambijenta za zaposlene, kako bi oni videli svoje karijerne puteve i mogli kontinuirano da razvijaju kompetencije.

Pored navedenih izazova, evidentna je nepovezanost obrazovnog sistema sa zahtevima savremenog tržišta rada. OECD u svom izveštaju ističe da je neophodno povezati formalno obrazovanje sa potrebama sektora, kroz dualno obrazovanje i praktične obuke.[40]

To nam ukazuje da je veliki procenat novih zaposlenih nespreman za uključivanje u radne procese. Na osnovu tih saznanja, uočavamo da je u budućem periodu neophodno sprovesti sistemske reforme koje bi uključivale univerzitete, državne institucije i osiguravajuća društva. Još jedan uvid do koga smo došli je da je trenutno funkcija HR sektora osiguravajućih društava i dalje pretežno administrativna, gde su vidljiva značajna ograničenja u strateškom odlučivanju.

U svom istraživanju, EIOPA[41] daje smernice prema kojima HR funkcija u organizacijama treba da preuzme ključnu ulogu u implementaciji različitih regulatornih promena (npr. Solventnost II, ESG standardi). Druga istraživanja ukazuju da

[37] McKinsey & Company, How generational differences will impact the future workforce, 2020.
[38] Narodna banka Srbije, „Osiguranje – opšti pregled", https://www.nbs.rs/sr/finansijske-institucije/osiguranje 2025.
[39] EIOPA, EIOPA annual report 2022. European Insurance and Occupational Pensions Authority, 2022.
[40] OECD, Business and Finance Outlook 2021.
[41] EIOPA, EIOPA annual report 2022. European Insurance and Occupational Pensions Authority, 2022.

je neophodno da osiguravajuća društva koja integrišu HR u svoje strategije imaju veću otpornost na promene i bolju reputaciju na tržištu rada, što navodi CIPD.[42] Sve navedene preporuke naglašavaju važnost dugoročnog osnaživanja HR funkcije kako bi se obezbedio efikasan razvoj ljudskih resursa.

Još jedan uvid iz istraživanja ukazuje da su organizacione strukture teško promenljive, što negativno utiče na motivaciju i angažovanost zaposlenih, posebno kod novih generacija koje dolaze u organizacije. Deloitte u svom izveštaju Global Human Capital Trends navodi da je izgradnja organizacione kulture zasnovane na vrednostima, transparentnosti, različitosti i inkluziji od ključnog značaja.[43]

Gallup u svom istraživanju navodi da zaposleni koji su više angažovani ostvaruju 21% viši prihod po zaposlenom, a stopa fluktuacije kod angažovanih zaposlenih je skoro 60% manja u odnosu na zaposlene koji ne učestvuju u odlučivanju.[44] Ovi podaci ukazuju da je uticaj organizacione klime i kulture ključan za poslovne rezultate, i da to nije samo „meki" pristup već značajan strateški faktor.

Još jedan kritični segment su nedostatak specijalizovanih kadrova sa ključnim i specifičnim kompetencijama, što je posebno izraženo u oblastima aktuarske matematike, upravljanja rizicima, reosiguranja, underwritinga, procene šteta, compliance-a, digitalne analitike i IT podrške. Nedostatak radne snage je prisutan i na globalnom nivou, ali je posebno izražen na i tržištu radne snage u Srbiji. Razlog tome je slab razvoj obrazovnih programa koji omogućavaju školovanje ovih kadrova, zbog čega kompanije moraju da interno razvijaju zaposlene, što usporava procese razvoja.

Deloitte u svome izveštaju beleži da 68% ispitanika u sektoru osiguranja u Centralnoj i Istočnoj Evropi ukazuje na ogroman jaz između kompetencija koje se zahtevaju i onih koje kandidati poseduju.[45]

Poseban izazov predstavlja međugeneracijski jaz: zaposleni iz generacija X i Baby Boom često pokazuju otpor prema novim zahtevima i promenama, dok mlađe generacije (Y i Z) traže fleksibilnije radne uslove, kontinuirani feedback, napredovanje i razvoj. Takođe se navodi da kompanije koje implementiraju fleksibilnije HR prakse suočavaju se sa manjim rizikom gubitka talenata i većim zadovoljstvom zaposlenih.

Uočen je i nedostatak sistemskog pristupa razvoju regulatornih kompetencija kao jedan od značajnijih izazova. EIOPA ukazuje da nedostatak ovih kompetencija nosi reputacione i operativne rizike, a uvođenje evropskih standarda (Solventnost II, GDPR, ESG) zahteva kontinuiranu edukaciju zaposlenih kako bi se ispunila očekivanja regulatornih tela.[46]

[42] CIPD People profession 2023: International survey report, 2023.
[43] Deloitte, Global human capital trends 2023: Leading in the new era. Deloitte Insights, 2023.
[44] Gallup, State of the Global Workplace 2023 Report. Gallup, 2023.
[45] Deloitte, Global human capital trends 2023: Leading in the new era. Deloitte Insights, 2023.
[46] EIOPA, EIOPA annual report 2022. European Insurance and Occupational Pensions Authority, 2022.

Detaljan prikaz ključnih izazova:

Dimenzija analize	**Glavni nalazi**	**Izvori**
Strateška uloga HR funkcije	Ograničena uloga u strateškom odlučivanju, pretežno operativni fokus	Deloitte, PwC
Privlačenje i zadržavanje talenata	Visoka fluktuacija, naročito među mlađima; nizak employer branding	NBS, Korn Ferry
Razvoj kompetencija	Nedovoljni interni programi obuke, slaba saradnja sa akademskim institucijama	Mercer, OECD
Digitalna pismenost i adaptacija	Zastareli alati, niska upotreba digitalnih HR tehnologija	PwC, Deloitte
Organizacija i međugeneracijski odnosi	Teškoće u saradnji među generacijama, nedostatak fleksibilnih politika	McKinsey, CIPD
Regulatorna usklađenost	Potreba za dodatnom edukacijom; nepostojanje sistematskih programa za regulatorno usklađivanje	EIOPA

VI ZAKLJUČAK

Osiguravajuća društva koja posluju u Republici Srbiji nalaze se u fazi intenzivne transformacije, pod značajnim uticajem digitalizacije. Vidljive su velike promene u strukturi radne snage, u njenoj dostupnosti, kao i rastući međugeneracijski jaz unutar kompanija. Takođe, nameću se stroži zahtevi regulatornih tela. U ovakvim uslovima poslovanja, ljudski resursi predstavljaju strateški resurs – ljudski kapital koji pokreće rast i uspeh organizacije, jer njihova znanja, veštine i kompetencije doprinose ovim razlikama.

Analize ukazuju da HR funkcija mora doživeti transformaciju, odnosno preći iz administrativne uloge u stratešku, imajući u vidu sveobuhvatnu ulogu HR-a u poslovanju kompanija. Još jedan uvid je da je na tržištu rada vidljiv nedostatak različitih profila zaposlenih, dok je stopa fluktuacije značajno prisutna u svim osiguravajućim društvima. Pored toga, postoji velika neusklađenost obrazovnog sistema sa zahtevima savremenog tržišta rada.

Digitalna transformacija značajno utiče na promene u osiguravajućim društvima, što podrazumeva potrebu za zapošljavanjem novih kandidata sa digitalnim veštinama, kao i kontinuirani trening postojećih zaposlenih radi sticanja adekvatnih digitalnih kompetencija. Važan uvid je da kompanije često ne investiraju dovoljno u razvoj zaposlenih, njihovih znanja i kompetencija, dok je organizaciona kultura zbog toga često upitna. Ova situacija je naročito izražena kod mlađe generacije, koja je zahtevnija u pogledu fleksibilnih oblika rada i mogućnosti razvoja i napredovanja.

Sve navedeno rezultira time da se povećava stopa fluktuacije, kao i da dolazi do problema u efikasnijem prilagođavanju tržišnim i regulatornim zahtevima.

Takođe, evidentno je da obrazovni sistem u Republici Srbiji ne omogućava dovoljno programa i smerova usmerenih na osiguranje, što dodatno opterećuje HR sektore u osiguravajućim društvima kroz potrebu za dodatnom edukacijom i usavršavanjem zaposlenih. Iz tih razloga, veoma je važno jačanje saradnje između osiguravajućih društava, regulatornih tela i akademskih institucija, kako bi se dugoročno obezbedilo održivo rešenje za razvoj stručne radne snage.

Na kraju, možemo zaključiti da će uspeh i poslovanje osiguravajućih društava u Srbiji u velikoj meri zavisiti od sposobnosti da prepoznaju HR funkciju kao ključnog i strateškog partnera. Sistematski pristup razvoju ljudskih resursa omogućava stvaranje ambijenta koji motiviše zaposlene, dok kompanijama olakšava prilagođavanje savremenim izazovima i povećava otpornost organizacija za održivi rast, razvoj i bolje poslovne rezultate.

Pored analiza ključnih izazova i utvrđenih nedostataka HR praksi, predlaže se nekoliko preporuka za unapređenje upravljanja ljudskim resursima u industriji osiguranja u Srbiji. Jedna od ključnih odrednica promena je transformacija HR funkcije u strateškog partnera, pri čemu HR treba aktivnije učestvovati u strateškom planiranju, razvoju lidera, inovacijama i razvoju organizacione kulture. Na taj način, funkcija HR treba da pređe sa administrativne uloge na stratešku i razvojno orijentisanu.

HR funkcija treba da podrži razvoj digitalnih kompetencija, posebno u oblastima analitike podataka, upravljanja digitalnim kanalima i korisničkim iskustvima. Takođe, HR treba da obezbedi interne treninge, e-learning platforme i korišćenje različitih alata, sa posebnim fokusom na zadržavanje talenata i povećanje angažovanosti zaposlenih. U praksi, HR treba da kreira radno okruženje koje je u skladu sa očekivanjima tržišta rada i jasno definiše razvojne puteve za napredovanje i karijeru.

U cilju boljeg povezivanja sa obrazovnim institucijama, preporučuje se uspostavljanje partnerskih odnosa sa univerzitetima i organizovanje specijalizovanih obrazovnih modula iz oblasti osiguranja, rizika i finansija. U daljem razvoju poslovanja, važno je da kompanije sistematski usklađuju poslovanje sa međunarodnim standardima, uključujući Solventnost II, ESG i GDPR.

HR funkcija treba da ojača i razvije organizacionu kulturu koja omogućava bolju međugeneracijsku koheziju. Takva kultura se gradi otvorenom, inkluzivnom i vrednosno usmerenom praksom, koja podstiče saradnju, transparentnost i međusektorsku koordinaciju, ključnu za povećanje zadovoljstva zaposlenih. HR treba aktivno ulagati u izgradnju otvorene, inkluzivne i vrednosno orijentisane kulture, koja promoviše timski rad, transparentnost i međugeneracijsku saradnju.

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CHALLENGES OF HUMAN RESOURCES MANAGEMENT IN THE INSURANCE INDUSTRY IN SERBIA

REVIEW ARTICLE

Sumarry

The current state and challenges faced by the insurance industry in Serbia are primarily manifested in the complexity of human resources management, due to various influences and changes. These changes are evident in technology, regulation, digitalization, and particularly in the labor market itself. This paper aims to highlight all essential aspects of human resources management under such operating conditions, with particular emphasis on the insurance industry in Serbia. The paper will examine existing practices and provide guidelines and frameworks for further improvements. The analysis will utilize various secondary sources and numerous existing practices, and will propose different directions for improving human resources management, employee development, talent retention, and organizational culture in companies operating in the insurance sector in Serbia.

Keywords: human resources, insurance, strategy, challenges, digitalization.

I Introduction

The contemporary business environment in the insurance industry in Serbia is shaped by dynamic changes that significantly impact the operations of companies

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in this sector. These changes encompass processes of preparing product and service proposals, client communication, and internal work organization. In such an environment, human resources play a crucial role in the growth, development, and sustainability of organizations. The competencies, knowledge, and skills of employees directly affect the quality of service delivery and operational efficiency.

Market changes encourage companies to create better conditions for attracting new candidates, developing and retaining existing employees, and creating a work environment favourable to professional growth and advancement. Human resources management in insurance companies is characterized by numerous challenges, including a shortage of qualified personnel with specific knowledge and skills in the insurance field, high employee turnover – particularly among Generation Z, generational transitions, and an increasingly pronounced need for digital competencies.

These challenges are further complicated by the regulatory framework, which requires compliance with legal standards and professional practices. At the same time, employees are making more frequent demands regarding work-life balance, greater transparency, and participation in decision-making processes. Digital transformation is additionally reshaping the insurance sector through the introduction of new IT solutions, process automation, and the development of digital communication channels.

Under such conditions, the need for continuous employee development and for strengthening the strategic role of the human resources function becomes imperative. HR departments must move beyond traditional administrative tasks and assume the role of strategic business partners. Their role entails creating organizational climate and culture, employee and leadership development, enhancing employee satisfaction and competencies, and shaping a work environment that attracts and retains talent.

The aim of this paper is to provide an overview of key challenges in human resources management within insurance companies in Serbia, to examine existing practices and literature, and to offer guidelines for improving HR strategies in accordance with the contemporary labor market requirements and the transformation of the insurance industry.

II Theoretical framework

In the literature, the human resource management (HRM) function encompasses a systematic and comprehensive approach that includes a planned process for workforce planning, employee selection and recruitment, onboarding and job orientation, motivation, and daily support in achieving both individual and corporate objectives, in order to maximize organizational success.[3] The human

[3] John Bratton, Jeff Gold, *Human resource management: Theory and practice* (7th ed.). Macmillan International Higher Education, 2019, 79.

resources function plays a highly important and dominant role in every industry. In service-oriented industries, this role is even more pronounced, which is particularly evident in the insurance sector and financial institutions.

The role of the HRM function is reflected in generating a competitive advantage created by employees in relation to the market and clients; that is, the relevance of their role depends on the competencies and knowledge of employees who provide services.[4] The human resource management function today is more strategic than administrative and serves as a bridge between employees and the company, or between their knowledge, skills, and competencies on one hand, and the company's growth strategy and vision on the other.[5] Insurance companies increasingly recognize the significance of the HR function in creating business value through their employees.

Various human resource management models emphasize the importance of aligning HR strategy with the organization's overall goals.[6] To enable insurance companies to be more successful and competitive in the market, the competency-based model is increasingly being applied, which identifies and develops skills critical for effective performance across organisational functions.[7] Skills enhancement encompasses technical knowledge, as well as interpersonal skills,[8] digital literacy, and understanding regulatory requirements.[9]

Insurance companies in Serbia have aligned their operations with the legal and institutional framework, which also affects the functioning of the HR sector. Various laws and bylaws, in addition to the Labor Law and the Insurance Law, as well as regulations issued by the Insurance Supervision Agency and the National Bank of Serbia,[10] provide binding guidelines regarding training, licensing, and supervision of human capital.[11] These regulatory requirements further shape the role of the HR function in organizations, particularly in the domain of continuous education, competency development, and alignment with European standards.[12]

[4] John Purcell, Peter Boxall, J., *Strategy and human resource management* (4th ed.). Palgrave Macmillan, 2018, 98.

[5] David E. Guest, *Human resource management and performance: A review and research agenda. International Journal of Human Resource Management*, 8(3), 1997, 263–276.

[6] Biljana Bogićević Milikić, Nebojša Janićijević, Božidar Cerović *Two decades of post-socialism in Serbia: Lessons learned and emerging issues in human resource management.* Journal for East European Management Studies, 2012, 445–463.

[7] Nitin Vazirani, *Competency-based human resource management*. SAGE Publications, 2010, 78.

[8] Claire Buchan Bhawra, Jasmin Bhawra, Tarun Reddy Katapally, *Navigating the digital world: Development of an evidence-based digital literacy program and assessment tool for youth.* Smart Learning Environments, 2024, 11(1), 8.

[9] CIPD, People Profession 2023: International Survey Report, 2023.

[10] OECD, Business and Finance Outlook 2021.

[11] EIOPA, EIOPA Annual Report 2022, European Insurance and Occupational Pensions Authority, 2022.

[12] Deloitte, Global Human Capital Trends 2023: Leading in the New Era, Deloitte Insights, 2023.

In addition to domestic regulations, EIOPA guidelines at the international level also provide appropriate frameworks for establishing adequate and predictable corporate governance, with a focus on leadership development and professional ethics. All the aforementioned changes, requirements, and regulatory frameworks indicate that the human resource management function must move beyond its operational role and administrative support toward the role of strategic partner, which significantly influences employee competency, organisational climate and culture,[13] as well as the establishment of a learning organization that adapts to all regulatory requirements and market changes. The HR function should be strategic, with particular focus on employee development and organizational learning culture, with high agility in processes and change management.

The future results of insurance companies will depend on the HR sector's ability to fully respond to market demands, monitor digital and technological changes, and be prepared for the deployment of AI in business operations.[14] In the previous period, particularly following the COVID-19 pandemic, significant transformations have been observed in nearly all insurance companies in the Republic of Serbia. This primarily refers to changes driven by digitalization, increased client needs, and more demanding regulatory bodies.[15]

Contemporary challenges in human resource management (HRM) require analysis of the impact of social factors on employee competencies, with other authors highlighting the significance of gender, age structure, and socioeconomic status on digital learning skills.[16] In this context, the need for aligning HR policies with the organization's strategic goals and continuous improvement of employee management practices is particularly emphasized.

In the context of the Serbian market,[17] differences are evident between the private and public sectors in HR practices, including talent attraction, development, and retention. Other authors[18] note that employee satisfaction in non-profit organizations directly affects performance and motivation. In addition to this observation, the transformation of HRM practices in post-socialist countries and the need for modernization of human resource management strategies are also evident.[19] Thus, HRM functions are linked to overall organizational performance, emphasizing the research significance of aligning HR practices with organizational goals.

[13] Michael Armstrong, *A handbook of human resource management practice* (10th ed.), Kogan Page, 2006, 95.
[14] Buchan, M. C., Bhawra, J., Katapally, T. R. (2024), 8.
[15] Korn Ferry, *Future of work trends 2021: The new era of humanity*, 2021, 78.
[16] Bratton, J., Gold, J (2019), 97.
[17] Nemanja Berber, Agneš Slavić, *„HRM in private and public organizations in Serbia".* Journal of Engineering Management and Competitiveness (JEMC), 6(2), 2016, 75–83.
[18] Matthias Benz, *Not for the profit, but for the satisfaction? Evidence on worker well-being in non-profit firms.* Kyklos, 58(2), 2005, 155–176.
[19] Milikić, B. B., Janićijević, N.,Cerović, B.(2012), 445–463.

Other sources indicate that comprehensive reviews of HRM theoretical frameworks and their practical implementation across various industries are provided.[20] Here, we primarily see the importance of developing digital literacy and evaluating youth programs, which can also be applicable in corporate training programs. Certain authors also demonstrate how students use digital technologies and perceive their usefulness, which is relevant for developing employees' digital competencies.[21]

Deloitte also identifies trends in the digital transformation of the HR function in Southeast Asia, highlighting those that may be comparatively useful for application in Serbia.[22] Dukić and other authors emphasize how the application of HRM practices directly impacts performance in manufacturing firms and sustainable development.[23] Hamlin and colleagues demonstrate how virtual learning can have a significant impact on rural areas, which also suggests possibilities for *e-learning* platforms in HR training.[24]

The future of work is expected to require high agility and digital competencies, particularly in change management. Lazarević and others point out that demographic differences significantly affect employee satisfaction with benefits and perks.[25] All these findings further confirm that the insurance industry in Serbia and beyond must continuously invest in competency development, digital skills, and agile leadership in order for the HR function to become a strategic partner of the organization.

A key challenge in these changes is the shortage of a qualified workforce. This problem has been pronounced in recent years and is difficult to reverse. The shortage of potential employees with specific knowledge in the insurance field, particularly in areas such as actuarial science, underwriting, reinsurance, and risk management, poses a serious challenge. In addition to finding new personnel, there is also the problem of retaining existing employees with specialised skills.

All these problems are associated with less developed formal education in the insurance field, requiring insurance companies to invest considerably in employee education and competency development. Another recognized problem

[20] Bratton, J., & Gold, J (2019), 85.

[21] Anat Cohen, Tal Soffer, Michael Henderson, *Students' use of technology and their perceptions of its usefulness in higher education: International comparison,* Journal of Computer Assisted Learning, 38(1), 2022, 1–14.

[22] Deloitte, Digital HR transformation survey 2022: Southeast Asia. Deloitte, 2023.

[23] Mijatović, Marijana Dukić, Ozren Uzelac, and Aleksandra Stoiljković. „Effects of human resources management on the manufacturing firm performance: Sustainable development approach". *International Journal of Industrial Engineering and Management* 11.3 (2020): 205-212.

[24] Hamlin, D., Adigun, O., & Adams, C. (2023). *Do virtual schools deliver in rural areas? A longitudinal analysis of academic outcomes.* Computers & Education, 199, 104789.

[25] Anđela Lazarević, Ivana Marinović Matović, *The impact of demographic differences on employee satisfaction with benefits and perks: Evidence from Serbian financial sector.* Facta Universitatis, 19(2), 2022, 233–245.

is the high turnover rate, particularly among young professionals.[26] Young specialists do not perceive sufficient challenges in the insurance industry and seek career opportunities in faster-growing sectors such as IT, while market internationalisation enables the emigration of highly educated personnel, which affects the sustainability of domestic HR potential.[27]

In insurance companies, five generations of employees are present – from baby boomers to Generations Y/Z – which requires additional alignment of expectations, motivation, and workplace environment, as stated in various *McKinsey* reports.[28] HR practices must include flexible work arrangements, mentorship, onboarding, and support through various training programs.

Digitalization is creating new job profiles, such as data analysts, IT specialists, digital marketing experts, UX professionals, and cybersecurity specialists. Existing knowledge is insufficient for these positions, so there is a need for hybrid employees who combine technical and business knowledge with industry competencies, as stated in a PwC report.[29] Furthermore, there is an increasing requirement for compliance with European standards, including Solvency II principles, GDPR, and ESG. Therefore, continuous professional development and employee competency enhancement are key to the sustainability and competitiveness of insurance companies.

III Methodology

This paper is conceived as a review article, aimed at systematizing existing knowledge on human resource management challenges in the insurance industry, with a particular focus on the Republic of Serbia market and comparative analysis of similar economic systems.

The methodological approach is based on descriptive-analytical processing and qualitative analysis of secondary data sources. Primary data sources include scientific papers and articles published in relevant international and domestic journals, while secondary sources encompass reports and publications from regulatory bodies such as EIOPA and NBS, as well as professional analyses and reports from international consulting firms Deloitte, PwC, and Korn Ferry.

The analytical procedure includes systematic content analysis of relevant literature, identification of key themes and patterns in HR practices within insurance companies, and evaluation of the impact of regulatory and market factors on the HR

[26] Gallup, State of the Global Workplace 2023 Report. Gallup, Inc. Retrieved from https://www.gallup.com/workplace/349484/state-of-the-global-workplace.aspx, 2023.
[27] World Bank, Human Capital Umbrella Program Annual Report 2022, 2022.
[28] McKinsey & Company, "How generational differences will impact the future workforce" 2020.
[29] PwC., Insurance 2025 and beyond: Preparing talent for the future. PwC,2021.

function. Particular focus is placed on digitalization challenges, employee turnover, intergenerational diversity, and digital competency development.

The data validation process was conducted through source triangulation, comparing findings from academic papers, institutional reports, and professional case studies. This approach enables an increase in the reliability of interpretations and the relevance of conclusions, reducing potential bias from individual sources.

The methodological limitations stem from the fact that this research does not include primary empirical data from domestic insurance companies. Therefore, it is recommended that future research apply quantitative instruments (questionnaires, surveys) for mapping employee attitudes and perceptions, as well as qualitative techniques (semi-structured interviews, focus groups) for a deeper understanding of organizational culture and HR strategies. Additionally, further limitations arise from regional specificities and varying levels of corporate digital maturity, which may affect the transferability of findings to other countries or sectors.

This methodological framework enables a systematic review and integration of existing knowledge, identification of key challenges, and development of recommendations for improving HR practices in insurance companies in Serbia and the broader regional context.

IV Results analysis

The analysis used numerous relevant domestic and international sources encompassing various aspects of human resource management in the insurance industry. Particular focus is placed on talent attraction processes, employee development and retention, and the impact of digitalization on organizations, including automation and its implications for HR functions. All these changes significantly shape organizational climate and culture.

In addition to the specific characteristics affecting human resources, the transformation process of the HR function itself in the insurance industry was analyzed through available research studies and reports published by PwC, Deloitte, EIOPA, and the OECD.

According to the PwC – Insurance 2025 and Beyond study,[30] which surveyed more than 200 participants, predominantly in executive positions across 35 countries, including countries in our region, up to 80% of respondents indicated that the primary challenge in the upcoming period will be securing employees with adequate digital skills. At the same time, more than half of the participants pointed to a shortage of leaders prepared to assume greater responsibilities, which confirms the need for an agile and strategic approach to the HR function.

[30] PwC, Insurance 2025 and Beyond: Preparing Talent for the Future, 2021.

Similarly, a longitudinal study conducted by Deloitte,[31] with a sample of over 10,000 HR professionals and leaders, demonstrated that the insurance industry ranks low on the agility scale in employee management, despite significant changes in customer requirements and digital communication channels. The results show that as many as 41% of insurance companies have not developed training programs for acquiring digital skills, while 55% continue to use traditional *performance* management models, which is not aligned with the expectations of Generations Y and Z.

In an analysis conducted by the OECD – Human Resource Challenges in Financial Services,[32] which covers the banking and insurance sectors in OECD member countries, a dominant hierarchical management system and high employee turnover in sales divisions were identified, reaching up to 35% in some countries.

According to National Bank of Serbia data, in the first quarter of 2025, the number of employees in the insurance sector was 11,297, representing a slight decrease of 1.2% compared to the same period in the previous year. Furthermore, the NBS emphasizes in its regulatory guidelines that insurance companies must ensure that persons performing insurance sales activities are adequately prepared and educated to meet the needs of citizens and the economy. Accordingly, the Serbian Chamber of Commerce prescribes that insurance intermediaries and agents are obligated to participate in at least 15 training hours of professional development annually.[33]

Additionally, the EIOPA – Conduct Risk Report 2022[34] highlights a lack of adequate training and education in legislation and policyholder protection at insurance companies, which directly affects legal and market risks. EIOPA recommendations emphasize that continuous learning and employee development should be integrated directly into HR functions and *compliance*, thereby increasing organizational resilience to regulatory changes.

The World Economic Forum – The Future of Jobs Report 2020[35] stresses that by 2030, 50% of job positions will require skill enhancement or acquisition of new competencies, with industries such as insurance being particularly vulnerable to digitalization and automation, which further confirms the significance of the HR function in maintaining competitiveness.

Based on all analyzed sources, it can be concluded that the primary challenge for the insurance industry in Serbia and the region is the recruitment and retention of qualified personnel, particularly those with digital competencies and the capacity to assume leadership roles. The transformation of the HR function into a strategic

[31] Deloitte, Digital HR Transformation Survey 2022: Southeast Asia, 2023.
[32] OECD, Business and Finance Outlook 2021.
[33] National Bank of Serbia, „Osiguranje – opšti pregled", https://www.nbs.rs/sr/finansijske-institucije/osiguranje, 2025.
[34] EIOPA, EIOPA annual report 2022. European Insurance and Occupational Pensions Authority, 2022.
[35] World Bank, Human Capital Umbrella Program Annual Report 2022, 2022.

partner is essential to respond to increasing market demands, digitalization, the intergenerational gap, and regulatory changes.

The limitations of this analysis stem from the lack of primary empirical data from domestic insurance companies, as well as from the limited real-time availability of certain regulatory reports, which may affect data completeness and accuracy. These limitations emphasize the need for future research that combines quantitative (questionnaires, surveys) and qualitative (semi-structured interviews) methods for more detailed mapping of HR challenges and practices.

V Discussion

Through analysis of all available sources and secondary literature, we have established that the insurance sector in Serbia is undergoing a phase of intensive changes, reflected in the adaptation and enhancement of human resources through competency development and upgrading, as well as in changes to organizational structure, management approaches, and organizational climate and culture within insurance companies.

In this regard, we will present key areas where challenges are evident, supplemented with additional research confirming the previously stated findings. According to the Deloitte report Global Human Capital Trends 2023,[36] the digital transformation process in insurance companies is a necessity, not an option, and requires significant investment in employee training and development. Digital transformation processes are no longer a development option, but represent a necessity for organizational survival and competitiveness. Only those organizations that implement effective digitalization can successfully enter the transformation process.

This process requires parallel investment in employee training, organizational culture change, and strategic HR function planning. Furthermore, a McKinsey & Company report[37] shows that more than 60% of digital initiatives in insurance companies fail to deliver expected results, which is attributed to employee resistance, poor implementation, and insufficient communication, as well as weak management vision. Based on these insights, it can be concluded that the introduction of new IT tools and digitalization is closely linked to the transformation of the HR function, which must evolve from an administrative function into a strategic business partner in operations and organizational vision creation.

The National Bank of Serbia states in its review[38] that there is a significant imbalance between labor market needs and the availability of qualified candidates,

[36] Deloitte, Global Human Capital Trends 2023: Leading in the New Era, Deloitte Insights, 2023.
[37] McKinsey & Company, How generational differences will impact the future workforce, 2020.
[38] Narodna banka Srbije, „Osiguranje – opšti pregled", https://www.nbs.rs/sr/finansijske-institucije/osiguranje, 2025.

particularly in sales and technical functions. Similar findings are provided by EIOPA,[39] which indicates that the turnover rate in insurance companies is above the financial sector average, driven by inadequate reward models and unclear career paths.

In this context, the HR function must develop comprehensive strategies to create a safe and motivating environment for employees, enabling them to see clear career pathways and continuously develop their competencies.

In addition to the aforementioned challenges, the disconnect between the education system and contemporary labor market requirements is evident. The OECD emphasizes in its report that it is necessary to align formal education with sector needs through dual education and practical training.[40]

This indicates that a large percentage of new employees are unprepared to integrate effectively into work processes. Based on these findings, we observe that systemic reforms involving universities, state institutions, and insurance companies will be necessary in the future period. Another insight we have gained is that the current HR function in insurance companies remains predominantly administrative, with significant limitations in strategic decision-making.

In its research, EIOPA[41] provides guidelines according to which the HR function in organizations should assume a key role in implementing various regulatory changes (e.g. Solvency II, ESG standards). Other research indicates that insurance companies that integrate HR into their strategies demonstrate greater resilience to change and better reputation in the labor market, as noted by CIPD.[42] All these recommendations emphasize the importance of long-term HR empowerment to ensure effective human resource development.

Another research insight shows that organizational structures are difficult to change, which negatively affects employee motivation and engagement, particularly among new generations entering organizations. Deloitte states in its Global Human Capital Trends report that building an organizational culture based on values, transparency, diversity, and inclusion is of critical importance.[43]

Gallup research indicates that highly engaged employees achieve 21% higher revenue, and the turnover rate among engaged employees is nearly 60% lower compared to employees who do not participate in decision-making.[44] These data demonstrate that the impact of organizational climate and culture is crucial for business results, and that this is not merely a soft approach but a significant strategic factor.

[39] EIOPA, EIOPA annual report 2022. European Insurance and Occupational Pensions Authority, 2022.
[40] OECD, Business and Finance Outlook 2021.
[41] EIOPA, EIOPA annual report 2022. European Insurance and Occupational Pensions Authority, 2022.
[42] CIPD People profession 2023: International survey report, 2023.
[43] Deloitte, Global human capital trends 2023: Leading in the new era. Deloitte Insights, 2023.
[44] Gallup, State of the Global Workplace 2023 Report. Gallup, 2023.

Another critical segment is the shortage of specialized personnel with key and specific competencies, which is particularly pronounced in the areas of actuarial mathematics, risk management, reinsurance, underwriting, claims assessment, *compliance*, digital analytics, and IT support. The workforce shortage occurs at the global level as well, but is especially pronounced in Serbia's labor market. The reason for this is poor development of educational programs that enable training of such personnel, which forces companies to develop employees internally, thereby slowing development processes.

Deloitte reports that 68% of respondents in the insurance sector in Central and Eastern Europe indicate an enormous gap between required competencies and those possessed by candidates.[45]

A particular challenge is the intergenerational gap: employees from Generation X and baby boomers often demonstrate resistance to new requirements and changes, while younger generations (Y and Z) seek more flexible working conditions, continuous *feedback*, career advancement, and development. It is also noted that companies implementing more flexible HR practices face a lower risk of talent loss and higher employee satisfaction.

The lack of a systematic approach to regulatory competency development has also been identified as one of the more significant challenges. EIOPA points out that the absence of such competencies carries reputational and operational risks, and the implementation of European standards (Solvency II, GDPR, ESG) requires continuous employee education to meet regulatory body expectations.[46]

Detailed overview of key challenges:

Analysis Dimension	**Main Findings**	**Sources**
Strategic role of HR function	Limited role in strategic decision-making, predominantly operational focus	Deloitte, PwC
Talent attraction and retention	High turnover, particularly among younger employees; low *employer branding*	NBS, Korn Ferry
Competency development	Insufficient internal training programs, weak collaboration with academic institutions	Mercer, OECD
Digital literacy and adaptation	Outdated tools, low utilization of digital HR technologies	PwC, Deloitte
Organization and intergenerational relations	Difficulties in cross-generational collaboration, lack of flexible policies	McKinsey, CIPD
Regulatory compliance	Need for additional education; absence of systematic regulatory compliance programs	EIOPA

[45] Deloitte, Global human capital trends 2023: Leading in the new era. Deloitte Insights, 2023.
[46] EIOPA, EIOPA annual report 2022. European Insurance and Occupational Pensions Authority, 2022.

VI Conclusion

Insurance companies operating in the Republic of Serbia are undergoing an intense phase of transformation, significantly influenced by digitalization. Substantial changes are evident in workforce structure and availability, alongside a growing intergenerational gap within companies. Additionally, more stringent requirements are being imposed by regulatory bodies. Under such operating conditions, human resources represent a strategic asset–human capital that drives organizational growth and success, as their knowledge, skills, and competencies contribute to these defining competitive factors.

The analyses indicate that the HR function must undergo transformation, specifically transitioning from an administrative role to a strategic one, considering the comprehensive role of HR in corporate operations. Another insight is that the labor market exhibits a shortage of various employee profiles, while the turnover rate is significantly high across all insurance companies. Furthermore, there is substantial misalignment between the education system and contemporary labor market requirements.

Digital transformation significantly impacts changes in insurance companies, which entails the need for recruiting new candidates with digital skills, as well as continuous training of existing employees to acquire adequate digital competencies. An important insight is that companies often fail to invest sufficiently in employee development and competency enhancement, while organizational culture is consequently often questionable. This situation is particularly pronounced among the younger generation, which has higher expectations regarding flexible work arrangements and opportunities for development and career advancement.

All of the above results in an increased turnover rate and difficulties in more efficient adaptation to market and regulatory requirements.

Additionally, it is evident that the education system in the Republic of Serbia does not provide sufficient insurance-focused programs and specializations, which further burdens HR departments in insurance companies through the need for additional employee education and professional development. For these reasons, strengthening collaboration among insurance companies, regulatory bodies, and academic institutions is essential to ensure a sustainable long-term solution for the development of a specialised workforce.

Finally, we can conclude that the success and operations of insurance companies in Serbia will largely depend on their ability to recognize the HR function as a key strategic partner. A systematic approach to human resource development enables the creation of a work environment that motivates employees, while facilitating corporate adaptation to contemporary challenges and increasing organizational resilience for sustainable growth, development, and improved business results.

In addition to analyzing the key challenges and identified deficiencies in HR practices, several recommendations are provided for improving human resource management in the insurance industry in Serbia. One of the key determinants of change is the transformation of the HR function into a strategic partner, whereby HR should participate more actively in strategic planning, leadership development, innovation, and organizational culture development. In this way, the HR function should shift from an administrative role to a strategic and development-oriented one.

The HR function should support the development of digital competencies, particularly in the areas of data analytics, digital channel management, and customer experience. Additionally, HR should provide internal training, *e-learning* platforms, and the use of various tools, with particular focus on talent retention and increasing employee engagement. In practice, HR should create a work environment aligned with labor market expectations and clearly define development pathways and career advancement.

To improve cooperation with educational institutions, it is recommended to establish partnerships with universities and introduce specialized educational modules in insurance, risk, and finance. In further business development, it is important for companies to systematically align their operations with international standards, including Solvency II, ESG, and GDPR.

The HR function should strengthen and develop an organizational culture that enables better intergenerational cohesion. Such a culture is built through open, inclusive, and value-based practices that encourage collaboration, transparency, and cross-sectoral coordination, which are crucial for increasing employee satisfaction. HR should invest actively in building an open, inclusive, and value-based culture that promotes teamwork, transparency, and intergenerational collaboration.

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USKLAĐIVANJE ZAKONSKOG OKVIRA SISTEMA OSIGURANJA DEPOZITA U SRBIJI S PRAVNIM TEKOVINAMA EVROPSKE UNIJE

PREGLEDNI NAUČNI RAD

Apstrakt

Zakon o osiguranju depozita usklađivan je sukcesivno od 2008. prvo s Direktivom 94/19/EC, zatim s Direktivom 2009/14/EC, a po njenom ukidanju, i s Direktivom 2014/49/EU. Cilj ovog rada je da čitaocu približi proces usklađivanja zakonskog okvira kojim se uređuje sistem osiguranja depozita u Srbiji s odgovarajućim izvorima prava u Evropskoj uniji. Taj proces biće predstavljen hronološki, uz analizu neposrednih povoda i svrhe koju je zakonodavac nameravao da ostvari. Težište rada biće na najvažnijim odredbama evropskih propisa o osiguranju depozita i mogućnosti njihove primene u Srbiji s obzirom na realno stanje na bankarskom tržištu. Na kraju će biti predstavljen koncept mogućih daljih pravaca unapređenja evropske regulative za upravljanje krizama u bankarskom sistemu.

Ključne reči: osiguranje depozita, Zakon o osiguranju depozita, Direktiva EU o sistemima osiguranja depozita, usklađivanje s evropskim pravnim tekovinama

I Svrha i funkcija sistema osiguranja depozita

Primarni cilj sistema osiguranja depozita jeste da zaštiti vlasnike računa u bankama od gubitaka u slučaju stečaja ili likvidacije banke[2] (osigurani slučaj).

[1] Agencija za osiguranje depozita, direktorka. imejl: ljubica.pantelic@aod.rs.
Rad primljen: 28. 7. 2025.
Rad prihvaćen: 26. 9. 2025.
[2] Prema čl. 2 Zakona o stečaju i likvidaciji banaka i društava za osiguranje, i stečaj i likvidacija pokreću se rešenjem nadležnog suda, i to na osnovu rešenja Narodne banke Srbije o ispunjenosti uslova za

U različitim formama, sistemi osiguranja depozita postoje u svim evropskim zemljama i velikoj većini zemalja sveta. Koncepciju i specifične odlike svakog sistema prvenstveno diktiraju ekonomske prilike u datoj jurisdikciji.

Saglasno odredbama Zakona o osiguranju depozita,[3] po nastupanju osiguranog slučaja, Agencija za osiguranje depozita započinje isplatu osiguranih deponenata u roku od sedam radnih dana od dana donošenja rešenja suda o pokretanju stečajnog odnosno likvidacionog postupka nad bankom. Sve banke s dozvolom za rad obuhvaćene su sistemom osiguranja i dužne da na ime osiguranja depozita plaćaju tromesečnu premiju u iznosu koji odgovara propisanom procentu (najviše 0,2 odsto kvartalno) ukupnih osiguranih iznosa depozita u banci. Od naplaćenih premija obrazuje se Fond za osiguranje depozita, čija se sredstva ulažu na način propisan Zakonom o osiguranju depozita i internim aktima Agencije za osiguranje depozita (Agencija). Osiguranici (deponenti) ne plaćaju premiju niti s Agencijom stupaju u ugovorni odnos. Treba imati u vidu da nisu zaštićeni svi deponenti banke. Osiguranjem su obuhvaćena fizička lica, preduzetnici, te mikro, mala i srednja pravna lica, dok recimo depoziti velikih pravnih lica, kako su razvrstana u Zakonu o računovodstvu,[4] ne uživaju zaštitu. Iz sistema osiguranja isključene su i neke druge kategorije deponenata, poput pravnih ili fizičkih lica povezanih s bankom, lica čiji su depoziti nastali pranjem novca ili finansiranjem terorizma i slično. Ukupan osigurani iznos depozita koje jedan klijent čuva u jednoj banci jeste 50.000 evra. U slučaju stečaja ili likvidacije banke, ukoliko je ulog deponenta veći od tog iznosa, deo koji nije pokriven sistemom osiguranja depozita može se naplatiti prilikom deobe stečajne/likvidacione mase banke. Na isti način se, između ostalog, namiruje i sâm Fond za osiguranje depozita, koji ima apsolutni prioritet u naplati potraživanja od banke u stečaju/likvidaciji u odnosu na sve druge poverioce, uključujući i osigurane deponente.

Princip realne subrogacije svojstven je sistemima osiguranja depozita u celom svetu i zapravo predstavlja njihov temelj. Bez subrogacije, tj. zamene poverioca (u ovom slučaju, Agencija nastupa kao poverilac banke u stečaju umesto osiguranih deponenata, ispunivši prethodno obaveze banke prema njima, tj. vrativši im depozite do osiguranog iznosa), sistem osiguranja depozita ne bi uspeo da ispuni jedan od osnovnih ciljeva svog postojanja, a to je očuvanje finansijske stabilnosti kroz garantovanje zaštite osiguranim deponentima.

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pokretanje stečajnog odnosno likvidacionog postupka, s tom razlikom što se postupak stečaja može sprovoditi i na predlog likvidacionog upravnika ukoliko utvrdi da imovina likvidacionog dužnika nije dovoljna da podmiri sva potraživanja poverilaca. Drugim rečima, u postupku likvidacije očekuje se da će likvidaciona masa biti dovoljna za pokriće svih obaveza prema poveriocima, dok se u stečajnom postupku nad bankom ili društvom za osiguranje poverioci namiruju procentualno i po isplatnim redovima sve do završne deobe stečajne mase.

[3] Zakon o osiguranju depozita – ZOD, *Službeni glasnik RS*, br. 14/15, 51/17, 73/19 i 94/24, čl. 3, 4, 6, 10, 12, 15–17.

[4] Zakon o računovodstvu, *Službeni glasnik RS*, br. 73/19, 44/21-dr. zakon, čl. 6.

Nosilac osiguranja depozita u Srbiji je Agencija za osiguranje depozita, koja pored te osnovne delatnosti, obavlja i druge poslove, poput organizovanja Fonda za zaštitu investitora i vršenja funkcije stečajnog i likvidacionog upravnika u bankama i društvima za osiguranje. Za obaveze Agencije prema osiguranim deponentima jemči država. Prema klasifikaciji utvrđenoj Baznim principima delotvornih sistema osiguranja depozita Međunarodnog udruženja osiguravača depozita (IADI) i Bazelskog komiteta za superviziju banaka (BCBS), kao osiguravač depozita, Agencija ima mandat isplatne blagajne plus (engl. *paybox plus*),[5] jer pored isplate osiguranih iznosa, učestvuje i u postupku restrukturiranja banaka, i to pružajući finansijsku podršku izdvajanjem sredstava iz Fonda za osiguranje depozita.

II Usklađivanje domaće regulative s evropskim direktivama o osiguranju depozita

1. Izvori prava u EU i pravni osnov za usklađivanje

Proces usklađivanja domaće regulative s pravnim tekovinama Evropske unije pokrenut je još 2004. godine, pre nego što je Sporazum o stabilizaciji i pridruživanju (SSP) stupio na snagu (2013), pa čak i pre nego što ga je Republika Srbija potpisala i ratifikovala (2008). Potpisivanjem SSP-a, Srbija se obavezala na postepeno usklađivanje domaćeg zakonodavstva s pravom EU.[6]

Najviši pravni akt Evropske unije kojim se uređuje funkcionisanje sistema osiguranja depozita pripada korpusu sekundarnog zakonodavstva (engl. *secondary law*) i naziva se Direktivom o sistemima osiguranja depozita. Direktivama se postavljaju obavezujući ciljevi za zemlje članice, koje ih dalje moraju uklopiti u nacionalno zakonodavstvo i svaka za sebe propisati način na koji će biti postignuti.[7]

U procesu harmonizacije domaćeg zakonodavstva s pravnim tekovinama EU, u martu 2015. godine održan je prvi skrining u okviru pregovaračkog poglavlja 9 (danas deo klastera 2 – Unutrašnje tržište), koje je obuhvatalo finansijske usluge. Sámo pregovaračko poglavlje otvoreno je u junu 2019. Agencija za osiguranje depozita učestvuje u radu Pregovaračke grupe 9 kao jedna od institucija nadležnih za praćenje i usaglašavanje domaćeg zakonodavstva s propisima EU o sistemima za osiguranje depozita.

[5] International Association of Deposit Insurers (IADI), *Core Principles for Effective Deposit Insurance Systems* (Core Principles), November 2014, dostupno na: https://www.iadi.org/uploads/cprevised2014nov.pdf 10. 7. 2025, str. 19.

[6] Kancelarija za evropske integracije, *Nacionalni program za usvajanje pravnih tekovina Evropske unije*, jul 2014, dostupno na: https://www.mei.gov.rs/upload/documents/nacionalna_dokumenta/npaa/npaa_2014_2018.pdf 11. 7. 2025, str. 1.

[7] Types of legislation, https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en, 11. 7. 2025.

Transpozicija Direktive 94/19/EC Evropskog parlamenta i Saveta od 30. maja 1994. godine[8] u Zakon o osiguranju depozita počela je još 2008. godine. To je, zapravo, bila prelomna godina u razvoju sistema osiguranja depozita u Srbiji jer je stupanjem na snagu Zakona o izmenama i dopunama Zakona o osiguranju depozita u decembru 2008. obrazovan moderni sistem osiguranja depozita, čija se kredibilnost, između ostalog, ogledala i u visini osiguranog iznosa i obuhvatu zaštićenih kategorija. Početkom 2009. godine usvojene su izmene i dopune Direktive (Direktiva 2009/14/EC od 11. marta 2009), kojima su modifikovani osigurani iznos i rok za početak isplate osiguranih iznosa.[9] Trenutno je na teritoriji Evropske unije u primeni Direktiva 2014/49/EU od 16. aprila 2014. godine,[10] koja bi u narednom periodu takođe mogla biti predmet izmena i dopuna po završetku javne rasprave o nacrtu novog okvira za upravljanje bankarskim krizama i osiguranje depozita.

Prema Planu za ispunjavanje najvažnijih obaveza iz procesa pregovora o pristupanju Republike Srbije Evropskoj uniji do kraja 2026. godine (donet u aprilu 2025),[11] rok za usvajanje izmena i dopuna Zakona o osiguranju depozita u cilju punog usklađivanja s Direktivom iz 2014. godine jeste četvrto tromesečje 2026. godine.

2. Zakonsko uređenje i stanje sistema osiguranja depozita na početku procesa usklađivanja

Iako sistem osiguranja depozita u Srbiji nominalno postoji od 1989. godine, tek 2005. postavljeni su zakonski i operativni temelji savremenog i funkcionalnog sistema. Na osnovu Zakona o osiguranju depozita iz 2005. godine,[12] osiguranjem su bili pokriveni depoziti fizičkih lica do iznosa od 3000 evra, a rok za početak isplate ograničen je na 30 dana od dana otvaranja stečajnog postupka nad bankom. Sve banke su bile obuhvaćene sistemom osiguranja i plaćale su unapred tromesečnu premiju po stopi koja je obezbeđivala adekvatnu kapitalizaciju Fonda za osiguranje depozita (osnovica za obračun premije bila je 22 puta veća nego prethodne godine). Ukupni depoziti fizičkih lica u bankama iste godine porasli su za 76,7 odsto.[13]

[8] Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (Direktiva EU 1994), dostupno na: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31994L0019 11. 7. 2025.

[9] Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 ameding Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay) (Direktiva EU 2009), dostupno na: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32009L0014, 11. 7. 2025.

[10] Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (recast) (Direktiva EU 2014), dostupno na: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0049, 11. 7. 2025.

[11] dostupno na: https://www.mei.gov.rs/upload/documents/pristupni_pregovori/plan_spunjavanje_obaveza_pregovori__2026.pdf 24. 7. 2025, 97

[12] Zakon o osiguranju depozita (ZOD 2005), *Službeni glasnik RS*, br. 61/05, čl. 1–3, 13, 16–17.

[13] Izveštaj o radu Agencije za osiguranje depozita za 2005. godinu, mart 2006, 12.

Međutim, samo u oktobru 2008. godine, kao posledica globalne finansijske krize, zabeležen je odliv depozita fizičkih lica u bankama od oko osamsto miliona evra.[14] Kako bi se odgovorilo na negativnu tendenciju u kretanju depozita, krajem godine je u hitnoj skupštinskoj proceduri usvojen Zakon o izmenama i dopunama Zakona o osiguranju depozita (ZOD 2008), kojim su promenjeni osnovni parametri sistema i praktično započeto postepeno usklađivanje s odredbama Direktive EU 94/19/EC.

Najvažnije izmene odnosile su se na osigurani iznos i obuhvat osiguranja. Osiguranici više nisu bili samo fizička lica već i preduzetnici, te mala i srednja pravna lica. Osigurani iznos povećan je na 50.000 evra.

U Obrazloženju ZOD-a 2008, kao prvi razlog za donošenje akta navodi se „povećanje osiguranog iznosa zbog potrebe harmonizacije domaćeg zakonodavstva sa zakonodavstvom zemalja u okruženju i zemalja Evropske unije". Prema proceni navedenoj u Obrazloženju, povećanjem osiguranog iznosa sa 3000 na 50.000 evra po deponentu po banci, osiguranjem depozita bi u celosti bilo pokriveno više od 99 odsto ukupnih deponenata u svim bankama u zemlji. Navodeći razloge za donošenje zakona po hitnom postupku, predlagač ukazuje na aktuelne probleme na finansijskom tržištu i „psihološkim faktorima izazvanu" potrebu da se obezbedi sigurnost deponenata, a sistem osiguranja depozita prilagodi zemljama u okruženju i Evropskoj uniji. Premda se razlozi za prilagođavanje dalje ne objašnjavaju, pogotovo u pogledu zemalja u okruženju, može se zaključiti da je namera zakonodavca bila i da spreči pojavu regulatornog oportunizma, tj. da demotiviše prenos sredstava u države s povoljnijim uslovima osiguranja depozita, prvenstveno s većim osiguranim iznosom.

Sudeći po kretanju osiguranih depozita neposredno po donošenju ZOD-a 2008. godine, primenjena mera bila je pravovremena i delotvorna s obzirom na to da je već u novembru naredne godine ukupna suma osiguranih depozita u bankarskom sistemu Srbije dostigla nivo s kraja septembra 2008. godine.[15]

U vreme donošenja ZOD-a 2008, u Evropskoj uniji je na snazi bila Direktiva 94/19/EC, koja će i sama pretrpeti važne izmene već naredne godine. Propisivala je tek minimalne osnove za usklađivanje s nacionalnim zakonodavstvima.

U njenoj preambuli podseća se da je Evropska komisija krajem 1986. izdala preporuku da sve zemlje članice Evropske unije (tada ih je bilo dvanaest) uvedu sisteme osiguranja depozita, ali se ocenjuje da ta preporuka nije u potpunosti ostvarila željeni rezultat. [16] Zemlje članice se obavezuju da na svojoj teritoriji uspostave sistem

[14] Izveštaj o radu Agencije za osiguranje depozita za 2008. godinu, jun 2009, 4.

[15] Izveštaj o radu Agencije za osiguranje depozita za 2009. godinu, maj 2010, 12.

[16] Mnoge evropske zemlje uvele su sistem osiguranja depozita još pre 1986, ali su razlike među centralnim odlikama tih sistema bile izražene. Tako su, recimo, Nemačka, Francuska i Italija imale privatne sisteme osiguranja depozita na dobrovoljnoj osnovi (učešće u sistemu nije bilo obavezno za sve banke), dok je britanskim sistemom upravljalo državno telo i članstvo u njemu bilo je obavezno. Međutim, britanskim sistemom bilo je osigurano 20.000 funti po principu saosiguranja: državni sistem bi po nastupanju osiguranog slučaja isplatio 75 odsto osiguranog iznosa, dok bi na teret deponenta pao ostatak. U Francuskoj

osiguranja depozita, osim ako već nemaju određene šeme kojima se deponenti štite od gubitka u slučaju stečaja kreditne institucije. Osigurani iznos bio je na nivou od najmanje 20.000 ekija (evra) po deponentu po kreditnoj instituciji, s tim što jurisdikcije u kojima je bio manji od propisanog nisu morale da ga povećavaju ako do početka drugog milenijuma dostigne makar 15.000 ekija. Sami deponenti kao osiguranici ne definišu se posebno, što znači da se Direktivom nijedna kategorija ne isključuje automatski, ali se u preambuli naglašava da zemlje članice mogu izuzeti određene vrste depozita ili deponenata ukoliko smatraju da ne treba da uživaju zaštitu.

Važno je ukazati i na propisanu obavezu kreditnih institucija da svim deponentima pruže potrebne informacije o garantnoj šemi koja ih štiti, kao i o njihovim pravima ukoliko nastupi osigurani slučaj, ali im nije bilo dozvoljeno da članstvo u sistemu osiguranja depozita zloupotrebe u marketinške svrhe. Rok za isplatu osiguranih iznosa bio je tri meseca od dana kad je deponentima onemogućen pristup njihovim sredstvima na računu, s tim da se taj rok mogao produžiti za još tri meseca. U čl. 11 eksplicitno je navedeno da sistemi osiguranja depozita imaju pravo na naplatu potraživanja od stečajnog dužnika u ime deponenata po pravu subrogacije.[17]

3. Zakonske reforme u EU i Srbiji podstaknute globalnom finansijskom krizom

Ozbiljni poremećaji na finansijskom i bankarskom tržištu primorali su regulatore širom sveta, pa i u EU i Srbiji, da pruže čvršće i uverljivije garancije korisnicima bankarskih usluga da neće snositi gubitke usled problema u poslovanju kreditnih institucija ni kao deponenti ni kao poreski obveznici.[18] Kako bi u većoj meri internalizovala troškove restrukturiranja banaka, EU je 2014. donela Direktivu o uspostavljanju okvira za oporavak i restrukturiranje kreditnih institucija i investicionih firmi (BRRD),[19]

je osigurani iznos bio 400.000 franaka (oko 63.000 američkih dolara), dok je u Italiji bilo osigurano dvesta miliona lira (oko 150.000 američkih dolara) u celosti, a preostali iznos do osamsto miliona lira do 80 odsto. Zanimljiv prikaz razlika između pojedinih evropskih sistema osiguranja depozita i sistema u Japanu i Kanadi daje američki General Accounting Office (GAO) u izveštaju izrađenom po nalogu predsednika Odbora za bankarstvo, stanovanje i urbanizam Senata SAD iz 1991. godine. Dostupno na https://www.gao.gov/assets/nsiad-91-104.pdf, 7. 7. 2025, 12–21.

[17] Direktiva EU 1994, Preambula i članovi 3, 7, 9, 10 i 11.

[18] Prema procenama MMF-a, gubici evropskih banaka u periodu od 2007. do 2010. godine dostigli su osam odsto BDP-a EU ili gotovo bilion evra. Evropska komisija je između 2008. i 2012. godine izdvojila skoro šeststo milijardi evra pomoći bankama u vidu dokapitalizacije i drugih mera sanacije. V. Rowe, James: „IMF Survey: Government Borrowing Is Rising Risk to World Financial System", April 20, 2010, dostupno na: https://www.imf.org/en/News/Articles/2015/09/28/04/53/sores042010a#:~:text=The%20report%20cut%20its%20estimates,$2.3%20trillion%2C%20the%20IMF%20estimates, 14. 7. 2025.

[19] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms (BRRD), dostupno na: https://eur-lex.europa.eu/eli/dir/2014/59/oj/eng

predvidevši kompleksan niz instrumenata i mera kojima se sprečava prelivanje gubitaka banaka na deponente, ali i na državni budžet i druge oblike javnih davanja.

U domenu osiguranja depozita, evropska Direktiva iz 1994. dopunjena je i izmenjena u martu 2009. godine. U preambuli Direktive 2009/14/EC o sistemima osiguranja depozita navodi se da je Savet EU oktobra 2008. zaključio da su obnova poverenja u finansijski sektor i njegovo adekvatno funkcionisanje prioritetni zadaci, da se tokom krize pokazalo kako je minimalni iznos pokrića od 20.000 evra nedovoljan i da ga privremeno treba podići na 50.000 evra, s tim da do kraja 2010. godine na nivou EU bude utvrđen na najmanje 100.000 evra. Pored osiguranog iznosa, za deponente je veoma važno i da svojim sredstvima mogu pristupiti relativno brzo po zatvaranju banke. Stoga je rok za isplatu osiguranih iznosa skraćen sa tri meseca na 20 radnih dana, uz mogućnost produženja u vanrednim okolnostima do deset radnih dana.

Članom 12 Direktive iz 2009. Evropska komisija se obavezala da do kraja godine izvesti Evropski parlament i Savet, između ostalog, i o mogućim modelima uvođenja diferencijalnih premija osiguranja depozita (na osnovu procene rizika poslovanja svake banke članice sistema), kao i o potencijalnim koristima i troškovima uspostavljanja jedinstvenog sistema osiguranja depozita na nivou Evropske unije.

Diferencijalne premije osiguranja univerzalno se prepoznaju kao jedan od načina suzbijanja tzv. moralnog hazarda kod banaka. Moralni hazard je negativna posledica svih oblika osiguranja, pa i osiguranja depozita, a svojstven je kako bankama tako i deponentima. Zahvaljujući zaštiti koju im pruža sistem osiguranja depozita, deponenti gube interes da prate poslovanje banaka u kojima čuvaju novac, popušta tržišna disciplina, te banke postaju sklonije rizičnijim plasmanima.[20] Diferencijalnim premijama se makar delimično koriguje taj nedostatak jer su banke motivisane da dobiju bolje ocene rizika kako bi plaćale niže premije osiguranja depozita, nezavisno od percepcije njihovih klijenata. Obaveza obračuna diferencijalne premije biće uvedena već 2014, donošenjem nove direktive o sistemima osiguranja depozita, koja se primenjuje i danas.

O perspektivama uvođenja jedinstvenog sistema osiguranja depozita u Evropskoj uniji više reči biće u završnom delu rada.

I srpsko zakonodavstvo reagovalo je na posledice globalne finansijske krize. Već 2010. godine, Narodna skupština usvaja Zakon o izmenama i dopunama Zakona o osiguranju depozita (ZOD 2010), čiji je osnovni cilj „dalje približavanje sistema osiguranja depozita propisima EU i evropskim standardima",[21] kao i korigovanje određenih nedostataka odredaba čija se primena u praksi pokazala kao

[20] Krstić, B.; Radojičić, J., „Osiguranje depozita kao ex ante i ex post antikrizni mehanizam u bankarstvu", *Ekonomske teme br. 4*, Univerzitet u Nišu, Ekonomski fakultet, 2012, 537–538.

[21] Predlog Zakona o izmenama i dopunama Zakona o osiguranju depozita, Obrazloženje, 2010.

problematična. Zakonom iz 2010, međutim, nisu uvedene suštinski važne novine u samom sistemu osiguranja depozita, ali je u prvi plan stavljen potencijal sistema da doprinese očuvanju finansijske stabilnosti u zemlji, što se eksplicitno navodi kao jedan od ciljeva obaveznog osiguranja depozita.

Anticipirajući mogućnost nastanka problema u bankama od sistemskog značaja, koje najčešće nije moguće rešavati isplatom osiguranih iznosa i stečajnim postupkom, zakonodavac je ovim propisom predvideo da se iz Fonda za osiguranje depozita mogu izdvojiti sredstva za finansijsku podršku banci koja preuzima ili kupuje problematičnu banku (u administrativnom upravljanju) kako bi se pokrila razlika u vrednosti njene imovine i obaveza. Kako bi omogućila da posustala banka ostane na tržištu do konačne kupoprodaje (u celosti ili makar delomično) unutar bankarskog sektora, Agencija je mogla da osnuje banku za posebne namene i obavezni početni kapital obezbedi takođe iz Fonda za osiguranje depozita.

Nosiocima finansijske stabilnosti (Narodnoj banci Srbije, Ministarstvu finansija i Agenciji) omogućeno je da, po potrebi, sami procene da li je potrebno povećati osigurani iznos ili proširiti obuhvat osiguranih kategorija deponenata kako bi im se u određenom periodu obezbedila veća zaštita (čl. 4, st. 2 ZOD 2010). Veoma je bitno i to što je uvedena i mogućnost da Agencija samostalno utvrđuje premiju osiguranja na osnovu ukupnog stanja rizika u banci (čl. 9, st. 2 ZOD 2010). Kako bi Agencija stekla jasniju sliku o stanju depozita i ispravnije procenjivala izloženost Fonda, banke su od tada u obavezi da dostavljaju mesečne izveštaje o ukupnim i osiguranim depozitima, a Agencija može proveriti njihovu tačnost neposrednim uvidom u dokumentaciju banke.

Od posebne je važnosti i odredba kojom se predviđa obavezna razmena informacija između Agencije i Narodne banke Srbije, kao supervizora banaka, što obuhvata i blagovremeno obaveštavanje o preduzetim merama u postupku kontrole boniteta i zakonitosti poslovanja banaka. Najzad, kredibilnost sistema osiguranja depozita dodatno je pojačana i utvrđivanjem izvora za pribavljanje dopunskih sredstava u slučaju da ih u Fondu nema dovoljno za ispunjavanje zakonske obaveze.

Drugim rečima, iako izmenama i dopunama ZOD-a 2010. godine nije došlo do većih modifikacija sistema, pa ni do osetnijeg približavanja evropskim standardima, nove odredbe bitno su doprinele izraženijoj fleksibilnosti u reagovanju na potencijalne krize, proširile su obuhvat mera koje se mogu preduzeti u fazi kad se banka može restrukturirati i, što je još značajnije, omogućile su razmenu i akumulaciju odgovarajućih podataka na osnovu kojih se sistem može blagovremeno pripremiti za slučaj krize. Time su, između ostalog, obezbeđeni uslovi za drastično skraćenje roka za početak isplate osiguranih iznosa, koje će uslediti 2015. godine.

4. Oblikovanje savremenih sistema osiguranja depozita od 2014. godine do danas

a. Zakon o osiguranju depozita iz 2015. godine

Srpska privreda je 2014. godine ušla u recesiju treći put u šest godina, delom i zbog posledica katastrofalnih poplava u maju iste godine. Stopa nezaposlenosti dostigla je 18 odsto radno sposobnog stanovništva, a javni dug porastao na 70 odsto BDP-a. Bez sveobuhvatne promene javnih politika, situacija je bila neodrživa, uz izglede za privrednu stagnaciju.[22]

Bankarski sektor se oporavljao posle ozbiljnog potresa koji je izazvalo zatvaranje pet banaka između 2012. i 2014. godine, pri čemu je Fond za osiguranje depozita bio ispražnjen i dodatno opterećen obavezom prema Svetskoj banci i Evropskoj banci za obnovu i razvoj po osnovu kredita, odnosno obezbeđenja sredstava iz predostrožnosti. Obaveze prema državi izmirene su već do kraja 2015. godine, kada je obustavljena i naplata vanrednih premija od banaka. Na saniranje bankarske krize iz Fonda je izdvojeno više od 350.000.000 evra.

Iste godine usvojen je set finansijskih zakona, među kojima je bio i Zakon o osiguranju depozita (ZOD 2015). Iako nije doneo veće novine u uređenju sistema osiguranja depozita, doprineo je zaokruživanju institucionalne i organizacione arhitekture budućeg okvira za restrukturiranje banaka, u najvećoj meri usaglašenog s Direktivom o oporavku i restrukturiranju kreditnih institucija i investicionih firmi (Direktiva 2014/59/EU ili BRRD) u delu koji se odnosi na banke.[23] Direktiva BRRD postavila je na nove temelje postupanje prema problematičnim bankama koje imaju sistemski značaj ili su suviše velike da bi se njihovi osigurani deponenti mogli isplatiti iz postojećih fondova.

Postupak restrukturiranja banaka, opisan pretežno u Zakonu o bankama iz 2015. godine, podrazumevao je uvođenje čitavog niza instrumenata u slučaju problema u sistemski važnim bankama ili kada bi se samim restrukturiranjem postiglo više nego sprovođenjem stečaja ili likvidacije.[24] Za postupak restrukturiranja nadležna je Narodna banka Srbije, kojoj su na raspolaganju mere i instrumenti za blagovremeno i efikasno postupanje u slučaju da je restrukturiranje problematične banke u javnom interesu. Dok se u Zakonu o bankama precizno propisuju uslovi pod kojima se za potrebe restrukturiranja mogu izdvojiti sredstva iz Fonda za osiguranje depozita (prvenstveno u članu 128h), ZOD 2015 sadržao je samo jednu odredbu

[22] International Monetary Fund, *Republic of Serbia: Letter of Intent, Attachment I. Memorandum of Economic and Financial Policies*, „Recent Economic Developments and Outlook", 6 February 2015, str. 3, dostupno na: https://www.imf.org/external/np/loi/2015/srb/020615.pdf, 16. 7. 2025.

[23] BRRD reguliše restrukturiranje kreditnih institucija i investicionih društava.

[24] Zakon o bankama, Službeni glasnik RS, 14/2015, čl. 128ž, st. 3.

koja se odnosila na obaveze Fonda u postupku restrukturiranja (čl. 6, st. 3, tačka 2)). Ukratko, sredstva Fonda se mogu upotrebiti za restrukturiranje banke ukoliko njeni deponenti i dalje mogu slobodno raspolagati novcem na svojim računima. Ukupan iznos tih sredstava ne može biti veći od onog koji bi se iz Fonda isplatio za izmirenje obaveza prema osiguranim deponentima po otvaranju stečajnog ili likvidacionog postupka, a svakako ne može preći polovinu ciljnog iznosa Fonda, propisanog Zakonom o osiguranju depozita (u 2015. godini, bio je ograničen na pet odsto osiguranih depozita, a od 2019. godine na 7,5 odsto ukupnih osiguranih iznosa).[25] U slučaju otvaranja stečaja ili likvidacije nad bankom po okončanju postupka restrukturiranja, Fond za osiguranje depozita ima pravo na prioritetno namirenje iz stečajne ili likvidacione mase po osnovu finansiranja restrukturiranja, ukoliko je u njemu učestvovao.[26] Obezbeđivanje sredstava za restrukturiranje banaka iz fondova za osiguranje depozita pod tim uslovima dozvoljeno je i Direktivom 2014.

b. Direktiva 2014/49/EU

Direktiva iz 2009. godine doneta je kao odgovor na finansijsku krizu, korigujući neke od osnovnih elemenata osiguranja depozita kako bi učvrstila poverenje deponenata i osujetila panično povlačenje novca iz banaka. Nova Direktiva 2014/49/EU (Direktiva 2014), s druge strane, predvidela je opsežnu reformu sistema osiguranja depozita na nivou EU kako bi stvorila predvidljivu, visokousklađenu i funkcionalnu mrežu sistema osiguranja depozita, ali bez ambicije da ih zameni jedinstvenim sistemom za teritoriju EU.[27] S obzirom na to da su prethodne direktive propisivale tek minimalnu harmonizaciju, evropski sistemi bili su krajnje heterogeni kako u pogledu arhitekture, finansiranja i upravljanja, tako i po važnim odlikama poput visine osiguranog iznosa, obuhvata pokrića, vrsta osiguranih računa i roka za početak isplate.[28]

Kao prvo, po Direktivi 2014, nijedna kreditna institucija u državi članici EU ne može primati depozite ako nije deo zvanično priznatog sistema osiguranja depozita. Da bi se proverila adekvatnost i operativna spremnost sistema da reaguje u osiguranom slučaju, svi sistemi u EU podležu obaveznim periodičnim stres-testovima, koji se organizuju najmanje jednom u tri godine, i to počev od sredine 2017.

[25] Pod osiguranim depozitom podrazumeva se depozit obuhvaćen sistemom osiguranja, nezavisno od visine sredstava na računu, dok je osigurani iznos definisan kao deo osiguranog depozita do nivoa pokrića od 50.000 evra. Prema Direktivi EU iz 2014. godine, osnovicu za obračun premija i ciljnog iznosa Fonda predstavljaju upravo osigurani iznosi depozita. Usaglašavanje s tim odredbama Direktive postignuto je izmenama i dopunama Zakona o osiguranju depozita iz 2019. godine.

[26] Zakon o stečaju i likvidaciji banaka i društava za osiguranje, *Službeni glasnik RS*, br. 14/15, čl. 19, st. 1, tačka 6).

[27] Payne, Jennifer: „The Reform of Deposit Guarantee Schemes in Europe", *European Company and Financial Law Review,* Volume 12, Issue 4, De Gruyter, 2015, 553.

[28] European Commission, MEMO/14/296, 15. april 2014, dostupno na: https://ec.europa.eu/commission/presscorner/detail/en/memo_14_296, 15. 7. 2025.

Direktivom 2014 nije promenjen osigurani iznos, koji je od početka 2011. utvrđen na sto hiljada evra, uračunavajući i dospelu kamatu. Osigurane kategorije takođe su ostale iste, a to su fizička i pravna lica uz određene izuzetke, poput finansijskih institucija i državnih organa, za koje se podrazumeva da imaju lakši pristup drugim izvorima finansiranja i da su u stanju da procene rizik poslovanja banke depozitara. S druge strane, uvodi se mogućnost privremeno većeg pokrića (u trajanju do najviše 12 meseci) u slučaju prodaje nepokretnosti ili nekog drugog jedinstvenog životnog događaja (dobitak nasledstva, otpremnine i slično).

Do 1. januara 2024. godine, rok za početak isplate osiguranih iznosa sukcesivno je skraćivan sa 20+10 na sedam radnih dana. Objašnjavajući tehničke i organizacione promene koje će to omogućiti, Evropska komisija podsetila je da u Sjedinjenim Državama isplata počinje i završava se za nekoliko dana, a u Velikoj Britaniji za najviše jednu sedmicu. Kako bi to bilo izvodljivo i u drugim članicama EU, Direktivom iz 2014. propisana je obaveza institucija za nadzor poslovanja banaka da blagovremeno upozore osiguravače depozita na potencijalno rizične situacije u bankama, ali i obaveza samih banaka da svoju evidenciju o depozitnoj bazi i kretanju osiguranih depozita organizuju tako da bude kompatibilna sa informacionim sistemima osiguravača depozita.[29] Skraćenju rokova doprineće i eliminacija netiranja iz obračuna osiguranih iznosa, što znači da osigurani iznos koji se isplaćuje deponentu više neće biti umanjivan za iznos koji deponent duguje banci. Sve navedene mere kumulativno će doprineti unapređenju operativne pripravnosti sistema da promptno reaguju u slučaju potrebe.

S obzirom na to da je uspešnost sistema osiguranja depozita u odbrani finansijske stabilnosti direktno srazmerna stepenu informisanosti građana o njegovim prednostima i obimu pokrića, Direktivom 2014 utvrđena je obaveza banaka da obaveštenje o visini osiguranog iznosa i podatke o nadležnom osiguravaču depozita dostavlja deponentima uz izvode s računa, kao i da im najmanje jednom godišnje šalje informatore o osiguranju depozita.

Novom Direktivom definisan je i način finansiranja fondova za osiguranje depozita, te njihov ciljni obim. Sredstva fonda akumuliraju se naplatom doprinosa *ex ante* (pre nastupanja osiguranog slučaja), pri čemu, po potrebi, postoji i mogućnost naplate vanrednih doprinosa, pozajmica od drugih evropskih osiguravača depozita ili od trećih lica (javnih ili privatnih). Minimalni ciljni iznos fonda utvrđen je na 0,8 odsto ukupnih osiguranih iznosa, a treba ga dostići do 2024. godine (u slučaju isplate, može se produžiti za najviše četiri godine).

Osnovicu za obračun doprinosa (ili premija) banaka čine ukupni osigurani iznosi, ali i stepen rizika svake banke ponaosob. Smernice za obračun doprinosa po Direktivi daje Evropska bankarska agencija (EBA), uključujući računsku formulu,

[29] *Ibid.*

konkretne pokazatelje, klasifikaciju rizika i slično, s tim što osiguravači depozita mogu da koriste i drugačiju metodologiju, saglasno pravilima u sopstvenim jurisdikcijama.

Sredstva fonda za osiguranje depozita primarno se koriste za isplatu osiguranih iznosa, ali mogu se upotrebiti i za primenu alternativnih mera u banci kako bi se sprečila njena nesolventnost (ukoliko je osiguravač depozita nadležan za njihovu primenu), kao i u postupku restrukturiranja banke, uz odgovarajuća ograničenja.

Najzad, Direktiva se bavi i saradnjom među osiguravačima depozita u EU u slučaju stečaja banke s filijalama u drugim članicama Unije. Osnovno pravilo je da deponente inostrane filijale isplaćuje osiguravač u istoj državi u ime matičnog osiguravača depozita i po njegovim instrukcijama. Matični osiguravač depozita dužan je da pre planirane isplate doznači potrebna sredstva i naknadno izmiri sve ostale troškove u vezi s isplatom osiguranih iznosa.[30] Kako bi unapred regulisali međusobne odnose i, u perspektivi, uštedeli vreme, osiguravači depozita u EU i šire preventivno zaključuju bilateralne i multilateralne sporazume.

v. Neusklađeni elementi sistema u EU i Srbiji

Uprkos tome što je ZOD 2015 (naročito s izmenama i dopunama iz 2019. godine) dostigao visok stepen usaglašenosti s Direktivom 2014, identifikovane su i određena razmimoilaženja.[31] U nastavku ćemo razmotriti samo najznačajnije nepodudarnosti.

1) Osigurani iznos

Članom 6 Direktive 2014 osigurani iznos po deponentu po banci utvrđen je na sto hiljada evra, dok je u Srbiji još 2008. godine maksimum pokrića za jedno osigurano lice po banci ograničen na 50.000 evra.

Kao razlog da se pokriće širom EU ustanovi upravo na sto hiljada evra, u preambuli Direktive iz 2014. navodi se da je to razumno rešenje, imajući u vidu, s jedne strane, potrebu da najveći deo depozita u nacionalnim sistemima bude zaštićen, a s druge strane, troškove popune fondova za osiguranje depozita.[32] Prema već pomenutim Baznim principima delotvornih sistema osiguranja depozita, pokriće (u smislu iznosa i obuhvata) treba da bude ograničeno i dovoljno kredibilno da u isti mah spreči i panično povlačenje depozita iz banaka i slabljenje tržišne discipline. Pokriće treba da bude definisano tako da u punoj meri bude osigurana velika većina deponenata, ali da znatan deo vrednosti samih depozita ostane bez zaštite.[33]

[30] Direktiva EU 2014, Preambula i članovi 2, 4, 5, 7, 10–16.

[31] Kancelarija za evropske integracije Vlade Republike Srbije, *Nacionalni program za usvajanje pravnih tekovina Evropske unije – druga revizija*, dostupno na https://www.mei.gov.rs/upload/documents/nacionalna_dokumenta/npaa/NPAA_2016_revizija_srp.pdf, 17. 7. 2025, str. 396–7.

[32] Direktiva EU 2014, Preambula, tačka 21).

[33] Core Principles, Principle 8 – Coverage, Essential Criteria 2, 27.

Detaljnije uputstvo nude Proširene smernice za utvrđivanje pokrića, takođe u izdanju IADI, po kojima osigurani iznos, između ostalog, treba da omogući punu zaštitu 90–95 odsto deponenata, i to samo u odsustvu velikih odstupanja u veličini depozita u bankarskom sistemu.[34] Sistemom osiguranja depozita (s nivoom pokrića od 50.000 evra) u potpunosti je pokriveno više od 99 odsto deponenata fizičkih lica i preduzetnika.[35] Shodno tome, moglo bi se zaključiti da je osigurani iznos u Srbiji adekvatan i dovoljan za uslove domaćeg bankarskog tržišta, te se može očekivati da će taj važan parametar sistema biti promenjen tek po pristupanju Srbije Evropskoj uniji, odnosno do isteka roka za puno usklađivanje propisa o osiguranju depozita s evropskim.

2) Osigurane kategorije deponenata

Direktiva 2014 definiše deponenta kao vlasnika depozita. (čl. 2, tačka 6), ali su iz sistema osiguranja izuzeti depoziti kreditnih i finansijskih institucija, društava za osiguranje, penzijskih fondova, investicionih firmi i državnih organa (osim lokalnih organa s godišnjim budžetom manjim od pola miliona evra), kao i depoziti nastali u vezi s pranjem novca. (čl. 2, st. 1, tačka 6) i čl. 5). U Preambuli (tačka 31)) pojašnjava se da pojedine kategorije deponenata ne treba da uživaju zaštitu sistema osiguranja depozita, a naročito finansijske institucije ili državni organi, s izuzetkom lokalnih, kao što je već pomenuto. Ističe se, međutim, da preduzeća koja se ne bave primarno finansijskim poslovima ne treba isključivati iz osiguranja, nezavisno od njihove veličine.

Prema ZOD-u 2015, osigurani su depoziti fizičkih lica, preduzetnika, mikro, malih i srednjih pravnih lica, a isključuju se depoziti lica povezanih s bankom, depoziti koji glase na šifru ili donosioca, depoziti nastali pranjem novca ili kao posledica finansiranja terorizma, te depoziti velikih pravnih lica, državnih organa i organizacija, organa autonomne pokrajine ili organa jedinice lokalne samouprave, malih investitora i stečajnih i likvidacionih masa. Isključeni su i depoziti položeni kao sredstvo obezbeđenja ako je iznos na taj način obezbeđenih potraživanja banke prema deponentu jednak iznosu tog depozita ili veći od njega. (čl. 2, st. 1, tačka 6)).

Na samom isteku 2015. godine, ukupna izloženost Fonda za osiguranje depozita prema velikim pravnim licima, kad bi ona bila obuhvaćena osiguranjem depozita, iznosila bi 66.000.000 evra, dok je stvarna izloženost Fonda prema osiguranim kategorijama dostigla više od devet milijardi evra.[36] Osiguranje velikih pravnih lica ne bi predstavljalo nesrazmerno veliko finansijsko opterećenje za Fond niti značajniji operativni izazov za Agenciju ili njene informacione sisteme, što znači da će do ulaska Srbije u EU relevantne zakonske odredbe biti promenjene u cilju pune

[34] IADI, *Enhanced Guidance for Effective Deposit Insurance Systems: Deposit Insurance Coverage*, str. 4, 2013, dostupno na: https://www.iadi.org/uploads/IADI_Coverage_Enhanced_Guidance_Paper.pdf, 17. 7. 2025.
[35] Agencija za osiguranje depozita, Izveštaj o radu za 2024. godinu, februar 2025, 21.
[36] Agencija za osiguranje depozita, Izveštaj o radu za 2015. godinu, april 2016, 39.

harmonizacije. U ovom trenutku, međutim, s obzirom na to da velika pravna lica imaju pristup raznovrsnijim izvorima finansiranja i više resursa da samostalno prate stepen rizika u poslovanju banke kojoj poveravaju svoja sredstva, njihovo isključenje iz osiguranih kategorija ima opravdanja u vidu mere suzbijanja moralnog hazarda.

3) Obračun premija osiguranja na osnovu rizika poslovanja u bankama

Naplata diferencijalnih premija na bazi rizika takođe je mera kojom se smanjuje moralni hazard. Prema Direktivi 2014, obračun diferencijalnih premija je pravičniji i podstiče banke da primenjuju manje rizične modele poslovanja (Preambula, tačka 36). Kako bi se obezbedila dosledna primena sistema diferencijalnih premija širom EU, smernice za pripremu metodologije za obračun premije na bazi rizika izrađuje Evropska bankarska agencija. Smernice sadrže obračunsku formulu, specifične pokazatelje, kategorije rizika, skale za primenu odgovarajućih pondera i slično. Revizija smernica obavlja se na pet godina, počev od 2017. (čl. 13).

Mogućnost uvođenja premija na bazi rizika u Srbiji uvedena je u Zakon o osiguranju depozita 2019. godine, te bi se moglo reći da je harmonizacija načelno izvršena. Međutim, ona podrazumeva ne samo uključivanje odredaba evropskih propisa u domaće, nego i njihovo sprovođenje i primenu. Kad se govori o sprovođenju, Agencija za osiguranje depozita usvojila je metodologiju obračuna diferencijalne premije na osnovu podataka koje dobija od Narodne banke Srbije, što je važan korak ka konačnoj primeni propisa. Ipak, metodologija do danas nije primenjena, te se očekuje da i taj element harmonizacije u bliskoj budućnosti bude ispunjen.

4) Privremeno visoki saldo na računu

Prema članu 6(2) Direktive EU iz 2014, depoziti nastali kao rezultat kupoprodaje nekretnine za lično stanovanje, naplate štete od osiguranja ili određenih vrsta odštete, te kao posledica nekog jedinstvenog životnog događaja (poput sklapanja braka, razvoda, penzionisanja, ostavinske rasprave, gubitka posla i slično) uživaju viši nivo zaštite od sto hiljada evra u vremenskom rasponu od tri meseca do godinu dana.

Zakon o osiguranju depozita ne predviđa takve izuzetke, a odgovarajuće dopune morale bi biti unete najkasnije do dana kada Srbija postane članica Evropske unije.

III Savremeni pravci razmišljanja o osiguranju depozita u EU

Najranije od globalne finansijske krize, na različitim platformama u Evropskoj uniji razmatra se mogućnost stvaranja panevropskog sistema osiguranja depozita. U novembru 2015. Evropska komisija predložila je da se osnuje takav sistem (EDIS) u zemljama evrozone, koji bi zapravo kompletirao Bankarsku uniju, uspostavljenu godinu dana ranije. Bilo je predviđeno da se uvede postepeno, u tri faze od 2017.

do 2024, te da pored jedinstvenog mehanizma kontrole poslovanja banaka (engl. *Single Supervisory Mechanism* – SSM) i jedinstvenog mehanizma za restrukturiranje banaka (engl. *Single Resolution Mechanism* – SRM), postane jedan od nosilaca stabilnosti evropske ekonomske i monetarne unije. Ipak, tokom godina nije postignut napredak u sprovođenju te inicijative.

U međuvremenu, bankarska kriza u SAD tokom 2023. godine podstakla je na dalje razmatranje mogućnosti uređenja tog pitanja u EU. U aprilu iste godine, Evropska komisija predložila je izmenu zakonskog okvira za upravljanje krizama u bankarskom sistemu i osiguranje depozita unutar EU (Direktiva BRRD, Direktiva 2014 i Uredba o jedinstvenom mehanizmu za restrukturiranje banaka). Ciljevi tog predloga bili su povećanje stepena zaštite deponenata u slučaju zatvaranja banke, usaglašavanje primene mera u procesu restrukturiranja širom EU i stvaranje mogućnosti da se mere restrukturiranja primenjuju i na bankama male i srednje veličine.

Krajem juna 2025. godine, Savet EU i Evropski parlament postigli su dogovor o reformi seta propisa kojima se uređuju upravljanje bankarskim krizama i osiguranje depozita, što, po njihovoj oceni, predstavlja korak bliže upotpunjavanju Bankarske unije.[37] Najveću novinu u aktuelnom nacrtu izmena i dopuna relevantnih direktiva predstavlja mogućnost da se sredstva fondova za osiguranje depozita koriste za obezbeđivanje kapaciteta malih i srednjih banaka za pokriće gubitaka i dokapitalizaciju kako bi ispunile minimalni zahtev za kapitalom i podobnim obavezama. Dok aktuelni zakonski okvir za upravljanje krizama podrazumeva primenu mera restrukturiranja samo na sistemski važne i velike banke, to znači da se nad srednjim i manjim bankama pokreće postupak stečaja praćen isplatom osiguranog iznosa ukoliko nemaju mogućnost da pokriju potencijalne gubitke. S druge strane, banke koje od obaveza uglavnom imaju samo depozite i ne pozajmljuju sredstva na tržištu kapitala ponekad teško mogu da ispune te uslove. Predloženim izmenama i dopunama direktiva otvorile bi se nove mogućnosti za male i srednje banke, pri čemu bi osiguravač depozita mogao da proceni stepen ekonomičnosti obe opcije (pružanje finansijske podrške restrukturiranju u odnosu na stečaj i isplatu osiguranih iznosa).

Ostali predlozi mahom se odnose na preciziranja ili dopunu postojećih odredbi: da se proširi krug državnih organa pokrivenih osiguranjem, da se u privremeno visoki saldo uvrste i depoziti namenjeni kupoprodaji nepokretnosti do 2.500.000 evra (Direktiva 2014 priznaje samo depozit nastao kao rezultat kupoprodaje), da se ograniči rok u kom se osigurani iznosi mogu preuzeti i slično.

[37] Council of the European Union: „Bank resolution: Council and Parliament strike deal to strengthen the EU crisis management framework" (saopštenje za javnost), 25. jun 2025, dostupno na: https://www.consilium.europa.eu/en/press/press-releases/2025/06/25/bank-resolution-council-and-parliament-strike-deal-to-strengthen-the-eu-crisis-management-framework/, 18. 7. 2025.

IV Zaključak

Zakonski okvir kojim se u Srbiji uređuje sistem osiguranja depozita usaglašen je s evropskom Direktivom iz 2014. godine po duhu, ciljevima i većini pojedinosti. Neusklađena je ona materija koja je u ovom trenutku ili teško primenljiva ili ne odgovara realnoj situaciji na bankarskom tržištu prema proceni nosilaca finansijske stabilnosti. Nije retkost da zemlje kandidati svoje propise iz domena osiguranja depozita u potpunosti usaglase s evropskim tek neposredno po pristupanju Evropskoj uniji (npr. Hrvatska).

U ovom radu pokušali smo da pokažemo kako je dalje usaglašavanje poželjno i neophodno i to ne samo radi ispunjavanja ciljeva definisanih u SSP-u, već i zbog toga što bi nove odredbe predstavljale korak napred u razvoju domaćeg sistema. Uprkos tome, uvek je potrebno sagledati svrsishodnost svake planirane promene. To se prvenstveno odnosi na povećanje osiguranog iznosa i proširenje obuhvata zaštićenih lica, imajući u vidu i druge međunarodne standarde, poput Baznih principa delotvornih sistema osiguranja depozita. Iako se percepcija uloge sistema osiguranja depozita naglo promenila posle globalne finansijske krize i potonjih potresa na bankarskim tržištima širom sveta, ne treba smetnuti s uma da pomeranje težišta na zaštitu finansijske stabilnosti nauštrb suzbijanja moralnog hazarda može imati ozbiljne posledice. U tom smislu, Srbija ima prostora da do priključenja Evropskoj uniji pažljivo razmotri sve mogućnosti harmonizacije s relevantnim izvorima prava imajući u vidu interese i potencijalne koristi svih zainteresovanih strana na sopstvenom tržištu.

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***Dr. Ljubica Pantelić*[1]**

HARMONISATION OF THE LEGAL FRAMEWORK OF THE DEPOSIT INSURANCE SYSTEM IN SERBIA WITH THE EUROPEAN UNION ACQUIS

REVIEW ARTICLE

Summary

The Deposit Insurance Act has been harmonised successively since 2008, initially with Directive 94/19/EC, then with Directive 2009/14/EC, and following its repeal, with Directive 2014/49/EU. The purpose of this paper is to provide the reader with insight into the harmonisation process of the legal framework governing the deposit insurance system in Serbia with the corresponding EU legislation. This process will be presented chronologically, with an analysis of the immediate triggers and the objectives the legislator intended to achieve. The paper will focus on the most important provisions of the European deposit insurance regulations and the feasibility of their implementation in Serbia, taking into account the actual conditions of the banking market. Finally, the paper will present the concept of possible future directions for enhancing European regulations on crisis management in the banking system.

Keywords: deposit insurance, Deposit Insurance Act, EU Directive on Deposit Guarantee Schemes, harmonisation with the EU acquis

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I Purpose and function of deposit insurance systems

The primary objective of deposit insurance systems is to protect bank account holders against losses in the event of a bank's bankruptcy or liquidation[2] (the insured event). In various forms, deposit insurance systems exist in all European countries and the vast majority of countries worldwide. The design and specific features of each system are determined primarily by the economic and institutional conditions prevailing in the respective jurisdiction.

In accordance with the provisions of the Deposit Insurance Act,[3] upon the occurrence of the insured event, the Deposit Insurance Agency initiates reimbursement of insured depositors within seven working days from the date of the court decision to initiate bankruptcy or liquidation proceedings against the bank. All licensed banks are included in the deposit insurance system and are required to pay a quarterly premium for deposit insurance in an amount corresponding to the prescribed percentage (maximum 0.2% quarterly) of the total insured deposit amounts in the bank. Premiums collected are allocated to the Deposit Insurance Fund, whose resources are invested in accordance with the Deposit Insurance Act and the internal acts of the Deposit Insurance Agency (the Agency). Policyholders (depositors) do not pay premiums, nor do they enter into a contractual relationship with the Agency. It should be noted that not all bank depositors are protected. Coverage extends to natural persons, entrepreneurs, and micro, small and medium-sized legal entities, whereas deposits of large legal entities, as classified under the Accounting Law,[4] are non-eligible for coverage. Certain other categories of depositors are also excluded from the deposit insurance system, such as legal or natural persons related to the bank, persons whose deposits originate from money laundering or terrorism financing, and the like. The maximum insured amount for deposits held by a single client in one bank is EUR 50,000. In the event of a bank's bankruptcy or liquidation, if the depositor's deposit exceeds that amount, the portion not covered by the deposit insurance system may be recovered from the distribution of the bank's bankruptcy/

[2] Pursuant to Article 2 of the Law on Insolvency and Liquidation of Banks and Insurance Companies, both insolvency and liquidation are initiated by a decision of the competent court, based on a decision of the National Bank of Serbia on the fulfilment of conditions for initiating insolvency or liquidation proceedings, with the difference that insolvency proceedings may also be conducted at the request of the liquidator if they determine that the liquidation debtor's assets are insufficient to satisfy all creditors' claims. In other words, in liquidation proceedings it is expected that the liquidation estate will be sufficient to cover all obligations to creditors, whereas in insolvency proceedings against a bank or insurance company, creditors are satisfied proportionately and according to payment ranks until the final distribution of the insolvency estate.

[3] Deposit Insurance Act – DIA, *Official Gazette of the RS*, Nos. 14/15, 51/17, 73/19 and 94/24, Articles 3, 4, 6, 10, 12, 15–17.

[4] Accounting Act, *Official Gazette of the RS*, Nos. 73/19, 44/21 – other law, Art. 6.

liquidation estate. Similarly, the Deposit Insurance Fund itself is reimbursed in the same manner, enjoying absolute priority in recovering claims from a bank under bankruptcy/liquidation over all other creditors, including covered depositors.

The principle of legal subrogation is inherent to deposit insurance systems worldwide and in fact constitutes their foundation. Without subrogation, i.e. the substitution of the protected depositor (in this case, the Agency acts as the creditor of the insolvent bank in place of the covered depositors, having previously fulfilled the bank's obligations towards them, by reimbursing their deposits up to the insured amount), the deposit insurance system would fail to achieve one of its fundamental objectives, namely the preservation of financial stability through guaranteeing protection to covered depositors.

Deposit insurance in Serbia is administered by the Deposit Insurance Agency, which, in addition to its core function, performs other tasks such as managing the Investor Protection Fund and acting as a bankruptcy and liquidator in banks and insurance companies. The state guarantees the Agency's obligations towards covered depositors. According to the classification established by the Core Principles for Effective Deposit Insurance Systems of the International Association of Deposit Insurers (IADI) and the Basel Committee on Banking Supervision (BCBS), the Agency, as a deposit insurer, has a *paybox plus* mandate.[5] This means that, in addition to reimbursing insured deposits, the Agency also participates in the bank restructuring processes, providing financial support through allocations from the Deposit Insurance Fund.

I Harmonisation of national regulation with EU Directives on deposit insurance

1. Sources of EU law and legal basis for harmonisation

The process of harmonising national legislation with the acquis of the European Union was initiated as early as 2004, before the Stabilisation and Association Agreement (SAA) entered into force (2013), and even before the Republic of Serbia signed and ratified it in 2008. By signing the SAA, Serbia committed to the gradual harmonisation of national legislation with EU law.[6]

The highest legal act of the European Union governing the functioning of deposit insurance systems belongs to the body of *secondary law* and is known as

[5] International Association of Deposit Insurers (IADI), *Core Principles for Effective Deposit Insurance Systems* (Core Principles), November 2014, available at: https://www.iadi.org/uploads/cprevised2014nov.pdf, accessed:10. 7. 2025, 19.

[6] European Integration Office, *National Programme for the Adoption of the Acquis of the European Union*, July 2014, available at: https://www.mei.gov.rs/upload/documents/nacionalna_dokumenta/npaa/npaa_2014_2018.pdf, accessed: 11. 7. 2025, 1.

the Deposit Guarantee Schemes Directive. The Directives establish binding objectives for Member States, which must incorporate them into national legislation and individually determine the way of achieving these objectives.[7]

In the process of harmonising national legislation with the EU acquis, the first screening under Negotiating Chapter 9 (now part of Cluster 2 – Internal Market), which covered financial services, was held in March 2015. The negotiating chapter itself was opened in June 2019. The Deposit Insurance Agency participates in the work of Negotiating Group 9 as one of the institutions responsible for monitoring and aligning national legislation with EU regulations on deposit guarantee schemes.

The transposition of Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994[8] into the Deposit Insurance Act began as early as 2008. That was, in fact, a pivotal moment in the development of the deposit insurance system in Serbia, as the entry into force of the Law on Amendments to the Deposit Insurance Act in December 2008 established a modern deposit insurance system, the credibility of which was reflected, *inter alia*, in the level of covered deposits and the scope of protected categories. In early 2009, amendments to the Directive were adopted (Directive 2009/14/EC of 11 March 2009), which modified the coverage level and the payout period.[9] Currently, Directive 2014/49/EU of 16 April 2014, is in force within the European Union,[10] which may also be subject to amendment in the coming period following the conclusion of the public consultation on the draft new framework for banking crisis management and deposit insurance.

According to the Plan for fulfilling key obligations from the EU negotiation process for the Republic of Serbia's Accession to the European Union by the end of 2026 (adopted in April 2025),[11] the deadline for adopting amendments to the Deposit Insurance Act in order to achieve full alignment with the 2014 Directive is the fourth quarter of 2026.

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[7] Types of legislation, https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en, accessed: 11. 7. 2025.

[8] Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (EU Directive 1994), available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31994L0019, accessed: 11. 7. 2025.

[9] Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay (EU Directive 2009), available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32009L0014, accessed: 11. 7. 2025.

[10] Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (recast) (EU Directive 2014), available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0049, accessed: 11. 7. 2025.

[11] Available at: https://www.mei.gov.rs/upload/documents/pristupni_pregovori/plan_spunjavanje_obaveza_pregovori__2026.pdf, accessed: 24. 7. 2025, 97.

2. Legal framework and state of the deposit insurance system at the beginning of the harmonisation process

Although the deposit insurance system in Serbia has nominally existed since 1989, it was not until 2005 that the legal and operational foundations of a modern and functional system were established. Under the Deposit Insurance Act of 2005,[12] coverage extended to deposits of natural persons up to EUR 3,000, and the payout deadline was limited to 30 days from the date of the court decision initiating bankruptcy proceedings against the bank. All banks were included in the deposit insurance system and were required to pay a quarterly premium in advance at a rate that ensured adequate capitalisation of the Deposit Insurance Fund (the premium calculation base was 22 times higher than in the previous year). Total deposits of natural persons in banks increased by 76.7% in the same year.[13]

However, in October 2008 alone, as a consequence of the global financial crisis, withdrawals of household deposits from banks amounted to approximately €800 million.[14] In order to counter this negative trend in deposit movements, the Law on Amendments to the Deposit Insurance Act (DIA 2008) was adopted at the end of the year under urgent parliamentary procedure, which changed the key system parameters and effectively initiated the gradual harmonisation with the provisions of EU Directive 94/19/EC.

The most important amendments concerned the insured amount and the scope of coverage. Insured parties were no longer limited to natural persons but also included entrepreneurs as well as small and medium-sized legal entities. The insured amount was increased to EUR 50,000.

In the Explanatory Memorandum of DIA 2008, the first reason cited for adopting the act was "the increase in the insured amount due to the need to harmonise national legislation with the legislation of neighbouring countries and EU countries". According to the assessment stated in the Explanatory Memorandum, by increasing the insured amount from EUR 3,000 to EUR 50,000 per depositor per bank, deposit insurance coverage would fully cover more than 99% of all depositors in all banks in the country. Citing reasons for adopting the law under urgent procedure, the proposer highlighted the current problems in the financial market and the "psychologically induced factors" need to ensure depositor security and to align the deposit insurance system with neighbouring countries and the EU. Although the reasons for harmonisation are not further explained, particularly with regard to neighbouring countries, it can be concluded that the legislator's intention was also to prevent the occurrence of regulatory arbitrage, i.e. to discourage the transfer of

[12] Deposit Insurance Act (DIA 2005), *Official Gazette of the RS*, No. 61/05, Articles 1–3, 13, 16–17.
[13] Report on the Work of the Deposit Insurance Agency for 2005, March 2006, 12.
[14] Report on the Work of the Deposit Insurance Agency for 2008, June 2009, 14.

funds to states offering more favourable deposit insurance conditions, primarily with higher coverage levels.

Judging by the trends in insured deposits immediately following the adoption of the 2008 DIA, the measure applied was timely and effective, given that by November of the following year, the total sum of insured deposits in the Serbian banking system had reached the level from the end of September 2008.[15]

At the time of the adoption of the 2008 DIA, Directive 94/19/EC was in force in the European Union, which itself would undergo significant amendments the following year. It prescribed only minimum requirements for harmonisation with national legislation.

Its preamble recalls that at the end of 1986, the European Commission issued a recommendation that all EU Member States (there were twelve at the time) introduce deposit insurance systems, but it is assessed that this recommendation did not fully achieve the desired result.[16] Member States are obliged to establish deposit insurance systems on their territory, unless they already have certain schemes that protect depositors against loss in the event of a credit institution's insolvency. The insured amount was set at a minimum of EUR 20,000 per depositor per credit institution, with the provision that jurisdictions where the amount was lower than prescribed did not have to increase it as long as it reached at least EUR 15,000 by the beginning of the second millennium. Depositors as insured parties are not specifically defined, meaning that the Directive does not automatically exclude any category, but the preamble emphasises that Member States may exclude certain types of deposits or depositors if they consider that they should not enjoy protection.

It is also important to note that the prescribed obligation on credit institutions to provide all depositors with the necessary information about the deposit guarantee scheme that protects them, as well as about their rights in the event of an insured case, but they were not permitted to misuse deposit insurance membership for marketing purposes. The payout deadline was three months from the date depositors were denied access to their funds, with the provision that this deadline could be extended by additional three months. Article 11 explicitly states that

[15] Report on the Work of the Deposit Insurance Agency for 2009, May 2010, 12.

[16] Many European countries had already introduced deposit insurance before 1986, but there were significant differences in the core features of these systems. For example, Germany, France, and Italy operated private, voluntary deposit insurance schemes, while in the UK membership in the state-administered scheme was compulsory. The UK system insured GBP 20,000 on a co-insurance basis: the state system would pay 75% of the insured amount, and the remainder was borne by the depositor. In France, the insured amount was 400,000 francs (approx. USD 63,000), while in Italy, 200 million lire (approx. USD 150,000) was fully covered, with the remaining amount up to 800 million lire covered at 80%. A comparative overview of European deposit insurance systems and those in Japan and Canada is provided by the US General Accounting Office (GAO) in a 1991 report commissioned by the US Senate Committee on Banking, Housing, and Urban Affairs, available at https://www.gao.gov/assets/nsiad-91-104.pdf, accessed: 7. 7. 2025, 12–21.

deposit insurance systems have the right to recover claims from the insolvent debtor on behalf of depositors under the principle of subrogation.[17]

3. Legislative reforms in the EU and Serbia prompted by the global financial crisis

Serious disturbances in the financial and banking market prompted regulators worldwide, including in the EU and Serbia, to provide stronger and more credible guarantees to users of banking services that they would not bear losses due to problems in the operations of credit institutions, either as depositors or as taxpayers.[18] In order to internalise the costs of bank resolution to a greater extent, in 2014 the EU adopted the Bank Recovery and Resolution Directive (BRRD),[19] providing for a complex set of tools and measures designed to prevent the transfer of bank losses onto depositors, the state budget, or other forms of public funding.

Within the domain of deposit insurance, the European Directive from 1994 was amended in March 2009. The preamble to Directive 2009/14/EC on deposit guarantee schemes states that the EU Council concluded in October 2008 that restoring confidence in the financial sector and its proper functioning were priority tasks, that during the crisis the minimum coverage of EUR 20,000 proved insufficient, and that it should be temporarily raised to EUR 50,000, with the requirement that by the end of 2010 the minimum coverage across the EU be set at €100,000. In addition to the coverage amount, it is very important for depositors to be able to access their funds relatively quickly following a bank closure. Therefore, the payout deadline was shortened from three months to 20 working days, with the possibility of extension under exceptional circumstances by up to 10 working days.

Under Article 12 of the 2009 Directive, the European Commission undertook to report to the European Parliament and the Council by the end of the year, *inter alia*, possible models for introducing risk-based deposit insurance premiums (based on the assessment of business risk of each member bank of the system), as well as the potential benefits and costs of establishing a single deposit insurance system at the European Union level.

[17] EU Directive 1994, Preamble and Articles 3, 7, 9, 10, 11.

[18] According to IMF estimates, losses incurred by European banks between 2007 and 2010 reached eight percent of the EU's GDP, or nearly one trillion euros. Between 2008 and 2012, the European Commission allocated almost six hundred billion euros in support to banks in the form of recapitalisation and other resolution measures. V. Rowe, James: "IMF Survey: Government Borrowing Is Rising Risk to World Financial System", April 20, 2010, available at: https://www.imf.org/en/News/Articles/2015/09/28/04/53/sores042010a#:~:text=The%20report%20cut%20its%20estimates,$2.3%20trillion%2C%20the%20IMF%20estimates, accessed: 14. 7. 2025.

[19] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms (BRRD), available at: https://eur-lex.europa.eu/eli/dir/2014/59/oj/eng.

Risk-based premiums are universally recognised as one of the ways to combat so-called moral hazard in banking. Moral hazard is a negative consequence of all forms of insurance, including deposit insurance, affecting both banks and depositors. Thanks to the protection provided by the deposit insurance system, depositors lose interest in monitoring the operations of banks where they hold funds, market discipline weakens, and banks become more inclined towards riskier lending.[20] Risk-based premiums partially correct this deficiency, as banks are motivated to obtain better risk ratings in order to pay lower deposit insurance premiums, regardless of their clients' perceptions. The obligation to calculate risk-based premiums was introduced as early as 2014, with the adoption of the new directive on deposit guarantee schemes, which is still in force today.

More will be said about the prospects for introducing a single deposit insurance system in the European Union in the concluding part of the paper.

Serbian legislation also responded to the consequences of the global financial crisis. As early as 2010, the National Assembly adopted the Law on Amendments to the Deposit Insurance Act (DIA 2010), the primary objective of which was "further alignment of the deposit insurance system to EU regulations and European standards",[21] as well as correcting certain deficiencies in provisions whose application in practice proved problematic. The 2010 Law, however, did not introduce fundamentally important innovations in the deposit insurance system itself, but it foregrounded the system's potential to contribute to financial stability in the country, which is explicitly stated as one of the objectives of mandatory deposit insurance.

Anticipating the possibility of problems arising in systemically important banks, which most often cannot be resolved through payout of insured amounts and bankruptcy proceedings, the legislator provided in this regulation that funds from the Deposit Insurance Fund could be allocated for financial support to a bank that takes over or acquires a troubled bank (under administrative management) in order to cover the difference in the value of its assets and liabilities. In order to enable a failing bank to remain on the market until final sale (fully or partially) within the banking sector, the Agency could establish a bridge bank and provide the mandatory initial capital also drawn from the Deposit Insurance Fund.

The guardians of financial stability (the National Bank of Serbia, the Ministry of Finance and the Agency) were empowered to assess independently, as necessary, whether to increase the insured amount or expand the coverage of depositor categories in order to provide higher protection during specific periods (Article 4, paragraph 2 of DIA 2010). It is also very important that the possibility was introduced for the Agency to determine the deposit insurance premium independently based on the

[20] Krstić, B.; Radojičić, J., „Osiguranje depozita kao ex ante i ex post antikrizni mehanizam u bankarstvu", *Ekonomske teme br. 4*, University of Niš, Faculty of Economics, 2012, 537–538.

[21] Draft Law on Amendments and Supplements to the Deposit Insurance Law, Explanatory Memorandum, 2010.

overall risk position in the bank (Article 9, paragraph 2 of DIA 2010). In order for the Agency to gain a clearer picture of the deposit portfolio and more accurately assess the Fund's exposure, banks have since been required to submit monthly reports on total and insured deposits, and the Agency may verify their accuracy through direct inspection of the bank records.

Of particular importance is the provision prescribing mandatory exchange of information between the Agency and the National Bank of Serbia, as the banking supervisor, which includes timely notification of measures taken during prudential supervision and supervision of banks' lawful operations. Finally, the credibility of the deposit insurance system was further enhanced by establishing sources for procuring supplementary funding in the event that the Fund does not have sufficient funds to meet statutory obligations.

In other words, although the 2010 amendments to the DIA did not result in major modifications to the system, nor in any significant approximation to EU standards, the new provisions significantly enhanced flexibility in responding to potential crises, expanded the scope of measures available during the restructuring phase, and more importantly, enabled the exchange and accumulation of relevant data on the basis of which the system can prepare in a timely manner for crises. Among other things, these measures laid the groundwork for the drastic reduction in the payout period for insured deposits, which was implemented in 2015.

4. Shaping of modern deposit insurance systems from 2014 to the present

a. Deposit Insurance Act of 2015

In 2014, the Serbian economy entered recession for the third time in six years, partly due to the consequences of catastrophic floods in May of that year. The unemployment rate reached 18 per cent of the working-age population, and public debt rose to 70% of GDP. Without comprehensive changes in public policies, the situation was unsustainable, with prospects for economic stagnation.[22]

The banking sector was recovering from a serious shock caused by the closure of five banks between 2012 and 2014, whereby the Deposit Insurance Fund was depleted and further burdened by obligations to the World Bank and the European Bank for Reconstruction and Development under loans and precautionary funding arrangements. Obligations to the State were settled by the end of 2015, when the collection of extraordinary premiums from banks was also discontinued. More than EUR 350 million was allocated from the Fund for bank crisis resolution.

[22] International Monetary Fund, *Republic of Serbia: Letter of Intent, Attachment I. Memorandum of Economic and Financial Policies,* „Recent Economic Developments and Outlook", 6 February 2015, 3, available at: https://www.imf.org/external/np/loi/2015/srb/020615.pdf, accessed: 16. 7. 2025.

In the same year, a set of financial laws was adopted, including the Deposit Insurance Act (DIA 2015). Although it did not introduce major innovations in the regulation of the deposit insurance system, it contributed to the completion of the institutional and organisational architecture of the future bank resolution framework, largely aligned with the Bank Recovery and Resolution Directive (Directive 2014/59/EU or BRRD) in the part relating to banks.[23] The BRRD Directive laid new foundations for dealing with failing banks that have systemic importance or are too large for their covered depositors to be paid out from existing funds.

The bank resolution procedure, described primarily in the Banking Law of 2015, entailed the introduction of a whole range of tools in the event of problems in systemically important banks or where more would be achieved through the resolution than through bankruptcy or liquidation proceedings.[24] The National Bank of Serbia is in charge of resolution proceeding, and has at its disposal measures and tools for timely and efficient action in the event that resolution of a failing bank is in the public interest. Whereas the Banking Law precisely prescribes the conditions under which funds from the Deposit Insurance Fund may be allocated for resolution purposes (primarily in Article 128h), DIA 2015 contained only one provision relating to the Fund's obligations in resolution proceedings (Article 6(3)(2)). In short, the Fund resources may be used for bank resolution provided that covered depositors retain full access to their deposits. The total amount of such resources may not exceed the amount that would be paid out from the Fund to settle obligations to covered depositors in the event of bankruptcy or liquidation proceedings, and certainly may not exceed half of the target level of the Fund prescribed by the Deposit Insurance Act (in 2015, it was limited to 5% of covered deposits, and from 2019 to 7.5% of total covered amounts).[25] In the event of bankruptcy or liquidation proceedings against a bank following the resolution, the Deposit Insurance Fund has the right to priority repayment from the bankruptcy or liquidation estate on account of the resolution financing it had provided.[26] The use of deposit insurance funds for bank resolution under these conditions is also permitted by the 2014 Directive.

[23] The BRRD regulates the resolution of credit institutions and investment firms.

[24] Banking Law, *Official Gazette of the RS*, 14/2015, Article 128ž, para. 3.

[25] A covered deposit is understood to mean a deposit covered by the deposit insurance system, regardless of the amount of funds in the account, whereas the covered amount is defined as the portion of a covered deposit up to the coverage level of EUR 50,000. According to the 2014 EU Directive, the calculation base for premiums and the target level of the Fund consists precisely of covered amounts of deposits. Alignment with these provisions of the Directive was achieved through amendments to the Deposit Insurance Act in 2019.

[26] Law on Bankruptcy and Liquidation of Banks and Insurance Companies, *Official Gazette of the RS*, No. 14/15, Article 19, para. 1, point 6.

b. Directive 2014/49/EU

The 2009 Directive was adopted as a response to the financial crisis, correcting some of the fundamental elements of deposit insurance in order to strengthen depositor confidence and prevent panic bank runs. The new Directive 2014/49/EU (the 2014 Directive), on the other hand, provided for a comprehensive reform of deposit guarantee schemes at the EU level in order to create a predictable, highly harmonised, and functional network of deposit guarantee systems, but without the ambition of replacing them with a single system for the EU territory.[27] Given that previous directives prescribed only minimum harmonisation, European systems were highly heterogeneous both in terms of architecture, funding and governance, as well as in important features such as the coverage level, scope of coverage, types of covered accounts and the payout deadline.[28]

First, under the 2014 Directive, no credit institution in an EU Member State may accept deposits unless it is part of an officially recognised deposit guarantee scheme. In order to verify the adequacy and operational readiness of the system to respond in the event of an insured event, all systems in the EU are subject to mandatory periodic stress tests, which are organised at least once every three years, starting from mid-2017.

The 2014 Directive did not change the coverage level, which from the beginning of 2011, has been set at EUR 100,000, including accrued interest. The covered categories also remained the same, namely natural and legal persons with certain exceptions, such as financial institutions and government bodies, which are assumed to have easier access to other sources of funding and to be able to assess the risk associated with the bank holding their deposits. On the other hand, the Directive introduced the possibility of temporary higher coverage (for a period of up to 12 months) in the event of the sale of real estate or some other specific life event (inheritance, severance payment and the like).

By 1 January 2024, the payout deadline was successively shortened from 20+10 to seven working days. In explaining the technical and organisational changes that will enable this, the European Commission recalled that in the United States payout begins and ends within a few days, and in the United Kingdom within a maximum of one week. In order to make this feasible in other EU Member States, the 2014 Directive prescribed the obligation of banking supervisory authorities to give deposit insurers a timely warning of potentially risky situations in banks, as well as the obligation of the banks themselves to organise their records on the deposit base and movements in covered deposits in a manner compatible with the

[27] Payne, Jennifer: „The Reform of Deposit Guarantee Schemes in Europe", *European Company and Financial Law Review,* Volume 12, Issue 4, De Gruyter, 2015, 553.

[28] European Commission, MEMO/14/296, 15 April 2014, available at: https://ec.europa.eu/commission/presscorner/detail/en/memo_14_296, accessed: 15. 7. 2025.

information systems of deposit insurers.[29] The shortening of deadlines will also be facilitated by the elimination of set-off from the calculation of covered amounts, which means that the covered amount paid to a depositor will no longer be reduced by the amount the depositor owes to the bank. All the aforementioned measures will cumulatively contribute to enhancing the operational readiness of systems to respond promptly when needed.

Given that the success of deposit insurance in safeguarding financial stability is directly proportional to the level of public awareness of its benefits and scope of coverage, the 2014 Directive established the obligation of banks to provide notification of the coverage level and information about the competent deposit insurer to depositors with account statements, as well as to send them information materials on deposit insurance at least once a year.

The new Directive also defined the method of financing deposit insurance funds and their target level. Fund resources are accumulated through the collection of *ex ante* contributions (before the occurrence of the trigger event), with the possibility, where necessary, of collecting extraordinary contributions, borrowing from other European deposit insurers or from third parties (public or private). The minimum target level of the fund is set at 0.8% of total covered deposits and should be reached by 2024 (in the event of a payout, it may be extended by a maximum of four years).

The calculation base for banks' contributions (or premiums) consists of total covered deposits, but also the degree of risk of each individual bank. Guidelines for calculating contributions under the Directive are provided by the European Banking Authority (EBA), including the calculation formula, specific indicators, risk classification and the like, with the provision that deposit insurers may use a different methodology in accordance with the rules in their own jurisdictions.

Fund resources are used primarily for the payout of covered deposits, but may also be used for the application of alternative measures in a bank in order to prevent its insolvency (if the deposit insurer has competence for their application), as well as in bank resolution proceedings, subject to appropriate limitations.

Finally, the Directive addresses cooperation among deposit insurers in the EU in the event of bank failures with branches in other Member States. The basic rule is that depositors of a foreign branch are paid out by the insurer in the same state on behalf of the home deposit insurer and according to its instructions. The home deposit insurer is obliged to transfer the necessary funds before the planned payout and subsequently settle all other costs related to the payout of insured amounts.[30] In order to regulate mutual relations in advance and, in the long term, save time, deposit insurers in the EU and beyond preventively conclude bilateral and multilateral agreements.

[29] *Ibid.*

[30] Directive 2014/49/EU, Preamble and Articles 2, 4, 5, 7, and 10–16.

c. Non-aligned elements of the systems in the EU and Serbia

Despite the fact that DIA 2015 (particularly with the amendments of 2019) achieved a high level of alignment with the 2014 Directive, certain discrepancies have been identified.[31] The following section discusses only the most significant inconsistencies.

1) Coverage level

Article 6 of the 2014 Directive sets the coverage level at EUR 100,000 per depositor per bank, whereas in Serbia the maximum coverage per depositor per bank has been limited to EUR 50,000 since 2008.

As the reason for establishing coverage throughout the EU at precisely EUR 100,000, the preamble to the 2014 Directive states that this is a reasonable solution, taking into account, on the one hand, the need for the largest share of deposits in national systems to be protected, and on the other hand, the costs of funding deposit guarantee scheme funds.[32] According to the aforementioned Core Principles for Effective Deposit Insurance Systems, coverage (in terms of amount and scope) should be limited and sufficiently credible to simultaneously prevent both panic bank runs and the weakening of market discipline. Coverage within a deposit guarantee scheme should be defined in such a way that the vast majority of depositors are fully protected, while a significant share of the value of deposits remains uncovered.[33] More detailed guidance is provided by the Enhanced Guidance for Deposit Insurance Coverage, also published by IADI, which states, *inter alia*, that the insured amount should ensure full protection of 90–95% of depositors, and that this applies only where there are no substantial outliers in the distribution of deposit sizes within the banking system.[34] With the current coverage level of EUR 50,000, the Serbian deposit insurance system fully protects more than 99% of individual depositors and entrepreneurs.[35] Accordingly, it could be concluded that the insured amount in Serbia is adequate and sufficient for the conditions of the domestic banking market. Therefore, it can be expected that this important system parameter will be changed only upon Serbia's accession to the European Union, or by the expiry of the deadline for full harmonisation of deposit insurance legislation with the EU acquis.

[31] Office for European Integration of the Government of the Republic of Serbia, *National Program for the Adoption of the EU Acquis – Second Revision*, available at: https://www.mei.gov.rs/upload/documents/nacionalna_dokumenta/npaa/NPAA_2016_revizija_srp.pdf, accessed: 7. 7. 2025, 396–397.

[32] EU Directive 2014, Preamble, Recital 21.

[33] Core Principles, Principle 8 – Coverage, Essential Criteria 2, 27.

[34] IADI, Enhanced Guidance for Effective Deposit Insurance Systems: Deposit Insurance Coverage, 4, 2013, available at: https://www.iadi.org/uploads/IADI_Coverage_Enhanced_Guidance_Paper.pdf, accessed: 17. 7. 2025.

[35] Deposit Insurance Agency, Annual Report for 2024, February 2025, 21.

2) Covered depositor categories

The 2014 Directive defines a depositor as the holder of a deposit (Article 2, point 6), but deposits of credit and financial institutions, insurance companies, pension funds, investment firms and government authorities (except local authorities with an annual budget of less than half a million euros) are excluded from the deposit insurance scheme, as are deposits connected to money laundering (Article 2(1)(6) and Article 5). The Preamble (Recital 31) explains that certain categories of depositors should not enjoy the protection of deposit guarantee schemes, particularly financial institutions or public authorities, with the exception of local authorities, as already mentioned. It is emphasised, however, that undertakings not primarily engaged in financial business should not be excluded from coverage, regardless of their size.

Under DIA 2015, covered deposit categories include deposits of natural persons, entrepreneurs, micro, small and medium-sized legal entities. Excluded are deposits of persons connected to the bank, bearer or coded deposits, deposits arising from money laundering or as a result of terrorist financing, deposits of large legal entities, government authorities and organisations, bodies of the autonomous province or local self-government units, small investors and bankruptcy and liquidation estates. Deposits pledged as collateral are also excluded if the amount of the bank's secured claims against the depositor is equal to or exceeds the deposit amount (Article 2(1)(6)).

At the very end of 2015, the total exposure of the Deposit Insurance Fund to large legal entities, had they been covered by deposit insurance, would have amounted to EUR 66 million, whereas the Fund's actual exposure to covered categories exceeded EUR 9 billion.[36] Extending coverage to large legal entities would therefore not constitute a disproportionate financial burden for the Fund, nor a significant operational challenge for the Agency or its information systems. This means that by the time of Serbia's accession to the EU, the relevant legal provisions will be amended in order to achieve full harmonisation. At present, however, given that large legal entities have access to more diverse sources of funding and greater capacity to independently assess the risk profile of the bank entrusted with their funds, their exclusion from covered categories is justified as a measure to combat moral hazard.

3) Risk-based calculation of deposit insurance premiums

The collection of risk-based premiums is also a measure that reduces moral hazard. According to the 2014 Directive, risk-based premium calculation is fairer and encourages banks to apply less risky business models (Preamble, Recital 36). In order to ensure consistent implementation of the risk-based premium systems

[36] Deposit Insurance Agency, Annual Report for 2015, April 2016, 39.

throughout the EU, guidelines for preparing the methodology for risk-based premium calculation is developed by the European Banking Authority. The guidelines contain the calculation formula, specific indicators, risk categories, weighting scales, and similar parameters. The guidelines are reviewed every five years, starting from 2017 (Article 13).

The possibility of introducing risk-based premiums in Serbia was introduced into the Deposit Insurance Act in 2019, so it could be said that harmonisation has been carried out in principle. However, it implies not only the transposition of EU provisions into domestic law, but also their implementation and application. When it comes to implementation, the Deposit Insurance Agency has adopted a methodology for calculating risk-based premiums based on data received from the National Bank of Serbia, representing an important step towards the final application of the regulations. Nevertheless, the methodology has not been implemented yet, and it is expected that this element of harmonisation to be fulfilled in the near future.

4) Temporary high account balance

Pursuant to Article 6(2) of the 2014 EU Directive, deposits arising from the sale of a private residential property, insurance indemnification, certain types of compensation claims, or other specific life events (such as marriage, divorce, retirement, inheritance proceedings, job loss, etc.) enjoy a higher level of protection than EUR 100,000 within a time period of three months to one year.

The Deposit Insurance Act does not provide for such exceptions, and corresponding amendments would need to be incorporated no later than the date when Serbia becomes a member of the European Union.

II Contemporary approaches to deposit insurance within the EU

Since the global financial crisis, the possibility of creating a pan-European deposit insurance system has been under consideration on various platforms in the European Union. In November 2015, the European Commission proposed the establishment of such a system - the European Deposit Insurance Scheme (EDIS) in the euro zone countries, which would effectively complete the Banking Union, established a year earlier. It was planned to be introduced gradually, in three phases from 2017 to 2024, with EDIS becoming, alongside the Single Supervisory Mechanism (SSM) and the Single Resolution Mechanism (SRM), one of the key pillars supporting the stability of the Economic and Monetary Union. However, no progress has been made in implementing this initiative over the years.

In the meantime, the banking crisis in the USA during 2023 prompted further consideration of the renewed discussion of this issue within the EU. In April of the same year, the European Commission proposed an amendment to the legal

framework for crisis management in the banking system and deposit insurance within the EU (the BRRD Directive, the 2014 Deposit Guarantee Schemes Directive and the Regulation on the Single Resolution Mechanism). The objectives of this proposal were to increase the level of depositor protection in the event of bank closures, to harmonise the application of measures in the resolution process across the EU, and to create the possibility for resolution measures to small and medium-sized banks as well.

At the end of June 2025, the EU Council and the European Parliament reached an agreement on reforming the crisis management and deposit insurance (CMDI) framework, which, in their assessment, represents a step towards completing the Banking Union.[37] The greatest innovation in the current draft amendments to the relevant directives is the possibility for deposit insurance funds to be used to provide small and medium-sized banks with loss-absorption capacity and recapitalisation, enabling them to meet the minimum requirement for own funds and eligible liabilities (MREL). Whereas the current crisis management legal framework limits the application of resolution measures only to systemically important and large banks, this means that bankruptcy proceedings are opened against medium-sized and smaller banks, followed by the payout of the covered deposits if they lack sufficient capacity to absorb losses. Conversely, banks whose liabilities consist mainly of deposits only and which do not borrow funds on the capital market sometimes find it difficult to meet these conditions. The proposed amendments would open up new possibilities for small and medium-sized banks, allowing the deposit insurers to assess the cost-effectiveness of the options available, providing financial support in resolution or, alternatively, allowing the bank to enter bankruptcy and payout.

Other proposals mainly relate to clarifying or supplementing existing provisions: expanding the range of government authorities covered by the framework, including temporarily high balances (up to EUR 2,500,000) arising from real estate transactions under the scope of the Deposit Guarantee Schemes Directive (DGSD) (whereas the 2014 Directive only covered such balances if they resulted from a transaction), limiting the time-frame within which covered amounts may be claimed.

III Conclusion

The legal framework governing the deposit insurance system in Serbia is aligned with the 2014 European Directive in spirit, objectives and most specific provisions. Those areas that remain non-aligned are either difficult to implement at

[37] Council of the European Union: "Bank resolution: Council and Parliament strike deal to strengthen the EU crisis management framework" (press release), 25 June 2025, available at: https://www.consilium.europa.eu/en/press/press-releases/2025/06/25/bank-resolution-council-and-parliament-strike-deal-to-strengthen-the-eu-crisis-management-framework/, accessed: 18. 7. 2025.

this stage or do not correspond to the actual situation in the banking market according to the assessment of the financial-stability authorities. It is not uncommon for candidate countries to fully align their regulations in the field of deposit insurance with European framework only immediately upon accession to the European Union (e.g. Croatia).

In this paper we have attempted to demonstrate that further alignment is desirable and necessary, not only for the purpose of fulfilling the objectives defined in the SAA, but also because the new provisions would represent a step forward in the development of the domestic system. Nevertheless, it is always necessary to consider the appropriateness of each planned amendment. This primarily relates to increasing the coverage level and expanding the scope of protected persons, bearing in mind other international standards, such as the Core Principles for Effective Deposit Insurance Systems. Although the perception of the role of deposit insurance systems changed noticeably after the global financial crisis and subsequent shocks to banking markets worldwide, it should not be forgotten that shifting the focus to protecting financial stability at the expense of limiting moral hazard can have serious consequences. In this regard, Serbia has scope to carefully consider all harmonisation options with relevant sources of law prior to accession to the European Union, taking into account the interests and potential benefits of all stakeholders in its domestic market.

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POJAM UPOTREBE MOTORNOG VOZILA U SMISLU OBAVEZNOG OSIGURANJA OD AUTO-ODGOVORNOSTI

PREGLEDNI NAUČNI RAD

SAŽETAK

U ovom radu analiziran je pojam upotrebe motornog vozila u okviru obaveznog osiguranja vlasnika motornih vozila od odgovornosti za štetu pričinjenu trećim licima, sa posebnim osvrtom na požar kao uzrok nastanka štete. Rad se usredsređuje na zakonodavstvo Republike Srbije i Evropske unije i bavi se analizom sudske prakse. Cilj rada je da pruži jasnu sliku situacije kada se smatra da je šteta nastala upotrebom vozila, odnosno kada postoji obaveza osiguravača da štetu nadoknadi, a kada ne. Metode istraživanja uključuju analizu pravnih izvora, domaćeg zakonodavstva i direktiva EU, komparativnu analizu sudske prakse Suda pravde Evropske unije i domaćih sudova. Rezultati pokazuju značaj ujednačenog razumevanja pojma upotrebe vozila, a zaključak ističe potrebu daljeg usklađivanja srpskog zakonodavstva i sudske prakse s pravom EU.

Ključne reči: *obavezno osiguranje vlasnika motornih vozila, pojam upotrebe motornog vozila, direktive EU o osiguranju od auto-odgovornosti, sudska praksa.*

I Uvod

Upotreba motornih vozila nosi visok rizik nastanka šteta trećim licima, što uslovljava potrebu za adekvatnim pravnim regulisanjem obaveznog osiguranja u saobraćaju. Osiguranje od odgovornosti za upotrebu automobila, kao oblik obaveznog osiguranja u saobraćaju, štiti interese odgovornog i oštećenog lica, garantujući

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da će šteta biti nadoknađena čak i ako je štetnik nesolventan, jer se oštećeni, osim štetniku, zahtevom za naknadu štete može obratiti i osiguravaču.[2]

Međutim, osiguravač će imati obavezu naknade štete samo ukoliko je šteta koju je oštećeni pretrpeo pokrivena obaveznim osiguranjem u saobraćaju. Domaći propisi, kao i propisi Evropske unije (dalje u tekstu: EU), obavezuju vlasnika motornog vozila da zaključi osiguranje za štete prouzrokovane upotrebom motornog vozila, te je tako šteta koja je prouzrokovana upotrebom motornog vozila pokrivena ovim osiguranje, dok šteta koja nije proizašla iz upotrebe motornog vozila nije.[3]

Dakle, centralni pojam ovog vida osiguranja jeste „upotreba motornog vozila", čija interpretacija direktno utiče na obim pokrića osiguranja. Termin „upotreba motornog vozila" je gotovo u svim zakonima prihvaćen kao uslov nastupanja osiguranog slučaja kod obaveznog osiguranja u saobraćaju. Međutim, taj pojam nije precizno definisan, tačnije nije precizno određeno šta se sve smatra upotrebom motornog vozila, jer se radi o pravnom standardu.

Ujednačeno, konzistentno i što preciznije definisanje tog pravnog standarda u našoj teoriji i praksi od izuzetne je važnosti kako zbog pravne sigurnosti građana i osiguravajućih društava, tako i zbog harmonizacije domaćeg prava s pravom EU.[4] Obaveza harmonizacije domaćeg prava s pravom EU nije samo na zakonodavnoj već i na sudskoj vlasti, pa tako ne postoji samo potreba usklađivanja Zakona o obaveznom osiguranju u saobraćaju[5] sa izmenama Direktive (EU) 2009/103/EC[6] koje su izvršene Direktivom (EU) 2021/2118[7], već i potreba usklađivanja sudske prakse s praksom Suda pravde Evropske unije.[8]

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[2] Nataša Petrović Tomić, *Pravo osiguranja – Sistem,* Beograd, 2019, 538–539.

[3] Vladimir Čolović, „Naknada štete po osnovu osiguranja od auto-odgovornosti – ranije i sadašnje regulisanje u zakonodavstvu Srbije", *Obavezno osiguranje, naknada štete i obezbeđenje potraživanja* (ur. Zdravko Petrović), Beograd 2010, 12.

[4] Republika Srbija zaključila je Sporazum o stabilizaciji i pridruživanju EU (*Službeni glasnik RS* – Međunarodni ugovori, br. 83/2008), kojim je, između ostalog, preuzela obavezu da svoje pravo uskladi s pravom EU.

[5] Zakon o obaveznom osiguranju u saobraćaju – ZOOS, *Sl. glasnik RS*, br. 51/2009, 78/2011, 101/2011, 93/2012 i 7/2013 – odluka US.

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[8] Miloš Radovanović, „Pojam upotrebe motornog vozila u slovenačkoj sudskoj praksi", *Strani pravni život,* 1/2018, 104.

II Razvoj osiguranja od auto-odgovornosti u Republici Srbiji i Evropskoj uniji

Obavezno osiguranje od odgovornosti vlasnika motornih vozila obuhvata naknadu štete koju je osiguranik, u skladu sa zakonom, dužan da isplati trećim licima zbog štetnih posledica nastalih upotrebom motornog vozila. Suština tog osiguranja ogleda se u pokriću građanskopravne odgovornosti za štetu prouzrokovanu korišćenjem vozila u saobraćaju.[9]

Opasnosti savremenog doba, naročito one što proizlaze iz saobraćaja, nameću potrebu za uspostavljanjem efikasnog društvenog mehanizma zaštite.[10] Upravo u oblasti drumskog saobraćaja, osiguranje od odgovornosti pokazuje se kao najdelotvorniji instrument zaštite, i to ne samo interesa vlasnika motornih vozila već i lica koja trpe štetu. Nezgode u saobraćaju predstavljaju neizbežan rizik koji društvo mora prihvatiti kao cenu tehnološkog napretka i koristi koje upotreba vozila donosi. Međutim, postavlja se pitanje ko će snositi posledice tih rizika. Prema opštim pravilima građanskog prava, za štetu koju izazove opasna stvar, kao što je motorno vozilo, odgovoran je njen imalac, i to po principu objektivne odgovornosti, nezavisno od krivice.[11] S razvojem automobilske industrije i s porastom intenziteta saobraćaja, raste i verovatnoća nastanka štete, što je uslovilo potrebu da teret odgovornosti ne snosi isključivo vlasnika vozila. Tako je nastalo osiguranje od odgovornosti vlasnika motornog vozila – najpre kao sredstvo zaštite njihovih imovinskih interesa. Međutim, kako se broj saobraćajnih žrtava povećavao, tako se menjala i funkcija tog instituta: osiguranje od auto-odgovornosti postaje mehanizam kojim se prvenstveno obezbeđuje naknada štete oštećenim licima.[12]

Auto-osiguranje kao pravni institut nije oduvek bilo zakonski obavezno. Prvobitno se razvilo kao oblik dobrovoljnog imovinskog osiguranja, zasnovan na slobodnoj volji lica da zaštite sebe od potencijalne građanskopravne odgovornosti. Međutim, rast broja motornih vozila, razvoj saobraćaja i porast učestalosti saobraćajnih nezgoda doveli su do potrebe da se ta vrsta osiguranja normira kao obavezna, kako bi se obezbedila efikasna zaštita oštećenih lica i povećala pravna sigurnost u saobraćaju.[13] Prve države koje su uvele obavezno osiguranje od auto-odgovornosti bile su skandinavske zemlje – Danska (1920), Finska (1925), Norveška (1926), Švedska,

[9] Nataša Petrović Tomić, 537.

[10] Marijan Ćurković, *Ugovori o obaveznom osiguranju u cestovnom prometu*, Savjet stručne biblioteke „Croatia zajednica osiguranja imovine i osoba", Zagreb, 1989, 14.

[11] Videti čl. 173 i 174 Zakona o obligacionim odnosima – ZOO, *Sl. list SFRJ, br. 29/78, 39/85, 45/89 – odluka USJ i 57/89, Sl. list SRJ,* br. 31/93, *Sl. list SCG*, br. 1/2003 - Ustavna povelja i *Sl. glasnik RS*, br. 18/2020.

[12] Nataša Petrović Tomić, str. 537–538.

[13] Todor Brajović, „Naknada nematerijalne štete u srpskom osiguranju od auto-odgovornosti sa posebnim osvrtom na pojedina rešenja država članica EU", *Pravo i privreda* 10–12/2013, str. 126.

a zatim i Austrija (1929), dok su Velika Britanija (1930), Švajcarska (1932) i Nemačka (1939) sledile ubrzo nakon toga, da bi se nakon Drugog svetskog rata ovaj model proširio i na druge evropske države, kao što su Poljska (1951), Belgija (1956), Francuska (1958) i Čehoslovačka (1964).[14]

U Republici Srbiji, sistem obaveznog auto-osiguranja prošao je kroz više faza. Prvi korak ka njegovom uvođenju bio je Zakon o osiguranju imovine i lica iz 1976. Godine,[15] koji je postavio osnov za dalje uređenje ove oblasti. Nakon raspada SFRJ, pravna regulativa se razvijala kroz ZOIL iz 1990. i 1996. godine, sve do donošenja posebnog zakona o obaveznom osiguranju u saobraćaju iz 2009. godine, kojim je prvi put ova materija sistematski uređena posebnim zakonom. Tim zakonom je ustanovljena obaveza vlasnika vozila da zaključe ugovor o osiguranju od odgovornosti, osnovan je Garantni fond i definisani su jasni uslovi za isplatu naknade štete, a izmenama iz 2011. godine dodatno su precizirani postupak likvidacije šteta i uvedene su strože sankcije za nepribavljeno osiguranje vozila, što je doprinelo većoj stabilnosti tržišta osiguranja i zaštiti oštećenih lica.[16]

Zakonom o obaveznom osiguranju u saobraćaju propisana je obaveza vlasnika motornog vozila da zaključi ugovor o osiguranju od odgovornosti za štetu koju upotrebom vozila može pričiniti trećim licima, a koja se ogleda u smrti, telesnim povredama, narušavanju zdravlja, kao i uništenju ili oštećenju stvari.[17] S druge strane, osiguravač, koji obavlja poslove osiguranja te vrste, dužan je da prihvati ponudu za zaključenje ugovora ukoliko se ona ne razlikuje od opštih uslova pod kojima redovno posluje. Time se uspostavlja zakonsko ograničenje ugovorne slobode za obe ugovorne strane.[18]

U Evropskoj uniji, osiguranje od auto-odgovornosti razvijalo se postepeno kroz sedam direktiva donetih od 1972. do danas, sve u cilju uklanjanja prepreka slobodnom kretanju vozila i osiguranju jednakog tretmana žrtava saobraćajnih nezgoda u svim državama članicama. Hronološki, najvažnije direktive su: 1. Direktiva 72/166/EEZ[19] – uspostavlja osnovni okvir za obavezno osiguranje i sistem zelene karte; 2. Direktiva 84/5/EEZ[20] – uvodi minimalne iznose osigurane sume, definiše da su osiguranjem pokrivena i lica i stvari i uvodi obavezu postojanja Garantnog

[14] Jasna Pak, *Pravo osiguranja,* Univerzitet Singidunum, Beograd, 2011, str. 247.
[15] Zakon o osiguranju imovine i lica – ZOIL, *Službeni list SFRJ,* br. 24/76.
[16] T. Brajović, 127.
[17] ZOOS, čl. 18 st. 1.
[18] Nataša Petrović Tomić, 541.
[19] Vidi: Direktiva 72/166/EEZ Saveta od 24. aprila 1972. o usklađivanju zakonodavstava država članica u vezi sa osiguranjem od građanske odgovornosti u pogledu upotrebe motornih vozila i kontroli obaveze osiguranja, *Službeni list EU*, OJ L 103, 2. 5. 1972, str. 1–4.
[20] Vidi: Direktiva 84/5/EEZ Saveta od 30. decembra 1983. o usklađivanju zakonodavstava država članica u vezi sa osiguranjem od građanske odgovornosti u pogledu upotrebe motornih vozila, *Službeni list EU*, OJ L 8, 11. 1. 1984, str. 17–20.

fonda; 3. Direktiva 90/232/EEZ[21] – obuhvata sve putnike u vozilu i uvodi koncept jedinstvene premije; 4. Direktiva 2000/26/EZ[22] – uređuje postupke u prekograničnim nezgodama („Direktiva žrtava posetilaca")[23]; 5. Direktiva 2005/14/EZ[24] – dodatno harmonizuje prethodne direktive i modifikuje ih radi bolje zaštite oštećenih lica; 6. Direktiva 2009/103/EZ[25] – kodifikaciona direktiva koja objedinjeno reguliše sve ključne aspekte sistema osiguranja, uključujući minimalna pokrića, direktnu tužbu i izuzeća od osiguravajućeg pokrića.[26] Iako su prethodne direktive obuhvatale širok spektar pitanja, nijedna nije definisala pojam „upotrebe vozila", mada je on bio ključan za određivanje pokrića osiguranja. Ta pravna praznina rezultirala je različitom sudskom praksom i tumačenjima država članica, te je usled toga doneta Direktiva (EU) 2021/2118,[27] kojom se menja i dopunjuje Direktiva 2009/103/EZ. Ta direktiva uvodi niz važnih novina: redefiniše pojmove „vozilo" i „upotreba vozila", povećava minimalne iznose sume osiguranja, uređuje zaštitu oštećenih lica u slučaju nesolventnosti osiguravača, te precizira uslove za proveru valjanosti osiguranja u prekograničnom kontekstu.[28]

Naročito je značajna nova definicija upotrebe vozila, prema kojoj se ona podrazumeva „u skladu sa funkcijom vozila kao prevoznog sredstva, nezavisno od terena, stanja kretanja ili tehničkih karakteristika". Time se širi obuhvat osiguranja i omogućava doslednija primena prava osiguranja u praksi.

Donošenje Direktive 2021/2118 bilo je ključno za uspostavljanje pravne sigurnosti u dotičnoj oblasti, jer su se prethodna neujednačena tumačenja u državama članicama pokazala kao prepreka efikasnom ostvarivanju prava žrtava. Republika Srbija, kao kandidat za članstvo u EU, teži harmonizaciji sa ovim rešenjima, što se može videti i kroz domaću praksu i tumačenja pojma upotrebe motornog vozila u pravnoj doktrini.

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[21] Vidi: Direktiva 90/232/EEZ Saveta od 14. maja 1990. o usklađivanju zakonodavstava država članica u vezi sa osiguranjem od građanske odgovornosti u pogledu upotrebe motornih vozila, *Službeni list EU*, OJ L 129, 19. 5. 1990, str. 33–35.

[22] Vidi: Direktiva 2000/26/EZ Evropskog parlamenta i Saveta od 16. maja 2000. o usklađivanju zakonodavstava država članica u vezi sa osiguranjem od građanske odgovornosti u pogledu upotrebe motornih vozila, kojom se menjaju Direktiva 73/239/EEZ i Direktiva 88/357/EEZ, *Službeni list EU*, OJ L 181, 20. 7. 2000, str. 65–74.

[23] Detaljnije: Iva Tošić, „Razvoj koncepta auto-odgovornosti u pravu Evropske unije", *Pravni život* br. 12/2017.

[24] Vidi: Direktiva 2005/14/EZ Evropskog parlamenta i Saveta od 11. maja 2005. o izmenama direktiva 72/166/EEZ, 84/5/EEZ, 88/357/EEZ i 90/232/EEZ u vezi sa osiguranjem od građanske odgovornosti u pogledu upotrebe motornih vozila (*Službeni list EU*, OJ L 149, 11. 6. 2005, str. 14–22).

[25] Vidi: Direktiva 2009/103/EZ, 11–31.

[26] Detaljnije: Danijela Šaban, „Pojam uporabe motornog vozila u pravu osiguranja od automobilske odgovornosti", *Anali Pravnog fakulteta Univerziteta u Zenici*, br. 17/2016, 278–281.

[27] Vidi: Direktiva (EU) 2021/2118, s1–27.

[28] Jasenko Marin, „Novine u zakonskom uređenju osiguranja od automobilske odgovornosti u Republici Hrvatskoj",*Tokovi osiguranja* 4/2024, 1–3.

III Pojam upotrebe motornog vozila

U okviru osiguranja od auto-odgovornosti, predmet pokrića nije celokupna građanskopravna odgovornost lica koje prouzrokuje štetu, već isključivo njen deo koji zakon prepoznaje kao obavezno osigurani rizik. Na taj način dolazi do distinkcije između građanskopravne odgovornosti štetnika in integrum i odgovornosti osiguravača in terminus, tj. ograničene odgovornosti koja proizlazi iz zaključenog ugovora o obaveznom osiguranju.[29] Imajući u vidu da je odgovornost osiguravača strogo ograničena normativnim okvirom i obimom obaveze predviđene zakonom, od ključnog je značaja precizno utvrditi granice tog pokrića.

Jedan od najvažnijih aspekata u tom smislu jeste tumačenje pojma „upotrebe motornog vozila", jer se upravo polazeći od značenja tog pojma određuje da li se konkretna šteta nalazi unutar ili izvan okvira osiguranog pokrića.[30] Kako zakonodavac u pozitivnom pravu Republike Srbije ne nudi izričitu definiciju „upotrebe vozila" u kontekstu osiguranja od auto-odgovornosti, tumačenje ovog pojma u praksi postaje zadatak pravne teorije i sudske prakse. Od toga kako se taj pojam razume i primenjuje zavisi i obim zaštite oštećenih lica, ali i dužina i složenost postupaka za naknadu štete.

Pored domaćih izvora, poseban značaj u oblikovanju savremenog razumevanja ovog pojma ima pravo Evropske unije, u okviru kojeg su direktive EU i sudska praksa, naročito presude Suda pravde EU, bile odlučujuće za definisanje i usmeravanje zakonodavnih izmena.

1. Pojam upotrebe motornog vozila u zakonodavstvu Evropske unije

Uprkos značaju pojma „upotrebe motornog vozila", on dugo nije bio zakonski definisan u tekstovima direktiva EU, već je njegovo tumačenje bilo prepuštano pravnoj teoriji i sudskoj praksi država članica, što je dovodilo do neujednačenih rešenja i razlika u pravima oštećenih lica. S obzirom na sve izraženiju potrebu da se postigne jedinstveno i stabilno tumačenje pojma „upotrebe" na teritoriji EU, naročito u kontekstu različitih tipova vozila (npr. radnih mašina, parkiranih vozila, vozila u privatnim prostorima), kao i u cilju proširenja zaštite žrtava, Evropski zakonodavac je 2021. godine usvojio sedmu direktivu – Direktivu (EU) 2021/2118 kojom su izvršene izmene Direktive 2009/103/EZ.[31] Najvažnija izmena je svakako redefinisanje pojma „upotrebe vozila".

Prema novoj definiciji, sadržanoj u članu 1 stav 1 tačka 1a) Direktive 2021/2118, upotreba motornog vozila obuhvata „svaku upotrebu vozila koja je u skladu s njegovom funkcijom kao prevoznog sredstva, bez obzira na svojstva terena na kojem

[29] Berislav M. Matijević, „Croquis pojma upotreba vozila u osiguranju od automobilske odgovornosti kroz praksu suda Evropske unije", *Strani pravni život*, 3/2019, str. 140.
[30] Ibid.
[31] J. Marin, 5-10.

se koristi i na to da li se u trenutku nezgode kreće, stoji ili obavlja neku drugu radnju koja proističe iz njegove prevozne funkcije".[32]

Takvo normativno određenje pojma rezultat je potrebe da se prekine s dotadašnjim oslanjanjem isključivo na sudsku praksu, te da se stvori pravna sigurnost. Direktiva time ne ostaje na deklarativnom nivou, već postaje konstitutivan akt koji standardizuje široko funkcionalno tumačenje pojma upotrebe u skladu sa savremenim potrebama saobraćaja i osiguranja.[33]

Novom regulativom i na zakonodavnom nivou, ali i na teoretskom nivou, dolazi do prelaska iz klasičnog pojma „aktivne upotrebe" vozila (koja podrazumeva kretanje) ka širem, funkcionalnom modelu tumačenja koji obuhvata i pasivne situacije – kao što su parkiranje, stajanje, utovar, istovar, pa čak i tehnički kvarovi na mestu mirovanja.[34]

Nova definicija inspirisana je sudskom praksom Suda pravde EU, pogotovo presudom u predmetu Vnuk (C-162/13), koja je otvorila proces zakonodavnih promena. Uvođenjem te definicije pravna nesigurnost je znatno smanjena i došlo je do pozitivnih pomaka u ostvarenju ciljeva iz članova 114 i 169 UFEU – zaštite potrošača i unapređenja jedinstvenog tržišta osiguranja.

2. Pojam upotrebe motornog vozila prema sudskoj praksi Suda pravde EU

U nedostatku precizne zakonske definicije u ranijim direktivama, pojam „upotrebe vozila" u okviru prava EU razvijan je pretežno kroz praksu Suda pravde Evropske unije (ESP), koji je interpretacijom konkretnih slučajeva postepeno izgradio osnovne kriterijume za njegovu primenu. Te presude ne samo da su rešavale pojedinačne sporove već su i direktno uticale na tumačenje pojma i bile ključne za kasniju zakonodavnu intervenciju, konkretno donošenje Direktive 2021/2118.

2.1. Presuda Vnuk (C-162/13)[35]

U tom predmetu se radilo o nezgodi koja je nastala kada je traktor u dvorištu farme udario osobu koja se bavila skladištenjem sena. Sud je utvrdio da se pojam „upotreba vozila" ne sme tumačiti restriktivno kao isključivo kretanje vozila po javnim putevima, već obuhvata svaku upotrebu u skladu s osnovnom funkcijom vozila kao prevoznog sredstva, bez obzira na lokaciju.

[32] Ibid, 11–12.

[33] Loris Belanić, „Redefiniranje obaveze osiguratelja od automobilske odgovornosti s obzirom na upotrebu vozila u kontekstu prakse suda EU", *Godišnjak Akademije pravnih znanosti Hrvatske*, Vol. XII, 1/2021, 345–366.

[34] Ibid.

[35] Presuda Suda EU u predmetu C-162/13 od 4. 12. 2014., Damjan Vnuk / Zavarovalnica Triglav, ECLI:EU:C:2014:2146, dostupno na adresi: https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX%3A62013CJ0162, 20. 6. 2025.

Ta presuda se smatra prekretnicom jer je ukazala na potrebu za usklađivanjem tumačenja pojma upotrebe vozila na nivou cele EU.

2.2. *Presuda Rodrigues de Andrade (C-514/16)*[36]

U tom slučaju traktor je bio zaustavljen, ali mu je motor radio kako bi pokrenuo pumpu za prskanje vinograda. Tom prilikom vozilo se prevrnulo i usmrtilo radnika. Sud je naglasio razliku između funkcije vozila kao prevoznog sredstva i njegove alternativne (radne) funkcije, i utvrdio da kada radna funkcija prevladava, događaj nije obuhvaćen pojmom „upotreba vozila" u smislu direktiva o osiguranju.

Ta presuda ukazala je na značaj utvrđivanja toga da li je vozilo u trenutku nastanka štete imalo funkciju prevoznog sredstva ili pak neku drugu funkciju.

2.3. *Presuda Núñez Torreiro (C-334/16)*[37]

Ta presuda se bavila vojnom vežbom tokom koje se vozilo prevrnulo u zoni neprilagođenoj za drumsku upotrebu. Iako se radilo o specifičnim okolnostima, sud je konstatovao da je funkcija vozila bila prevozna i da je događaj obuhvaćen pojmom „upotrebe" jer se radilo o kretanju u svojstvu prevoznog sredstva.

Zaključak presude je da teren na kom se nezgoda dogodila nije relevantan ukoliko je vozilo obavljalo svoju funkciju prevoznog sredstva.

2.4. *Presuda BTA Baltic Insurance (C-648/17)*[38]

Ovde se radilo o situaciji u kojoj je putnik, otvarajući vrata parkiranog vozila, oštetio susedno vozilo. Sud je ocenio da je i takva radnja deo uobičajene prevozne funkcije vozila, jer omogućava ulazak i izlazak putnika, pa je u skladu s pojmom upotrebe vozila u kontekstu osiguranja.

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[36] Presuda Suda EU u predmetu C-514/16 od 28. 11. 2017., *Isabel Maria Pinheiro Vieira Rodrigues de Andrade i dr. / Crédito Agrícola Seguros*, ECLI:EU:C:2017:908, dostupno na adresi: https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX%3A62016CJ0514, 20. 6. 2025.

[37] Presuda Suda EU u predmetu C-334/16 od 20. 12. 2017., *José Luís Núñez Torreiro / AIG Europe Limited i dr.*, ECLI:EU:C:2017:1007, dostupno na adresi: https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX%3A62016CJ0334, 20. 6. 2025.

[38] Presuda Suda EU u predmetu C-648/17 od 15. 11. 2018., *BTA Baltic Insurance Company AS / Baltijas Apdrošināšanas Nams AS*, ECLI:EU:C:2018:917, dostupno na adresi: https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX%3A62017CJ0648, 20. 6. 2025.

2.5. *Presuda Linea Directa Aseguradora (LDA, C-100/18)*[39]

U tom predmetu vozilo je bilo parkirano duže od 24 časa u privatnoj garaži, kada je usled kvara na električnim instalacijama izbio požar koji je oštetio nepokretnost. Sud je utvrdio da i takva situacija može biti obuhvaćena pojmom „upotrebe vozila", jer se uzrok štete može povezati s funkcijom vozila kao prevoznog sredstva i njegovim tehničkim stanjem, iako se u trenutku nezgode nije nalazilo u pokretu.

Posredi je izuzetno značajna presuda jer ukazuje na to da vozilo ne mora biti u pokretu, niti mu motor mora biti upaljen da bi se moglo smatrati da je u upotrebi.

Prethodno prikazane presude ukazuju na to da je ESP dosledno razvijao široko, funkcionalno i teleološko tumačenje pojma „upotreba vozila", imajući u vidu cilj osiguranja – zaštitu žrtava. Upravo njihova raznolikost, ali i potreba za jedinstvenim standardom, bile su povod za zakonodavca da u Direktivi (EU) 2021/2118 konačno ponudi normativnu definiciju ovog pojma, koja sada uključuje upotrebu vozila „u skladu s njegovom funkcijom kao prevoznog sredstva", bez obzira na teren, stanje kretanja ili konkretan trenutak.

3. Pojam upotrebe motornog vozila u pravu Republike Srbije

3.1. *Pojam upotrebe u pravnoj teoriji*

U pravu Republike Srbije, kao i u pravu EU, u okviru obaveznog osiguranja od auto-odgovornosti pokriva se odgovornost štetnika, to jest vlasnika ili korisnika motornog vozila. Ipak, važno je utvrditi osnov te odgovornosti. Dok se građanskopravna odgovornost štetnika zasniva na opštim pravilima obligacionog prava,[40] obaveza osiguravača da naknadi štetu prouzrokovanu upotrebom vozila proizlazi iz ugovor o osiguranju od auto-odgovornosti, njegovih uslova i relevantnih odredaba Zakona o obaveznom osiguranju u saobraćaju. Ta razlika u pravnoj osnovi ima za posledicu da se odgovornost štetnika i odgovornost osiguravača ne moraju u potpunosti poklapati. Naprotiv, osiguranje od auto-odgovornosti pokriva samo jedan deo te odgovornosti – onaj što je zakonom prenesen na osiguravača. Jedan od ključnih elemenata koji određuje granice osiguravačeve odgovornosti jeste pojam „upotrebe motornog vozila".[41]

[39] Presuda Suda EU u predmetu C-100/18 od 20. 6. 2019., *Línea Directa Aseguradora SA v. Segurcaixa Sociedad Anónima de Seguros y Reaseguros*, ECLI:EU:C:2019:517, dostupno na adresi: https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX%3A62018CJ0100, 20. 6. 2025.

[40] Videti čl. 173 i 174 ZOO.

[41] Odredbom čl. 18 ZOOS propisano je da je vlasnik motornog vozila dužan da zaključi ugovor o osiguranju od odgovornosti za štetu koju upotrebom motornog vozila pričini trećim licima u vidu smrti, povrede tela, narušavanja zdravlja, uništenja ili oštećenja stvari, iz čega se izuzimaju štete na stvarima koje je primio na prevoz.

U tom smislu, upotreba motornog vozila predstavlja Zakonom o obaveznom osiguranju u saobraćaju definisani osigurani rizik, čije precizno razumevanje ima direktne posledice na obim osiguravačeve obaveze, te je od ključne važnosti da se sadržaj ovog pojma jasno razluči, kako bi se ustanovilo da li je konkretan štetni događaj pokriven obaveznim osiguranjem od auto-odgovornosti ili nije.[42]

Zakon o obaveznom osiguranju u saobraćaju ne definiše pojam „upotreba vozila", što samo po sebi nije loše imajući u vidu da je pitanje da li je šteta posledica upotrebe motornog vozila činjenično pitanje koje zavisi od okolnosti konkretnog slučaja.[43] Međutim, ukoliko nema ujednačene sudske prakse, navedeno može dovoditi do pravne nesigurnosti.

U delu pravne teorije šteta nastala upotrebom motornog vozila vezuje se za saobraćajnu nezgodu, pri čemu se pravi razlika između saobraćajne nezgode u užem smislu, koja predstavlja sudar motornih vozila i saobraćajne nezgode u širem smislu, one kod koje nema fizičkog kontakta dva ili više vozila (sletanje s puta, ispadanje predmeta iz vozila i sl.).[44]

Deo pravne teorije ukazuje na potrebu ekstenzivnog tumačenja i ističe da osiguranje od odgovornosti ne pokriva samo štete nastale usled saobraćajne nezgode.[45] Tako, prof. Nataša Petrović Tomić zaključuje da i sledeće situacije spadaju pod upotrebu vozila: 1) zaslepljivanje farovima usled čega je došlo do skretanja s puta; 2) ukoliko je jedan vozač načinom upravljanja vozilom primorao drugog da udari u treće lice; 3) ukoliko je jedno vozilo nanelo zemlju na kolovoz pa je drugo vozilo proklizalo; 4) kada usled oštećenja na vozilu dođe do zapaljenja i požara koji ošteti stvari trećeg lica; 5) sve vrste zaustavljanja na putu i radova na vozilu i svaka vožnja koja se preduzima iz sedišta pa do povratka u sedište.[46]

Na potrebu širokog tumačenja ukazuje i prof. Predrag Šulejić navodeći da se pod upotrebom smatra i zaustavljanje na putu, radovi na vozilu i svako stajanje na putu u toku vožnje, ali ukazuje i na to da je u svakom slučaju potrebno utvrditi uzročnu vezu između štete i upotrebe vozila, s tim što ta veza ne mora biti neposredna već šteta može nastupiti i na drugom mestu ili kasnije.[47] Dalje se ukazuje na to da je pogrešno upotrebu vezivati samo za situacije kada je šteta nastala na javnom putu, te da se osiguranje odnosi i na situacije kada je šteta nastala i na putevima koji nemaju javni karakter, kao i da za upotrebu nije nužno da se vozilo kreće snagom sopstvenog motora već može biti i vučeno.[48]

[42] L. Belanić, 347–348.

[43] Za razliku od važećeg zakona, ZOIL iz 1967. godine je smatrao da je potrebno bliže definisati pojam upotrebe vozila, pa je članom 15 st. 2 bilo propisano da se smatra kako je vozilo u upotrebi za vreme vožnje i za vreme stajanja na putu u toku vožnje.

[44] Detaljnije: N. Petrović Tomić, 544–545.

[45] Ibid.

[46] Ibid, 545.

[47] Predrag Šulejić, *Pravo osiguranja*, Beograd 2005, 441–442.

[48] Ibid, 442–443.

Dakle, upotrebu motornog vozila ne treba isključivo vezivati za saobraćajnu nezgodu, niti za kretanje vozila, kao ni za javni put, već, po ugledu na evropsko pravo, prilikom tumačenja ovog pojma treba imati u vidu da je funkcija obaveznog osiguranja u saobraćaju pre svega zaštita trećih oštećenih lica, te ovaj pojam treba tumačiti ekstenzivno, ali vodeći računa o prevoznoj funkciji vozila.

Međutim, naša sudska praksa i dalje nije ujednačena i primećuje se odstupanje od tumačenja tog pojma u skladu s funkcijom motornog vozila kao prevoznog sredstva, bez obzira na teren, stanje kretanja ili konkretan trenutak.

3.2. Pojam upotrebe u domaćoj sudskoj praksi

S obzirom na to da pozitivno pravo Republike Srbije, pre svega Zakon o obaveznom osiguranju u saobraćaju, ne sadrži izričitu definiciju pojma „upotreba motornog vozila", sudska praksa ima ključnu ulogu u određivanju granica obaveze osiguravača u slučajevima nastanka štete. Analiza relevantnih presuda pokazuje da se tumačenje pojma „upotrebe" u praksi sudova razlikuje, te da sudske odluke osciliraju između: restriktivnog tumačenja, prema kojem je upotreba isključivo vezana za kretanje vozila u saobraćaju, i funkcionalnog (šireg) pristupa, koji priznaje i radnje poput parkiranja, istovara, mirovanja s upaljenim motorom ili tehničkog kvara kao oblike upotrebe – ako su u vezi s funkcijom vozila kao prevoznog sredstva.

U ranijoj sudskoj praksi nailazimo na stavove gde se smatra da je vozilo u upotrebi dok stoji na autobuskom stajalištu radi ulaska i izlaska putnika; da nanošenje ilovače na kolovoz predstavlja upotrebu ako je to prouzrokovalo klizavost puta i prevrnuće; ali da šteta nije nastala iz upotrebe ukoliko je oštećeni gurao vozilo ili ako je došlo do trovanja plinom u zatvorenoj garaži.[49]

Kada je u pitanju mesto (put) na kom se šteta dogodila, ranije je bilo kolebanja, pa se tako u jednoj presudi zaključuje da šteta naneta radniku koji je pomagao prilikom istovara smeća na javnom đubrištu nije pokrivena obaveznim osiguranjem u saobraćaju jer nije nastala na mestu gde se saobraćaj odvija, a u drugoj odluci se navodi da ne postoji obaveza zajednice osiguranja ako je šteta nastala traktorom na njivi jer se ne radi o javnom putu, dok se u trećoj odluci, suprotno prethodnom, smatra da fabričko dvorište u kojem je došlo do nezgode treba smatrati putem jer se po njemu odvija saobraćaj, pa makar i ograničeno – za službena vozila.[50]

U novijoj sudskoj praksi takođe nije postignuto potpuno ujednačeno tumačenje. Tako je u predmetu Gž 1292/2018, Apelacioni sud u Novom Sadu zauzeo stav da je povreda koju je putnik zadobio prilikom ulaska u vozilo obuhvaćena pojmom

[49] VSH, Gž. 1174/70 od 11.5.1971; VSH, GŽ. 1600/71 od 16. 6. 1971; VSS, Gž. 705/69 od 12. 10. 1969; VSH, Gž. 1777/74, od 17. 4. 1975, sve prema: P. Šulejić, 441.

[50] VS SRS, Pž. 102/72 od 18. 2. 1972; Gž. 156/74 od 20. 1. 1975; VSS, Pž. 1451/71 od 31. 3. 1972; sve prema: P. Šulejić, 442.

upotrebe motornog vozila u smislu ZOOS. Sud je naveo da čin ulaska putnika u vozilo predstavlja radnju neposredno vezanu za korišćenje vozila u njegovoj osnovnoj funkciji – prevozu lica i stvari, te da takva radnja ima dovoljno čvrstu uzročnu i funkcionalnu vezu sa osnovnom svrhom vozila.[51] Time je prihvaćen funkcionalni pristup pojmu upotrebe, koji prevazilazi uži koncept kretanja vozila.

Nasuprot tome, u predmetu Rev 4191/2020, Vrhovni kasacioni sud zauzima restriktivan stav, smatrajući da vozilo koje se nalazi u fazi popravke ne može biti smatrano vozilom „u upotrebi" u smislu obaveznog osiguranja. Sud je istakao da šteta nije nastala kao posledica uobičajene upotrebe vozila, već prilikom servisiranja i osposobljavanja vozila za njegovu osnovnu namenu, čime se jasno isključuje osiguravajuće pokriće za radnje koje nisu neposredno povezane sa saobraćajem ili prevozom.[52] Taj slučaj jasno pokazuje sudsko razgraničenje između aktivne uloge vozila u saobraćaju i stanja u kome se vozilo tehnički osposobljava ili održava – što, prema stavu suda, ne potpada pod obavezno osiguranje. Taj stav predstavlja primer formalnog i suženog tumačenja pojma upotrebe, ograničenog na aktivno uključivanje vozila u saobraćajni proces.

Dalje, u presudi Rev 18331/2024, razmatrana je situacija gde je došlo do sudara automobila u pokretu i priključnog vozila, pri čemu je drugostepeni sud smatrao da nema odgovornosti osiguravača priključnog vozila jer to vozilo nije dejstvovalo samo. Revizioni sud našao je da je priključno vozilo koje je vučeno funkcionalno povezano, te da okolnost da nije dejstvovalo samostalno nije odlučujuća.[53] Takvim tumačenjem prihvaćen je funkcionalni model koji upotrebu vozila ne vezuje striktno za njegovu mehaničku aktivnost, već za namenski kontekst i uzročnu povezanost.

Te presude potvrđuju da domaća sudska praksa oscilira između šire funkcionalne i uže tehničke interpretacije, pri čemu je granica između „upotrebe" i „neupotrebe" vozila uslovljena činjeničnim okolnostima konkretnog slučaja, a ne striktno ustanovljenim pravnim standardom. S jedne strane, apsolutno je potrebno voditi računa o specifičnim okolnostima svakog slučaja, ali s druge, ovako oblikovana praksa može dovesti do različitih pravnih ishoda u sličnim situacijama, čime se ugrožava pravna sigurnost i doslednost. U tom smislu, sve češće se u teoriji naglašava potreba za preciznijim zakonskim određenjem pojma upotrebe, po ugledu na standarde uspostavljene Direktivom (EU) 2021/2118, koja unosi funkcionalnu definiciju i obezbeđuje ujednačeno tumačenje u državama članicama.

4. Pojam upotrebe motornog vozila u sudskoj praksi u slučaju požara

Jedna od naročito složenih situacija u praksi tiče se pitanja da li se nastanak požara na vozilu može smatrati „upotrebom motornog vozila" u smislu obaveznog

[51] Apelacioni sud u Novom Sadu, Gž 1292/2018 od 28. 5. 2018 godine.
[52] Vrhovni kasacioni sud RS, Rev 4191/2020 od 15. 7. 2021. godine.
[53] Vrhovni kasacioni sud RS, Rev 18331/2024 od 18. 9. 2024. godine.

osiguranja od auto-odgovornosti. Ta pravna dilema dodatno je izražena u slučajevima kada vozilo nije bilo u pokretu, niti se neposredno koristilo za prevoz, ali je ipak došlo do štetnog događaja zbog njegove tehničke funkcije ili kvarova na sistemima. Sudovi su zauzimali različite stavove, oscilirajući između širokog funkcionalnog i restriktivnog tumačenja, što komplikuje pravni položaj oštećenih i pitanje postojanja obaveze osiguravača.

U nastavku će biti prikazane neke odluke sudova Republike Srbije koje su se bavile tim pitanjem, s posebnim osvrtom na to kako se pojam „upotrebe" tumači kada do štete dolazi usled pojave požara na vozilu.

U jednom predmetu Privrednog suda u Beogradu[54] odlučivano je o tužbenom zahtevu za naknadu štete nastale usled izbijanja požara na parkiranom motornom vozilu, koje je bilo osigurano kod tuženog osiguravača po osnovu obaveznog osiguranja od auto-odgovornosti. Požar se zatim proširio na susedno vozilo, koje je bilo u svojini tužioca, izazvavši materijalnu štetu. Tužilac je tvrdio da je osiguravač dužan da nadoknadi štetu, budući da je štetni događaj potekao od osiguranog vozila, bez obzira na to da li se ono kretalo ili nije. Naročito je ukazano da je u pitanju šteta koja potiče od opasne stvari, te da bi u skladu sa svrhom obaveznog osiguranja i zaštitnom funkcijom tog instituta, osiguravač trebalo da odgovara. Sud je, međutim, u potpunosti odbio tužbeni zahtev, obrazlažući svoju odluku time da u konkretnom slučaju nije bila ispunjena osnovna pretpostavka odgovornosti osiguravača – da je šteta nastala upotrebom vozila, odnosno da tužilac nije dokazao da je u trenutku nastanka štete postojala bilo kakva radnja upotrebe vozila u skladu s funkcijom prevoznog sredstva. Navodi se da je vozilo koje je izazvalo požar bilo parkirano, nije bilo pokrenuto, nije se koristilo za prevoz ljudi ili stvari, niti je bilo uključeno u bilo kakav saobraćajni proces. Dalje se navodi da nije došlo do saobraćajne nezgode u smislu Zakona o bezbednosti saobraćaja na putevima,[55] jer je, u smislu tog zakona, za postojanje saobraćajne nezgode potrebno da je makar jedno vozilo bilo u pokretu. Zaključuje se da je, kako u konkretnom slučaju toga nije bilo, prigovor nedostatka pasivne legitimacije osnovan, te da je tužbeni zahtev neosnovan.

Ta presuda predstavlja primer restriktivnog tumačenja pojma upotrebe motornog vozila, koje se oslanja isključivo na funkcionalno stanje vozila u trenutku nastanka štete i koje se vezuje za postojanje saobraćajne nezgode u užem smislu. Takav pristup zanemaruje mogućnost da vozilo, i kada je nepokretno, može proizvesti štetne posledice koje su uzročno povezane s njegovom prevoznom funkcijom ili tehničkim svojstvima (npr. akumulator, elektroinstalacija, rezervoar goriva itd.). Time se, praktično, sužava opseg zaštite koju institut obaveznog osiguranja treba

[54] Presuda Privrednog suda u Beogradu P 6410/2023 od 21. 3. 2024. godine.

[55] Zakon o bezbednosti saobraćaja na putevima, *Sl. glasnik RS*, br. 41/2009, 53/2010, 101/2011, 32/2013 – odluka US, 55/2014, 96/2015 – dr. zakon, 9/2016 – odluka US, 24/2018, 41/2018, 41/2018 – dr. zakon, 87/2018, 23/2019, 128/2020 – dr. zakon, 76/2023 i 19/2025.

da pruži, i stvara pravna nesigurnost za oštećene, jer postaje sporno da li osiguranje pokriva štete čak i kada ne postoji krivica štetnika, ali postoji kauzalna veza između vozila i štete.

Za potrebe poređenja ovde ćemo se osvrnuti na jednu presudu Vrhovnog suda Republike Hrvatske,[56] u kojoj je odlučivano o požaru koji je izbio na parkiranom vozilu unutar garaže, a koji je izazvan kvarom na instalaciji. Iako se vozilo nije kretalo, niti je neposredno učestvovalo u saobraćaju, sud je ipak ocenio da se radi o „upotrebi vozila" u smislu osiguranja od auto-odgovornosti. Ključno obrazloženje bilo je da je uzrok požara proistekao iz tehničkih karakteristika i funkcionalnih svojstava samog vozila, što omogućava da se takav događaj podvede pod širu funkcionalnu definiciju upotrebe.

Ta presuda, iako ne pripada domaćoj sudskoj praksi, ilustrativna je za pristup koji ne ograničava upotrebu vozila isključivo na njegovo kretanje ili aktivno učešće u saobraćaju, već priznaje i situacije u kojima vozilo, usled svojih tehničkih svojstava, proizvodi štetne posledice dok miruje. Takvo tumačenje bolje odgovara funkciji osiguranja kao sredstva zaštite trećih oštećenih lica i omogućava širu, materijalno-pravičnu zaštitu.

Prethodno prikazana prvostepena presuda Privrednog suda u Beogradu dobija svoj epilog u postupku po pravnom leku gde Privredni apelacioni sud u Beograd[57] presuđuje da prvostepeni sud nepravilno zaključuje kako tuženi nije pasivno legitimisan, jer se pod upotrebom vozila smatraju i one situacije kada se parkirano vozilo zapalilo usled kvara na električnim instalacijama, izazvavši požar. Međutim prvostepena odluka biva potvrđena uz obrazloženje da je uzrok nastanka štetnog događaja od uticaja na donošenje odluke, te da je na tužiocu bio teret dokazivanja okolnosti koja je dovela do nastanka požara na motornom vozilu, odnosno da tužilac nije dokazao na koji je način došlo do požara: da li je pitanju kvar na instalacijama automobila, koji je doveo do samozapaljenja, ili je u pitanju ljudski faktor. Dakle, tužbeni zahtev se odbija uz primenu tereta dokazivanja i zaključak da tužilac nije dokazao da se uzrok požara na vozilu nalazio u mehanizmu nužnom za upotrebu prevozne funkcije tog vozila.

Ta drugostepena odluka ima naročit značaj jer eksplicitno prihvata mogućnost da i požar koji je izbio na parkiranom vozilu može predstavljati „upotrebu motornog vozila" u smislu člana 18 stav 1 ZOOS-a, pod uslovom da postoji uzročna i funkcionalna povezanost s tehničkim sistemima vozila koji služe njegovoj osnovnoj prevoznoj funkciji. Time se odstupa od ranijeg restriktivnog pristupa i afirmiše šira, funkcionalna interpretacija pojma upotrebe, koja je bliža rešenjima prihvaćenim u pravu EU. Ipak, ta presuda istovremeno pokazuje i suštinsku procesnopravnu

[56] Presuda VSRH, Rev 2643/12-2 od 23. 4. 2014. godine, prema D. Šaban, 289–290.

[57] Presuda Privrednog apelacionog suda u Beogradu Pž 2792/24 od 11. 9. 2024. godine.

prepreku, pitanje dokazivanja uzroka štete. Ta presuda takođe potvrđuje da sudska praksa počinje da prepoznaje složenost pojma upotrebe, ali ističe i da u sporovima ove vrste odlučujuću ulogu i dalje ima konkretna činjenična osnova i valjanost izvedenih dokaza.

Međutim, u nevezanom predmetu Rev 4570/2024,[58] Vrhovni kasacioni sud Republike Srbije razmatrao je da li požar koji je izbio na parkiranom motornom vozilu koje nije bilo uključeno u saobraćaj može predstavljati slučaj „upotrebe vozila" u smislu člana 18 stav 1 ZOOS. Sud je zauzeo stav da ne postoji odgovornost osiguravača u situaciji kada je šteta izazvana vozilom koje se u trenutku nastanka nezgode nalazilo u stanju mirovanja i nije se koristilo za prevoz lica ili stvari. Sud je ukazao na to da sama činjenica da je vozilo bilo uzrok požara nije dovoljna da se zaključi da se radi o njegovoj „upotrebi" u smislu ZOOS. Za postojanje odgovornosti osiguravača, prema shvatanju suda, neophodno je da se šteta može dovesti u neposrednu funkcionalnu vezu sa svojstvom vozila kao sredstva prevoza. U konkretnom slučaju, ta veza nije postojala jer vozilo nije bilo u pokretu, niti se obavljala bilo kakva radnja koja bi ukazivala na njegovu aktivnu ulogu u saobraćaju.

Takvo tumačenje odražava restriktivni pristup u sudskoj praksi kada je reč o granicama pokrića obaveznog osiguranja od auto-odgovornosti. Daje se mišljenje da se štete izazvane vozilima koja se u trenutku nezgode nalaze u statičnom, tehnički pasivnom stanju, čak i kada su neposredan uzrok štete, ne smatraju štetama iz kategorije upotrebe vozila, i kao takve ne ulaze u sferu pokrića obaveznog osiguranja. Takav pristup je suprotan modernim tokovima u pravu osiguranja, pogotovo u pravu Evropske unije, gde se, kako je to istaknuto u presudama Rodrigues de Andrade i LDA, „upotreba" vozila ne vezuje striktno za kretanje ili saobraćaj, već se tumači funkcionalno, u svetlu tehničke prirode i potencijala vozila da izazove štetu.

Primer širokog tumačenja je presuda Privrednog suda u Požarevcu, P. br. 126/12,[59] kojom se ukazuje na postojanje odgovornosti vlasnika vozila po osnovu ZOO, čak i kada vozilo miruje i ne učestvuje u saobraćaju, ukoliko izazove štetu svojom opasnom prirodom. Iako se u tom predmetu nije radilo o odgovornosti po osnovu ZOOS, ona je značajna jer ukazuje da je kod štete nastale požarom irelevantno koji je konkretan uzrok unutar stvari doveo do njenog nastanka. U tom predmetu, došlo je do požara na parkiranom putničkom vozilu tuženog koje se nalazilo u boksu samouslužne auto-perionice tužioca. Izveštaji veštaka potvrdili su da je požar potekao iz unutrašnjosti vozila (zona putničkog prostora), te da se proširio i pričinio štetu objektu perionice. U obrazloženju, sud nije ulazio u konkretan tehnički uzrok zapaljenja (da li je to bio kvar na gasnoj instalaciji, varnica ili nešto drugo), već je istakao da je za

[58] Videti presudu Vrhovnog suda Republike Srbije Rev 4570/24 od 29. 5. 2024. godine.

[59] Presuda Privrednog suda u Požarevcu P. br. 126/12 od 18. 12. 2012. godine, koja je potvrđena presudom Privrednog apelacionog suda 3 Pž. 978/13 od 21. 3. 2013. godine, dostupno na: http://www.propisionline.com/Login?ReturnUrl=%2f.

odluku relevantna uzročna veza između vozila i štete, a ne tehnički detalji mehanizma nastanka požara. Sud je primenio pravila o objektivnoj odgovornosti za štetu od opasne stvari iz ZOO i zaključio da putničko vozilo samo po sebi jeste opasna stvar, budući da po svojoj tehničkoj prirodi i karakteristikama nesumnjivo može ugroziti život i zdravlje ljudi, kao i imovinu. Sud je konstatovao da postoji oboriva zakonska pretpostavka uzročne veze, koju tuženi nije uspeo da pobije.

Analiza tih presuda pokazuje napetost između šireg pojma odgovornosti vlasnika vozila i užeg pojma odgovornosti osiguravača. Dok sudovi u klasičnim parničnim postupcima prepoznaju vozilo kao opasnu stvar čije statično postojanje može proizvesti štetu i osnovati odgovornost, sudska praksa u osiguravajućim sporovima sve češće insistira na postojanju upotrebe u funkcionalnom, ali i u saobraćajnom smislu kako bi odgovornost osiguravača postojala.

Navedeno potvrđuje da praksa nije ujednačena, te da je pojmu upotrebe potrebno dati jasniju zakonsku definiciju, koja bi uskladila pravne posledice i obezbedila doslednost. Takođe, otvara se pitanje da li se zaštita trećih oštećenih lica narušava prelaskom sa objektivne ka usko definisanoj osiguravačevoj odgovornosti, što je naročito važno sa stanovišta javnog interesa i pravne sigurnosti.

IV Zaključak

Pojam „upotrebe motornog vozila" predstavlja centralni pravni standard u kontekstu obaveznog osiguranja od auto-odgovornosti, čije razumevanje direktno određuje obim odgovornosti osiguravača. Kroz analizu zakonodavnih okvira, sudske prakse i pravne teorije, očigledno je da se ovaj pojam mora tumačiti u skladu s funkcionalnom svrhom motornog vozila, a ne formalistički ograničeno na kretanje vozila po javnim putevima.

Republika Srbija, kao država u procesu pristupanja EU, suočava se sa izazovom harmonizacije ne samo zakonodavstva već i sudske prakse sa standardima prava Evropske unije. Direktiva (EU) 2021/2118, kao ključna tačka preokreta u evropskom pravu osiguranja, uvodi široku, funkcionalnu definiciju „upotrebe vozila", zasnovanu na njegovoj osnovnoj nameni kao prevoznog sredstva, nezavisno od kretanja, lokacije ili stanja mirovanja. U tom smislu, osnovna svrha obaveznog osiguranja, zaštita trećih oštećenih lica, dolazi u prvi plan, a tumačenje pojma „upotrebe" mora služiti tom cilju.

Srpsko pravo, iako formalno obuhvata slične ciljeve, još uvek u značajnoj meri oscilira u sudskoj praksi. Na jednoj strani nalazimo presude koje prihvataju širi, funkcionalni pristup i priznaju upotrebu i u kontekstu parkiranja, istovara, tehničkog kvara i požara; na drugoj, restriktivne odluke koje striktno vezuju upotrebu za aktivno kretanje i prisustvo vozila u saobraćaju. takve oscilacije proizvode pravnu nesigurnost i potencijalno onemogućavaju ostvarenje prava oštećenih lica.

Potrebno je stoga izvršiti dve paralelne reforme. Prvo, neophodna je izmena i dopuna Zakona o obaveznom osiguranju u saobraćaju u skladu sa Direktivom (EU) 2021/2118, kojom bi se jasno normirala definicija „upotrebe vozila" u funkcionalnom smislu. Drugo, i možda još važnije, neophodno je raditi na ujednačavanju sudske prakse, koje bi interpretaciju pojma „upotrebe" usmerilo ka teleološkom pristupu – onom koji služi svrsi osiguranja i štiti oštećene.

U svakom konkretnom slučaju, kada se razmatra da li postoji obaveza osiguravača na isplatu, odlučujuće bi trebalo da bude sledeće:

1. da li je vozilo u trenutku štetnog događaja bilo u funkciji prevoza ili u radnji neposredno povezanoj s tom funkcijom (uključujući parkiranje, istovar, pripremu za vožnju, itd.);
2. da li postoji uzročna veza između štete i tehničkih karakteristika vozila kao sredstva za prevoz ljudi i stvari;
3. da li bi isključenje pokrića, u konkretnom slučaju, dovelo do očiglednog narušavanja svrhe obaveznog osiguranja i zaštite trećih lica.

Lično smatram da pojam „upotrebe motornog vozila" ne može ostati u domenu široke i raznolike sudijske ocene, jer to otvara prostor za pravnu nesigurnost i nejednakost građana pred pravom. Normativna preciznost, uz uvođenje opšteg standarda, predstavlja uslov sine qua non postizanja predvidljivosti prava, dok funkcionalno tumačenje, dosledno sprovođeno u praksi, garantuje pravičnost i zaštitu javnog interesa.

U skladu s tim, potrebno je preduzeti korake u pravcu harmonizacije, kako bi domaći sistem osiguranja postao pouzdan, pravičan i usklađen sa evropskim pravnim vrednostima, koje, ne samo formalno, već suštinski, stavljaju žrtvu u centar zaštite.

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Milica Goravica[1]

THE CONCEPT OF THE USE OF A MOTOR VEHICLE WITHIN THE COMPULSORY MOTOR THIRD PARTY LIABILITY INSURANCE

REVIEW SCIENTIFIC ARTICLE

Abstract

This paper analyzes the concept of the use of a motor vehicle within the framework of compulsory motor third party liability insurance, with particular reference to fire as the cause of damage. This paper focuses on the legislation of the Republic of Serbia and the European Union, with a detailed examination of relevant case law. The aim is to provide a clear understanding of the circumstances under which damage is considered to have arisen from the use of a motor vehicle, thus establishing whether the insurer must provide compensation. The research methods include the analysis of legal sources, national legislation, and EU directives, as well as a comparative analysis of the case law of the Court of Justice of the European Union and domestic courts. The results highlight the importance of a harmonized understanding of the concept of vehicle use, while the conclusion emphasizes the need for further alignment of Serbian legislation and judicial practice with EU law.

Keywords: compulsory motor third party liability insurance, concept of use of a motor vehicle, EU Motor Insurance Directives, case law.

I. Introduction

The use of a motor vehicles entails a high risk of causing damage to third parties, which requires adequate legal regulation of compulsory traffic insurance.

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Motor third party liability insurance, as a form of compulsory traffic insurance, protects the interests of both the liable party and the injured party, ensuring that the damage will be compensated even if the tortfeasor is insolvent, since the injured party may claim compensation not only from the tortfeasor but also from the insurer.[2]

However, the insurer will be obliged to compensate the damage only if the damage suffered by the injured party is covered by compulsory traffic insurance. National legislation, as well as the regulations of the European Union (hereinafter: the EU), require the owner of a motor vehicle to take out insurance covering damage caused by the use of the motor vehicle. Accordingly, damage caused by the use of a motor vehicle is covered by this insurance, whereas damage not arising from the use of a motor vehicle is not.[3]

Therefore, the central concept of this type of insurance is the " use of a motor vehicle", the interpretation of which directly affects the scope of insurance coverage. The concept "use of a motor vehicle" is, in almost all laws, recognized as a condition for the occurrence of the insured event under compulsory traffic insurance. However, this concept is not precisely defined, i.e. it is not clearly determined what constitutes the use of a motor vehicle, as it represents a legal standard.

A uniform, consistent, and precise definition of this legal standard in domestic legal theory and practice is of crucial importance, not only for ensuring legal certainty for citizens and insurance companies, but also for harmonizing domestic law with EU law.[4] The obligation to harmonize national law with EU law rests not only with the legislative branch but also with the judicial branch. Thus, there is a need not only to align the Law on Compulsory Traffic Insurance[5] with the amendments to Directive (EU) 2009/103/EC[6] as introduced by Directive (EU) 2021/2118[7], but also to harmonize domestic case law with the case law of the Court of Justice of the European Union.[8]

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[2] Nataša Petrović Tomić, *Pravo osiguranja – Sistem,* Belgrade, 2019, 538–539.

[3] Vladimir Čolović, „Naknada štete po osnovu osiguranja od auto-odgovornosti - ranije i sadašnje regulisanje u zakonodavstvu Srbije", *Obavezno osiguranje, naknada štete i obezbeđenje potraživanja* (ed. Zdravko Petrović), Belgrade 2010, 12.

[4] The Republic of Serbia has concluded the Stabilization and Association Agreement with the European Union (*Official Gazette of the Republic of Serbia* - International Treaties, No. 83/2008), under which it has, among other obligations, undertaken to align its legal system with EU law.

[5] Law on Compulsory Traffic Insurance - *Official Gazette of the Republic of Serbia*, Nos. 51/2009, 78/2011, 101/2011, 93/2012, and 7/2013 - Constitutional Court Decision.

[6] Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of a motor vehicle, and the enforcement of the obligation to insure against such liability, *Official Journal of the European Union*, OJ L 263, 7.10.2009.

[7] Directive (EU) 2021/2118 of the European Parliament and of the Council of 24 November 2021 amending Directive 2009/103/EC relating to insurance against civil liability in respect of the use of a motor vehicle, *Official Journal of the European Union,* OJ L 430, 2.12.2021.

[8] Miloš Radovanović, „Pojam upotrebe motornog vozila u slovenačkoj sudskoj praksi", *Strani pravni život,* 1/2018, 104.

II. Development of motor third party liability insurance in the Republic of Serbia and the European Union

Compulsory motor third party liability insurance covers compensation for damage which the insured, in accordance with the law, is obliged to pay to third parties for damage arising from the use of a motor vehicle. The essence of this type of insurance lies in providing coverage for civil liability for damage arising from the use of a vehicle in traffic.[9]

The risks of modern society, particularly those arising from traffic, create the need for establishing an effective social protection mechanism.[10] Precisely in the field of road traffic, motor third party liability insurance has proven to be the most efficient instrument of protection, not only of the interests of motor vehicle owners but also for those who suffer damage. Traffic accidents represent an unavoidable risk that society must accept as the cost of technological progress and the benefits that vehicle use brings. However, the question arises as to who will bear the consequences of such risks. Under the general civil law principles, the owner of a hazardous object, such as a motor vehicle, is liable for damage caused by that object on the basis of strict (objective) liability, irrespective of fault.[11] With the development of the automotive industry and the increasing volume of traffic, the likelihood of damage occurring also increased, creating the need for the burden of liability not to rest solely on the vehicle owner. Thus emerged motor third party liability insurance - initially conceived as a means of protecting the property interests of vehicle owners. However, as the number of traffic accident victims increased, the function of this institution evolved: motor third party liability insurance became primarily a mechanism for ensuring compensation to injured parties.[12]

Motor insurance, as a legal concept, has not always been legally compulsory. Initially, it developed as a form of voluntary property insurance, based on the free will of individuals seeking to protect themselves against potential civil liability. However, the increase in the number of motor vehicles, the expansion of traffic, and the increasing frequency of traffic accidents led to the necessity of regulating this type of insurance as compulsory, in order to ensure effective protection of injured parties and enhance legal certainty in traffic.[13] The first countries to introduce compulsory

[9] Nataša Petrović Tomić, 537.

[10] Marijan Ćurković, *Ugovori o obaveznom osiguranju u cestovnom prometu*, Savjet stručne biblioteke „Croatia zajednica osiguranja imovine i osoba", Zagreb, 1989, 14.

[11] See Articles 173 and 174 of the Law on Contracts and Torts – *Official Gazette of SFRY*, Nos. 29/78, 39/85, 45/89 – Constitutional Court Decision, and Nos. 57/89, *Official Gazette of SRJ*, No. 31/93, *Official Gazette of Serbia and Montenegro*, No. 1/2003 – Constitutional Charter, and *Official Gazette of the RS*, No. 18/2020.

[12] Nataša Petrović Tomić, 537–538.

[13] Todor Brajović, „Naknada nematerijalne štete u srpskom osiguranju od auto-odgovornosti sa posebnim osvrtom na pojedina rešenja država članica EU", *Pravo i privreda* 10–12/2013, 126.

motor third party liability insurance were the Scandinavian states - Denmark (1920), Finland (1925), Norway (1926), and Sweden, followed by Austria (1929). The United Kingdom (1930), Switzerland (1932), and Germany (1939) soon followed, and after World War II, this model spread to other European countries such as Poland (1951), Belgium (1956), France (1958), and Czechoslovakia (1964).[14]

In the Republic of Serbia, the system of compulsory motor third party liability insurance has gone through several stages. The first step towards its introduction was the Law on Property and Persons Insurance of 1976,[15] which laid the foundation for further regulation in this field. After the dissolution of the SFRY, the legal framework developed through the Law on Insurance of Property and Persons of 1990 and 1996, culminating in the adoption of a special law on compulsory traffic insurance in 2009, which for the first time systematically regulated this field by a special law. That law established the obligation of vehicle owners to conclude a motor third party liability insurance contract, created a Guarantee Fund, and set out clear conditions for the payment of compensation. The 2011 amendments further clarified claims settlement procedures and introduced stricter penalties for failing to obtain vehicle insurance, thereby contributing to greater insurance market stability and enhanced protection of injured parties.[16]

Under the law on compulsory traffic insurance, motor vehicle owners are obliged to conclude an insurance contract covering their liability for damage caused to third parties by the use of a vehicle, including death, bodily injury, health impairment, as well as destruction or damage to property.[17] On the other hand, the insurer providing this type of insurance is obliged to accept an offer to conclude a contract if it does not differ from the general terms and conditions under which it normally operates, thus establishing a statutory limitation on the contractual freedom for both contracting parties.[18]

In the European Union, motor third party liability insurance has developed gradually through seven directives adopted from 1972 to the present day, with the aim of removing barriers to the free movement of vehicles and ensuring equal treatment of traffic accident victims across all Member States. Chronologically, the most important directives are: 1. Directive 72/166/EEC[19] – establishes the basic framework for compulsory insurance and the Green Card system; 2. Directive 84/5/EEC[20]

[14] Jasna Pak, *Pravo osiguranja,* Univerzitet Singidunum, Beograd, 2011, 247.
[15] Law on Insurance of Property and Persons, *Official Gazette of SFRY*, No. 24/76.
[16] T. Brajović, 127.
[17] The Law on Compulsory Traffic Insurance, Article18, para. 1.
[18] Nataša Petrović Tomić, 541.
[19] See: Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of a motor vehicles and the supervision of the obligation to insure against such liability, *Official Journal of the European Union*, OJ L 103, 2.5.1972, 1–4.
[20] See: Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of a motor vehicles, *Official Journal of the European Union,* OJ L 8, 11.1.1984, 17–20.

– introduces minimum amounts of sum insured, defines that the insurance covers both personal injury and property damage, and establishes the obligation to create a Guarantee Fund; 3. Directive 90/232/EEC[21] – extends coverage to all passengers in the vehicle and introduces the concept of a single premium; 4. Directive 2000/26/EC[22] – regulates procedures in cross-border accidents (the "Visiting Victims Directive")[23]; 5. Directive 2005/14/EC[24] – further harmonizes and amends previous directives in order to strengthen the protection of injured parties; 6. Directive 2009/103/EC[25] – the codification directive, which consolidates and regulates all key aspects of the insurance system, including minimum cover amounts, the right of direct action, and exclusions from insurance coverage.[26] Although the above directives covered a broad range of issues, none provided a definition of the concept of "use of a vehicle", even though this concept was essential for determining the scope of insurance coverage. This legal gap led to divergent case law and varying interpretations across Member States, leading to the adoption of Directive (EU) 2021/2118,[27] amending and supplementing Directive 2009/103/EC. This directive introduced a series of significant innovations: it redefined the concepts of "vehicle" and "use of a vehicle", increased the minimum amounts of sum insured, strengthened the protection of injured parties in cases of insurer insolvency, and clarified the conditions for verifying the validity of insurance in a cross-border context.[28]

Of particular importance is the new definition of the use of a vehicle, understood as "in accordance with the function of the vehicle as a means of transport, regardless of the terrain, movement, or technical characteristics". This definition broadens the scope of insurance and enables a more consistent application of insurance law in practice.

The adoption of Directive (EU) 2021/2118 was crucial for ensuring legal certainty in this field, as the previous inconsistent interpretations among Member

[21] See: Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of a motor vehicles, *Official Journal of the European Union,* OJ L 129, 19.5.1990, 33–35.

[22] See: Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of a motor vehicles, amending Directives 73/239/EEC and 88/357/EEC, *Official Journal of the European Union*, OJ L 181, 20 July 2000, 65–74.

[23] In more detail: Iva Tošić, „Razvoj koncepta auto-odgovornosti u pravu Evropske unije", *Pravni život*, No. 12/2017.

[24] Directive 2005/14/EC of 11 May 2005, amending Directives 72/166/EEC, 84/5/EEC, 88/357/EEC, and 90/232/EEC regarding civil liability insurance in respect of the use of a motor vehicles, *Official Journal of the European Union,* OJ L 149, 11.6.2005, 14–22.

[25] See: Directive 2009/103/EC, 11–31.

[26] In more detail: Danijela Šaban, „Pojam uporabe motornog vozila u pravu osiguranja od automobilske odgovornosti", *Anali Pravnog fakulteta Univerziteta u Zenici*, No. 17/2016, 278–281.

[27] See: Directive (EU) 2021/2118, 1–27.

[28] Jasenko Marin: "Amendments In The Legislative Framework For Motor Liability In The Republic Of Croatiaj", *Insurance Trends,* No. 4/2024, 1–3.

States had proven to be an obstacle to the effective enforcement of victims' rights. The Republic of Serbia, as a candidate country for EU membership, strives to harmonize its national legislation with these solutions, as reflected in national practice and in the interpretation of the concept of use of a motor vehicle within national legal doctrine.

III. The concept of the use of a motor vehicle

Within the framework of motor third party liability insurance, the scope of insurance coverage is not the insured's entire civil liability for the damage caused, but only that portion which the law recognizes as a compulsory insurable risk. In this way, a distinction is made between the tortfeasor's civil liability *in integrum* and the insurer's liability *in terminis*, i.e. the limited liability arising from the concluded compulsory insurance contract.[29] Given that the insurer's liability is strictly limited by the statutory framework and by the scope of the obligation prescribed by law, it is of fundamental importance to precisely determine the boundaries of such coverage.

One of the most significant aspects in this regard is the interpretation of the concept of " use of a motor vehicle", since the meaning of this term determines whether specific damage falls within or outside the scope of insurance coverage.[30] As the legislator in the positive law of the Republic of Serbia does not provide an explicit definition of "use of a vehicle" in the context of motor third party liability insurance, the interpretation of this concept in practice becomes a matter for legal theory and case law. The way in which this concept is understood and applied determines both the extent of protection for injured parties and the length and complexity of damage compensation proceedings.

In addition to domestic legal sources, European Union law plays a particularly important role in shaping the modern understanding of this concept, with the EU directives and case law, particularly the judgments of the Court of Justice of the European Union, being decisive in defining and guiding legislative amendments.

1. The Concept of the use of a motor vehicle in European Union legislation

Despite the importance of the concept of the "use of a motor vehicle", it long remained undefined in the texts of the EU Directives. Its interpretation was left to legal theory and the judicial practice of Member States, which led to inconsistent solutions and disparities in the rights of injured parties. Given the increasing need

[29] Berislav M. Matijević, „Croquis pojma upotreba vozila u osiguranju od automobilske odgovornosti kroz praksu suda Evropske unije", *Strani pravni život*, 3/2019, 140.
[30] *Ibid.*

to achieve a uniform and stable interpretation of the term "use" throughout the EU, particularly in relation to various types of vehicles (e.g. working machinery, parked vehicles, vehicles on private property), and in order to extend protection for victims, the European legislator adopted in 2021 the seventh Directive – Directive (EU) 2021/2118, amending Directive 2009/103/EC.[31] The most significant amendment introduced by this directive is certainly the redefinition of the concept of "use of a vehicle".

According to the new definition contained in Article 1(1)(1a) of Directive (EU) 2021/2118, the use of a motor vehicle means: "any use of a vehicle that is consistent with its function as a means of transport, irrespective of the characteristics of the terrain on which the vehicle is used, and whether, at the time of the accident, it is in motion, stationary, or performing another operation deriving from its transport function".[32]

Such a normative definition stems from the need to move away from an exclusive reliance on case law and to establish legal certainty. In doing so, the Directive goes beyond a declarative level and becomes a constitutive legal act that standardizes a broadly functional interpretation of the concept of use, in accordance with the contemporary traffic and insurance requirements.[33]

Under this new regulatory framework, both at the legislative and theoretical level, there has been a transition from the classical notion of "active use" of a vehicle (implying movement) to a broader, functional model of interpretation encompassing passive situations -such as parking, standing, loading, unloading, and even technical malfunctions occurring while the vehicle is stationary.[34]

The new definition was inspired by the case law of the Court of Justice of the European Union, particularly the judgment in Vnuk (C-162/13), which initiated the process of legislative reforms. By introducing this definition, legal uncertainty has been significantly reduced, and tangible progress has been achieved toward fulfilling the objectives set forth in Articles 114 and 169 of the Treaty on the Functioning of the European Union (TFEU), namely, consumer protection and the enhancement of the single insurance market.

2. The concept of the use of a motor vehicle according to the case law of the Court of Justice of the European Union

In the absence of a precise statutory definition in the earlier directives, the concept of the "use of a vehicle" under EU law was developed primarily through the case law of the Court of Justice of the European Union (CJEU). By interpreting specific

[31] J. Marin, 5-10.

[32] *Ibid*, 11–12.

[33] Loris Belanić, „Redefiniranje obaveze osiguratelja od automobilske odgovornosti s obzirom na upotrebu vozila u kontekstu prakse suda EU", *Godišnjak Akademije pravnih znanosti Hrvatske*, Vol. XII, 1/2021, 345–366.

[34] *Ibid.*

cases, the Court gradually established the key criteria for applying this concept. These judgments not only resolved individual disputes, but also directly influenced their interpretation and were instrumental in prompting later legislative intervention, specifically the adoption of Directive (EU) 2021/2118.

2.1. Vnuk Judgment(C-162/13)[35]

This case concerned an accident that occurred when a tractor in a farmyard struck a person stacking hay. The Court held that the concept of the "use of a vehicle" must not be interpreted restrictively as merely the movement of a vehicle on public roads. Instead, it encompasses any use consistent with the vehicle's principal function as a means of transport, regardless of the location.

This judgment is regarded as a turning point, as it highlighted the need to harmonize the interpretation of the concept of the "use of a vehicle" across the EU.

2.2. Rodrigues de Andrade Judgment (C-514/16)[36]

In this case, a tractor was stationary, with its engine running to operate a vineyard spraying pump. The vehicle overturned, resulting in the death of a worker. The Court emphasized the distinction between a vehicle's function as a means of transport and its alternative (working) function. It held that when the working function predominates, the event does not fall within the concept of the "use of a vehicle" for the purposes of insurance directives.

This judgment underscored the importance of determining whether the vehicle was performing its transport function or another function at the moment the damage occurred.

2.3. Núñez Torreiro Judgment (C-334/16)[37]

This judgment concerned a military exercise during which a vehicle overturned in an area unsuitable for road use. Although the circumstances were specific, the Court concluded that the vehicle was being used in accordance with its transport

[35] Judgment of the CJEU in Case C-162/13 of 4 December 2014, *Damjan Vnuk / Zavarovalnica Triglav*, ECLI-:EU:C:2014:2146, available at: *https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX%3A62013CJ0162*, accessed: 20. 6. 2025.

[36] Judgment of the CJEU in Case C-514/16 of 28 November 2017, *Isabel Maria Pinheiro Vieira Rodrigues de Andrade and others / Crédito Agrícola Seguros*, ECLI:EU:C:2017:908, available at: *https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX%3A62016CJ0514*, accessed: 20. 6. 2025.

[37] Judgment of the CJEU in Case C-334/16 of 20 December 2017, *José Luís Núñez Torreiro / AIG Europe Limited and others*, ECLI:EU:C:2017:1007, available at:*https://eur-lex.europa.eu/legal-content/HR/TXT/?uri-=CELEX%3A62016CJ0334,* accessed: 20. 6. 2025.

function and that the event fell within the concept of the "use", since the movement occurred in the vehicle's capacity as a means of transport.

The judgment concluded that the terrain on which the accident occurred is not relevant, provided that the vehicle was being used in accordance with its transport function.

2.4. BTA Baltic Insurance Company Judgment (C-648/17)[38]

This case involved a situation in which a passenger, while opening the door of a parked vehicle, damaged an adjacent vehicle. The Court held that such an act also falls within the vehicle's ordinary transport function, as it enables passengers to enter and exit, and is, therefore, consistent with the concept of the "use of a vehicle" in the context of insurance.

2.5. Linea Directa Aseguradora Judgment (C-100/18)[39]

In this case, a vehicle had been parked for more than 24 hours in a private garage when, due to a fault in its electrical system, a fire broke out, causing damage to property. The Court found that such a situation may also fall within the concept of the "use of a vehicle", as the cause of the damage could be linked to the vehicle's function as a means of transport and its technical condition, even though it was not in motion at the time of the incident.

This is an exceptionally significant judgment because it demonstrates that a vehicle does not need to be in motion, nor must its engine be running, in order to be regarded as "in use".

The judgments discussed above demonstrate that the CJEU has consistently developed a broad, functional, and teleological interpretation of the concept of the "use of a vehicle", taking into account the primary objective of motor insurance - victim protection. Their diversity, coupled with the need for a uniform standard, prompted the legislator to include in Directive (EU) 2021/2118 a normative definition of this concept, which now encompasses the use of a vehicle "in accordance with its function as a means of transport", regardless of terrain, movement, or the specific moment in time.

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[38] Judgment of the CJEU in Case C-648/17 of 15 November 2018, *BTA Baltic Insurance Company AS / Baltijas Apdrošināšanas Nams AS*, ECLI:EU:C:2018:917, available at: *https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX%3A62017CJ0648*, accessed: 20. 6. 2025.

[39] Judgment of the CJEU in Case C-100/18 of 20 June 2019, *Línea Directa Aseguradora SA v. Segurcaixa Sociedad Anónima de Seguros y Reaseguros*, ECLI:EU:C:2019:517, available at: *https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX%3A62018CJ0100*, accessed: 20. 6. 2025.

3. The concept of the use of a motor vehicle within the law of the Republic of Serbia

3.1. The concept of use in legal theory

In the law of the Republic of Serbia, as in the law of the EU, compulsory motor third party liability insurance covers the liability of the tortfeasor, i.e. the owner or user of the motor vehicle. Nevertheless, it is important to determine the legal basis of such liability. While the civil liability of the tortfeasor is founded on the general rules of the Law on Contracts and Torts,[40] the insurer's duty to compensate for damage caused by the use of a vehicle arises from the motor third party liability insurance contract, its terms and conditions, and the relevant provisions of the law on compulsory traffic insurance. This difference in the legal basis implies that the liability of the tortfeasor and that of the insurer do not necessarily coincide. On the contrary, motor third party liability insurance covers only that portion of the tortfeasor's liability which, by law, is transferred to the insurer. One of the key elements determining the boundaries of the insurer's liability is the concept of the " use of a motor vehicle".[41]

In this sense, the use of a motor vehicle represents an insured risk as defined by the law on compulsory traffic insurance, and its precise understanding directly affects the scope of the insurer's liability. It is, therefore, of crucial importance to delineate this concept clearly in order to determine whether a particular harmful event is covered by compulsory motor third party liability insurance or not.[42]

The law on compulsory traffic insurance does not provide an explicit definition of "use of a vehicle", which is not necessarily problematic, given that the question of whether the damage resulted from the use of a motor vehicle is a factual matter, dependent on the specific circumstances of the case.[43] However, in the absence of consistent case law, such an approach can lead to legal uncertainty.

Within legal theory, damage arising from the use of a motor vehicle is often linked to traffic accident, with a distinction drawn between a traffic accident in the narrow sense, i.e. a collision between motor vehicles and a traffic accident in the broader sense, where no physical contact occurs between two or more vehicles (e.g. running off the road, objects falling from a vehicle, and similar incidents).[44]

[40] See Articles 173 and 174 of the Law on Contracts and Tort.

[41] Pursuant to Article18 of the Law on Compulsory Traffic Insurance (LCTI), the owner of a motor vehicle is obliged to conclude an insurance contract covering liability for damage caused by the use of the vehicle to third parties, in the form of death, bodily injury, health impairment, or destruction/damage to property, excluding damages to property entrusted for transport.

[42] L. Belanić, 347–348.

[43] Unlike the current law, the 1967 Law on Compulsory Motor Insurance considered it necessary to define the concept of vehicle use more precisely; Article 15(2) provided that a vehicle is deemed to be in use both while driving and while stationary on the road during a journey.

[44] In more detail: N. Petrović Tomić, 544–545.

A part of legal theory supports a broad interpretation of the concept, emphasizing that liability insurance does not cover only damages arising from traffic accidents.[45] Thus, Professor Nataša Petrović Tomić concludes that the following situations also fall under the concept of vehicle use: 1) dazzling by headlights, causing another vehicle to veer off the road; 2) where the manner of driving of one driver forces another vehicle to collide with a third party; 3) if one vehicle brings mud or dirt onto the roadway, causing another vehicle to skid; 4) when a defect or malfunction in a vehicle leads to ignition and fire that damages a third party's property; 5) all situations involving stopping on the road, work on the vehicle, and any driving undertaken from the driver's seat and back.[46]

Professor Predrag Šulejić also advocates a broad interpretation, stating that the use includes stopping on the road, work on the vehicle, and any halt occurring during a drive. However, he emphasizes that in every case it is necessary to establish a causal link between the damage and the vehicle use. This link need not be direct, as the damage may occur at another location or at a later time.[47] Furthermore, it is noted that it is incorrect to restrict the concept of use solely to situations where the damage occurred on a public road, since the insurance also extends to damage occurring on non-public roads. Nor is it necessary for the vehicle to be self-propelled at the time, as it can be towed.[48]

Therefore, the use of a motor vehicle should not be limited strictly to a traffic accidents, vehicle movement, or public roads. Following the approach of EU law, when interpreting this concept, it must be borne in mind that the principal function of compulsory traffic insurance is the protection of third-party victims. Accordingly, this concept should be interpreted broadly, while always taking into account the transport function of the vehicle.

However, domestic case law remains inconsistent,with noticeable deviations from the interpretation of this concept in accordance with the vehicle's function as a means of transport, regardless of the terrain, its movement, or the specific moment at which the event occurred.

3.2. The concept of use in domestic case law

Given that the positive law of the Republic of Serbia, and in particular the Law on Compulsory Traffic Insurance, does not contain an explicit definition of the concept of the "use of a motor vehicle", case law plays a crucial role in determining the boundaries of the insurer's liability in cases involving damage. An analysis of the

[45] *Ibid.*
[46] *Ibid.*, 545.
[47] Predrag Šulejić, *Pravo osiguranja*, Belgrade, 2005, 441–442.
[48] *Ibid.*, 442–443.

relevant case law reveals that the interpretation of this concept varies among courts, with judicial decisions oscillating between two main interpretations: a restrictive interpretation, according to which use is strictly linked to the vehicle's movement in traffic, and a functional (broader) interpretation, which recognizes acts such as parking, unloading, idling with the engine running, or mechanical malfunction as forms of use, provided that such acts are connected to the vehicle's transport function.

Earlier case law includes rulings where a vehicle was considered to be in use while stationary at a bus stop for the purpose of passengers boarding and alighting; where the spreading of mud onto the roadway constitutes use if it caused the road surface to become slippery and led to a rollover; yet that damage is not considered to arise from use if the injured party was pushing the vehicle or if carbon monoxide poisoning occurred in a closed garage.[49]

Regarding the location (road) where the damage occurred, there were some inconsistencies in case law. In one decision, it was held that damage sustained by a worker assisting with the waste unloading at a public dump was not covered by compulsory traffic insurance, on the ground that the event did not occur in an area where traffic takes place. In another decision, it was held that there was no liability on the part of the insurance community where damage was caused by a tractor in a field, since the event did not occur on a public road. Conversely, a third decision, contrary to the previous, held that a factory yard where an accident occurred should be considered a road, since traffic, albeit limited to official vehicles, is conducted there.[50]

In more recent case law, a fully consistent interpretation has not been achieved. In case Gž 1292/2018, the Court of Appeal in Novi Sad held that an injury sustained by a passenger while entering a vehicle falls within the concept of use of a motor vehicle under the Law on Compulsory Traffic Insurance. The Court reasoned that the act of entering a vehicle constitutes an action directly linked to the use of the vehicle in its primary function - the transport of persons and goods, and that such an action bears a sufficiently strong causal and functional connection to the vehicle's purpose.[51] This decision thus adopts a functional interpretation of use, which extends beyond the narrower concept of the vehicle's movement.

By contrast, in case Rev 4191/2020, the Supreme Court of Cassation adopted a restrictive interpretation, holding that a vehicle undergoing repair cannot be regarded as "in use" within the meaning of compulsory motor insurance. The Court emphasized that the damage did not result from the vehicle's ordinary use, but occurred during servicing and preparation of the vehicle for its primary pur-

[49] VSH, Gž. 1174/70 of 11 May 1971; VSH, Gž. 1600/71 of 16 June 1971; VSS, Gž. 705/69 of 12 October 1969; VSH, Gž. 1777/74 of 17 April 1975, all cited in: P. Šulejić, 441.

[50] VS SRS, Pž. 102/72 of 18 February 1972; Gž. 156/74 of 20 January 1975; VSS, Pž. 1451/71 of 31 March 1972; all cited in: P. Šulejić, 442.

[51] Court of Appeal in Novi Sad, Gž 1292/2018 of 28 May 2018.

pose. Therefore, insurance coverage was excluded for actions not directly related to traffic or transport.[52] This case clearly illustrates the judicial distinction between the vehicle's active role in traffic and its technical servicing state or maintenance, which, according to the Court, does not fall within compulsory insurance. This view represents a paradigmatic example of a formal and narrowly defined interpretation of the concept of use, limited to the vehicle's active participation in the traffic process.

Furthermore, in case Rev 18331/2024, a situation was considered in which a moving car collided with a towed trailer, where the second-instance court held that the insurer of the trailer was not liable because the trailer did not act independently. The Supreme Court held that the trailer, being functionally connected to the towing vehicle, was in use, and that the absence of independent mechanical activity was not decisive.[53] This interpretation adopts the functional model, whereby the use of a vehicle is not strictly confined to its mechanical activity, but extends to the purposeful context and causal connection.

These judgments confirm that domestic case law fluctuates between the broader functional and narrower technical interpretations, with the dividing line between "use" and "non-use" of a vehicle determined largely by the factual circumstances of each case, rather than by a strictly established legal standard. On the one hand, it is essential to consider the specific circumstances of each individual case; on the other, such variability in practice may result in divergent legal outcomes in factually similar situations, thereby undermining legal certainty and consistency. In this regard, legal theory increasingly emphasizes the need for a more precise statutory definition of the concept of "use of a vehicle", based on the standards established by Directive (EU) 2021/2118, which provides a functional definition and ensures a harmonized interpretation among the Member States.

4. The concept of the use of a motor vehicle in case law regarding fire

One of the particularly complex issues in case law concerns the question of whether the occurrence of fire in a vehicle can be regarded as the "use of a motor vehicle" within the meaning of compulsory motor third party liability insurance. This legal dilemma is especially pronounced in cases where the vehicle was stationary and not being used for transportation at the time of the event, yet damage nonetheless occurred due to its technical function or system malfunctions. Courts have taken differing positions, oscillating between a broad functional interpretation and a restrictive approach, which complicates both the legal position of injured parties and the determination of the insurer's liability.

[52] Supreme Court of Cassation of the RS, Rev 4191/2020 of 15 July 2021.
[53] Supreme Court of Cassation of the RS, Rev 18331/2024 of 18 September 2024.

The following section presents selected judgments rendered by courts of the Republic of Serbia that address this question, with particular emphasis on how the term "use" is interpreted in situations where the damage arises from a vehicle fire.

In one case before the Commercial Court in Belgrade,[54] the court considered a claim for compensation for damage caused by a fire that had broken out on a parked motor vehicle insured with the defendant insurer under a policy of compulsory motor third party liability insurance. The fire subsequently spread to a neighbouring vehicle owned by the claimant, resulting in material damage. The claimant argued that the insurer was obliged to compensate for the damage since the harmful event originated from the insured vehicle, regardless of whether it was in motion. It was particularly emphasised that the damage had arisen from a hazardous object, and that, in accordance with the protective purpose of compulsory insurance, the insurer should be held liable. The court, however, entirely dismissed the claim, reasoning that in this specific case the fundamental prerequisite for the insurer's liability was not fulfilled, namely, that the damage must have arisen from the use of the vehicle. The court found that the claimant failed to prove the existence of any act of use consistent with the vehicle's transport function at the time of the damage. The court noted that the vehicle that caused the fire was parked, not in motion, not used for the transport of people or goods, and was not engaged in any traffic process. It further noted that the event could not be qualified as a traffic accident within the meaning of the Law on Road Traffic Safety,[55] which requires that at least one vehicle be in motion for such a classification. Accordingly, the court held that the defendant's objection of lack of passive standing was well-founded and that the claim was therefore unsubstantiated.

This judgment exemplifies a restrictive interpretation of the term "use of a motor vehicle", which relies strictly on the functional status of the vehicle at the moment of damage and ties the concept of use to the existence of a traffic accident in the narrow sense. Such an approach disregards the possibility that a stationary vehicle may nonetheless cause harmful consequences that are causally linked to its transport function or technical characteristics (e.g. battery, electrical wiring, fuel tank, etc.). In effect, this narrows the scope of protection that the institution of compulsory insurance is intended to provide and creates legal uncertainty for injured parties, as it raises the question of whether the insurance covers damages even when no fault is attributable to the tortfeasor, yet a causal link exists between the vehicle and the damage.

[54] Judgment of the Commercial Court in Belgrade, P 6410/2023 of 21 March 2024.

[55] Law on Road Traffic Safety, *Official Gazette of the Republic of Serbia*, Nos. 41/2009, 53/2010, 101/2011, 32/2013 – Constitutional Court Decision, 55/2014, 96/2015 – other law, 9/2016 – Constitutional Court Decision, 24/2018, 41/2018, 41/2018 – other law, 87/2018, 23/2019, 128/2020 – other law, 76/2023, and 19/2025.

For comparative purposes, reference may be made to a judgment of the Supreme Court of the Republic of Croatia,[56] which concerned a fire that broke out in a parked vehicle in a garage, caused by a malfunction in the vehicle's electrical system. Although the vehicle was not in motion and was not directly participating in traffic, the court nevertheless held that the incident constituted " use of a motor vehicle" within the meaning of motor third party liability insurance. The key reasoning was that the cause of the fire stemmed from the technical characteristics and functional properties of the vehicle itself, thereby allowing the event to be classified under the broader functional definition of use.

Although this judgment does not belong to domestic case law, it exemplifies a functional approach that does not limit the use of a vehicle solely to its movement or active participation in traffic, but also recognises situations where a vehicle, due to its technical characteristics, produces harmful consequences while stationary. Such an interpretation better aligns with the purpose of insurance as a means of protection for third-party victims and provides broader, materially fair protection.

The previously cited first-instance judgment of the Commercial Court in Belgrade was concluded in appellate proceedings, where the Commercial Appellate Court in Belgrade[57] ruled that the first-instance court had incorrectly concluded that the defendant insurer lacked passive legitimacy. The court clarified that the concept of use of a vehicle can include situations in which a parked vehicle ignites due to a fault in the electrical system, causing a fire. Nevertheless, the first-instance decision was confirmed on the grounds that the cause of the harmful event influenced the decision, and that the burden of proof rested on the claimant to establish the circumstances that led to the fire in the vehicle. The claimant failed to prove whether the fire resulted from a malfunction in the vehicle's electrical system, causing spontaneous ignition, or from human factors. Therefore, the claim was dismissed, applying the principle of burden of proof, concluding that the claimant did not prove that the cause of the fire was related to the mechanism necessary for the vehicle's transport function.

This second-instance judgment is particularly significant because it explicitly recognises that a fire ignited in a parked vehicle can constitute the "use of a motor vehicle" within the meaning of Article 18(1) of the Law on Compulsory Traffic Insurance, provided that there exists a causal and functional connection with the vehicle's technical systems serving its primary transport function. This departs from the earlier restrictive approach and affirms a broader, functional interpretation of the term use, closer to solutions adopted in EU law. At the same time, the judgment highlights a substantial procedural obstacle, the question of proving the cause of damage. The decision also confirms that case law is beginning to acknowledge the complexity

[56] Judgment of the Supreme Court of the Republic of Serbia, Rev 2643/12-2 of 23 April 2014, cited in D. Šaban, 289–290.

[57] Judgment of the Commercial Appellate Court in Belgrade, Pž 2792/24 of 11 September 2024.

of the concept of use, while emphasising that in such disputes, the decisive factor remains the specific factual basis and the validity of the evidence presented.

However, in an unrelated case, Rev 4570/2024,[58] the Supreme Court of Cassation of the Republic of Serbia considered whether a fire occurring in a parked vehicle, which was not involved in traffic, could constitute a case of the use of a vehicle under Article 18(1) of the Law on Compulsory Traffic Insurance. The Court held that no insurer liability arises when the damage is caused by a vehicle that was stationary and not used for transporting people or goods at the time of the incident. The Court noted that the mere fact that the vehicle caused the fire is insufficient to conclude that it was "in use" within the meaning of the Law on Compulsory Traffic Insurance. For insurer liability to exist, according to the Court, the damage must be directly and functionally linked to the vehicle's characteristics as a means of transport. In the specific case, such a link did not exist, as the vehicle was not in motion and no activity indicated its participation in traffic.

This interpretation reflects a restrictive approach in case law regarding the limits of coverage under compulsory motor third party liability insurance. It suggests that damage caused by vehicles in a static, technically passive state, even if directly responsible for the damage, is not considered damage arising from the use of a vehicle and, therefore, falls outside the scope of compulsory insurance coverage. This approach contrasts with modern trends in insurance law, particularly in EU law, where, as emphasised in the Rodrigues de Andrade and LDA judgments, the "use" of a vehicle is not strictly linked to motion or traffic participation but is interpreted functionally, in terms of the vehicle's technical nature and its potential to cause damage.

An example of a broad interpretation is the judgment of the Commercial Court in Požarevac, Case P. No. 126/12,[59] which held the liability of a vehicle owner under the Law of Contracts and Tort, even when the vehicle was stationary and not participating in traffic, if it caused damage due to its hazardous nature. Although this case did not concern liability under the Compulsory Motor Third Party Liability Insurance Law, it is significant as it demonstrates that, in cases of fire damage, the specific technical cause within the vehicle is irrelevant. In that case, a fire occurred in a parked passenger vehicle owned by the defendant, located in a self-service car wash bay operated by the claimant. Expert reports confirmed that the fire originated from inside the vehicle (passenger compartment) and spread, causing damage to the car wash property. In its reasoning, the court did not examine the exact technical cause of ignition (whether a gas system malfunction, spark, or other factor), but emphasised that the relevant factor for the decision was the causal link between the

[58] See Judgment of the Supreme Court of the Republic of Serbia, Rev 4570/24 of 29 May 2024.

[59] Judgment of the Commercial Court in Požarevac, P No. 126/12 of 18 December 2012, upheld by the Judgment of the Commercial Appellate Court, 3 Pž. 978/13 of 21 March 2013, available at: *http://www.propisionline.com/Login?ReturnUrl=%2f*.

vehicle and the damage, rather than the technical details of the cause of the fire. The court applied the rules on strict liability for damage caused by a hazardous object under the Law of Contracts and Tort, and concluded that a passenger vehicle, by its very technical nature and characteristics, constitutes a hazardous object capable of jeopardizing life, health, and property. The court found that a statutory presumption of causation existed, which the defendant failed to rebut.

The analysis of these judgments highlights the tension between the broader concept of a vehicle owner's liability and the narrower concept of insurer liability. While courts in standard civil proceedings tend to recognise a vehicle as a hazardous object whose mere static existence can cause damage and ground liability, case law in insurance disputes increasingly insists on the existence of use in both a functional and traffic-related sense in order to establish insurer's liability.

This demonstrates that case law is not uniform and underscores the need for a clearer statutory definition of the concept of use, which would harmonise the legal consequences and ensure consistency. Additionally, it raises the question of whether the protection of third-party victims is compromised when the system shifts from objective liability to a narrowly defined insurer liability, an issue of particular importance from the standpoint of public interest and legal certainty.

IV. Conclusion

The concept of "use of a motor vehicle" represents a central legal standard within the framework of compulsory motor third party liability insurance, as its interpretation directly determines the scope of insurer liability. An analysis of legislative frameworks, case law, and legal theory demonstrates that this concept must be construed in accordance with the functional purpose of the motor vehicle, rather than being narrowly limited to the vehicle's movement on public roads.

The Republic of Serbia, as a country in the process of EU accession, faces the challenge of harmonising not only its legislation but also its case law with European Union standards. Directive (EU) 2021/2118, a key milestone in European insurance law, introduces a broad, functional definition of the "use of a motor vehicle" based on its fundamental purpose as a means of transport, regardless of movement, location, or stationary status. In this sense, the primary purpose of compulsory insurance, the protection of third parties, comes to the fore, and the interpretation of "use" must serve this goal.

Serbian law, while formally pursuing similar objectives, still demonstrates significant oscillation in case law. On the one hand, there are judgments embracing a broader, functional approach, recognising use in contexts such as parking, unloading, technical malfunction, and fire; on the other hand, restrictive decisions strictly link use to active movement and the vehicle's presence in traffic. Such oscillations

generate legal uncertainty and may potentially hinder the realization of the rights of injured parties.

Therefore, it is necessary to pursue two parallel reforms. First, the Law on Compulsory Traffic Insurance must be amended and supplemented in accordance with Directive (EU) 2021/2118 to clearly establish a functional definition of the "use of a motor vehicle". Second, and perhaps even more importantly, case law must be harmonised so that the interpretation of use adopts a teleological approach - one that serves the purpose of insurance and protects the injured parties.

In each specific case, when considering whether the insurer is obliged to provide compensation, the following factors should be decisive:

1. whether the vehicle, at the time of the harmful event, was functioning as a means of transport or engaged in an activity directly connected to that function (including parking, unloading, preparation for driving, etc.);
2. whether there is a causal link between the damage and the technical characteristics of the vehicle as a means of transporting people or goods;
3. whether excluding coverage in the particular case would result in a clear undermining of the purpose of compulsory insurance and the protection of third parties.

In my view, the concept of " use of a motor vehicle" cannot remain within the domain of broad and inconsistent judicial discretion, as this creates legal uncertainty and inequality of citizens before the law. Normative precision, through the introduction of a general standard, is a *sine qua non* for ensuring predictability of law, while functional interpretation, consistently applied in practice, guarantees fairness and the protection of public interest.

Accordingly, steps should be taken toward harmonisation, so that the domestic insurance system becomes reliable, fair, and aligned with European legal values, which place the victim, not only formally but also substantively, at the center of protection.

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Prevela: ***Tijana Đekić***

Milica Goravica Stakić[1]

IZMAKLA KORIST USLED NEMOGUĆNOSTI KORIŠĆENJA MOTORNOG VOZILA

(„Auto-dani“)

Izmakla korist predstavlja vid materijalne štete. Dok obična šteta predstavlja direktno umanjenje nečije imovine (gubitak, smanjenje vrednosti, trošak i slično), izmakla korist je sprečavanje njenog zakonito očekivanog uvećanja.[2] Odredbom člana 189 Zakon o obligacionim odnosima predviđa da oštećeni ima pravo na naknadu i obične štete i izmakle koristi, ali samo ako se ona mogla osnovano očekivati prema redovnom toku stvari ili posebnim okolnostima.

Sudska praksa definiše tri ključna uslova za priznanje izmakle koristi: 1. Izvesnost – mora postojati realna osnova da bi oštećeni ostvario neki prihod da nije bilo štetnog događaja (prethodni period, ugovoren posao itd.); 2. Merljivost i dokazivost – izmakla korist mora biti merljiva u novcu (pogotovo kroz stručna veštačenja) i mora postojati adekvatna dokumentacija (računi, dnevne evidencije, ugovori, cene tržišta itd) i 3. Uzročna veza – mora biti dokazano da štetan događaj (npr. oštećenje vozila u saobraćajnoj nezgodi) direktno onemogućava korišćenje vozila i da je to onemogućavanje uzrok gubitka te koristi (to jest da bi, da nije bilo nezgode, vozilo bilo angažovano i donelo prihod).

Naročito su značajne situacije kada je upotreba imovine bila poslovno povezana, npr. u slučaju motornih vozila koja služe za prihodovanje, jer se tu ne radi samo o šteti na vozilu nego i o gubitku prihoda koji se ostvaruju korišćenjem dotičnog vozila.

Metoda vrednovanja izmakle koristi u situacijama kada je došlo do oštećenja vozila koje bi u normalnim uslovima generisalo prihod po danu (npr. taksi, teretni prevoz, dostava, rentakar i sl.) u sudskoj praksi poznata je kao „auto-dani“. Auto-dani

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[2] Videti odredbu čl. 155 Zakona o obligacionim odnosima – ZOO (*Sl. list SFRJ бр. 29/78, 39/85, 45/89* – odluka USJ i 57/89, *Sl. list SRJ бр. 31/93, Sl. list SCG бр. 1/2003* – Ustavna povelja i *Sl. glasnik RS бр. 18/2020*).

predstavljaju višednevnu vrednost (dobit) koju bi vozilo donelo da je bilo u upotrebi. Metodologija vrednovanja auto-dana obično uključuje sledeće: dokaz o redovnom opsegu poslovanja vozila (računi, ugovori…), procene stručnjaka o broju i vrednosti tih dana (saobraćajno-tehnički i ekonomsko-finansijski veštaci), primenu standardnih tarifa (npr. Pravilnik „Srbijatransporta" ili udruženja prevoznika) i odbijanje troškova (gorivo, održavanje) kada se izračunava neto dobit. Sudovi dosledno zahtevaju veštačenja kao merodavan dokaz u tim sporovima.

U parničnim sporovima sa osiguravačima, teren tužbi za „auto-dane" je složen, ishod spora često zavisi od kvaliteta dokaza i veštačenja, ali je sudska praksa prilično ujednačena.

Cilj sledeće analize sudske prakse jeste da se prikaže koje pristupe sudovi u Srbiji imaju i koje metode vrednovanja koriste.

- U predmetu Privrednog apelacionog suda u Beogradu Pž 2246/24[3] tužilac, koji je bio zakupac oštećenog vozila, podneo je odštetni zahtev osiguravaču dana 13. decembra 2019. godine, ali ga je dopunio tek 20. februara 2020. godine dostavljanjem overenog ovlašćenja da kao zakupac ima pravo da prijavi i naplati naknadu iz osiguranja. Osiguravač je priznao pravo tužiocu na naknadu izgubljene dobiti usled nemogućnosti korišćenja vozila, ali samo za period od 15 dana, uz obrazloženje da do 20. februara 2020. godine nije raspolagao potpunom dokumentacijom. Sud je prihvatio stav osiguravača, istakavši da on može pristupiti isplati tek onda kada raspolaže svim potrebnim dokumentima te da osiguravač nije skrivio protek vremena od dana prijema zahteva do isplate. Dodatno, sud je ocenio da tužilac nije dokazao da mu je za eventualnu nabavku novog vozila ili popravku oštećenog bilo potrebno više od 15 dana. Sud je naglasio da pravo na izgubljenu dobit postoji samo za period koji je objektivno potreban za nabavku ili popravku vozila, te da je odlukom da čeka potpunu isplatu naknade pre nego što nabavi novo vozilo doprineo da šteta bude veća.

Ova odluka je značajan primer primene instituta doprinosa oštećenog (član 192 ZOO) u kontekstu potraživanja izgubljene dobiti prema osiguravaču. Sud je zauzeo restriktivan stav prema pravu na izgubljenu dobit, ističući da se ona ne može protezati beskonačno u budućnost i da je oštećeni dužan da preduzme razumne radnje radi umanjenja štete. U pogledu izgubljene dobiti, sud potvrđuje da se visina i trajanje naknade moraju zasnivati na objektivno potrebnom vremenu za nabavku novog vozila ili popravku starog. Ta presuda je naročito korisna jer pokazuje kako sudovi posmatraju aktivno ponašanje oštećenog kao odlučujući faktor u proceni trajanja „auto-dana" i time postavljaju ograničenja na zahtev za izgubljenu dobit. Time se naglašava princip pravične raspodele rizika između oštećenog i osiguravača.

[3] Presuda Privrednog apelacionog suda u Beogradu Pž 2246/24 od 22. 11. 2024. godine, u arhivi autorke.

- U predmetu Privrednog apelacionog suda u Beogradu Pž 1970/21[4] tužilac je zahtevao naknadu izgubljene dobiti zbog nemogućnosti korišćenja putničkog vozila kojim je obavljao delatnost taksiste, tvrdeći da je zbog oštećenja vozila u saobraćajnoj nezgodi bio onemogućen da ostvaruje prihod tokom perioda trajanja popravke. Sud je, pozivajući se na član 189 Zakona o obligacionim odnosima, zauzeo stav da se izmakla korist mora temeljiti na realnim, dokazivim okolnostima i da se ne može priznati apstraktna, hipotetička dobit izražena u vidu „auto-dana" ako nije dokazano da bi je tužilac zaista ostvario. Zaključuje se da je za utvrđivanje visine izgubljene dobiti potrebno analizirati prethodno poslovanje tužioca, njegov prihod u dužem periodu, kao i obim posla u uobičajenim uslovima. Sud je dodatno istakao da pravo na izgubljenu dobit obuhvata samo period koji je objektivno potreban za popravku oštećenog vozila, a da subjektivne okolnosti na strani tužioca nisu od uticaja na obim i trajanje odgovornosti osiguravača. Sud je stoga odbio deo tužbenog zahteva jer tužilac nije dokazao koliki je prihod zaista ostvarivao u redovnom toku poslovanja.

Privredni apelacioni sud jasno zauzima stav da osiguravač odgovara samo za realno vreme onemogućavanja poslovanja koje se može dokazati tehnički i faktički te da se naknada ne može zasnivati na apstraktnom „auto-danu", već da mora postojati dokaz o realnoj zaradi koju bi oštećeni ostvario da do štete nije došlo. Na taj način sud sprečava produžavanje trajanja štete izvan objektivnih granica, čime se afirmiše princip pravične raspodele rizika i sprečava zloupotreba instituta izgubljene dobiti.

- U predmetu Privrednog apelacionog suda u Beogradu Pž 4643/24[5] tokom perioda popravke vozila, tužilac je iznajmio zamensko vozilo za obavljanje poslovnih aktivnosti, te je naknadu štete zahtevao u visini troškova najma za period dok vozilo nije bilo u upotrebi. Sud je, na osnovu nalaza veštaka saobraćajno-tehničke struke, utvrdio da je objektivno vreme potrebno za popravku iznosilo osam dana, i da tužilac ima pravo na naknadu izgubljene dobiti (tj. troškove najma zamenskog vozila) samo za taj period. Tužilac nije dostavio dokaze koji bi pokazali da je period popravke bio duži (npr. da je došlo do zastoja u isporuci delova, kašnjenja servisa ili administrativnih prepreka). Sud je zato ocenio da u skladu s pravilima o teretu dokazivanja, dodatni period zastoja nije dokazan, pa se naknada ograničava na period koji je utvrdio veštak i u visini realno plaćenog najma drugog vozila.

Ova odluka sledi doslednu liniju sudske prakse prema kojoj se naknada izgubljene dobiti zbog nemogućnosti korišćenja vozila priznaje samo za objektivno dokazani period onemogućene upotrebe, tj. onoliko koliko je, iz tehničkog ugla, potrebno za popravku. Sud je time potvrdio princip da se obim naknade ne

[4] Presuda Privrednog apelacionog suda u Beogradu Pž 1970/21 od 4. 8. 2022. godine, u arhivi autorke.
[5] Presuda Privrednog apelacionog suda u Beogradu Pž 4643/24 od 2. 10. 2024. godine, u arhivi autorke.

može zasnivati na subjektivnim okolnostima ili tvrdnjama tužioca, već isključivo na stručnim nalazima i verodostojnim dokazima. Presuda je značajna jer uvodi i ekvivalentnost vrednosti izgubljene dobiti i visine plaćenog zakupa zamenskog vozila, što je praktičan pristup u slučajevima kada oštećeni i dalje obavlja delatnost, ali uz dodatne troškove. Time se izbegava apstraktno vrednovanje „auto-dana" i prelazi na konkretan, dokaziv trošak koji direktno izražava posledice nemogućnosti korišćenja vozila. Sudsko insistiranje da se veštačenjem utvrđeni rok popravke smatra gornjom granicom za naknadu izgubljene dobiti ima širu funkciju sprečavanja preteranih zahteva i štiti osiguravače od neopravdanog produženja obaveze. Tužilac može tražiti isplatu za duži period samo ako to posebno dokaže, čime se ponovo afirmiše princip iz člana 189 ZOO o uzročnosti i dokazivosti štete.

- U predmetu Privrednog apelacionog suda u Beogradu Pž 5102/23[6] stranke nisu sporile da je na vozilu nastala totalna šteta, to jest da popravka nije bila ekonomski opravdana. Ipak, tužilac se odlučio da vozilo popravi, čime je produžio vreme njegove neupotrebljivosti na više od dva meseca (od 12. 12. 2018. do 20. 2. 2019. godine). Sud je prihvatio nalaz veštaka koji je utvrdio da bi u slučaju nabavke novog ili sličnog vozila, prosečno vreme potrebno za zamenu iznosilo 23 dana. Na osnovu toga, sud je ocenio da oštećeni ima pravo na naknadu izgubljene dobiti samo za taj period, a ne za čitavo vreme dok je trajala popravka. Sud je obrazložio da, iako oštećeni ima pravo da bira hoće li popravljati oštećeno vozilo ili kupiti drugo, njegov izbor ne može povećavati obim odgovornosti osiguravača.

Ovde imamo sukob dva pravna načela: 1. pravo oštećenog na izbor načina reparacije (da li će popravljati ili nabaviti drugo vozilo) i 2. dužnost oštećenog da doprinese smanjenju štete propisanu odredbom člana 192 ZOO. Naime, pravo oštećenog na uspostavljanje pređašnjeg stanja (naturalna restitucija) osnovno je pravilo.[7] U kontekstu oštećenja vozila, to bi značilo popravku, ali ovo pravo nije apsolutno jer odredba člana 185 St. 3 ZOO uvodi ključan izuzetak i propisuje sledeće: kad uspostavljanje ranijeg stanja nije moguće, ili kad sud smatra da nije nužno da to učini odgovorno lice, sud će odrediti da ono oštećeniku isplati odgovarajuću svotu novca na ime naknade štete. Proglašenje „totalne štete" od strane osiguravajućeg društva upravo je situacija u kojoj se smatra da popravka nije ekonomski racionalna, da dakle nije nužno da se vrši uspostavljanje pređašnjeg stanja, jer troškovi popravke prevazilaze vrednost samog vozila pre udesa. U takvim okolnostima, pravni standard je novčana naknada koja oštećenom omogućava da nabavi drugo vozilo istih ili sličnih karakteristika.

Sud zauzima stav da oštećeni zadržava slobodu izbora, ali da posledice tog izbora ne mogu teretiti osiguravača ako izbor vodi povećanju obima štete. Time se

[6] Presuda Privrednog apelacionog suda u Beogradu Pž 5102/23 od 2. 8. 2024. godine, u arhivi autorke.
[7] Odredbom čl. 185 st. 1 ZOO propisano je da je odgovorno lice dužno uspostaviti stanje koje je bilo pre nego što je šteta nastala.

potvrđuje da je institut izgubljene dobiti tesno povezan s načelom uzročnosti i da naknada obuhvata samo onaj deo štete koji bi po redovnom toku stvari nastao, a ne i onaj koji je rezultat subjektivnih odluka oštećenog.

Pri tome je važno naglasiti da, prilikom utvrđivanja tog objektivnog perioda, sud treba da uzme u obzir i faktičke okolnosti kao što su: vreme potrebno da oštećeni proda ostatke uništenog vozila (jer mu osiguravač naknadu umanjuje za vrednost ostatka kako ne bi došlo do dvostrukog obeštećenja), vreme neophodno za registraciju novog vozila, kao i moguće rokove za uvoz vozila iz inostranstva. Drugim rečima, iako sud ispravno insistira na objektivnom vremenu potrebnom za nabavku novog vozila, to vreme mora biti realno određeno i moraju se imati u vidu svi koraci koje oštećeni mora preduzeti da bi vozilo zaista bilo zamenjeno i ponovo uključeno u delatnost.

Ova presuda ima poseban značaj za praksu jer postavlja ravnotežu između prava oštećenog na izbor i ograničenja tog prava principom razumnog ponašanja. Time se potvrđuje da osiguravač ne snosi rizik za neekonomske odluke oštećenog, već samo za štetu koja je u neposrednoj uzročnoj vezi sa štetnim događajem i koja je mogla biti izbegnuta uz uobičajenu pažnju i blagovremenu reakciju.

- U predmetu Privrednog apelacionog suda u Beogradu Pž 10828/21[8] osiguravač je odložio odlučivanje o odštetnom zahtevu dok nije pribavio zapisnik o policijskom uviđaju, a taj postupak je trajao nekoliko meseci. Do tada je raspolagao samo izjavom oštećenog, koju nije smatrao dovoljnim osnovom za likvidaciju štete. Sud je prihvatio stav osiguravača da rok za isplatu ne može početi da teče dok dokumentacija nije potpuna, pozivajući se na član 919 ZOO i član 25 Zakona o obaveznom osiguranju u saobraćaju.[9] Ocenjeno je da je osiguravač aktivno preduzimao radnje (obraćanje tužilaštvu, prikupljanje dokaza) i da se ne može smatrati pasivnim. Dalje, sud je zaključio da je tužilac doprineo povećanju štete jer nije pokušao da popravi vozilo niti da obezbedi zamensko, pre isplate naknade, iako je za to vozilo imao ugovorene poslove u narednoj godini. Time je, prema mišljenju suda, sam doprineo da izgubljena dobit bude veća.

Sud polazi od formalnog tumačenja odredbe čl. 25 Zakona o obaveznom osiguranja u saobraćaju i zaključuje da osiguravač ne može isplatiti naknadu pre nego što dođe u posed kompletne dokumentacije. Sud implicitno stavlja akcenat na potpunost zahteva kao preduslov za početak toka roka propisanog odredbom člana 25 Zakona o obaveznom osiguranju u saobraćaju. Dalje, sud smatra da je tužilac, ne popravljajući vozilo, zanemario obavezu smanjenja štete iz člana 192 ZOO.

- U predmetu Privrednog apelacionog suda u Beogradu Pž 1605/23[10] osiguravač je takođe kasnio sa isplatom štete čekajući na dostavu zapisnika

[8] Presuda Privrednog apelacionog suda u Beogradu Pž 10828/21 od 26. 4. 2023. godine, u arhivi autorke.
[9] *Sl. glasnik RS*, br. 51/2009, 78/2011, 101/2011, 93/2012 i 7/2013 – odluka US.
[10] Presuda Privrednog apelacionog suda u Beogradu Pž 1605/23 od 15. 8. 2024. godine, u arhivi autorke rada.

o uviđaju saobraćajne nezgode. Sud je odbio zahtev, zauzimajući stav da je relevantan samo period potreban za popravku vozila, utvrđen veštačenjem, bez obzira na to koliko dugo je osiguravač odlagao odluku zbog nedostatka dokumentacije. Zaključuje se da subjektivne okolnosti (kašnjenje, čekanje na zapisnik, administrativne prepreke) ne utiču na obim odgovornosti osiguravača. Sud je naveo da je Zapisnik o uviđaju neophodan dokument za prijavu i likvidaciju štete, te da bez njega osiguravač ne može utvrditi osnov odgovornosti.

U ovoj odluci sud sledi istu logiku kao u predmetu Pž 10828/21 – da odgovornost osiguravača počinje tek kad je zahtev potpun, odnosno kada se pribavi sva potrebna dokumentacija, a izgubljena dobit se priznaje samo za objektivno utvrđeni period popravke. Ovde je dodatno naglašeno da je osiguravač bio u pravu što nije započeo procenu bez zapisnika MUP-a, jer se taj dokument smatra osnovnim dokazom o štetnom događaju.

Pristup iz poslednje dve presude mogao bi da bude problematičan, ukoliko bi se *a priori* smatralo da rok za rešavanje odštetnog zahteva nikada ne počinje da teče dok osiguravač od nadležnih organa ne pribavi svu dokumentaciju i da oštećeni uvek, kada odluči da ne popravlja vozilo dok ne bude isplaćen od strane osiguravača, doprinosi uvećanju štete. To važi iz sledećih razloga:

- Zakon ne poznaje institut „nepotpunog zahteva“ koji bi suspendovao obavezu osiguravača. Naime, član 25 Zakona o obaveznom osiguranju u saobraćaju propisuje rokove (14 i 45 dana) za rešavanje odštetnog zahteva, ali ne daje osiguravaču diskreciono pravo da odloži odlučivanje na neodređeno vreme;
- Prema članu 18 Zakona o obaveznom osiguranju u saobraćaju, državni organi su dužni da na zahtev osiguravača dostave traženu dokumentaciju. Dakle, osiguravač je u boljoj poziciji od oštećenog, a ima i pravne instrumente kojima može da obezbedi brže pribavljanje podataka, te je dužan da postupa aktivno, koristi zakonske mehanizme za ubrzanje dobijanja zapisnika (npr. urgencije, žalbe, zahtev zbog ćutanja uprave) i da obezbedi bar delimičnu isplatu na osnovu dostupnih činjenica;
- Oštećeni ne može biti kažnjen zbog pasivnosti državnih organa. Prebacivanje posledice sistemskih zastoja na tužioca ne ugrožava svrhu obaveznog osiguranja – zaštitu trećih lica od štetnih posledica saobraćajnih nezgoda;
- Tumačenje da je oštećeni doprineo uvećanju štete time što nije sam popravio vozilo nije u skladu s načelom autonomije volje. Naime, oštećeni ima pravo da odluči kada i kako će raspolagati svojim sredstvima, nije dužan da finansira popravku pre nego što primi naknadu. U suprotnom bi se ignorisala realna ekonomska pozicija privrednih subjekata. Stav suda da je oštećeni doprineo uvećanju štete time što vozilo nije opravio pre rešavanja

odštetnog zahteva može se prihvatiti u situacijama kada osiguravač dokaže da je tužilac imao mogućnost da finansira popravku (raspoloživa sredstva, kreditna linija, zamensko vozilo) i unapred ugovoren posao za to vozilo čijim bi neizvršenjem svesno uvećao štetu.

U svetlu čl. 18 i 25 Zakona o obaveznom osiguranju u saobraćaju, pristup sudova ne sme biti previše formalan jer bi odudarao od svrhe obaveznog osiguranja: da se obezbedi efikasna i brza reparacija štete oštećenima. Celishodno bi bilo da sudovi zahtevaju od osiguravača da dokaže da je preduzeo sve razumne radnje da što pre pribavi zapisnik i okonča postupak; da razmotre obavezu isplate nesporne štete; i da doprinos oštećenog cene prema okolnostima svakog slučaja, te da nalaze da ga je bilo samo ako je dokazano da je imao realne mogućnosti da popravkom ili zakupom vozila izbegne uvećanje štete.

Analizirana sudska praksa pokazuje da sudovi u Republici Srbiji ujednačeno polaze od stava da se naknada materijalne štete u vidu izgubljene dobiti zbog nemogućnosti korišćenja motornog vozila može priznati samo za realno potreban period popravke oštećenog vozila, odnosno za vreme koje je veštačenjem utvrđeno kao objektivno potrebno za sanaciju vozila ili za nabavku drugog u slučaju totalne štete.

Kroz više odluka utvrđeno je da se visina izgubljene dobiti ne može određivati paušalno, već da tužilac mora dokazati da bi u tom periodu zaista ostvario prihod, i koliku bi dobit ostvario po redovnom toku stvari. Pri tome, subjektivne okolnosti ne utiču na obim odgovornosti osiguravača.

Rešen je sukob između prava oštećenog na slobodan izbor (da li će popraviti ili nabaviti novo vozilo) i njegove dužnosti da umanji štetu, tako što je sudska praksa dala prednost potonjem, smatrajući da oštećeni koji popravi vozilo iako je šteta totalna sam snosi posledice produženog trajanja „auto-dana".

Ukupno posmatrano, sudska praksa teži da ograniči obim odgovornosti osiguravača na objektivne, dokazive parametre, vreme potrebno za popravku ili nabavku vozila i realno dokazanu dobit. Ipak, treba voditi računa o okolnostima svakog slučaja i ne treba se preterano oslanjati na formalne okolnosti, da ne bi došlo do zanemarivanja šireg ekonomskog i zaštitnog smisla instituta obaveznog osiguranja. Potrebno je u svakom slučaju ceniti aktivnost osiguravača u pribavljanju dokaza, kao i realnu ekonomsku mogućnost oštećenog, te opravdanost da preduzme popravku ili obezbedi zamensko vozilo pre nego što mu naknada bude isplaćena. Time bi se ostvarila svrha člana 189 ZOO i načelo pravične naknade štete, po kome oštećeni treba da bude doveden u položaj u kome bi bio da do štetnog događaja nije došlo, bez neopravdanog premeštanja tereta rizika na njegovu stranu. S druge strane, vodilo bi se računa i o doprinosu oštećenog, u smislu odredbe člana 192 ZOO.

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Izvori (literatura) se navode u fusnotama, fontom veličine 10 pt. Na kraju svake fusnote stavlja se tačka.

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1) **Prvi nivo naslova** – na sredini; numeracija: rimski broj (npr. I, II, III, itd.); prvo slovo veliko, a ostala mala.
2) **Drugi nivo naslova** – na sredini; numeracija: arapski broj sa tačkom (npr. 1., 2., 3., itd.); prvo slovo veliko, a ostala mala.
3) **Treći nivo naslova** – na sredini; kurziv (kosa slova, italik); numeracija: malo slovo azbuke sa zatvorenom zagradom (npr. a), b), v), itd.); prvo slovo veliko, a ostala mala.
4) **Četvrti nivo naslova** – na sredini; numeracija: arapski broj sa zatvorenom zagradom (npr. 1), 2), 3), itd.); prvo slovo veliko, a ostala mala.

Primer:

I Pojam
Definicija
Definicija u uporednom pravu
1) Francusko zakonodavstvo

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Primer: Nenad Grujić, *Raskid ugovora zbog neispunjenja i pravna dejstva raskida*, Beograd, 2016, 111; Susan Hodges, *Cases and Materials on Marine Insurance Law,* Cavendish Publishing Limited, London, 2002, 74.

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Primer: Nenad Grujić, *Raskid ugovora zbog neispunjenja i pravna dejstva raskida*, Beograd, 2016, 111–120.

Primer: Nenad Grujić, *Raskid ugovora zbog neispunjenja i pravna dejstva raskida*, Beograd, 2016, 111 i dalje.

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Primer: Vladimir Kapor, Slavko Carić, *Ugovori robnog prometa,* Deveto izdanje, Centar za privredni konsalting, Novi Sad, 1996, 67.

Katherine B. Posner, Tim Marland, Philip Chrystal, *Margo on Aviation Insurance,* Fourth edition, London, 2014, 429.

g) Ako se citira knjiga sa više od tri autora, navodi se samo ime i prezime prvog autora, uz dodavanje skraćenice reči et alia kurzivom.

Primer: Hugh Beale et al., *Contract Law,* 2nd edition, Bloomsbury Publishing, London, 2010, 54.

d) Knjiga koju je neko lice priredilo kao urednik se citira tako što se nakon njegovog imena i prezimena u zagradi navodi oznaka „urednik" ili skraćenica „ur.", odnosno odgovarajuća oznaka na jeziku na kom je knjiga objavljena.

Primer: Mirko Vasiljević (urednik), *Akcionarska društva, berze i akcije*, Beograd, 2006, 27; Marko Baretić, Saša Nikčević (urednici), *Zbornik Treće regionalne konferencije o obveznom pravu*, Zagreb, 2022, 44.

Fidelis Oditah (editor), *The Future for the Global Securities Market*, Oxford, 1996, 74.

Jürgen Basedow *et al*., (Hrsg.), *Anleger- und objektgerechte Beratung, Private Krankenversicherung, Ein Ombudsmann für Versicherungen,* Band 11, Nomos, Baden-Baden, 1999, 55.

đ) Kada se citira jedna knjiga određenog autora, kod ponovljenog citiranja se navodi prvo slovo imena sa tačkom i prezime, nakon čega se dodaje broj strane.

Primer: N. Grujić, 102.

S. Hodges, 231.

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Primer: M. Vasiljević (2012), 107.

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Primer: *Ibidem*.

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Primer: *Ibid*., 23.

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a) Članci se citiraju na sledeći način: ime autora, prezime autora, otvoreni navodnici, naziv članka, zatvoreni navodnici, naziv časopisa kurzivom, broj i godina izdanja, broj strane.

Primer: Predrag Šulejić, „Pravna priroda sredstava matematičke rezerve u osiguranju", *Pravo i privreda* 5–8/2006, 775.

Ebers Martin, „Information and Advising requirements in the Financial Services Sector: Principles and Peculiarities in EC Law", *Electronic Journal of Comparative Law* 2/2004, vol. 8, 238.

b) Kada se citira članak više autora, njihova imena i prezimena se razdvajaju zarezom.

Primer: Nataša Petrović Tomić, Miloš Radovanović, „Poravnanje o naknadi štete iz sredstava Garantnog fonda", *Harmonius, Journal of Legal and Social Studies in South East Europe*, 2017, 175.

Ako se citira članak sa više od tri autora, navodi se samo ime i prezime prvog autora, uz dodavanje skraćenice reči et alia kurzivom.

Primer: Farines Elise *et al*., , "The Pre-contractual and Contractual Infiormation in Life Insurance Policy", *Insurer's Precontractual Information Duty*, Turkish Chapter of AIDA, Istanbul 2013, 123.

v) Rad, odnosno članak objavljen u okviru zbornika radova ili knjige, koju je neko drugo lice priredilo kao urednik, se citira na sledeći način: ime autora, prezime autora, otvoreni navodnici, naziv članka, zatvoreni navodnici, naziv zbornika radova, odnosno knjige kurzivom, u zagradi oznaka „urednik" ili „ur." („editor" ili „ed."), „redaktor" i sl., i ime i prezime urednika, eventualno redni broj izdanja, mesto izdanja, godina izdanja, broj strane.

Primer: Nebojša Jovanović, „Otvaranje i zatvaranje privrednih društava", *Akcionarska društva, berze i akcije* (urednik Mirko Vasiljević), Beograd, 2006, 307.

Helmut Heiss, "The Common Frame of Reference (CFR) of European Insurance Contract Law", *Common Frame of Reference and Existing EC Contract Law* (ed. Reiner Schulze), Sellier European law publishers, GmbH, München, 2008, 13.

g) Kada se citira jedan članak određenog autora, kod ponovljenog citiranja se navodi prvo slovo imena sa tačkom i prezime, a potom broj strane.

Primer: N. Petrović Tomić, 164.

d) Kada se citira više članaka istog autora, kod ponovljenog citiranja se navodi prvo slovo imena sa tačkom i prezime, potom se u zagradi stavlja godina izdanja, i najzad broj strane.

Primer: N. Petrović Tomić (2014), 122.

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Primer: I. Jankovec (1995a), 16.

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a) Propisi se citiraju na sledeći način:

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Primer: Zakon o privrednim društvima, *Službeni glasnik RS*, br. 36/2011, 99/2011, 83/2014, 5/2015, čl. 13.

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Primer: Zakon o osiguranju – ZO, *Službeni glasnik RS*, br. 139/2014 i 44/2021, čl. 6 st. 3.

v) Član, stav i tačka propisa označava se skraćenicama čl., st. i tač., a paragraf skraćenicom par.

Primer: čl. 24 st. 1 tač. 5 ili par. 14.

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Primer: Zakon o privrednim društvima, čl. 7.

ZPU, čl. 25.

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Primer: nemački Trgovački zakonik iz 1897. godine (*Handelsgesetzbuch*), par. 29. britanski Kompanijski zakon iz 2006. godine (*Companies Act*; dalje u fusnotama: CA), čl. 67.

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Primer: Elisabeth Pollman, The Making and Meaning of ESG, Law Working Paper 659/2022, dostupno na adresi: http://ssrn.com/an+bstarct_id-4219857, 16. 6. 2023, 5.

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Primer: Elisabeth Pollman, The Making and Meaning of ESG, 5.

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Articles should be written in **Times New Roman, 12 pt font, with 1.5 line spacing**. The article in Serbian should be written in Latin script, except for foreign words and words in Latin, which should be written in Latin script and italicized.

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The article must also include an abstract and key words in English. The abstract and key words should be provided at the end of the article, after the References section.

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I Concept
Definition
a) *Definition in Comparative Law*
) French Legislation

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b) When citing a text from multiple pages that are specifically determined, separate the page numbers with a dash, followed by a period. If more than one page is cited from a text, but they are not specifically stated, after the number which notes the first page "etc." is added with a period at the end.

Example: Susan Hodges, *Cases and Materials on Marine Insurance Law*, Cavendish Publishing Limited, London, 2002, 74–80.

Example: Philip Wood, Principles of international insolvency, Sweet &Maxwell, London 2007, 111 etc.

c) When citing a book by multiple authors (up to three), their names are separated by commas.

Example: Katherine B. Posner, Tim Marland, Philip Chrystal, *Margo on Aviation Insurance*, Fourth edition, London, 2014, 429.

d) If citing a book with more than three authors, only the first author's name and surname are given, followed by the abbreviation *et al.* in italics.

Example: Hugh Beale *et al.*, *Contract Law*, 2nd edn. Bloomsbury Publishing, London, 2010, 54.

e) A book edited by someone is cited by adding the designation "editor" or the abbreviation "ed." in parentheses after their name.

Example: Fidelis Oditah (editor), *The Future for the Global Securities Market*, Oxford, 1996, 74. Jürgen Basedow *et al.,* (Hrsg.), *Anleger- und objektgerechte Beratung, Private Krankenversicherung, Ein Ombudsmann für Versicherungen*, Band 11, Nomos, Baden-Baden, 1999, 55.

f) When citing a single book by a specific author, in repeated citations, use the first initial of the first name with a period and the last name, followed by the page number.

Example: S. Hodges, 231.

g) When citing multiple books by the same author, in repeated citations, use the first initial of the first name with a period and the last name, followed by the year of publication in parentheses, and the page number.

Example: M. Vasiljević (2012), 107.

h) If the same page of the same source was cited in the previous footnote, the abbreviation for *Ibidem* should be used, in italics, followed by a period (without quoting the name of the author). (without repeating the author's last name and first name).

Example: *Ibidem*.

If the same source (but not the same page) was cited in the previous footnote, the abbreviation for Ibidem should be used, in italics, followed by the page number and a period.

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2. ARTICLES

a) Articles should be cited as follows:

Author's name, author's last name, title of the article in roman with quotation marks, name of the journal in italics, volume and year of publication, page number

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Example: Ebers Martin, "Information and Advising Requirements in the Financial Services Sector: Principles and Peculiarities in EC Law", *Electronic Journal of Comparative Law* 2/2004, vol. 8, 238.

b) When citing an article by multiple authors, their names and surnames should be separated by commas.

Example: Nataša Petrović Tomić, Miloš Radovanović, "Poravnanje o naknadi štete iz sredstava Garantnog fonda", *Harmonius, Journal of Legal and Social Studies in South East Europe*, 2017, 175.

If citing an article by more than three authors, only the first author's name and surname are to be cited, followed by the abbreviation *et al.* in italics.

Example: Farines Elise *et al*., "The Pre-contractual and Contractual Information in Life Insurance Policy", *Insurer's Precontractual Information Duty*, Turkish Chapter of AIDA, Istanbul 2013, 123.

c) A paper or article published in a proceedings or book edited by another person is cited as follows:

Author's first name, author's last name, opening quotation marks, title of the article, closing quotation marks, title of the proceedings or book in italics, in parentheses the designation "editor" or "ed.", and the name and surname of the editor, edition number if applicable, place of publication, year of publication, page number.

Example: Helmut Heiss, "The Common Frame of Reference (CFR) of European Insurance Contract Law", *Common Frame of Reference and Existing EC Contract Law* (ed. Reiner Schulze), Sellier European Law Publishers, GmbH, Munich, 2008, 13.

d) When citing an article by a specific author, in repeated citations, use the first initial of the first name with a period and the last name, followed by the page number.

Example: N. Petrović Tomić, 164.

e) When citing multiple articles by the same author, in repeated citations, use the first initial of the first name with a period and the last name, followed by the year of publication in parentheses, and finally the page number.

Example: N. Petrović Tomić (2014), 122.

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Example: I. Jankovec (1995a), 16.

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Example: Act XXVIII of 2017 on Private International Law of Hungary, *Magyar Közlöny*, 2017-04-11, vol. 54.

b) In case of repeated citations, an acronym should be provided on the first mention of a given statute or other regulation.

Example: Companies Act – CA, *Official Gazette of the Republic of Serbia*, No. 6/2011, 99/2011, 83/2014, 5/2015, 44/2018, 95/2018, 91/2019 and 109/2021.

c) Article, paragraph, and point of the regulation are designated with the abbreviations art. and par..

Example: Art. 8, par. 25.

d) When citing a regulation repeatedly, its full name or the abbreviation introduced in the first citation should be given, along with the abbreviations art. or par. and the provision number.

Example: CA, art. 58.

e) Regulations in foreign languages should be cited as follows:

Full name of the regulation translated into English, year of publication or adoption, opening parenthesis, full name of the regulation in the original language in italics, any abbreviation under which the regulation will continue to appear, closing parenthesis, abbreviation art. or par. and provision number.

Example: German Commercial Code of 1897 (*Handelsgesetzbuch*), par. 29.

4. ONLINE SOURCES

a) Online sources should be cited as follows:

author's first name and surname, or the name of the organization that prepared the text, title of the text, possible place and year of publication, the website address in italics, the date of access, and the page number.

Example: Elisabeth Pollman, "The Making and Meaning of ESG", Law Working Paper 659/2022, available at: http://ssrn.com/abstract_id=4219857, accessed June 16, 2023, 5.

b) When citing an online source repeatedly, use the first initial of the author's first name with a period and the surname, or the name of the organization that prepared the text, the title of the text, and the page number.

Example: Elisabeth Pollman, The Making and Meaning of ESG, 5.

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