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The application of principles of European insurance contract law to policyholders of the Baltic States: A measure for the protection of policyholders

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LIST OF ORIGINAL PUBLICATIONS

This dissertation is based on the following publications:

1. Luik, Olavi-Jüri, "Do the Principles of European Insurance Contract Law Go Too Far in Protecting the Policyholder?", Juridica International, Vol XVIII, 2011, pp 73–83.
2. Luik, Olavi-Jüri; Braun Magnus, "Significance of the Principles of European Insurance Contract Law for the pre-contractual information duty: Experience of the Baltic States", Current Issues of Business and Law, Vol 6, No 2, 2011, pp 192–215.
3. Luik, Olavi-Jüri; Kontautas, Tomas, "Does the insurance premium payment regulation as stipulated in the Principles of European Insurance Contract Law protect policyholders sufficiently enough?", Current Issues of Business and Law, Vol 7, No 1, 2012, pp 85–107.
4. Luik, Olavi-Jüri, "Policyholder Obligations After an Insured Event: Are Baltic Insurance Laws Too Insurer-Friendly Compared to the Principles of European Insurance Contract Law?", Baltic Journal of Law & Politics, Vol 5, No 1, 2012, pp 137–164.
5. Luik, Olavi-Jüri; Ratnik, Rainer; Braun Magnus, "Aggravation of Risk and Precautionary Measures in Non-Life Insurance: Tricky Scope for Insurer?", Baltic Journal of Law & Politics, Vol 8, No 2, 2015, pp 1–45.

AUTHOR'S CONTRIBUTION

Research I and IV the author of the current dissertation is the sole author of the paper. Research II, III and V the author of the current dissertation was fully responsible for formulating the research question, designing the theoretical framework, producing analysis and writing the paper as the main author.

1. INTRODUCTION

1.1. The essence of the problem

Insurance law relations may be divided into three broad categories: (i) legal relationships arising from insurance contracts, i.e., the legal relationships between an insurer and a policyholder arising from an insurance contract; (ii) legal relationships between insurers and the state, i.e., insurance supervision, activity licences, etc.; and (iii) legal relationships between insurers and the state arising from financial law, i.e., taxes, levies, etc. In the European Union, the two latter categories dealing with the daily activities of insurers have been harmonised to a large extent by various directives. While the relations between policyholders and insurers have also been regulated, no harmonisation has been achieved in the area of insurance contract law.

With the introduction of the single European insurance market it was assumed that market liberalisation would allow insurers to diversify their insurance portfolios on an international level, which would result in lower costs and also lower prices, local insurers would make their products available for all EU consumers, and specialised product could be more marketed in a more effective manner on a bigger market[1]. Mandeep Lakhan and Helmut Heiss states that:

> *"yet, even in the cases where a provider is internationally active, the business is typically carried out through subsidiaries or branch offices and the products sold in different countries are not same as those on offer in the country of the insurer's domicile. This leads to insurance providers being restricted by variations in national laws, consumers being prevented from having access to a full range of products, and the internal market consequently remaining incomplete"*[2].

The current practice shows that providing cross-border insurance services is problematic since 28 different contract laws make cross-border activities very difficult and expensive. When dealing with services and goods designed for consumers, companies have to take into consideration the specifics of each country, including the different legal systems, which is why business costs increase for example by costs for legal assistance (e.g., different legal systems require different standard contractual clauses, etc.). Ray Rees and Ekkerhard Kessner say:

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[1] T. Hess, T. Trauth. Towards A Single European Insurance Market. International Journal of Business, 3 (1), 1998, pp. 89–102.

[2] M. Lakhan, H. Heiss. An Optional Instrument for European Insurance Contract Law. Utrecht Journal of International and European Law, Volume 27/Issue 71, pp. 1–11.

> *"in our view there is unlikely to be a significant impact on direct competition between European insurance markets, until there is standardization of the insurance law in at least the two major markets, life insurance and property/ liability (including auto-) insurance. Without this, insurance is not the kind of commodity that can be directly exported or imported in substantial amounts"*[3].

They concluded that if European Commission policy aimed to create a single market in insurance, "it has been a failure and will continue to be so unless a legal framework is developed within which standardised insurance contracts can be brought and sold across national boundaries[4]. It may come as a surprise that lack of coherent European insurance contract legislation is the cause of the nationally fragmented European insurance market. The reason for this influence is that insurance has a twofold character. It is a contract but also a standardised mass product, when sold to consumers and the like. Similarly, insurance contract law, which at first glance seems to deal with single insurance contract disputes, also to some extent regulates product development in the insurance market. Because of the latter function of insurance contract law, lack of supranational insurance contract law is the reason for the fragmented European insurance market[5].

In his new Green paper of 10.12.2015 on retail financial services the European Commission finds, that in some instances, a separate legal framework might be the best way to increase choice of product while decreasing costs for business and ensuring that consumers are adequately protected. An opt-in regime could be a framework for identical product characteristics, to be used on a voluntary basis. Its advantage would lie in providing standardisation between Member States and in overcoming many national regulatory differences in some areas. Moreover, it could be a useful means for offering comparable and easy-to-understand financial products, thus increasing consumer trust and confidence for shopping cross border[6].

That is why harmonising civil law relationships with regard to insurance contracts has a significant role in ensuring the actual functioning of the single European insurance market. Without harmonisation, the single European insurance market cannot take a real and substantial effect as it would prove to be too complex for consumers to acquaint themselves with various legal systems and insurers would find that providing cross-border products for smaller markets is

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[3] R. Rees, E. Kessner. Regulation and Efficiency in European Insurance Markets. Economic Policy, Vol. 14, No. 29 (Oct., 1999), pp. 363–397.

[4] *Ibid.*

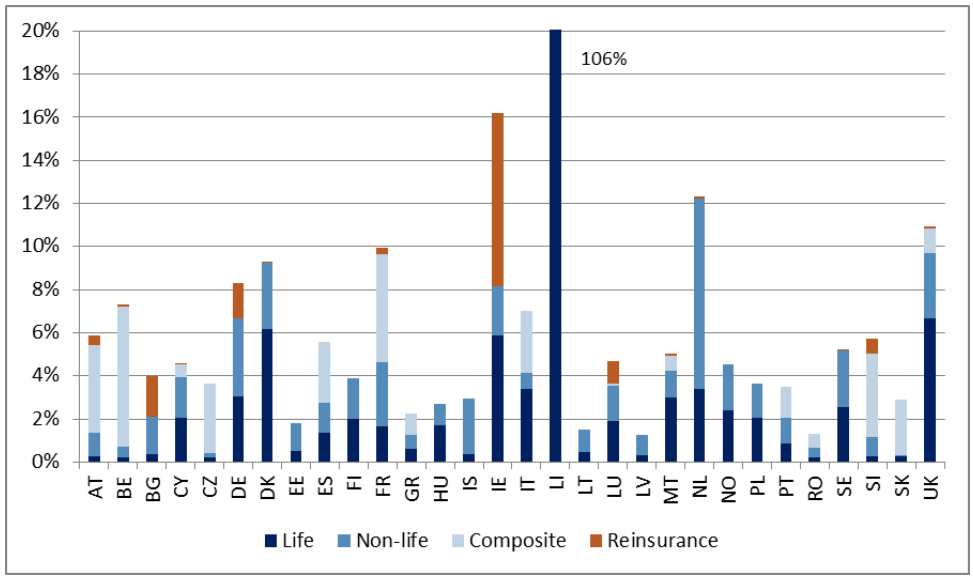
[5] J. Norio-Timonen. Legal Coherence as a Prerequisite for a Single European Insurance Market, in Coherence and Fragmentation in European Private Law, edited by Pia Letto-Vanamo, Jan Smits, Munich, 2012.

[6] European Comission, Green Paper from the Commission COM (2015) 630 final, Available online at http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX: 52015DC0630&from=EN (most recently accessed on 26 March 2016).

not economically feasible. Jürgen Basedow states[7] that the need to harmonisze insurance contract law, possibly in an optional instrument, was further underpinned by an opinion of the European Economic and Social Committee[8].

The share of the insurance sector in the GDPs of Estonia, Latvia and Lithuania is well below the average EU rate[9]:

Insurance Penetration: Gross written premiums in percentages of GDP[10]



The European Insurance and Occupational Pensions Authority refer that although a large number of companies have asked for authorisations to enter foreign markets, the actual market share of these activities is almost negligible. Most of the international business is still done through subsidiaries and branches[11].

[7] J. Basedow. The Europeanization of private law: Its progress and its significance for China. The Chinese Journal of Comparative Law, Vol. 1 No. 1, 2013, pp. 49–65.

[8] Opinion of the European Economic and Social Committee (Section for the Single Market, Production and Consumption) on 'The European Insurance Contract' (own initiative opinion), Doc CESE 1626/2004 (15 December 2004).

[9] Author started his research in 2011 (see author's first articles about the topic). Statistics haven't changed significantly since.

[10] European Insurance and Occupational Pensions Authority, Financial Stability Report 2012, Second half-year report, p. 17.

[11] *Ibid.*

Currently, there are 28 different contract laws simultaneously in force in the EU, including different regulations of insurance contract law. Hence, the laws regulating insurance contracts differ[12] vastly in Estonia[13], Latvia[14] and Lithuania[15]. For the consumers, this complicates the purchase of relevant services in another country, both for people who relocate in order to settle and those who work in another country. It also makes cross-border activities complicated and costly, which is why cross-border services are not provided to consumers as a rule. The diversity of contract laws is said by the Commission to discourage cross-border trade and hinder the development by SMEs of a pan-European commercial policy.[16] In the Commission Expert Group on European Insurance Contract Law's 2014 Final Report [17], the experts indicated, that cross-border insurance sales, on the basis of freedom to provide services and branches however represented only 4.10% of total gross premiums written in the EU in 2007.

The European Commission is currently developing the Common Frame of Reference for European Contract Law which also addresses insurance contracts (Principles of European Insurance Contract Law (hereinafter: PEICL[18])). On 8 June 2011, the European Parliament delivered its resolution on policy options for progress towards a European Contract Law for consumers and businesses,[19] which advocates the adoption of an Optional Instrument including Insurance Contract Law based on the PEICL. Optional instruments constitute an

[12] Despite many European directives and regulations on insurance, as well as a project on the formulation of principles of European insurance contract law, the substantive laws on insurance matters still differ considerably within the European Union. X. Kramer. The New European Conflict of Law Rules on Insurance Contracts in Rome I: A Complex Compromise. The Icfai University Journal of Insurance Law 2008, Vol. VI, No. 4, p. 23–42.

[13] Võlaõigusseadus [Law of Obligations Act – hereinafter: LOA], Riigi Teataja (State Gazette), Part 1, 18 July 2011, No. 21.

[14] Par apdrošināšanas līgumu [The Insurance Contract Law – hereinafter: ICL], Latvijas Vçstnesis No. 188/189 on 30 June 1998, No. 56 on 4.4.2007.

[15] Lietuvos Respublikos draudimo įstatymas [Law on insurance – hereinafter: IL], Valstybės þinios, 2003, No. 94–4246 and Lietuvos Respublikos civilinis kodeksa [The Civil Code of the Republic of Lithuania – hereinafter: CC], Valstybės þinios, 2000, No. 74–2262.

[16] G. Low. Will firms consider a European optional instrument in contract law? European Journal of Law and Economics Volume 33, No. 3, 2012, pp. 521–540. See also European Commission, Green Paper from the Commission COM (2015) 630 final, *Op cit.* Note 6

[17] Final Report of Commission Expert Group on European Insurance Contract Law, Available online at http://ec.europa.eu/justice/contract/files/expert_groups/insurance/final_report_en.pdf, p 10 (most recently accessed on 26 March 2016).

[18] Principles of European insurance contract law (PEICL), Available online at https://www.uibk.ac.at/zivilrecht/forschung/evip/restatement/sprachfassungen/peicl-en.pdf (most recently accessed on 26 March 2016).

[19] European Parliament Resolution of 8 June 2011 on Policy Options for Progress towards a European Contract Law for Consumers and Businesses, 2011/2013(INI) Available online at http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2011-0262 (most recently accessed on 26 March 2016).

alternative to national regimes of contract law, hence the reference to a 2nd regime.[20] With the 2nd regime, two regulations are applied in parallel: one is the national insurance contract law and the other is the PEICL as enforced by the European Union.[21] The parties choose the regulation they want to apply to their contract when entering into an insurance contract. Malcolm Clarke has characterised the current PEICL, saying that this is not a statement of current law, but in the language of law in the USA, a restatement of what a group of European scholars thinks the law should be (inevitably a compromise)[22]. Given the wide variety of positions, the Principles of European Insurance Contract Law seem to go beyond merely restating the current common core[23]. Helmut Heiss explains that the PEICL has been drafted as an optional instrument of European insurance contract law, allowing parties to opt out of national (insurance) law by opting for the application of the PEICL. Due to the mainly mandatory character of the rules on international insurance contract law (Article 7 of Rome I)[24] and national insurance contract law, this option does not exist at present; it requires an EU regulation on the matter[25]. The conflict of law rules relating to insurance contracts have always constituted one of the bottlenecks of European private international law. Because the conflict rules emanate from diverse sources and lack any cohesion or well-considered system, determining the applicable law to an insurance contract is like trying to find one's way through a

[20] H. Heiss, M. Clarke, M. Lakhnan. Europe: Toward a harmonised European insurance contract law – the PEICL, in: Julian Burling and Kevin Lazarus, Research Handbook on International Insurance Law and Regulation. Edward Elgar Publishing Ltd., 2011.

[21] Walter Doract gives the following example of an optional instrument as a choice of the consumer: "On the one hand, it is said that European consumers should have an additional option for the choice of law. This proposal of the optional choice of contract law has been illustrated by the term "blue button" ("blue" as in European). A buyer could click on a blue button when contracting online in cross-border (or, also in purely national) contracts. After a click on the button "Proceed to Checkout" on Amazon.fr or fnac.fr the next page would ask whether the sale should proceed according to the Code Civil or according to the optional European instrument – the blue button" (W. Doract. The Optional European Contract Law and why success or failure may depend on scope rather than substance. Max Planck Private Law Research Paper No. 11/9: 8, June 25, 2011, Available online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1876451 (most recently accessed on 26 March 2016)).

[22] M. Clarke. Late payment of insurance money. Erasmus Law Review, Volume 5, Issue 2, 2012, pp. 115–121.

[23] W. H. van Boom. Do Insurers Have to Pay for Bad Behaviour in Settling Claims? Legal Aspects of Insurers' Wrongful Claims Handling. Journal of European Tort Law 1, 2011, pp. 77–102.

[24] Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) [2008] OJ L177/6.

[25] H. Heiss. Proportionality in the new German insurance contract act. Erasmus Law Review, Volume 5, Issue 2, 2012, pp. 105–114.

labyrinth. Even for private international experts the task demands significant efforts[26].

In comparison with CISG, which is an international agreement which offers unified sales rules to countries who have joined this UN convention, PEICL is being created to focus on the EU. The purpose of CISG is to unify international sales rules on the level of substantive rules – the purpose of PEICL is to unify EU insurance contract law, by positioning next to the member states' domestic laws an optional instrument, which policyholder and insurer can implement by alternative choice.

When analysing the PEICL, European insurers have found that the central issue is whether the PEICL is too radical[27] in defending the consumers/ policyholders and whether it is a 'win-win' situation. Thus the question is whether both the policyholders and the insurers or just one party would win from implementation of the PEICL. Jürgen Basedow has referred to the threat that insurers choose the PEICL only when it does not significantly hinder their legal situation in comparison to the national law[28]. However, Erasmus School of Law Professor of insurance law Mop van Tiggele-van der Velde states:

> *"the development that characterises insurance law in the past decades is most clearly reflected in the legislation itself: new insurance law legislation has strengthened the position of the insured – as a consumer – considerably. In order to achieve this higher level of protection, the number of mandatory provisions has been considerably extended, particularly where consumer insurance is concerned. The context behind this development is clear: the insurance contract must offer protection, and in order to guarantee that protection, safeguards are incorporated by the legislator, already mentioned, as*

[26] X. Kramer. The New European Conflict of Law Rules on Insurance Contracts in Rome I: A Complex Compromise. The Icfai University Journal of Insurance Law 2008, Vol. VI, No. 4, p. 23–42.

[27] The German Insurance Association, the European Financial Services Round Table and Allianz SE find (Available online at http://ec.europa.eu/justice/news/consulting_public/0052/contributions/163_en.pdf, most recently accessed on 26 March 2016, Available online at http://www.efr.be/documents%5Cpublication%5C72.2011.02.%20EFR%20signed%20letter%20on%20European%20Contract%20Law%2031.01.2011.2011.pdf (most recently accessed on 26 March 2016), and Available online at http://ec.europa.eu/justice/news/consulting_public/0052/contributions/7_en.pdf (most recently accessed on 26 March 2016) in a reply to the Green Paper supporting the idea of the PEICL, that since the PEICL is not based on a 'win-win' situation and is too radically protective of policyholders, the idea should be further developed. Also, the Consumer Protection Board of Belgium has said that compared to Belgian law, the PEICL has advantages in only four issues, while the national law is more protective of the consumers in 16 issues. (H. Heiss, M. Lakhan. Principles of European Insurance Contract Law: A Model Optional Instrument. Sellier European Law Publishers, 2011, p. 96).

[28] *Ibid*, p. 96.

> *well as in case law. .....The insurer is more and more obliged to adopt a proactive approach to protect the interests of the insured"*[29].

Hence, the principle of 'all or nothing' has been replaced by the principle of proportionality in the postmodern insurance law. However, this is not always the case. Helmut Heiss adds that:

> *"the new German ICA 2008 introduces an entirely new principle through which the ability of an insurer to discharge his liability is limited. This is achieved by reducing the insurance money in proportion to the degree of fault apportioned to the policyholder. However, the right of an insurer to reduce the insurance money payable is limited to cases in which the policyholder has acted with gross negligence. In cases of ordinary negligence, the entire amount of the insurance money will be payable. In contrast, the insurer will be fully discharged in cases of intentional or fraudulent behaviour by the policyholder"*[30].

The PEICL also includes the rule of proportionality. Judging from the above, the following question can be asked: Has the proportionality rule been granted for the insurers of Estonia, Latvia and Lithuania by national law and is it a consumer-based or an insurer-based approach?

Based on the above, this dissertation purports to analyse whether the PEICL is more consumer-friendly in terms of obligations under an insurance contract, compared to the insurance contract laws of the Baltic States. Estonia, Latvia and Lithuania have been chosen as research objects *eo ipso* as they represent small neighbouring countries often treated as a single market by large corporations. Also, these are countries where insurance penetration is significantly below the EU average.

The dissertation author did his research between 2011–2014, i.e. in the mentioned period the author completed those articles on which the dissertation is based. Four years to complete and publish five research articles on the one hand is a long period, but on the other hand this topic has not become outdated and the author did his research while working as an attorney at law (i.e. not all of the author's activity was involved with academic work) and the author was also at the beginning on paternity leave.

The author was not able to use PEICL's 1 November 2015 version – all research articles on which this dissertation is based was submitted to journals before this date.

The author used in his research (in published articles) insurers' standard terms and conditions as they were actually used in the period when the research was made – indeed, in many cases insurers have changed/modernised their

[29] M. van Tiggele-van der Velde. About a new balance in the mutual obligations of both parties to a contract of insurance and a new system of sanctions. Erasmus Law Review, Volume 5, Issue 2, 2012, pp. 93–95.

[30] *Op. cit.* Note 25, p 106.

standard terms and conditions in the meanwhile, but problems which have been raised in those research articles are actual also today – first and foremost because Estonian, Latvian and Lithuanian insurance law have not become more policyholder-friendly, i.e. also those states' insurance terms have not significantly changed.

The insurance contract regulations of these three countries are very different and thus the insurance companies that operate in all of them need to develop completely different insurance products. Enforcement of the PEICL would enable such insurance companies that are active in several countries to create harmonised insurance products. However, this, in turn, gives rise to the question of whether or not the PEICL as the so-called 2nd regime regulation might be more favourable to the consumer than the domestic regulation. Based on the above the author will analyse the PEICL also with regard to the question whether the policyholders are being protected in a too 'radical' manner.

1.2. Research questions and arguments set for defence

The author's aim, in his dissertation, is to find an answer to the following fundamental research questions:

> *"What is the reasonable standard, in which the law must protect the policyholder's interests, as the weaker party, in an insurance contract? Does PEICL protect the policyholder's interests more widely than Estonian, Latvian and Lithuanian insurance contract laws? If yes, then is that reasonable?"*

The author limits the scope of this research comparing the PEICL with regard to the insurance law of Estonia, Latvia and Lithuania to the following issues: (a) pre-contractual relations in the context of the information duty; (b) contractual relations concerning the payment of insurance premium; (c) contractual relations in the context of aggravation of risk and compliance of precautionary measures; and (d) legal relationships after insured events. In the author's opinion, these four problems affect the performance of insurers' obligations the most. It is these four categories of rights and obligations that form the basis for whether the expectations the policyholders had when concluding their insurance contract are met. The author doesn't analyse questions arising from procedural laws, enforcement of PEICL, harmonization of local laws and exclusion of risk etc due to dissertation limits.

The hypothesis of this dissertation is that the analysed Estonian, Latvian and Lithuanian insurance contract laws do not provide sufficient protection to the policyholders when compared to the PEICL and it is in the interest of these three countries to ensure a quick implementation of the PEICL as the 2nd regime.

Among the cited four research issues, the author of this dissertation presents the following questions: Is the method, where the policyholder is required to

inform the insurer about all relevant circumstances in accordance with his pre-contractual information duty and where the insurer does not present a questionnaire to the policyholder, reasonable in modern insurance law? Could it be, that Estonian mortgagees would not be motivated to accept the application of the PEICL to insurance contracts, as this would put them in a less favourable situation compared with LOA? Is the PEICL's requirement that aggravation can only occur *vis-à-vis* risks that are clearly defined in the insurance contract, reasonable? Does the situation where the law provides a separate definition of precautionary measures and special provisions upon violation of precautionary measures provide more sufficient protection to the policyholders than without it? Is the concept reasonable, that an insurer is always released from the performance obligation if the violation of a policyholder's obligation to immediately notify the insurer of an occurrence of an insured event by the policyholder was intentional?

The author believes that implementing the PEICL in Estonia, Latvia and Lithuania would encourage large European insurers, who are not currently active in the Baltic States, to offer their services in these small countries in a cheap and standardised manner without needing to set up a subsidiary or a branch. In this way, the policyholders of Estonia, Latvia and Lithuania would benefit both in terms of price and the variety of the services provided. The objective of the dissertation is to examine whether harmonising the insurance law provided as the 2nd regime in the EU would make it possible to offer small countries a wider selection of service providers and services through cross-border service providers.

1.3. Methods

Finding an answer to the research questions requires a comprehensive analysis of the insurance laws of Estonia, Latvia and Lithuania. Therefore, this dissertation is based mainly on a systematic jurisprudence research method by which issues can be dealt with considering their mutual relations. The author also uses the comparative, analytical and historical method. The analysis consists of the comparative research. Estonian, Latvian and Lithuanian laws have been compared to the PEICL.

Justification of the applicable doctrines has been based on relevant specialised literature. Due to the thesis methodology, sources also include court decisions of Estonia, Latvia and Lithuania and their reception in law journals.

The choice of these countries has been made because foreign insurance corporations often regard these nations as one market (e.g., when entering one market, the company also immediately enters in the other two markets); also, due to the small size of the markets, many insurance products that are available for the citizens of other EU Member States are not offered here; and the

insurance penetration as a proportion of GDP in Estonia, Latvia and Lithuania is one of the lowest in the EU.

The need to protect the consumer rights in the case of unified insurance services arises also from the nature of insurance contracts – insurance contracts have been labelled as 'contracts of adhesion', i.e., agreements in which one of the parties – the policyholder – has no option other than to adhere to the terms dictated by the other party – the insurer – or reject the conclusion of the contract[31] – thus, when analysing the insurance law regulation in Estonia, Latvia and Lithuania in comparison to the PEICL, it can be deducted whether the legal position of policyholders would be improved from unification via an optional instrument when compared to their position today.

As the dissertation bases on five earlier published articles of the author, it consists of two parts: analytical summary of the main conclusions of the publications and the published articles.

The topics are divided into four groups according to the essence of the problems. The first one is about pre-contractual information duty. The second part is about insurance premium payment regulation. The third part is about aggravation of risk and precautionary measures. The last one is about policyholder obligations after an insured event. The order of subjects in these four groups differs from that of the published articles since the author deemed it necessary in the case of this dissertation to analyse the subjects in the logical order of the insurance contract process, starting from pre-contractual legal relations and ending with legal relations after an insured event.

Documents used and the relevant judicial practice considered in the thesis are taken as of the date of the publication of these articles.

[31] O. Brand, "Requirements Regarding the Transparency of Standard Terms", Transparency in Insurance Law, Available online at http://www.aida.org.uk/pdf/ Transparency%20book.pdf (most recently accessed on 26 March 2016), p. 53.

2. SUMMARY OF THE MAIN CONCLUSIONS OF THE PUBLICATIONS INCLUDED IN THIS COMPILATION

2.1. Pre-contractual information duty

The concept of pre-contractual information duty is analysed in the articles "Significance of the Principles of European Insurance Contract Law for the pre-contractual information duty: Experience of the Baltic States"[32] and "Do the Principles of European Insurance Contract Law Go Too Far in Protecting the Policyholder?"[33].

The information duty is especially important in the case of insurance contracts as speculative contracts since the contract parties are in a very unequal position with regard to knowledge of the properties of the insurable object. It is one of the fundamental obligations of a policyholder to notify the insurer of all circumstances known to the policyholder which are relevant to the insurer in order to take over the risk. This obligation is related to the principle of *uberrimae fidei* ('the utmost good faith').

There are two ways to address pre-contractual information duty in case of insurance contracts: the insurer presents a questionnaire to the policyholder who proceeds to answer all of the questions (i), or the policyholder is required to inform the insurer about all relevant circumstances (ii). These two potential regulations are different primarily in that which of the parties should bear the risk that all the circumstances relevant to the insurance contract have been clarified. Today's insurance practice leans towards the questioning method and not the rule of own initiative which, until quite recently, was the law in a majority of European countries[34].

While classical law presumed that, under the principles of liberalism, individuals should be capable of making the right decisions and taking responsibility for their consequences, modern law no longer presupposed the parties' competence to take account of all the risks involved with the contract and thus the rule of own initiative used to be predominant in insurance law.

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[32] O.-J. Luik, M. Braun. Significance of the Principles of European Insurance Contract Law for the pre-contractual information duty: Experience of the Baltic States. Current Issues of Business and Law, Volume 6, No. 2, 2011, pp. 192–215.

[33] O.-J. Luik. Do the Principles of European Insurance Contract Law Go Too Far in Protecting the Policyholder? Juridica International, Volume XVIII, 2011, pp. 73–83.

[34] J. Basedow, J. Birds, M. Clark *et al.* Principles of European Insurance Contract Law (PEICL). Sellier European Law Publishers 2009, p. 78. (Of this book we have now a newer version: J. Basedow, J. Birds, M. Clarke, H. Cousy, H. Heiss, L. Loacker (Eds.). Principles of European Insurance Contract Law (PEICL), 2nd Expanded Edition, Köln, 2016 – author didn't cited this book because he submitted all articles to journals, in which this dissertation is basing, before release of this new version).

Postmodern law presumes that insurers, being the professionals, are capable of predicting the risks adequately and thus can prepare relevant questionnaires.

According to the PEICL, the policyholder has the obligation to notify the insurer during the conclusion of a contract of any circumstances that he or she is aware of or should be aware of and regarding which the insurer has asked clear and precise questions. The objective of the PEICL is to give the insurers the right to request information on the circumstances of risk and based on that decide whether or not to conclude an insurance contract[35]. Tomas Kontautas explains[36] that the authors of PEICL took the continental approach to the duty of disclosure – under PEICL it is sufficient that the policyholder fills in the questionnaire prepared by the insurer. Traditional argument was used – the insurer as the professional should prepare a thorough questionnaire which would enable him all the needed information from policyholder.

It has been found in the Estonian legal literature that the LOA has rather chosen a middle ground between the two extreme regulations: on the one hand, policyholders have to inform insurers of all important facts relevant to concluding an insurance contract known to them at their own initiative; on the other hand, they should in any case submit information on any other matters upon the insurers' request[37]. In Estonia, it is assumed that facts for which the insurer has not specifically requested information are not relevant[38]. This is where a conflict arises, according to the author. If it is claimed that facts for which the insurer has not specifically required information are not important, then according to the author, it cannot also be claimed that the LOA is governed by the principle of a middle ground and that policyholders have to inform the insurer of anything else relevant upon their own initiative in addition to what has been requested by the insurer. In practise Estonian insurers demand to follow the 'own initiative' method. For example, the Estonian insurer ERGO Insurance SE home insurance terms[39] p 8.1.1. state that:

> *"the policyholder has the obligation upon entering into the insurance contract, to supply to the insurer the correct and complete data in any matter concerning the insurance contract and to inform the insurer of all significant circumstances affecting the insurable risk. Significant factors affecting the insurable risk mainly include the information requested by the insurer before entering into the*

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35 *Ibid*.

36 T. Kontautas, Principles of European Insurance Contract Law: Law and Economic Insights. In F. Chirico; P. Larouche (Eds), Economic Analysis of the DCFR: The Work of the Economic Impact Group Within CoPECL Berlin, New York: Sellier – DE GRUYTER, 2010, p 232–233.

37 J. Lahe. Kindlustusõigus [Insurance law]. Tallinn, 2007, p. 48.

38 P. Varul *et al*. Võlaõigusseadus II. Kommenteeritud väljaanne [Law of Obligations Act II, Executive edition]. Tallinn, 2007, p. 475.

39 Home insurance terms and conditions of ERGO MIDI KT.0928.15, Available online at https://www.ergo.ee/fs-files/0000/0000/0002/files/Kodukindlustus%20MIDI%20KT.0928.15.%20ENG.pdf (most recently accessed on 26 March 2016).

insurance contract. Significant factors affecting the insurable risk also include the failure to comply with the special conditions, additional conditions or agreements set out in the insurance contract or its annexes in relation to the insurable risk".

Therefore, the insurer considers important facts relevant to concluding an insurance contract also those facts, in some cases, where he did not ask direct questions. Due to the fact that LOA article 440 is not set imperatively, i.e. it is dispositive, this kind of approach is legal in Estonia. An analogous regulation we can find also in the Estonian insurer Seesam Insurance AS general terms and conditions[40] p 11.1, which states that:

"upon entry into the Contract, the policyholder shall provide Seesam with true and complete information about any and all essential circumstances known to the policyholder, which due to their nature may influence Seesam's decision to enter into the Contract or establish specific conditions for entry into the Contract. The notification obligation is also applicable if the policyholder presumes that Seesam may already be aware of the given circumstance".

The major difference between the PEICL and the LOA lies in that the LOA deals only with information that is known to the policyholder, while in the PEICL the information that the policyholder should know is also important. However, this difference is ostensible as only knowing behaviour results in a negative outcome under the LOA.

In Latvia, the policyholders and insured persons are required, under the ICL, to submit all information requested by the insurer on circumstances which are necessary for evaluating the probability of the realisation of risks and which are considered important with regard to the conclusion of the insurance contract[41]. Latvian jurisprudent Vadim Mantrov explains that:

"in case of policyholders (insureds), in general the duty to disclose information during pre-contractual and contractual time means to provide all the

[40] General terms and conditions 1/2008, Available online at https://www.seesam.ee/uploads/files/%C3%9Cldised%20lepingutingimused%20%2801.07.2008%29_ENG_2011.pdf (most recently accessed on 26 March 2016).

[41] See for example Latvian BTA Insurance Company SE General insurance terms and conditions No 3 p 3.1. which states that 3.1. Prior to signing the insurance contract, the Policyholder is obliged to provide BTA with genuine and complete information requested by BTA that is related to the insurance object and is necessary for BTA to evaluate the probability of the occurrence of the insured risk. If the Policyholder fails to submit the information required for evaluating the probability of the occurrence of the insured risk, or provides false or incomplete information with malicious intent or at his or her fault which in terms of reimbursement for losses and other civil liability consequences is considered malicious intent, the insurance contract is considered invalid and BTA does not refund the paid insurance premium. Available online at https://www.bta.lv/userfiles/files/29489_Visparejie_apdr_noteikumi_Nr_3_EN.pdf, (most recently accessed on 26 March 2016).

> *information regarding the circumstances the insurer has requested, information on which is necessary for the insurer in order to assess the probability of the occurrence of insurance risk and is important for entering into an insurance contract (Art. 5 (1) of the Insurance Contract Law). Such broad and rather vague information disclosure duty does not seem to ensure the balance of parties within the insurance contract because it cannot be expected from a policyholder to distinguish what facts would be material for the insurer. However, as it is justly admitted in the legal literature, "both the pre-contractual duty of disclosure and the obligations during the duration of the policy are usually described as the core of each insurance contract law"*[42].

Vadim Mantrov criticizes ICL:

> *"Though the Insurance Contract Law was amended several times, the changes have not updated the old-fashioned approaches contained in the law such as the lack of adequate balance between rights and obligations for the parties of the insurance contract, specifically, concerning information disclosure duty for policyholders and insureds, on the one hand, and information to be provided by insurers on the other*[43]*".*

In Lithuania, the policyholders are required, under the CC, to submit, prior to conclusion of the insurance contract, all information in their possession on: (i) facts which could have an important effect on the probability of the occurrence of an insured event; and (ii) on the extent of damage that may arise from the occurrence of an insured event when the insurer does not know and does not need to know such facts. However, of the information to be notified by the policyholders the information that is included in the standard contractual clauses and for which the insurer has requested written notification is considered important.

Based on the analysed insurance law of Estonia, Latvia and Lithuania, implementation of the PEICL will result in the fewest changes for the Latvian policyholders. In Lithuania and especially in Estonia, however, the position of policyholders will be greatly improved since the policyholders do not have to follow the 'own initiative' principle in the case of insurance contracts concluded under the PEICL.

At the beginning of his dissertation the author posed a question:

> *"Is the method, where the policyholder is required to inform the insurer about all relevant circumstances in accordance with his pre-contractual information*

[42] V. Mantrov. Problem Questions of Insurance Contract Regulation in Latvia. The Quality of Legal Acts and its Importance in Contemporary Legal Space. Collection of Research Papers Presented in the International Scientific Conference, 4–5 October 2012 at the University of Latvia Faculty of Law.

[43] *Ibid.*

duty and where the insurer does not present a questionnaire to the policyholder, reasonable in modern insurance law?"

The author finds that it is very difficult for policyholders to decide which information is relevant in terms of assessing the risk being insured and therefore the questions method decreases disputes in the future between the insurer and the policyholder. The author finds, that indeed, the 'own initiative' method is too insurer-friendly and therefore it is not reasonable in modern insurance law. It can be derived from the above that on this issue, the PEICL protects the Estonian and Lithuanian policyholders better than the respective national law. The author maintains that this regulation cannot be considered a significant hindrance to the legal position of the insurers as the insurers are experts in their fields and should be able to adequately assess such risks. Without harmonising the respective regulation, the insurers that operate in all three countries would find it difficult to harmonise their products, judging from the national law of Estonia, Latvia and Lithuania.

However, if the policyholder has violated its pre-contractual information duty but no insured event occurred, the PEICL prescribes the insurer upon violation of the information duty the right to: (i) demand a reasonable amendment in the contract within one month; or (ii) withdraw from the contract. Under the PEICL, the policyholder may withdraw from a proposal for amending the contract within one month after receiving the proposal. In such a case the insurer has the right to withdraw from the contract within one month, whereby the insurance contract shall be terminated upon one month after receiving the corresponding notice by the policyholder. As a rule, the right of withdrawal under the PEICL is restricted to wrongful violation only. The PEICL also prescribes the right of withdrawal upon non-wrongful violation if the insurer can verify that it would have not concluded the contract had it known the non-disclosed information. Under the LOA, giving false information about the circumstances of risk shall have two effects: (i) if the policyholder has wrongfully violated the information duty, then the insurer may withdraw from the contract or the insurer has the right to avoid the contract *ab initio*; (ii) if the violation of the information duty by the policyholder is non-wrongful, then the law prescribes the insurer the right to increase the insurance premium. The author concludes that the insurer should in each individual case have the right choose, depending on the severity of the infringement, whether it wishes to withdraw from the contract or is it possible to continue the contract by increasing the insurance premium. Preventing any claims for amending the insurance premium upon wrongful violation results in termination of the contract by the parties. The author believes that the law should rather encourage the parties to continue the contract in a modified format and that termination of the contract should be an *ultima ratio*. Contrary to the LOA, this is allowed under the PEICL. Thus, the PEICL should be given preference regarding this issue, since it allows the insurers to react to circumstances of risk in a more adequate manner. The

main differences between the PEICL and the ICL in this matter is only the deadline, which is 15 days in Latvia and one month under the optional instrument. The difference between the PEICL and the CC is also only the deadline by which the insurer must react after a violation by the policyholder. When analysing the insurance law of Estonia, Latvia and Lithuania in relation to a situation where the policyholder has violated the pre-contractual information duty but there has been no insured event, the largest change that will accompany implementation of the PEICL is that upon withdrawal from the contract by the insurer the contract shall be terminated within one month after the receipt of the corresponding notice. Also, in Lithuania the deadline to react upon the policyholder's violation of the information duty will be shortened to one month. In Latvia, this deadline will be extended to one month, and the policyholder will also have one month to agree to the amendment of the contract instead of the current 15 days.

The insurer often discovers a violation of the information duty only after the insured event has occurred, i.e., *ex post*. In such a case, when the policyholder has violated the pre-contractual information duty in an *ex post* situation in the case when the insured event has already occurred, implementation of the PEICL will only result in minor changes compared to the insurance law of Estonia, Latvia and Lithuania. In such a case upon risk of the insured person, the payment of insurance indemnity will continue to be carried out proportionally to the difference to the insurance premium, i.e., the proportionality rule will be applied. In the case of uninsurable risk, the insurer will be released from its obligations. Thus, the balance of the rights and obligations of both the policyholders and insurers in Estonia, Latvia and Lithuania in this matter will remain unchanged.

In the case of contracts concluded under fraudulent motives, the analysed insurance law of the Baltic States is substantially different from the PEICL. The PEICL allows for significantly more flexibility from the insurers' point of view and gives them more options for what to do with the insurance contract in the case when the policyholder has acted in a fraudulent manner. In Latvia, however, the situation of the policyholders will be much less burdensome since after implementation of the PEICL, insurers will not be able to rely on gross negligence in the case of notification of information during pre-contractual negotiations.

The author believes that the current differences of the Estonian, Latvian and Lithuanian insurance legislation as regards the pre-contractual obligations of the policyholder and the consequences of a breach of these obligations preclude the introduction of pan-Baltic insurance products.

The author hold that the PEICL will significantly alter the scope of the policyholder's obligations in the Baltic States. As regards the pre-contractual information duty, potential implementation of the PEICL will affect the Latvian policyholders the least. However, the situation of Estonian policyholders will improve significantly as policyholders no longer must adhere to the so-called rule of own initiative or the standard terms and conditions of the insurer if the insurance contract is entered into under the PEICL. The most significant change

upon the potential implementation of the PEICL will be that if the insurer withdraws from a contract, it terminates within one month after receipt of a notice to that effect. In addition, the deadline by which the policyholder must respond to a breach of the information duty will shorten to one month in Lithuania. In Latvia, this deadline will extend to one month; instead of the current 15 days, the policyholder will also have one month to agree to change the contract. Under the insurance law of Estonia, Latvia and Lithuania, the potential implementation of the PEICL will bring along only minor changes to the situation related to the policyholder's breach of the pre-contractual information duty *ex post* after an insured event. The regulation of the fraudulent breach of the policyholder's pre-contractual information duty will change significantly.

Based on the above analyses the author finds, in answering the following principal research questions, presented at the beginning:

> *"Which is reasonable standard, in which law must protect policyholder, as weaker party in insurance contract, interests? Does PEICL protect policyholder's interest more widely than Estonian, Latvian and Lithuanian insurance contract laws? If yes, then is it reasonable?"*

that the reasonable standard, which protects the policyholder, as the weaker party in insurance contracts, concerning pre-contractual information duty, is where the law states that the insurer presents a questionnaire to the policyholder who proceeds to answer all of the questions about fundamental obligations of a policyholder to notify the insurer of all circumstances known to the policy-holder which are relevant to the insurer in order to take over the risk. There is no place for the 'own initiative' method in modern insurance law. Indeed, PEICL protects the policyholder's interest more widely than especially Estonian insurance contract law and this is reasonable according to previous analyses.

2.2. Insurance premium payment regulation

The concept and role of insurance premium payment regulation is discussed in the article "Does the insurance premium payment regulation as stipulated in the Principles of European Insurance Contract Law protect policyholders sufficiently enough?"[44].

It was already back in the 17th century that Scacciae[45] stressed that *nam assecuratio est contractus emptionis et venditionis, in quo assecuratus emit periculum, et assecurans illud vendit* (Scacciae, 1664), i.e., insurance means the

[44] O.-J. Luik, T. Kontautas. Does the insurance premium payment regulation as stipulated in the Principles of European Insurance Contract Law protect policyholders sufficiently enough? Current Issues of Business and Law, Volume 7, No. 1, 2012, pp. 85–107.

[45] S. Scacciae, *Tractatus de commerciis et cambio* [Treaty of Commerce and Exchange]. Geneva: Sumptibus Ioannis Hermanni Widerhold, 1664.

purchase and sale of risk where the policyholder sells and the insurer buys such risk. An insurance premium is the price of risk – *pretium periculi*. Non-payment of insurance premiums may, in certain cases, cause the insurer to be released from the obligation to perform. Hence, it is the most important principal obligation of the policyholder. As a rule, the content of non-life insurance is to be the destination of risks (without regard to subrogation) and the insurer is entitled to an insurance premium for bearing the risk of destruction of / damage to assets based on accidentality. The content of the subjective rights of the parties can be defined through analysing the corresponding obligations. An insurance contract has two sides: the main obligation of the policyholder is to pay insurance premiums and the main obligation of the insurer is to compensate the damage that arises upon the realisation of an insurance risk. Thus it is important to analyse the insurance premium as the main obligation of the policyholder in order to define the content of the subjective rights of the parties. Insurance is a risk management technique used to hedge against the risk of an uncertain loss by transferring it to another party, namely, an insurance company, against a premium. The people who buy insurance are those who value the 'ease of mind' that insurance provides much more than those that prefer to self-insure. They prefer to pay a premium to transfer a possible loss to the insurer rather than living with uncertainty. The amount of the premium that they would pay depends highly on their degree of risk aversion and the way they evaluate the risk they represent[46].

Currently, the regulation concerning the payment of insurance premiums varies significantly across the EU Member States, and there are different approaches to the protection of the rights of the policyholder. However, such a situation renders it difficult to provide cross-border insurance services. Moreover, the citizens of the European Union may have difficulties in understanding the obligations arising out of the legislation of the country they plan to move to for employment. Jaana Norio-Timonen explains that although insurance company law has been harmonised in the European Union to the extent that an EU insurer is allowed to operate in all EU countries by a single licence, that is, by a licence granted in its home state, such a company cannot sell a similar insurance in the whole EU area. The reason for this is that because of the general good principles in the Insurance Directives, insurances marketed in a certain Member State must fulfil the requirements of insurance contract law in that country Because of these national legislations the European insurance market is not a single EU wide market throughout which an insurer is allowed to sell a similar insurance product but market fragmented into national markets because of legal barriers created by national insurance legislations[47]. PEICL in case it will be adopted as

[46] I. Dimitriyadis, R. Hayirsever Bastürk, I. Yardimci, E. Tacyldiz. The economics of insurance and cultural heritage in a changing world. In International Conference on Applied Economics – ICOAE 2011, 25–27 August 2011, pp. 159–168. Perugia, Italy: Department of International Trade, Kastoria Campus. JEL codes: D60, G22, Z1

[47] J. Norio-Timonen. *Op. cit*. Note 5.

an EU Opt Regulation gives the possibility for insurance products to be sold cross-border within the EU without being necessarily adapted to the mandatory rules of the Member States' applicable law. The Member States impose different mandatory rules of their Insurance Contract Law and this is an obstacle for creating a European insurance product, i.e a policy governed by the same rules being able to be sold in all Member States[48].

There are also many practical issues concerning the payment of insurance premiums. For example, what will happen to the prepaid insurance premium if the insurance contract is prematurely terminated during the insurance period as a result of cancellation of or withdrawal from the contract or for any other reason – will the insurer have be entitled to insurance premiums only for the period until the termination of the contract? In the annotated edition of the PEICL[49], it is pointed out that if an insurance premium has been prepaid, returning of the money takes place on the *pro rata* principle, since modern information technology enables virtual expenseless calculation on the principle of *pro rata temporis* (a), and due to lessening of the peril, an insurance premium is no longer necessary from the point of view of the insurer's solvency (b), the insurance risk is divisible on the basis of days/months/years in an economic sense (c), 'preservance' of an insurance premium is not justifiable as a 'contractual penalty' (d) and keeping such premium could be viewed as punishing of the policyholder, which is unjustifiable (e). Heiss, too, stresses that:

> *"indivisibility is, first of all, no longer required for reasons of practicability. Modern information technology enables the calculation of pro rata premiums at virtually no charge. Secondly, the argument that the insurer needs the premium to fund the relevant risk pool, as originally conceived, is unfounded. Following early termination of the contract, the overall exposure of the insurer to risk decreases and the unearned premium is no longer needed to maintain the solvency of the insurer. Thirdly, the risk covered is not indivisible itself. Insurance practice shows that a premium for risk can be calculated on a daily, monthly or yearly basis. Clearly, premiums for the cover of a shorter period are lower in absolute terms than premiums for cover of a longer period. Therefore, at least from the economic point of view, risks are divisible in time. There is, of course, the argument that risk is not even throughout a given period, such as one year. For example, in the case of flood insurance risk is higher in some seasons than others. However, insurers could tackle this problem by calculating and charging premiums on a monthly basis instead of an annual basis. The principle of divisibility of a premium neither prevents nor interferes with such a calculation and charging of the premium. Fourthly, the right of the insurer to retain unearned premium cannot be justified as a provision for liquidated damages"*[50].

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[48] I. Rokas. Principles of European insurance contract law (PEICL) as a settled and balanced system of policyholder protection. The European Insurance Law Review, 1–2013, pp 37–41.

[49] J. Basedow. *Op. cit.* Note 34, pp. 203–204.

[50] H. Heiss. Insurance premium. ERA-Forum, Volume 9, No. 0, 2008, pp. 141–150.

The author believes that if one was to take the stance that insurers may impose administrative fees at their own discretion and without restrictions, it would result in it being technically possible to lay down in general terms and conditions that the administrative expenses are equal to the potential refund, i.e., the amount of the insurance premium until the end of the insurance premium, it would therefore be situation *ab absurdo*. This might create a situation where the policyholder must pay premiums for the entire insured period despite of having the contract cancelled. The author notes that the policyholder pays a premium for the risk assumed by the insurer and should a contract be terminated due to cancellation, the risk no longer transfers to the insurer and thus the insurer is not entitled to any more premiums. Compensation for the costs of concluding the contract is open to debate. One may assert that an insurance contract and its termination is not, by nature, so special as to afford to the compilers of general terms and conditions an additional outlet for managing the costs. At the same time, in Latvia, for instance, the so-called fee for the termination of an insurance contract is provided for in law. In his research, the author states that unfortunately there are insurers in the Baltic States that provide for the so-called 'contract termination fee' in their standard clauses. See for example Latvian insurer AAS Baltikums General insurance rules applicable to the persons going abroad No 9F[51] p 5.4.2., which states:

> *" The Insurer shall be entitled to withhold up to 25% (twenty-five per cent) of the insurance premium if the contract is terminated prior to the commencement thereof at the Policy Holder's initiative. No insurance premium shall be repaid to the Policy Holder if the insurance contract has come into effect and the loss caused by the insured event has been determined."*

Thus, the author argues that implementation of the PEICL would end the absurd situation where, upon premature termination of a contract, the consumer of an insurance service has to pay for a service he or she does not get in practice.

Pursuant to the insurance laws of the Estonia, Latvia and Lithuania analysed by the author, the potential introduction of the PEICL and the regulation of the first payment will mean significant changes for policyholders in Estonia, Latvia and Lithuania. However, taking into account the dispositivity of Article 5:101 of the PEICL, insurers will be able to lay down rules in their standard terms which are analogous to the domestic law.

Under Estonian, Latvian and Lithuanian insurance laws, as analysed by the author, the potential introduction of the PEICL will bring most changes to Latvian policyholders in connection with the failure to make a subsequent premium payment as they will be entitled to the automatic right of a grace period. In Lithuania, introduction of the PEICL might reverse achievements of

[51] AAS Baltikums General insurance rules applicable to the persons going abroad No 9F, Available online at http://www.baltikums.lv/system/user_files/Files/EN_Izbrauceji_noteikumi_9F_lielie.pdf (most recently accessed on 26 March 2016).

non-life insurers regarding non-applicability of the suspension period. In Estonia, on the other hand, the grace period will shorten from the minimum 30 days to the minimum 15 days for the insurance of structures. However, the author points out that compared with the PEICL, the Finnish FICA has gone even further in protecting policyholders in the case of non-payment of subsequent premiums, granting them additional coverage in the case of an illness or unemployment. Whether or not the Finnish regulation is justified and just is open to discussion, as ultimately the consequences of the problems encountered by some policyholders (illness, unemployment) have to be indirectly borne by the rest of the policyholders who will have to guarantee their obligations through the insurance premiums they pay. Finnish jurisprudents believe that, as the level of protection granted to policyholders in the Nordic countries has always been high, it is likely that the harmonisation of the EU insurance contract law would result in less favourable terms both for policyholders and insured persons[52].

The Estonian Law of Obligations Act includes a regulation which differs from that of the PEICL, the CC and the ICL – the rights of the mortgagee, *inter alia*, the regulation concerning insurance premiums upon procuring the insurance cover for structures. In Estonia, the insurer is required to notify the mortgagee separately of a period of grace granted to the policyholder for the payment of an insurance premium, as well as of any occurrences of insured events. Subsection 499 (2) of the LOA sets out that if, upon the insurance of a structure, the immovable on which the structure is located is encumbered with a mortgage, the insurer immediately notifies the mortgagee known to the insurer in a format which can be reproduced in writing of the setting of a term for the policyholder to pay the insurance premium if the policyholder has failed to pay the premium and of the cancellation of the contract. The Law of Obligations Act does not directly set out the legal consequences for the insurer should he be in breach of the notification obligation. The general ideology on which the Law of Obligations Act is built upon is the principle that a remedy of the violation and continuation of the obligation should be preferred to the termination of the obligation by one party on the ground of the violation of the obligation. Based on this general principle, one cannot but assume the position that in Estonia, the insurer cannot cancel an insurance contract on the basis of §458 (3) of the LOA if the insurer has failed to inform the mortgagee about the policyholder's arrears and has not granted to the latter a period of grace to pay a premium. Moreover, the relevant regulation in the Law of Obligations Act grants Estonian mortgagees a broader protection than the actual insurance cover. Based on §501 of the LOA, if the policyholder violates an obligation arising from an insurance contract and, as a result thereof, the insurer is released from its performance obligation with

[52] K. Lehtipuro, I. Luukkonen, L. Mäntyniemi, V. Raulos, P. Santavirta. Vakuutuslainsäädänto [Insurance Legislation]. Sastamala: Finanssi- ja vakuutuskustannus OY, 2010, p. 119 (in Finnish).

respect to the policyholder, the insurer shall still perform the obligation to the mortgagee, unless the insurer is released from its performance obligation with respect to the policyholder, because the policyholder has failed to pay insurance premiums or intentionally caused an insured event. The claim of the mortgagee against the insurer for the payment of the insurance indemnity in a situation where the insurer has been released from the obligation to pay the indemnity to the policyholder is treated as the right of claim created under law, which should replace the mortgagee's right of security in respect of the indemnity to be paid. In Germany too, the insurer must, under §§142 and 143 of the VVG, notify the mortgagee of the non-payment of a premium so that the latter can make the payment. The Latvian ICL and the Lithuanian CC do not put such a notification burden on the insurer. Notably, Article 6.1007 of the Lithuanian CC establishes that in the event that the policyholder does not perform an insurance contract, the insurer may request the beneficiary (the mortgagee falls into this category) to perform the contract *if the beneficiary submits a claim for insurance indemnity*. However, the provision does not establish the legal duty for the insurer to notify the beneficiary about the breach of contract; moreover, the provision applies only in a situation after an insured event has occurred. Therefore, it may be argued that this provision merely entitles the insurer to set off the premiums due from the indemnity payable to the beneficiary. During the financial crisis, the situations when debtors failed to pay insurance premiums significantly affected mortgagees. Banks reacted by establishing an umbrella type of insurance arrangements (i.e., the insurance cover under policies of banks would come into force in case the primary cover for which the debtor was responsible was terminated). This is a good example of how players in the market economy find fast solutions to cure the deficiencies of legislation.

At the beginning of his dissertation the author posed the question:

> *"Could it be, that Estonian mortgagees would not be motivated to accept the application of the PEICL to insurance contracts, as this would put them in a less favourable situation compared with LOA?"*

The author finds that, it is very likely that Estonian mortgagees would not be motivated to accept the application of the PEICL to insurance contracts, as this would put them in a less favourable situation. In view of the fact that the majority of homes have been bought with bank financing, which always involves the establishment of a mortgage for the benefit of a bank, including the obligation to insure a structure as stipulated in the loan agreement, it is obvious that this would be a situation to affect huge numbers of policyholders. Hence, in the context of insuring structures, mortgagees may hinder the application of the PEICL in Estonia as they might not accept insurance contracts based on the PEICL. However, the PEICL would be more favourable for the insurers who operate in Estonia, as it would release them from several extra obligations imposed on them under the current LOA.

In conclusion the author finds that the part of the PEICL dealing with insurance premiums is, in certain aspects, stricter than the national law. The potential implementation of the PEICL regarding the regulation of the payment of the first premium would bring along major changes for Estonian, Latvian and Lithuanian policyholders. Currently in Estonia, if the policyholder fails to pay the first premium within fourteen days after entry into an insurance contract, the insurer has the right to withdraw from the contract. The insurer is presumed to have withdrawn from the contract if the insurer does not file an action to collect the insurance premium within three months after the premium becomes collectable. In Latvia, an insurance contract enters formally and without a special agreement into force on the day following the payment of the premium. In Lithuania, an insurance agreement, unless it provides otherwise, comes into force from the moment of payment by the insured of full insurance contribution (premium) or the first instalment thereof. However, as Article 5:101 of the PEICL is dispositive, insurers will be able to lay down rules in their standard terms which are analogous to the domestic law, although this may complicate the achievement of the key objective of the PEICL – facilitation of the policyholder's understanding of an insurance contract in a situation where the policyholder concludes contracts in different countries. Currently in Estonia, if the policyholder fails to pay the second or subsequent premium in time, the insurer may, in a format which can be reproduced in writing, set a term of at least two weeks or, if a structure is insured, one month for the policyholder to pay. If the policyholder fails to pay *de integro* the second or subsequent insurance premium within the specified term, the insurer may cancel the insurance contract without prior notice. The PEICL and the LOA on this issue, granting a two-week period of grace to the policyholder. In Lithuania, the period of grace for non-life insurance contracts is 15, and for life assurance contracts – 30 days. The Latvian law does not provide for an automatic period of grace to the policyholder in the case of subsequent premium payments. The potential introduction of the PEICL will bring most changes to Latvian policyholders in connection with the failure to make a subsequent premium payment as they will be entitled to the automatic right of a period of grace. In Estonia, on the other hand, the period of grace will shorten from the minimum 30 days to the minimum 15 days for the insurance of structures.

Based on the above analyses the author finds, in answering the following principal research questions, presented at the beginning:

> *"Which is reasonable standard, in which law must protect policyholder, as weaker party in insurance contract, interests? Does PEICL protect policyholder's interest more widely than Estonian, Latvian and Lithuanian insurance contract laws? If yes, then is it reasonable?"*

that the reasonable standard, which protects the policyholder, as the weaker party in insurance contracts, concerning insurance premium regulation, is where

the law entitles the automatic right of a period of grace concerning subsequent premium payment. Also the *pro rata* principle must apply to the insurer. Accordingly, PEICL would protect in some aspects the policyholder's interest more widely than Estonian, Latvian and Lithuanian insurance contract law and this is reasonable according to previous analyses.

2.3. Aggravation of risk and precautionary measures

The article "Aggravation of Risk and Precautionary Measures in Non-Life Insurance: Tricky Scope for Insurer?"[53] analyses policyholder's duty connection with aggravation of risk and precautionary measures.

Aggravation of risk and failure to perform precautionary measures are focal issues in non-life insurance in terms of potential partial or full release of the insurer from the duty to perform. Not infrequently, it is difficult to draw a line between the aggravation of risk and non-compliance with precautionary measures, as a particular act of the policyholder may represent both situations. At the same time, the legal remedies available to the insurer regarding these two different situations have a different scope. In non-life insurance there are pivotal accessory obligations of the policyholder, *ex ante* an insured event – the obligation to refrain from the aggravation of risk and to take precautionary measures – which, if violated, may have a significant impact on the performance obligation of the insurer.

The aggravation of risk and failure to perform precautionary measures are one of the most common causes for policyholders to have their expectations upon the conclusion of an insurance contract that these risks have been managed not be fulfilled.

Herman Cousy has claimed that:

> *"traditionally, insurance contract law was characterised by radical punitive sanctions, governed by an 'all-or-nothing' logic. This logic has changed as a result of an incorporation of a consumerist approach: more and more, punitive sanctions have been replaced by more proportionate ones, misbehaviour is only sanctioned insofar as it has caused the insured event to happen, duties and sanctions have been bilateralised, and sanctions are now limited to those instances where a high degree of intention or culpability can be detected. Ultimately, these changes have accounted for the hybrid nature of modern insurance contract law as a move away from business law towards consumer law"*[54].

[53] O.-J. Luik, R.Ratnik, M.Braun. Aggravation of Risk and Precautionary Measures in Non-life Insurance: Tricky Scope for Insurer? Baltic Journal of Law & Politics, Vol 8, No 2, 2015, pp 1–45.

[54] H. Cousy. About sanctions and the hybrid nature of modern insurance contract law. Erasmus Law Review, Volume 5, Issue 2, 2012, pp. 123–131.

Upon entry into an insurance contract, the insurer assumes that the insured risk remains unchanged during the insurance period – by assessing the level of the insured risk the insurer determines the amount of the premium: the insurance premium is the price of risk – *pretium periculi*. It is the insured risk that is the object of an insurance contract; this risk may be presented in the deterioration of the policyholder's economic situation (procuring coverage against damage in non-life insurance), claims filed against the policyholder (in the case of liability insurance) or any other adverse consequence for the policyholder (i.e., illness or death of the policyholder).[55]

The prohibition of the aggravation of risk aims to preserve stability of the insurance relationship. The aggravation of risk leads to *asymmetric information*.

J. Han Wansink and Niels Frenk find that:

> *"it is quite common that the policy contains a clause concerning aggravation of the risk insured, which requires notification of an aggravation. In most cases, particularly with consumer policies, the policyholder may be ignorant of matters that might influence the insurability of the risks covered. A prudent insurer should be aware of this ignorance and should act as a guide to the policyholder. This means that he should indicate in the policy clause which types of aggravation he wishes to be informed about"*[56].

Under PEICL, an insurer is permitted to include a term that the policyholder does not aggravate the risk. Article 4. 201, however, provides that such a term will be without effect unless two conditions are met. First, the aggravation must be material and second, it must be of a kind specified in the insurance contract. Examples of aggravation of the risk that are not material are those caused by the natural wear and tear of property or the increasing age of a person covered by life or health insurance. The requirement that the aggravation is of a specified kind is to bring to the attention of the policyholder the kind of aggravation the insurer considers material[57]. Currently, the Estonian, Latvian and Lithuanian insurance laws address differently the issue of which aggravation of risk the insurer needs to be notified. As a result of the analysis, the author agrees with H. Cousy [58] that aggravation must be "of the kind stipulated in the insurance

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[55] E. Deutsch. Versicherungsvertragsrecht, [Insurance Contract Processing]. Karlsruhe: Verlag Versicherungswirtschaft GmbH, 2005, p. 6 (in German).

[56] J. Han Wansink, N. Frenk. Some reflections on consumer protection and the requirement of anticipating behaviour of a prudent insurer. Erasmus Law Review, Volume 5, Issue 2, 2012, pp. 97–103.

[57] Insurance contract law: the business insured's duty of disclosure and the law of warranties, The Law Commission Consultation Paper No 204 and The Scottish Law Commission Discussion Paper No 155, Available online at
http://lawcommission.justice.gov.uk/docs/cp204_ICL_business-disclosure.pdf
(most recently accessed on 26 March 2016)

[58] H. Cousy. The Principles of European Insurance Contract Law: Duty of Disclosure and the Aggravation of Risk. ERA-Forum, Volume 9, No. 0, 2008, pp. 119–132.

contract". However, unlike Latvia and Lithuania, this is not currently the case in Estonia. See for example the Estonian insurer AB "Lietuvos draudimas" Estonian branch Household insurance terms and conditions K100/2013[59] p 4.2. which state that:

> *"the policyholder must immediately notify PZU of any possibility of an increase of the insured risk, unless the increase of the possibility of the insured risk was caused by a generally known circumstance, which does not affect the insured risk of only this policyholder. PZU doesn't specified in the insurance terms what he specifically count as "an increase of the insured risk".*

A similar approach we can find in Estonian insurer "BTA Insurance Company" SE Estonian branch General terms and conditions for insurance contracts No. GC-2012[60] p 8.3. which state:

> *"Circumstances increasing the insured risk are, among other things: transfer of the insured object, loss of keys of the insured object, malfunctions of the locking and alarm systems of the insured object, initiation of bankruptcy proceedings against a policyholder/insured person, in case of personal insurance: change in person's job, becoming unemployed, increase in a risk of an accident due to a change in insured person's lifestyle or hobbies (such as choice of hobbies, their intensity), etc.".*

Indeed, in the cited insurance terms the insurer lists what he finds as increasing the insured risk, but this is not a complete list as it includes the extension "among other things", which mean by the author's understanding, that in reality there is not a comprehensive list of aggravation in the insurance contract.

The PEICL's requirement that aggravation can only occur *vis-à-vis* to risks that are clearly defined in the insurance contract does not merely serve the purpose of increasing the vigilance of the policyholders and directing them to studying the insurance contract more carefully – it also provides the weaker party to the contract an opportunity to understand what is it that the insurer considers an aggravation of risk. Therefore, if the PEICL would be implemented as a 2nd regime legislation, it would greatly facilitate the conclusion of insurance contracts needed for day-to-day lives of the consumers who move to a neighbouring country to work or study, without them needing to have extensive knowledge of the legal system of that particular country.

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[59] AB "Lietuvos draudimas" Estonian branch, Household insurance terms and conditions K100/2013, Available online at https://www.pzu.ee/wp-content/uploads/2015/02/ Kodu-kindlustuse_tingimused_K100_2013_ENG1.pdf (most recently accessed on 26 March 2016).

[60] "BTA Insurance Company" SE Estonian branch General terms and conditions for insurance contracts No. GC-2012, Available online at http://www.bta-kindlustus.ee/ userfiles/files/General_terms_and_conditions_GC-2012_EN.pdf (most recently accessed on 26 March 2016).

Malcolm Clarke notes that:

> *"national legislation divides between laws that leave it to the insurer to learn about the aggravation (R1) and laws that require the policyholder to alert the insurer by notifying the insurer about change (R2). The latter divide between those requiring notification of aggravation in the risk as such (R2A) and those requiring notification of circumstances amounting to an aggravation of risk (R2B). In each case the rule assumes knowledge on the part of the policyholder – usually knowledge rather than constructive knowledge".*[61]

The author asked at the beginning of his dissertation:

> *"Is the PEICL's requirement that aggravation can only occur vis-à-vis risks that are clearly defined in the insurance contract is reasonable?"*

Based on the analysis, the author arrives at the conclusion that, in the matters of the notification format and when the insurer should be notified of the aggravation of risk, the PEICL should be preferred since it poses a significantly lower burden on the consumers. Probably there is not any argument that we should prefer consumers' interests and on the other hand, insurers are professionals and therefore it cannot be so difficult for them to specify what they define as aggravation of risk.

Malcolm Clarke notes that:

> *"laws across Europe currently favour the policyholder insofar as, when it comes to the consequences of an aggravation of risk, they tend to opt for contract modification rather than termination of the contract altogether. However, the scales tip the other way when aggravation is bought about by the act of the policyholder. The act, of course, may be innocent in sense that the policyholder did not realize its effect on the risk. The scales tip most when the policyholder is at fault in any way, notably, when in breach of duty of notification. In that case many legislators start from the position that insurer 'must not be put in worse position than if the duty had been fulfilled by the policyholder: therefore, in such case the insurer must…have the right to put an end to the contract or adapt it'".*[62]

The author finds that the consequences of the aggravation of risk when an insured event has not occurred differ greatly between Estonia, Latvia and Lithuania. And this prevents the pan-Baltic insurers to draw up unified insurance products.

In countries where the insurance period usually one year or less, the law tends to favour policyholder: it does not provide any legal mechanism to enable

[61] M. Clarke. Aggravation of risk during the insurance period. Lloyds Maritime and Commercial Law Quarterly. 2003; Issue 1, p. 117.
[62] *Ibid.,* p. 120.

insurers to change policy terms in the light of any significant aggravation of risk during the period. On the one hand, the law in these countries does not countenance wilful or reckless conduct by policyholders resulting in loss but, on the other hand, it does not relieve insurers of poor underwriting. For the rest it is insurers who, for a limited period of time, bear the risk of the unexpected.[63] In practice, the cases where the possibility of an insurance risk changes after the entry into an insurance contract are not uncommon. In such cases the insurance premium calculated by the insurer based on the facts notified at the time of the conclusion of the insurance contract no longer corresponds to the risk (adverse selection) that the insurer has to bear. Thus, the law prohibits the policyholder to aggravate the probability of an insurance risk and any such aggravation by a third party that is responsible for the policyholder. In the matters of aggravation of an insurance risk and occurrence of an insured event the defence mechanism of the policyholder coincides in both the PEICL and the LOA. In Lithuania, however, the insurance premium ratio and in Latvia, the degree of culpability is taken into consideration. Thus, the regulations of the three small adjacent countries are very different.

Precautionary measures are characterised by their inclusion of guidelines for avoiding damage or for limiting the occurred damage[64]. By laying down precautionary measures, the insurer defines for itself a principle of what reasonably can, and cannot, be expected. In certain cases, the insurer may lay down a presumed qualification requirement for the policyholder through precautionary measures – e.g., a driver of a vehicle must have a driving licence, etc.

'Precautionary measures' clauses are included in insurance contracts for the purpose of requiring insureds to take or not take steps prior to an insured risk occurring for the purpose of reducing the risk occurring or minimizing the loss if it does happen. Falling into this category are clauses requiring insureds to have activated security or fire alarm systems[65].

Two questions arise from the definition of the PEICL: (i) how to draw the line between a precautionary measure and an exemption from the risk covered by the contract and (ii) relationship between the precautionary measures and the causation of the loss by an intentional or reckless act of the policyholder or the insured as defined in Article 9:101. If the insured does not comply with the precautionary measures, can Article 9:101 be applied as well? [66]. J. Han Wansink gives an example of the first question:

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[63] J. Basedow. *Op. cit*. Note 34, p. 181.

[64] E. Hoppu, M. Hemmo. Vakuutusoikeus [Insurance law]. Helsinki: WSOYpro, 2006, p. 165 (in Finnish).

[65] G. Pynt, K. Noussia. Report on, and Minutes of, the Consumer Protection and Dispute Resolution Working Party Session on Precautionary Measures, IV AIDA Europe Conference, London 13–14/9/2012, Consumer Working Party Session.

[66] M. Schauer. Comments on Duration of Contract and Precautionary Measures. ERA-Forum, Volume 9, No. 0, 2008, pp. 157–165.

"A precaution may be phrased as a warranty (where, for example, the insured warrants that a vehicle will 'be kept in a roadworthy condition'). It may also be phrased as an exception belonging to the terms descriptive of the risk (the accident will not be covered 'while the vehicle is not in a roadworthy condition'). He adds that a distinction which may have a substantial impact in practice, in particular in those countries where differences in requirements to be fulfilled to deny coverage successfully with an appeal to these clauses, are accepted". [67]

Giesela Rühl claims that:

"the distinction between the two terms is of enormous practical significance: if the clause in question is construed as clause describing or excluding the risk, coverage is denied without any consideration of fault or → causation. Where, however, the clause in question is a precautionary obligation, the coverage is denied in most legal orders only where the policyholder was at fault and where his conduct has caused or increased the damage. The determination of whether the term is a precautionary obligation or a description of the risk can be difficult at times. However, if the meaning of a contractual term remains unclear the contra proferentem doctrine (or ambiguity doctrine) mandates that these terms are construed against the party that has drafted them, which is usually the insurer"[68].

Violation of precautionary measures can, *in genere*, have two consequences: (i) in the first case, the insurer accepts the violation and it does not affect the duration of the insurance contract or the performance obligation of the insurer, (ii) in the second case, the insurer does not accept the violation and in turn has two *ipso iure* options: (i) in the first case, the insurer has the right to terminate the contract, and (ii) in the second case, there is the discharge of the insurer's liability. Critizing Latvian ICL, jurisprudent Vadim Markov explains that:

"One of such important missing aspects is the lack of interpretation rules specific to insurance contracts. Their specifics lie in the fact that insurance contracts are drafted in advance and one side, namely, insurers, are professionals in the insurance services' market. Therefore, such specific interpretation rules should exist which provide that any ambiguity of any term of an insurance contract is interpreted against a person who, as a professional, drafted such contract, i.e., against an insurer. Such modern approach is provided in Latvian neighbouring states: in Estonia, in case of doubt in relation to standard terms, standard terms shall be interpreted to the detriment of the party supplying the standard terms, in this case: against an insurer; there is also a similar provision in Lithuania. Neither the Insurance Contract law, nor any other law contains interpretation rules for interpretation of standard insurance contract terms drafted in advance

[67] J. Han Wansink. Precautionary Measures: A Friendly or Hostile Tool of Limiting Insurance Coverage? ERA-Forum, Volume 9, No. 0, 2008, pp. 151–155.

[68] G. Rühl. Precautionary Obligations (Insurance Contracts). Encyclopaedia of European Private Law. Oxford University Press, 2012, p. 3. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1989538 (most recently accessed on 26 March 2016), p. 3.

by one of parties being a professional in that area, in this case – drafted by insurers[69]*"*.

Non-compliance with precautionary measures has a significance only in cases where the damage has been caused *causa-causans* by the policyholder by the non-compliance. In Germany and under PEICL, for example, where an insured fail to comply with a precautionary measure, the insurer must still pay for losses which are not caused by the non-compliance. Even where losses are caused by the non-compliance, if the non-compliance is not intentional or reckless, the insurer is expected to pay for a proportion of the loss. The insurer's main remedy is to terminate the contract for the future[70]. Martin Schauer finds that:

> *"a full discharge may be granted to the insurer only if the policyholder's or the insured's act is based on the intention to cause the loss or on recklessness and the knowledge that the loss would probably occur. Even in that case, the policyholder or the insured may claim the insurance money to the extent that the loss was not caused by the act of non-compliance. From this wording the conclusion may be drawn that partial indemnity is possible. If part of the loss would also have occurred if the policyholder and the insured had complied with the precautionary measures, then the insurer remains liable for this part of the loss. If the act of non-compliance is based on ordinary negligence, the amount of the insurance money may be reduced if provided in a clear clause in the contract. One may assume that the reduction of the insurance money also applies only if and insofar the negligent act has caused the loss"*[71].

J. Han Wansink gives an example that:

> *"taking into account the ratio for inserting a warranty into the policy like the presence of a sprinkler device in full operation as a condition precedent of coverage, it is reasonable to assume that in case of a policy of fire insurance, the requirement of causation will also be met if the non-compliance did not start the fire but did not prevent the large extent of the damage as a result of the fire"*[72].

Since neither the LOA of Estonia, the ICL of Latvia nor the CC and IL of Lithuania provide a separate definition of precautionary measures, then the respective laws do not contain special provisions on violation of precautionary

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[69] V. Mantrov. *Op. cit*. Note 42.

[70] Insurance contract law: the business insured's duty of disclosure and the law of warranties, The Law Commission Consultation Paper No 204 and The Scottish Law Commission Discussion Paper No 155, Available online at http://lawcommission.justice.gov.uk/docs/cp204_ICL_business-disclosure.pdf (most recently accessed on 26 March 2016).

[71] M. Schauer. *Op. cit*. Note 66.

[72] J. Han Wansink. Precautionary Measures: A Friendly or Hostile Tool of Limiting Insurance Coverage? ERA-Forum, Volume 9, No. 0, 2008, pp. 151–155.

measures. However, the insurers[73] may rely on norms that regulate general contractual obligations and consequences of the violation thereof. Unfortunately, the regulation on the right of termination of an insurance contract upon failure to perform precautionary measures and on the effect on the policyholder's performance obligation is fundamentally different in Estonia, Latvia and Lithuania.

The author finds, for example, that the LOA in Estonia sets two formal preconditions for release of the insurer from its performance obligation upon failure to perform precautionary measures: (i) the violation must occur due to fault of the policyholder (the type of culpability is not relevant); or (ii) the violation must affect the occurrence of the damage or the extent thereof. As a result of the analysis, the author finds that the abstract conditions that give the policyholder the right of refusal to compensate regardless of the degree of culpability may be in conflict with the principles of proportionality and good faith, being against the policyholder, i.e., the weaker party, and thus the application of this condition is questionable. The Basic philosophy for the majority of the PEICL Group was that without any requirement of fault, the rule felt to be unjust and incomplete. Freeing the insurer from covering the loss can generally not be legitimized if the fault on the insured's part is only "slight" negligence[74]. It should also be noted that the LOA allows *a priori* to preclude the insurer's performance obligation in the standard clauses upon gross negligence. The author claims that such an 'all-or-nothing' approach of the LOA is questionable in the modern insurance law due to consumer protection issues. This may be in conflict with the doctrine of reasonable expectations. In Latvia, however, the insurer's performance obligation may be precluded in the case of gross negligence and even ordinary negligence may restrict the insurer's performance. According to the IL of Lithuania, an insurance contract may specify the cases where the insurer is released from the obligation to pay the insurance benefit if the insured event occurs due to gross negligence of the policyholder or the insured person; however, the respective regulation presumes that such cases must be discussed individually.

Therefore, to answer the author's question, asked at the beginning of his dissertation:

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[73] See for example Estonian insurer Salva Kindlustuse AS Terms and conditions of vehicle insurance p 10, which list precautionary measures., Available online at https://www.salva.ee/sites/default/files/insurance/terms/skt-13.11_en_alates_01.11.13.pdf (most recently accessed on 26 March 2016). Or Latvian insurer Seesam Insurance AS Latvia branch Terms and conditions of Private persons property insurance PPWL 09/1 p 6.2.1.–6.2.9., Available online at https://www.seesam.lv/uploads/files/noteikumi/HOME/Seesam_Ipasums_PPWL-09.01_EN_PRN.PDF (most recently accessed on 26 March 2016).

[74] S. Sakellaridou, K. Noussia. Precautionary Measures Under P.E.I.C.L. – Art. 4:101 & The Position Under Greek Law, IV AIDA Europe Conference, London 13–14/9/2012, Consumer Working Party Session.

"Does the situation where law provides a separate definition of precautionary measures and special provisions on violation of precautionary measures provide more sufficient protection to the policyholders than without it?"

The author finds that in this matter, the PEICL's regulation protects the policyholder's interests better. However, it does not significantly hinder the position of the insurers since the pan-Baltic insurers obtain an opportunity to harmonise their insurance products as a countermeasure to the tightening of some regulations.

Based on the above analyses the author finds, in answering the following principal research questions, presented at the beginning:

"Which is reasonable standard, in which law must protect policyholder, as weaker party in insurance contract, interests? Does PEICL protect policyholder's interest more widely than Estonian, Latvian and Lithuanian insurance contract laws? If yes, then is it reasonable?"

that the reasonable standard, which protects the policyholder, as the weaker party in insurance contracts, concerning aggravation of risk and precautionary measures regulation, is where the law states that aggravation can only occur vis-à-vis risks that are clearly defined in the insurance contract and where the law states a separate definition of precautionary measures and special provisions on violation of precautionary measures. The author finds that the '*all-or-nothing*' approach is not acceptable in the modern insurance law. Accordingly, PEICL would protect the policyholder's interest more widely than Estonian, Latvian and Lithuanian insurance contract law and this is reasonable according to previous analyses.

2.4. Policyholder's obligations after an insured event

The final article of this cumulative dissertation "Policyholder Obligations After an Insured Event: Are Baltic Insurance Laws Too Insurer-Friendly Compared to the Principles of European Insurance Contract Law?"[75] and article "Do the Principles of European Insurance Contract Law Go Too Far in Protecting the Policyholder?"[76] analyses the policyholder's obligations after insured event.

How fast the policyholder receives the insurance indemnity in the case an insured event occurs depends on the performance of the main obligations after the insured event: (i) the obligation to reduce damage; (ii) the obligation to

[75] O.-J. Luik. Policyholder Obligations After an Insured Event: Are Baltic Insurance Laws Too Insurer-Friendly Compared to the Principles of European Insurance Contract Law? Baltic Journal of Law & Politics, Volume 5, No. 1, 2012, pp. 137–164.

[76] O.-J. Luik. Do the Principles of European Insurance Contract Law Go Too Far in Protecting the Policyholder? Juridica International, Volume XVIII, 2011, pp. 73–83.

inform of the occurrence of an insured event, and (iii) the obligation to cooperate – an important role in the insurer's performance obligation. Failure to perform these obligations may, in some cases, result in a refusal to pay the insurance indemnity.

In non-life insurance, in the case of immediate hazard or a loss event the insured person is responsible for preventing and containing the damage[77]. Concluding an insurance contract does not automatically give a guarantee that the policyholder is released from the obligation to exercise normal care when an insured event occurs. As in the case of not having an insurance contract, the policyholder must take elementary measures for containing and reducing the damage also when an insurance contract exists. Insofar as an insurance contract is made to address unexpected and unforeseen damages with an assumption that the policyholder behaves as customary, the failure to perform this obligation may give rise to the insurer's right to be in part or in full released from the performance obligation. This is a question about *moral hazard*; the tendency of people to change their behaviour if some downside risks of that behaviour are borne by others rather than themselves, as when those risks are covered by insurance.[78]

As to the legal effects of the obligation to reduce damage and failure thereof, Lithuania and Estonia have the most consumer-oriented regulations in the Baltics. However, in Latvia the insurer may be released of the performance obligation (partly or fully) even in situations that may not comply with one of the purposes of the insurance contract: to be protected from the ordinary negligence by the policyholder. Implementation of the PEICL would therefore result in a considerable rise of an additional consumer rights protection for the policyholders in Latvia.

If there is no immediate *ex post* notification of the insured event, a situation may arise where the insurer cannot realise its rights to a sufficient extent and this may cause it additional costs and, in some cases, the inability to detect the necessary information. An *ex post* notification of the insured event is also important for the policyholder as this is the trigger for getting an insurance indemnity from the insurer. With regard to notification about the insured event, the PEICL will introduce an important change for the policyholders in Estonia, Latvia and Lithuanian. The PEICL is much more consumer-oriented and is not too restrictive of the policyholder in terms of deadlines and sanctions in the case of violations.

Jaana Norio-Timonen finds that the entitlement to insurance indemnity cannot be made conditional on the insurer's notification of an insured event during a certain period, e.g., within two weeks after the occurrence of the insured

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[77] J. Rantala, T. Pentikäinen *et al*. Vakuutusoppi [Insurance Doctrine]. Sastamala: Finanssi- ja Vakuutuskustannus OY, 2009, p. 279 (in Finnish).

[78] L. R. Cohen, M. E. Boardman. Methodology: Applying economics to insurance law-an introduction. in: J. Burling, K. Lazarus. Research Handbook on International Insurance Law and Regulation. Edward Elgar Publishing Ltd., 2011.

event. It is in the interests of the beneficiary to receive the indemnity as soon as possible.[79] The author agrees with the approach of the Finnish legal theorists. It is difficult to argue why the insurer should be released from the indemnification obligation if it is notified of an insured event as late as five months after the event but the amount of loss or the clarification of the fact are not affected. For instance, in a situation where an apartment has been burglarised and the police have inspected the crime scene, nothing essentially changes for the insurer, as competent public servants have recorded the situation. Jaana Norio-Timonen points out that the provisions of Article 73[80] of the Finnish Insurance Contract Act set out the indemnification deadline for the claimant by specifying the deadline for the making of claims and their expiry. This is built on the presumption that a claim for compensation under an insurance contract must be submitted to the insurer within one year of the moment when the claimant became aware of the in-force insurance contract, insured event and the damages caused by the insured event.[81] The author does not agree with the concept that an insurer is always released from the performance obligation if the violation of the relevant obligation by the policyholder was intentional. There is no reasonable justification to release the insurer from the performance obligation in a situation where the policyholder's violation of the notification obligation was intentional but had no impact on the insurer's performance obligation. In 2001, however, the Estonian Supreme Court[82] ruled that in a situation where a policyholder notified the insurer that a logging tractor had been stolen from him but forgot to report that together with the tractor also a lumber trailer had been stolen (there were two separate insurance contracts), the explanation later offered by the policyholder in the court to the effect that he had deemed the tractor to also include the trailer, treating them as a whole as they could be operated only together, had no bearing to the case, and therefore the insurer was entitled to refuse to pay indemnity due to the late notification. Thus, the Estonian court affirmed the insurer's release from the performance obligation due to the policyholder's late notification even if there is no causal link. The author

[79] Jaana Norio-Timonen, *Vakuutussopimuslain pääkohdat (The Main Points of Insurance Contract Act)* (Helsinki: Talentum, 2010), p. 197 [in Finnish].

[80] Article 73 of the Finnish Insurance Contract Act provides that any claims based on an insurance contract shall be made to the insurer within one year from the date at which the claimant becomes aware of an in-force insurance policy, of the occurrence of an insured event and of the loss, damage or injury that resulted from the occurrence. In any event, the claim shall be made within ten years from the occurrence of the insured event or, if the insurance has been taken out to cover against bodily injury or liability for damages, from the occurrence of the loss, damage or injury. Reporting the occurrence of an insured event is considered to equal the making of a claim for this purpose. If no claim is made within the period provided under Subsection 1, the claimant loses his entitlement to compensation.

[81] Jaana Norio-Timonen, *Op. cit*. 79, p. 197.

[82] *Jaanus Sarv v. Salva Kindlustuse AS*, Supreme Court of the Republic of Estonia, 2001, no. 3-2-1-56-01 [in Estonian], Available online at http://www.nc.ee/?id=11&indeks=0,2,10246,10419,10426&tekst=RK/3-2-1-56-01 (most recently accessed on 26 March 2016).

believes that instead, preference should be given to the approach that the insurer is released from the performance obligation to the extent in which the losses suffered by the insurer due to late notification increased, as it is difficult to argue why the insurer may reduce the indemnity by, let us say, 50% if the notification was delayed due to gross negligence, but it had no bearing on the amount of damages or did not complicate the insurer's clarification of the other aspects of the performance obligation.

Compared with the LOA, CC and ICL, the PEICL is much more consumer-friendly by presuming notification without undue delay and providing that the notification deadline must be reasonable and not shorter than five days. The author believes that such an approach is justified as it allows the policyholder to first take care of vital needs in case of an accident (e.g., home loss in a fire) and not to prefer the interests of the insurer over the vitally primary interests of the policyholder.

Therefore, to answering the author's questions, asked at the beginning of his dissertation:

> *"Is the concept reasonable, that an insurer is always released from the performance obligation if the violation of a policyholder's obligation to immediately notify the insurer of an occurrence of an insured event by the policyholder was intentional?"*

The author finds that prompt notifying of an insured event is in the best interest of the policyholder – the faster the policyholder notifies the insurer about an insured event, then the quicker he can get indemnity. The author finds that of course we should allow the policyholder to first take care of vital needs in case of an accident and not to prefer the interests of the insurer over the vitally primary interests of the policyholder. At the same time, the insurer must be released from the performance obligation to the extent in which the losses suffered by the insurer due to late notification increased.

The third main obligation of the policyholder concerning obligations after an insured event is the obligation to cooperate, i.e., the policyholder must allow the insurer to examine the circumstances of the insured event, detect the extent of damage and the persons responsible for the damage in order to realise its subrogation rights, if necessary and desired. If the policyholder fails to perform the cooperation obligation, the insurer often finds it extremely difficult, if not impossible, to handle the insured event, i.e., detect the extent of its obligations and ensure itself the right of recourse against the person who is responsible for causing the damage. It is in the interests of the policyholder to comply with the cooperation obligation to the maximum extent in order to realise its claim against the insurer as fast as possible. Malcolm Clarke says that:

> *"if the initiative to notify of the insured event has to come from the policyholder, then the insurer must demonstrate initiative for collecting information and evidence for the purpose of determining the extent of the insurer's performance*

obligation. The general principle for insurers can be stated as follows: the greater the insurance indemnity claimed by the policyholder, the lower the insurer's trust and the more proof is demanded from the policyholder"[83].

There is another issue that arises concerning the cooperation obligation: Is an initiation of criminal proceedings a sufficient reason for the insurer to postpone its decision – in other words, is a situation, where the standard clauses stipulate that the insurer may, based on the cooperation obligation, postpone its performance obligation until the results of an investigation by the state authority (e.g., the police) have been declared, proportional and have the policyholder's interests been thereby sufficiently protected? The author states that the insurers in the Baltics reserve such a right in their standard clauses. The author concludes that such a standard term is void[84], as it is a generally worded provision which in essence entitles the insurer *ad extra* unlimited opportunities to postpone the performance of its obligations. This provision renders to the user of the general terms and conditions a formal basis to refuse to perform the obligation due to circumstances unrelated to the insured event. Refusal to decide on the indemnification and pay the indemnity for an indeterminate number of years is contrary to the purpose of insurance and renders the purpose of the insurance contract *ad absurdo*. This position has also been supported by judicial practice – e.g., the Tallinn Circuit Court has found in its ruling No. 2-06-6604 of 8 April 2008[85], whereby the insurer justified its delay in deciding with criminal proceedings the option of delaying the payment of the insurance indemnity in the event of initiated administrative, civil, criminal proceedings or a departmental investigation stipulated by the insurer in its standard clauses is unilateral and unreasonable, it is a violation of the reasonable expectations doctrine. The Supreme Court of the Republic of Estonia reached a similar conclusion in its decision No. 3-2-1-133-12 of 7 December 2012[86]. As a result of the analysis the author concluded that with regard to the cooperation obligation, the PEICL will make the insurers of Estonia, Latvia and Lithuania more consumer-oriented, as well. The insurers must take the interests of the policyholders more into consideration (e.g., not disclosing a business secret).

Based on the above analyses the author finds, in answering the following principal research questions, presented at the beginning:

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[83] M. Clarke. Policies and perceptions of insurance law in the twenty-first century. Oxford University Press, 2005, p. 198.

[84] Angelo Borselli points out that according to Article 3.1 of the European Union Directive 93/13/EEC of 5 April 1993 and Article 2:304(1) PEICL, a term not individually negotiated is unfair if, 'contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer' (A. Borselli. Unfair Terms in Insurance Contracts. Insurance Law Review No. 2, 2011).

[85] Most recently accessed on 26 March 2016 from: https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=108686753 (in Estonian).

[86] Most recently accessed on 26 March 2016 from: http://www.nc.ee/?id=11&tekst=RK/3-2-1-133-12 (in Estonian).

> *"Which is reasonable standard, in which law must protect policyholder, as weaker party in insurance contract, interests? Does PEICL protect policyholder's interest more widely than Estonian, Latvian and Lithuanian insurance contract laws? If yes, then is it reasonable?"*

that the reasonable standard, which protects the policyholder, as the weaker party in insurance contracts, concerning the policyholder's obligation to inform of the occurrence of an insured event, is where the law states that the insurer may be released from the performance obligation only to the extent in which losses are suffered by the insurer due to policyholder violation of obligation after an insured event. Accordingly, PEICL would protect the policyholder's interest more widely than Estonian, Latvian and Lithuanian insurance contract law and this is reasonable according to previous analyses.

CONCLUSIONS

The author analysed the PEICL with comparisons to Estonian, Latvian and Lithuanian insurance contract regulations in his research between 2011–2014 (completion of his last article[87]). Even if the possibility of enacting the PEICL in the EU in the near future is quite small, by the author's subjective understanding, it wouldn't reduce the necessity of an optional instrument to ensure a single EU insurance market.

The author posed a hypothesis that the analysed Estonian, Latvian and Lithuanian insurance contract regulations do not provide sufficient protection to the policyholders when compared to the PEICL and it is in the interests of the policyholders of these three countries to implement the PEICL as a 2nd regime as soon as possible. The author arrived at the conclusion that compared with national laws of the Baltic States, the relevant regulation provided in the PEICL is more favourable and consumer-friendly for policyholders. It would be in the interests of the Baltic policyholders that the PEICL would be promptly enforced as a so-called 2nd regime instrument in the European Union.

The author finds that implementing the PEICL in Estonia, Latvia and Lithuania would encourage large European insurers, who are not currently active in the Baltic States, to offer their services in these small countries in a cheap and standardised manner without needing to set up a subsidiary or a branch. For now, this is restricted by the fact that in order to offer cross-border services to consumers, the service provider should be familiar with each country's insurance law and therefore providing cross-border services is not rational. As insurance is a 'legal product', the influence of the legal environment on an insurance product is very strong. According to the rules of private international law, the law applicable to mass insurance contracts is normally the law of the state in which the policyholder has his habitual residence. As a consequence, insurers must be and actually are aware of the fact that any product they sell across borders will be subjected to different law rules in different member states[88]. Therefore, it is not possible to draw up for example pan-Baltic unified standard clauses without harmonising the insurance contract laws. Thus, the policyholders of Estonia, Latvia and Lithuania would benefit from implementation of the PEICL both in terms of price and the variety of the services provided. A larger number of service providers and more competition of prices and products would surely bring about an increase in the insurance penetration in Estonia, Latvia and Lithuania.

The author found that implementation of the PEICL could result in large insurance corporations that operate in several EU countries unifying their own insurance products into 'pan-European insurance products' by using an optional

[87] Aggravation of Risk and Precautionary Measures in Non-Life Insurance: A Tricky Scope for the Insurer?, Baltic Journal of Law & Politics, 2015 (8:2), pp. 1–45.

[88] N. Adelmann. Unfair Terms in Insurance Contracts. ERA-Forum, Volume 9, No. 0, 2008 pp. 133–140.

instrument and therefore it can be presumed that in some countries, implementation of the PEICL will become widespread. The author thus finds that, in reality, the term 'optional' may not ensure options for all parties, since in a situation where large corporations unify their products they may discontinue offering products based on national law and thus the only 'choice' policyholders will be left with (assuming that they prefer such an international corporation) is products based on the PEICL.

The author detected no material deficiencies in the PEICL compared to the national law of Estonia, Latvia and Lithuania. Only with regard to the rights of a mortgagee dealt with in the article "Does the insurance premium payment regulation as stipulated in the Principles of European Insurance Contract Law protect policyholders sufficiently enough?" the LOA has a significant preference to the PEICL from the mortgagee's perspective. Namely, the Estonian Law of Obligations Act includes a regulation which differs from that of the PEICL, CC and ICL – the rights of the mortgagee. However, this is not a provision that provides additional protection to the policyholders and thus, from the consumer's perspective, the PEICL should still be preferred.

The current differences of the Estonian, Latvian and Lithuanian insurance legislation as regards the pre-contractual obligations of the policyholder and the consequences of a breach of these obligations preclude the introduction of pan-Baltic insurance products. Implementation of the PEICL would allow cross-border insurers to provide consumers cross-border services on the Baltic insurance market as the barriers caused by different legal systems would be removed.

The part of the PEICL dealing with insurance premiums is, in certain aspects, stricter than the national law.

Aggravation of risk and compliance with precautionary measures play an important role in relations under the insurance law – in certain cases, the aggravation of risk and/or non-compliance with precautionary measures may entitle the insurer to reduce the indemnity or refuse payment under certain circumstances. In both situations, the fault of the policyholder as well as the causal relationship between the non-compliance and consequence may be weighed. Although in home insurance, such insured risks as fire, flood, etc., or such precautionary measures as the obligation to provide heating during a cold period or emptying the heating systems of water, obligation to not have an unsupervised open fire in a room, etc., are extremely similar in Estonia, Latvia and Lithuania (as the countries are neighbours), there are vast differences between their domestic regulations and thus people who work and live in several countries must familiarise themselves with all the different regulations.

The three key obligations after insured event, i.e., (i) the obligation to reduce damage, (ii) the obligation to report an insured event, and (iii) the obligation to cooperate, play a major role in the performance obligation of the insurer. Breach of those obligations may in certain cases result in the refusal to pay insurance indemnity. Among the Baltic States, Lithuania and Estonia have the consumer-

friendliest regulations regarding the obligation to reduce damages and the related legal consequences of violating that obligation. Latvia, however, makes it possible for an insurer to be released from the performance obligation (in part or in full) also in situations which may contradict one of the purposes of an insurance contract: to have coverage also in the case of the policyholder's ordinary negligence.

As a result of the analysis, the author found that although in some individual cases the legal position of the insurers may be hindered upon implementation of the PEICL, considering the benefits gained in return, i.e., the possibility to draw up unified pan-Baltic products and the accompanying cost savings (IT services, personnel costs, etc.), the benefits gained will outweigh the negative aspects. Also, the PEICL would not be a compulsory and the single regulation on insurance contract law but an optional instrument, i.e., in a situation where some insurers do not wish to provide their services based on the PEICL, they can continue providing their services based on national law.

As a result of the analysis, the author concludes that harmonising insurance contract law has a significant role in ensuring the actual functioning of the single European insurance market. Without implementing the PEICL as an optional instrument, which is currently the only considered alternative, the single European insurance market cannot take a real and substantial effect as it would prove to be too complex for consumers to acquaint themselves with various legal systems and insurers would find that providing cross-border products for smaller markets (such as the markets the author has analysed: Estonia, Latvia and Lithuania) is not economically feasible.

Should PEICL be enforced, the consumers' life will undoubtedly be much easier as they will be able to choose among unified insurance products. Likewise, implementation of the PEICL should help the insurers save considerably because in cross-border operations PEICL-based insurance products can share IT solutions, there will be no need for jobs that duplicate each other, and even the case-law as it is harmonised will help better assess the risks of operation. As for the situation as it is, the following questions spring to mind: Does the policy-holder's 'fault increase' as he travels 80 km south from Helsinki, Finland to Tallinn, Estonia and acts in an exactly similar manner there? Does the 'nature of insurance transform' although the insurers in these neighbouring countries belong to the one and same insurance group? There probably is no other answer than the negative – so, in order to prevent the exceptions and differences described in this article, which hinder problem-free movement, living and working of people in neighbouring countries, and to make the dream of a borderless EU come true, the enforcement of the PEICL as a 2nd regime legal act is very welcome.

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REFERENCES[89]

Literature and publications

1. **N. Adelmann**. Unfair Terms in Insurance Contracts. ERA-Forum, Vol 9, No 0, 2008.
2. **A.P. Arxipov, A.C. Adonin**. Strachovoje delo [Insurance case]. Moscow: EAOI 2008 (In Russian).
3. **J. Basedow, J. Birds, M. Clark, H. Cousy, H. Heiss**. Principles of European Insurance Contract Law (PEICL). Munich: European Law Publishers GmbH 2009.
4. **J. Basedow, J. Birds, M. Clarke, H. Cousy, H. Heiss, L. Loacker** (Eds.). Principles of European Insurance Contract Law (PEICL), 2nd Expanded Edition, Köln, 2016.
5. **J. Basedow**. The Europeanization of private law: its progress and its significance for China., The Chinese Journal of Comparative Law. Vol. 1 No. 1 2013.
6. **Ed. by H. Baumann** et al., VVG Großkommentar zum Versicherungsvertragsgesetz [Insurance Contract Law] Band 1. De Gruyter (in German).
7. **V.S. Belich**. Strachovoje pravo Rosii [Insurance law in Russia]. Moscow: Norma 2009 (In Russian).
8. **V. Belich, I. Krivisheev**. Strachovoje pravo [Insurance law]. Moscow: Norma 2001 (In Russian).
9. **W. H. van Boom**. Do Insurers Have to Pay for Bad Behaviour in Settling Claims? Legal Aspects of Insurers' Wrongful Claims Handling. Journal of European Tort Law 1, 2011, pp 77–102.
10. **A. Borselli**. Unfair Terms in Insurance Contracts. Insurance Law Review No. 2 2011.
11. **O. Brand**. Requirements Regarding the Transparency of Standard Terms. Transparency in Insurance Law, Retrieved 2016, April 8 from http://www.aida.org.uk/pdf/Transparency%20book.pdf
12. **C. Brömmelmeyer**. Principles of European Insurance Contract Law. European Review of Contract Law, 7(3) 2011.
13. **J. Burling, K.Lazarus**. Research Handbook on International Insurance Law and Regulation. Edward Elgar Publishing Ltd. 2011.
14. **M. Clarke**. Aggravation of risk during the insurance period. Lloyds Maritime and Commercial Law Quarterly No. 01 2003.
15. **M. Clarke**. Late payment of insurance Money. Erasmus Law Review, Volume 5, Issue 2 2012.
16. **M. Clarke**. Policies and perceptions of insurance law in the twenty-first century. Oford University Press 2005.
17. **H. Cousy**. The principles of European Insurance Contract Law: The duty of disclosure and the aggravation of risk. ERA-Forum, Vol 9, No 0, 2008.
18. **H. Cousy**. About sanctions and the hybrid nature of modern insurance contract law. Erasmus Law Review, Volume 5, Issue 2 2012.

[89] Contains references of this compendium in full, including the references used in the articles.

19. **Y. Delfos-Roy**. The PEICL and duty of disclosure. European Review of Private Law, (19)1 2011.
20. **E. Deutsch**. Versicherungsvertragsrecht [Insurance Contract Processing]. Karlsruhe: Verlag Versicherungswirtschaft GmbH 2005 (in German).
21. **I. Dimitriyadis, R. Hayirsever Bastürk, I. Yardimci, E. Tacyldiz**. The Economics of insurance and cultural heritage in a changing world. In International Conference on Applied Economics – ICOAE 2011.
22. **W. Doract**. The Optional European Contract Law and why success or failure may depend on scope rather than substance. Max Planck Private Law Research Paper No. 11/9: 8. Revue des Contrats, Vol. 2011, No. 4, pp. 1313–1342, October 2011**.**
23. **A. Engelbrecht, W. Halm, F. Krahe**. Handbuch des Fachanwalts: Versicherungsrecht. [Handbook for Lawyers Specialising in Insurance Law]. Luchterhand 2004 (in German).
24. **F. Hasenböhler**. Pre-7contractual Obligation to Provide Information under Private Insurance Law 2008. Retrieved 2016, April 8 from http://www.kpmg.ch/en/docs/20080505_Pre-contractual_obligation_to_provide_information.pdf
25. **H. Heiss, M. Clarke, M. Lakhnan**. "Europe: Toward a harmonised European insurance contract law – the PEICL", in Julian Burling and Kevin Lazarus. Research Handbook on International Insurance Law and Regulation. Edward Elgar Publishing Ltd 2011.
26. **H. Heiss**. Insurance premium. ERA-Forum, Vol 9, No 0, 2008.
27. **H. Heiss, M. Lakhan**. Principles of European Insurance Contract Law: A Model Optional Instrument. Munich: Sellier European Law Publishers 2011.
28. **H. Heiss**. Proportionality in the new German insurance contract act. Erasmus Law Review, Volume 5, Issue 2 2012.
29. **T. Hess, T. Trauth**. Towards a single European insurance market. International Journal of Business, 3(1) 1998.
30. **E. Hoppu, M. Hemmo**. Vakuutusoikeus [Insurance Law]. Helsinki: WSOY 2006 (In Finnish).
31. **M. Kingisepp**. Kahjuhüvitis postmodernses deliktiõiguses [Indemnity in Postmodern Delict Law]. Tartu Ülikooli Kirjastus, Tartu 2002 (in Estonian).
32. **T. Kontautas**. Duty of Disclosure in Insurance Law. Master thesis. Erasmus University Rotterdam 2002.
33. **T. Kontautas**. Principles of European Insurance Contract Law: Law and economic insights. In F. Chirico; P. Larouche (Eds), Economic Analysis of the DCFR: The Work of the Economic Impact Group Within CoPECL. Berlin, New York: Sellier – DE GRUYTER 2010.
34. **X. Kramer**. The New European Conflict of Law Rules on Insurance Contracts in Rome I: A Complex Compromise. The Icfai University Journal of Insurance Law 2008, Vol. VI, No. 4, p. 23–42.
35. **J. Lahe**. Kindlustusõigus [Insurance law]. Tallinn: Juura 2007 (In Estonian).
36. **M. Lakhan, H. Heiss**. An optional instrument for European Insurance Contract Law. Utrecht Journal of International and European Law, 27(71) 2010.
37. **K. Lehtipuro, I. Luukkonen, L. Mäntyniemi, V. Raulos, P. Santavirta.** Vakuutuslainsäädänto [Insurance Legislation]. Sastamala: Finanssi-ja vakuutuskustannus OY 2010 (In Finnish).
38. **G. Low**. Will firms consider a European optional instrument in contract law? European Journal of Law and Economics Vol. 33, No. 3 2012.

39. **P. MacDonald Eggers, S. Picken, P. Foss**. Good faith in insurance contract, Third Edition, Lloyd's list. London 2010.
40. **V. Mantrov**. Problem Questions of Insurance Contract Regulation in Latvia. The Quality of Legal Acts and its Importance in Contemporary Legal Space. Collection of Research Papers Presented in the International Scientific Conference, 4–5 October 2012 at the University of Latvia Faculty of Law.
41. **J. Norio-Timonen**. Vakuutussopimuslain Pääkohdat [The Main Points of Insurance Contract Act]. Helsinki: Talentum 2010 (In Finnish).
42. **J. Norio-Timonen**. Legal Coherence as a Prerequisite for a Single European Insurance Market, in Coherence and Fragmentation in European Private Law, edited by Pia Letto-Vanamo, Jan Smits, Munich, 2012.
43. **E.V. Protas**. Strachovoje pravo [Insurance law]. Moscow: MGIU 2010 (In Russian).
44. **G. Pynt, K. Noussia**. Report on, and Minutes of, the Consumer Protection and Dispute Resolution Working Party Session on Precautionary Measures, IV AIDA Europe Conference, London 13–14/9/2012, Consumer Working Party Session.
45. **J. Rantala, T. Pentikäinen**. Vakuutusoppi [Insurance Doctrine]. Sastamala: Finanssi- ja Vakuutuskustannus OY 2009 (in Finnish).
46. **R. Rees, E. Kessner**. Regulation and Efficiency in European Insurance Markets. Economic Policy, Vol. 14, No. 29 1999.
47. **I. Rokas**. The Precontractual Information Duty of the Policyholder According to the Principles of European Insurance Contract Law (PEICL). Association for the Insurance Law of Serbia, Memoir 2010.
48. **I. Rokas**. Principles of European insurance contract law (PEICL) as a settled and balanced system of policyholder protection. The European Insurance Law Review, 1–2013, pp 37–41.
49. **G. Rühl**. Precautionary Obligations (Insurance Contracts). Encyclopaedia of European Private Law. Oxford University Press, 2012.
50. **S. Scacciae**. Tractatus de commerciis et cambio [Treaty of Commerce and Exchange]. Geneva: Sumptibus Ioannis Hermanni Widerhold 1664.
51. **M. Schauer**. Comments on Duration of Contract and Precautionary Measures. ERA-Forum, Vol 9, No 0, 2008.
52. **H.-P. Schwintowski**. Neuerungen im Versicherungsvertragsrecht [Changes in the Insurance Contract Law]. Zeitschrift für Rechtspolitik 2006 (in German).
53. **V. Shakhov**. Strahovanije. [Insurance]. Iuniti, Moscow 2001 (in Russian).
54. **S. Sakellaridou, K. Noussia**. Precautionary Measures Under P.E.I.C.L. – Art. 4:101 & The Position Under Greek Law, IV AIDA Europe Conference, London 13–14/9/2012, Consumer Working Party Session.
55. **M. Todorović-Symeneonides**. EU Consensus on Applicant's Pre-Contractual Information Duty and Sanctions for its Breach – Some Issues from the Restatement of European Insurance Contract Law Common Frame of Reference. Association for the Insurance Law of Serbia, Memoir 2009.
56. **P. Varul**. *et al.* Võlaõigusseadus II. Kommenteeritud väljaanne [Law of Obligations Act II, Executive edition]. Tallinn: Juura 2007 (In Estonian).
57. **C. Von Bar, E. Clive, H. Schulte-Nölke, H. Beale, J. Herre, J. Huet, P. Schlechtriem, M. Storme, S. Swann, P. Varul, A. Veneziano, F. Zoll**. Principles, Definitions and Model Rules of European Private Law, Draft Common Frame of Reference (DCFR). Munich: European Law Publishers GmbH 2009.

58. **M. van Tiggele-van der Velde**. About a new balance in the mutual obligations of both parties to a contract of insurance and a new system of sanctions. Erasmus Law Review, Volume 5, Issue 2 2012.
59. **J. H. Wansink**. Precautionary Measures: A Friendly or Hostile Tool of Limiting Insurance Coverage? ERA-Forum, Vol 9, No 0, 2008.
60. **J. H. Wansink, N. Frenk**. Some reflections on consumer protection and the requirement of anticipationg behaviour of a prudent insurer. Erasmus Law Review, Volume 5, Issue 2 2012.
61. **H.-L. Weyers, M. Wandt**. Versicherungsvertragsrecht [Insurance Contract Processing]. Luchterhand Verlag GmbH 2003 (in German).
62. **K. Zaveckas**. Pareigos atskleisti informaciją draudimo santykiuose turinys: teoriniai ir praktiniai aspektai [Content of duty of disclose in insurance intercourse: theoretical and practical aspects]. Doctoral theses. Vilnius: Mykolas Romeris University 2008 (In Lithuanian).

Legislation

63. Bürgerliches Gesetzbuch [German Civil Code]. Bundesgesetzblatt [Federal Law Gazette], I 2011, S. 1600, No. 41. (In German).
64. The Civil Code of the Republic of Lithuania. Valstybės žinios, 2000, Nr. 74–2262.
65. Graszdanskij kodeks Rosiiskoj Federaciji [Russian Civil Code]. Rosijskaja Gazeta, part 1, November 30, 1994, No. 51–F3; part 2, January 26, 1996, No. 14–F3; part 3, November 26, 2001, No. 146–F3, and part 4, December 18, 2006, No. 230–F3. (In Russian).
66. Tsiviilseadustiku üldosa seadus [General Part of the Civil Code Act]. State Gazette, part 1, December 6, 2010, No. 12 (In Estonian).
67. The Insurance Contract Law of the Republic of Latvia. Latvijas Vēstnesis, No. 188/189 on 30 June 1998, No. 56 04.04.2007.
68. Võlaõigusseadus [Law of Obligations Act]. State Gazette, part 1, July 18, 2011, No.21 (In Estonian).
69. The Law on Insurance of the Republic of Lithuania. Valstybės žinios, 2003, Nr. 94–4246.
70. Vakuutussopimuslaki [Finnish Insurance Contract Act]. Electronic version of the daily Statute Series ("Official Journal") http://www.finlex.fi. Retrieved 2016, April 8 from http://www.finlex.fi/fi/laki/ajantasa/1994/19940543. (In Finnish).
71. Versicherungsvertragsgesetz [German Insurance Contract Act]. Bundesgesetzblatt [Federal Law Gazette], I S. page 2631, 23/11/2007. (In German).
72. Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) [2008] OJ L177/6.
73. Council Directive 2002/65/EC of the European Parliament and of the Council. Official Journal of the European Union. L 271, 9.10.2002

Insurance terms and conditions

74. AAS Baltikums General insurance rules applicable to the persons going abroad No 9F. Retrieved 2016, April 8 from http://www.baltikums.lv/system/user_files/Files/EN_Izbrauceji_noteikumi_9F_lielie.pdf.
75. AAS Gjensidige Baltic Estonian Branch. Kodukindlustuse tingimused [Home insurance conditions]. Retrieved 2016, April 8 from from http://www.vagner.ee/?action=files.get&id=115 (in Estonian).
76. AAS Gjensidige Baltic Estonian Branch. Terms and conditions of vehicle insurance. Retrieved 2016, April 8 from from http://www.gjensidige.ee/files/Dokumendid/Tingimused/Kasko/S%C3%B5idukikindlustuse%20tingimused%20SK%20101%202011.pdf (in Estonian).
77. AB "Lietuvos draudimas" Estonian branch, Household insurance terms and conditions K100/2013. Retrieved 2016, April 8 from https://www.pzu.ee/wp-content/uploads/2015/02/Kodukindlustuse_tingimused_K100_2013_ENG1.pdf.
78. AB Lietuvos Draudimas, Accident Insurance Regulations No. 048. Retrieved 2016, April 10 from http://web.archive.org/web/20130406150824/http://www.ld.lt/uploads/files/dir47/dir2/3_0.php.
79. AB Lietuvos Draudimas Home Insurance Policy Wording. No. 064. Retrieved 2016, April 10 from http://web.archive.org/web/20130406150705/http://www.ld.lt/uploads/files/dir52/dir2/13_0.php.
80. "BTA Insurance Company" SE Estonian branch, General terms and conditions for insurance contracts No. GC-2012. Retrieved 2016, April 8 from http://www.bta-kindlustus.ee/userfiles/files/General_terms_and_conditions_GC-2012_EN.pdf
81. BTA Insurance Company SE, General insurance terms and conditions No 3. Retrieved 2016, April 8 from https://www.bta.lv/userfiles/files/29489_Visparejie_apdr_noteikumi_Nr_3_EN.pdf.
82. BTA SE, General Insurance Terms and Conditions No. 3. Retrieved 2016, April 8 from https://www.bta.lv/userfiles/files/29489_Visparejie_apdr_noteikumi_Nr_3_EN.pdf.
83. BTA SE, Home Insurance conditions. No. 3F-2. Retrieved 2016, April 8 from https://bta.lv/userfiles/files/25151_Majoklu_apdrosinasanas_noteikumi_3F_EN.pdf.
84. BTA Insurance Company SE, General Insurance Terms and Conditions No. 2. Retrieved 2016, April 8 from https://bta.lv/userfiles/files/25118_Visparejie_apdr_noteikumi_Nr2_EN.pdf.
85. Codan Forsikring A/S Estonian branch, Car insurance terms A101/2011. Retrieved 2016, April 8 from https://www.iizi.ee/public/RSA_kasko_tingimused_alates_2011.01.01_eng.pdf (in Estonian).
86. ERGO Insurance SE, Home insurance terms and conditions of ERGO MIDI KT.0928.15. Retrieved 2016, April 8 from https://www.ergo.ee/fs-files/0000/0000/0002/files/Kodukindlustus%20MIDI%20KT.0928.15.%20ENG.pdf.
87. ERGO Kindlustuse AS. Kindlustuslepingute üldtingimused [General insurance conditions] KT.0806.11. Retrieved 2016, April 8 from https://www.ergo.ee/fs-files/0000/0000/0002/files/KT.0806.11_Kindlustuslepingute_uldtingimused.pdf. (In Estonian).
88. ERGO Kindlustuse AS. Terms and conditions of vehicle insurance. Retrieved 2016, April 8 from http://ergo.ee/files/KT_0056_11_Soidukikindlustuse_tingimused_KT_0056_11_ING.pdf.

89. ERGO Kindlustuse AS, Kodukindlustuse tingimused KT.0645.11 [Home insurance terms]. Retrieved 2016, April 8 from https://www.iizi.ee/public/Ergo_Kodu_tingimused.pdf (In Estonian).
90. If P&C Insurance AS, General Insurance Conditions ÜU 20021. Retrieved 2016, April 8 from http://tingimused.if.ee/ViewPDF.aspx?ID=441bd984-466f-4190-ad9f-1e4358b7e0bf.
91. AS Inges Kindlustus, Reisikindlustuse tingimused [Travel insurance terms]. Retrieved 2016, April 11 from http://www.inges.ee/wp/wp-content/uploads/2015/03/Reisikindlustuse-tingimused-30.03.2015.pdf (In Estonian).
92. AS Inges Kindlustus Varakindlustuse tingimused [Property insurance terms]. Retrieved 2016, April 11 from http://www.inges.ee/wp/wp-content/uploads/2015/02/Varakindlustuse-tingimused-31-03-2015.pdf (In Estonian).
93. Salva Kindlustuse AS Terms and conditions of vehicle insurance. Retrieved 2016, April 8 from https://www.salva.ee/sites/default/files/insurance/terms/skt-13.11_en_alates_01.11.13.pdf.
94. Salva Insurance AS. Kindlustuse üldtingimused [General Insurance Conditions]. Retrieved 2016, April 8 from https://www.salva.ee/sites/default/files/content-editors/tingimused/salva_kindlustuse_as_ku-03_0.pdf (In Estonian).
95. Salva Kindlustuse AS Kindlustuse üldtingimused KÜ-13. [General Insurance Conditions]. Retrieved 2016, April 11 from https://www.salva.ee/sites/ default/ files/content-editors/tingimused/kindlustuse_uldtingimused_ku-13.pdf (In Estonian).
96. Salva Kindlustuse AS. General vehicle insurance conditions SÜ-11. Retrieved 2016, April 8 from https://www.salva.ee/sites/default/files/content-editors/tingimused/Kasko/soidukikindl_uldting_as_su-11.pdf (In Estonian).
97. Salva Kindlustuse AS. Ettevõtte varakindlustuse tingimused [Legal Entities Property Insurance Conditions]. Retrieved 2016, April 11 from https://www.salva.ee/sites/default/files/content-editors/tingimused/Ettevqtte_vara/evt-14.04.pdf (In Estonian).
98. Salva Kindlustuse AS Apple seadmete kindlustamise tingimused [Apple Hardware Insurance Conditions]. Retrieved 2016, April 11 from https://www.salva.ee/sites/default/files/content-editors/tingimused/Apple/apple_seadmete_kindlustuse_tingimused_ask-13.05.pdf (In Estonian).
99. Seesam Insurance AS Latvia branch Terms and conditions of Private persons property insurance PPWL 09/1. Retrieved 2016, April 8 from https://www.seesam.lv/uploads/files/noteikumi/HOME/Seesam_Ipasums_PPWL-09.01_EN_PRN.PDF.
100. Seesam Insurance AS, General terms and conditions 1/2008. Retrieved 2016, April 8 from https://www.seesam.ee/uploads/files/%C3%9Cldised%20lepingu-tingimused%20%2801.07.2008%29_ENG_2011.pdf.
101. Seesam Insurance AS Motor Vehicle Insurance Conditions. 1/2012. Retrieved 2016, April 8 from https://www.seesam.ee/uploads/files/car-insurance/S%C3%B5idukikindlustuse_tingimused_1_2012_(22032012)_ENG.pdf.
102. Joint Stock Insurance Company "Seesam Latvia". Terms and conditions of private person's property insurance. Retrieved 2016, April 8 from http://www.seesam.lv/uploads/files/ipasuma-apdrosinasana/Seesam_Ipasums_PPWL-09.01_EN_PDF.pdf.
103. Pohjola Insurance. (2009). Extrasure insurance terms and conditions. Retrieved 2016, April 8 from https://www.pohjola.fi/NR/rdonlyres/ez4bxvs22urmmf7

njsrnvtlghx5eutjrsxndjyu6a5vjqa4ag7jkitvjpxaqi7pp422a5xqly5d7ocysyofjowpztff/1035311.pdf.
104. QBE Insurance (Europe) Limited Estonian branch home insurance conditions. Retrieved 2016, April 8 from https://www.iizi.ee/public/QBE_Koduvara_maaratud_riskide_kindlustus.pdf (In Estonian).

Case Law

105. The Supreme Court's judgement 3-2-1-56-01 of 10 April 2001.
106. The Supreme Court's judgement 3-2-1-88-04 of 13 September 2004.
107. The Supreme Court's judgement 3-2-1-131-04 of 17 November 2004.
108. The Supreme Court's judgement 3-2-1-51-06 of 16 May 2006.
109. The Supreme Court's judgement 3-2-1-106-07 of 28 November 2007.
110. The Supreme Court's judgement 3-2-1-17-08 of 9 April 2008.
111. The Supreme Court's judgement 3-2-1-133-12 of 7 November 2012.
112. Judgement of Tallinn District Court 2-04-111 of 18 December 2007.
113. Judgement of Tallinn District Court 2-06-6604 of 8 April 2008.
114. Judgement of Tallinn District Court 2-07-43148 of 19 June 2009.
115. Judgement of Tallinn District Court 2-08-3737 of 31 August 2009.
116. Judgement of Tartu District Court 2-10-14648 of 7 November 2011.
117. Judgement of Harju County Court 2-07-10217 of 28 April 2009.
118. Supreme Court of the Republic of Lithuania judgement No. 3K-3-354/2004 of 7 June 2004.
119. Supreme Court of the Republic of Lithuania judgement No. 3K-3-545/2007 of 10 December 2007.
120. Supreme Court of the Republic of Lithuania judgement No 3K-3-210/2010 of 10 May 2010.
121. Judgement of Vilnius District Court No. 2A-957-623/2010 of 20 January 2010.
122. Judgement of Spanish Tribunal Supremo. Case Allianz Ras Seguros y Reaseguros, S.A. v Order of the Ministry of Economy of 2003.
123. Supreme Court of the Germany judgement No. IV ZR 183/03 of 5 May 2004.
124. European Court of Justice Case No. C-484/08 of 3 June 2010.
125. Vakuutuslautakunta [The Finnish Insurance Complaints Board]. Case No. VKL 312/07 of 30 August 2007.
126. Vakuutuslautakunta [The Finnish Insurance Complaints Board]. Case No. VKL 182/0 of 15 December 2010.

Draft laws, recommendations etc

127. Opinion of the European Economic and Social Committee (Section for the Single Market, Production and Consumption) on 'The European Insurance Contract' (own initiative opinion), Doc CESE 1626/2004 (15 December 2004).
128. European Parliament Resolution of 8 June 2011 on Policy Options for Progress towards a European Contract Law for Consumers and Businesses, 2011/2013(INI)
129. Principles of Claim Handling Established by the Finnish Association of Insurance Companies. Retrieved 2016, April 8 from

http://web.archive.org/web/20150525050241/http://www.fkl.fi/materiaalipankki/ohjeet/Dokumentit/Korvaustoiminnan_periaatteet.pdf (In Finnish).
130. Draft Common Frame of Reference. Chapter III, Section IX: Insurance Contract. Project Group "Restatement of European Insurance Contract Law". Retrieved 2016, April 8 from https://www.uibk.ac.at/zivilrecht/forschung/evip/restatement/sprachfassungen/peicl-en.pdf.
131. Position of the Insurance Supervisory Commission on Right of Insurance Companies to Charge Insurance Premiums for Cover Suspension Period. Retrieved 2016, April 8 from: http://web.archive.org/web/20070208165936/http://www.dpk.lt/teises.pozicijos.php. (In Lithuanian).
132. Final Report of Commission Expert Group on European Insurance Contract Law. Retrieved 2016, April 8 from http://ec.europa.eu/justice/contract/files/expert_groups/insurance/final_report_en.pdf.
133. European Parliament Resolution of 8 June 2011 on Policy Options for Progress towards a European Contract Law for Consumers and Businesses. 2011/2013(INI). Retrieved 2016, April 8 from http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2011-0262.
134. European Commission, Green Paper from the Commission, COM(2010)348 final, Retrieved 2016, April 8 from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0348:FIN:en:PDF.
135. European Comission, Green Paper from the Commission COM (2015) 630 final. Retrieved 2016, April 8 from http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52015DC0630&from=EN.
136. Pedago Liz, Opinion of the European Economic and Social Committee on 'The 28th regime – an alternative allowing less lawmaking at Community level' (own-initiative opinion), Official Journal of the European Union, C 21/26, 21.1.2011.
137. Comments Of the German Insurance Association on the Green Paper of the EU Commission on policy options for progress towards a European Contract Law for consumers and businesses (COM (2010) 348). Retrieved 2016, April 8 from http://ec.europa.eu/justice/news/consulting_public/0052/contributions/163_en.pdf.
138. European Financial Services Round Tabel letter on the European Comissions Green Paper on European Contract law. Retrieved 2016, April 8 from http://www.efr.be/documents%5Cpublication%5C72.2011.02.%20EFR%20signed%20letter%20on%20European%20Contract%20Law%2031.01.2011.2011.pdf.
139. Allianz SE consultation response. Allianz Position on policy options for progress towards a European Contract Law for consumers and businesses. Retrieved 2016, April 8 from http://ec.europa.eu/justice/news/consulting_public/0052/contributions/7_en.pdf.
140. Pan European Customer Satisfaction. Report 2011. Retrieved 2016, April 8 from http://www.epsi-rating.com/?s=136.%09Pan+European+Customer+Satisfaction&lang=en.
141. EPSI Rating – Nordic and Baltic insurance trend 2010. Retrieved 2016, April 8 from http://www.epsi-rating.com/?s=136.%09Pan+European+Customer+Satisfaction&lang=en.
142. European Economic and Social Committee's opinion on the European Insurance Contract. Official Journal of the European Union. C 157, 28.6.2005.
143. The Green Paper solicited 319 distinct positions in the course of public consultations European Commission. Retrieved 2016, April 8 from http://ec.europa.eu/justice/news/consulting_public/news_consulting_0052_en.htm.

144. Insurance contract law: the business insured's duty of disclosure and the law of warranties, The Law Commission Consultation Paper No 204 and The Scottish Law Commission Discussion Paper No 155. Retrieved 2016, April 8 from http://www.scotlawcom.gov.uk/files/4513/4064/8464/Summary.pdf.
145. European Insurance and Occupational Pensions Authority, Financial Stability Report 2012, Second half-year report, Retrieved 2016, April 8 from https://eiopa.europa.eu/Publications/Reports/EIOPA_Second_Half-Year_Financial_Stability_Report_2012.pdf.

SUMMARY IN ESTONIAN

Euroopa kindlustuslepingu õiguse printsiipide (PEICL) rakendamine Balti riikide kindlustusvõtjatele: meede kindlustusvõtjate kaitseks ja võimalus piiriüleste teenuste levikuks

Kindlustusõigussuhteid saab jagada kolme suurde kategooriasse: (i) kindlustuslepingutest tulenevad õigussuhted ehk kindlustusandja ja kindlustusvõtja vahelised kindlustuslepingust tulenevad õigussuhted, (ii) kindlustusandjate ja riigi vahelised õigussuhted ehk kindlustusjärelevalve, tegevusload jne, (iii) kindlustusandjate ja riigi vahelised finantsõigusest tulenevad õigussuhted ehk maksud, lõivud jne. Neist kaks viimast kategooriat, mis puudutasid kindlustusandjate igapäevast tegevust, on Euroopa Liidus (edaspidi EL) läbi erinevate direktiivide suures osas ühtlustatud. Ka kindlustusvõtja ja kindlustusandja vahelisi õigussuhteid on reguleeritud, kuid siiani puudub kindlustuslepingu õiguse alane ühtlustamine.

EL üheks eesmärgiks on toimiv ühtne siseturg. Samas ühine turg baseerub suuresti lepinguõigusel. EL ühtse kindlustusturu puhul eeldati, et turu liberaliseerimine võimaldab kindlustusandjatel enda kindlustusportfelli jagada rahvusvaheliselt laiemalt, mis toob kaasa madalamad kulud ja seega ka madalamad hinnad ning kohalikud kindlustusandjad teevad enda tooted kõigile Euroopa Liidu tarbijatele kättesaadavaks ning suuremal turul saab spetsiaalseid eritooteid efektiivsemalt turustada[1]. Praktika näitab käesoleval hetkel, et piireülese kindlustusteenuse pakkumine on tarbijatele probleemne, kuna EL-s on 28 erinevat lepinguõigust ja see teeb piiriülese tegevuse keeruliseks ja kalliks. Teenuste ja kaupade puhul, mis on suunatud tarbijatele peavad ettevõtjad arvestama iga riigi eripäradega, m.h. erinevate õigussüsteemidega, mistõttu äritegemise kulukus suureneb näiteks õigusabikulude näol (nt eeldavad erinevad õigussüsteemid erinevaid lepingute tüüptingimusi jne). Seega omab kindlustuslepinguliste tsiviilõiguslike suhete harmoniseerimine olulist tähtsust, et tagada reaalselt EL ühtse kindlustusturu toimima hakkamine. Ilma harmoniseerimiseta ei saa ühtne EL kindlustusturg hakata reaalselt ja sisuliselt toimima kuna tarbijatel on keeruline erinevaid õigussüsteeme endale selgeks teha ja kindlustusandjatel puudub majanduslik mõttekus väiksemate turgude jaoks enda tooteid piireüleselt pakkuda.

Euroopa Komisjon on välja töötamas Euroopa Lepinguõiguse Ühtset Raamnormistikku (Draft Common Frame of Reference – DCFR), mille ühe osana käsitletakse kindlustuslepinguid (Principles of European Insurance Contract Law[2] – edaspidi PEICL[3]).

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[1] Hess, Thomas, Trauth, Thomas, Towards A Single European Insurance Market, International Journal of Business, 3 (1), 1998, 89–102.

[2] Principles of European Insurance Contract Law : Project Group "Restatement of European Insurance Contract Law", Common Frame of Reference (Euroopa Lepinguõiguse Ühtne Raamnormistik). Chapter III , Section IX1. Insurance Contract. Kättesaadav veebis: http://restatement.info/cfr/Draft-CFR-Insurance-Contract-17122007-FINAL.pdf (26.03.2016).

Euroopa Komisjoni 1.7.2010 nn roheline raamat "Euroopa lepinguõiguse loomise võimalused tarbijate ja ettevõtjate jaoks"[4] esitati avalikuks aruteluks, et konsulteerida Euroopa lepinguõiguse valdkonna edasiarendamise võimaluste osas. Euroopa Komisjon pakub rohelises raamatus välja sisuliselt 7 lähenemisviisi lepinguõiguse ühtsuse suurendamiseks, mh vabatahtlik Euroopa lepinguõigus (ehk 28. režiim[5] või ka 2 režiim), mille kohaldamise oma lepingulistele suhetele saaksid tarbijad ja ettevõtjad vabalt valida (*optional instrument*).[6] See vabatahtlik õigus oleks alternatiiviks olemasolevatele riiklikele lepinguõigustele. Euroopa kindlustusõiguse spetsialistid on leidnud, et kindlustusõiguses tuleks juhinduda 28 režiimi ideest[7], analoogselt leiti ka Euroopa Majandus- ja Sotsiaalkomitee arvamuses Euroopa kindlustuslepingu kohta.[8] Roheline raamat sai avalike konsultatsioonide käigus 319 erinevat seisukohta.[9] Rohelisele raamatule PEICL-iga seoses esitatud vastuste osas võib järeldada, et keskne küsimus ei ole kindlustussektori vaatenurgast mitte kas toetada *optional instrument*'i või mitte ning kas see peaks kohalduma B2B või/ja B2C lepingutele, vaid keskne küsimus on, kas PEICL kaitseb liiga radikaalselt[10] tarbijaid/kindlustusvõtjaid ning kas tegemist on *win-win* olukorraga.

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[3] PEICL-i üldosa (I osa) ja kahjukindlustuse osa (II osa) avaldati esmakordselt ja esitati Euroopa Komisjonile detsembris 2007, (Project Group "Restatement of European Insurance Contract Law". Kättesaadav veebis: http://www.restatement.info/ 26.03.2016).

[4] European Commission, COM(2010)348 final, kättesaadav veebis: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0348:FIN:en:PDF (26.03.2016).

[5] 27 liikmesriigi (nimetatud väljendit kasutati enne 28-nda liikmesriigi liitumist) „siseriiklik" lepinguõigus vs 28 režiim ehk 2. režiim kõigile liikmesriikidele. Euroopa vabatahtlik kord muutub liikmesriikide siseriikliku õiguseosaks sarnaselt muude Euroopa õiguse allikatega. 2. režiim annaks pooltele võimaluse valida siseriikliku lepinguõiguse kahe režiimi vahel, millest üht jõustab liikmesriigi seadusandja ja teist Euroopa seadusandja**.** Tegemist on alternatiiviga traditsioonilisele õigusaktide ühtlustamisele.

[6] Vt ka Euroopa Majandus- ja Sotsiaalkomitee arvamus teemal „28. režiim: alternatiiv, mis aitab vähendada õigusaktide hulka ühenduse tasandil" (omaalgatuslik arvamus). ELT C 21/26 21.1.201

[7] Jürgen Basedow, John Birds, Malcolm Clark jt, Principles of European Insurance Contract Law (PEICL), Sellier European Law Publishers, 2009, lk lxi. Samuti vt Project Group „Restatement of European insurance contract law" seisukohta rohelisele raamatule. Kättesaadav veebis:
http://ec.europa.eu/justice/news/consulting_public/0052/contributions/284_en.pdf (26.03.2016).

[8] ELT C 157, 28.6.2005, lk 1

[9] Euroopa Komisjon. Kättesaadav veebis: http://ec.europa.eu/justice/news/consulting_public/news_consulting_0052_en.htm (26.03.2016).

[10] Saksamaa Kindlustusseltside Liit, European Financial Services Round Table ja Allianz SE leiavad (Kättesaadav veebis: http://ec.europa.eu/justice/news/consulting_public/0052/contributions/163_en.pdf, (26.03.2016), http://www.efr.be/documents%5Cpublication%5C72.2011.02.%20EFR%20signed%20letter%20on%20European%20Contract%20Law%2031.01.2011.2011.pdf, (26.03.2016) ja http://ec.europa.eu/justice/news/consulting_public/0052/contributions/7_en.pdf, (26.03.2016)) vastuses rohelisele raamatule PEICL-i ideed toetades, et kuna PEICL ei

Eestis, nagu ka mujal Baltikumis, on riigi väiksusest tulenevalt kindlustusõiguse alaseid uurimusi väga vähe ja seetõttu on eelkõige tuginetud Lääne–Euroopa spetsialistide uurimustöödele. Väitekirjas on analüüsitud PEICL-it, Eesti, Läti ja Leedu kindlustusalaseid õigusakte vastavate artiklite avaldamise seisuga. Autor ei kasuta muid Ida-Euroopa (nt Ukraina, Poola jne) riike võrdlevas analüüsis, kuna reeglina on nende riikide kohta käivad kohtulahendid ja teadusartiklid siseriiklikes keeltes, mida autor ei valda. Baltikumi Riigikohtu otsuste analüüsis on uuritud asjakohaseid kohtulahendeid perioodist 2004–2015. Autor on kasutanud väitekirjas peamiselt võrdlevat meetodit. Autor ei käsitle väitekirjas tulenevalt töö piiridest menetlusõigusest tekkivaid küsimusi, PEICL-i rakendamise küsimusi, siseriiklike õiguste ühtlustamist ega riskivälistuste temaatikat.

Väitekirjas analüüsitakse PEICL-it küsimuses, et kas kindlustusvõtjat kaitstakse liiga radikaalselt, uurides PEICL erisusi võrreldes Eesti võlaõigusseaduse (edaspidi VÕS)[11] kindlustuslepingu regulatsiooniga, Läti kindlustuslepingu seadusega (ICL)[12], Leedu tsiviilkoodeksiga (CC)[13] ja Leedu kindlustusseadusega (IL)[14].

Väitekirja hüpoteesiks on, et Eesti, Läti ja Leedu kindlustuslepingut reguleerivad õigusaktid ei taga kindlustusvõtjatele piisavat kaitset võrreldes PEICL-iga ning antud kolme riigi kindlustusvõtjate huvides on PEICL-i võimalikult kiire rakendamine 2 režiimina.

PEICL-i rakendamine Eestis, Lätis ja Leedus võimaldaks suurtel Euroopa kindlustusandjatel, kes hetkel ei ole Baltikumis tegutsevad, pakkuda enda teenuseid neis väikeriikides odaval ja standardiseeritud viisil ilma tütarühingu või filiaali asutamiseta. Käesoleval hetkel piirab seda asjaolu, et selleks, et pakkuda piireülest teenust tarbijatele, peaks teenuseosutaja tundma kõikide riikide kindlustusõigusakte eraldi ja seeläbi on piireülese teenuse osutamise ebaratsionaalne. Seega PEICL-i rakendumisel tekiks Eesti, Läti ja Leedu kindlustusvõtjatele kasu nii pakutavate teenuste hinna- kui tootekonkurentsi suurenemisena.

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põhine w*in-win* olukorral ja on liialt radikaalselt kindlustusvõtjaid kaitsev, siis tuleks seda veel edasi arendada. Samas Belgia tarbijakaitseamet on toonud välja, et võrreldes Belgia õigusega omab PEICL eeliseid vaid 4 küsimuses aga 16 küsimuses on siseriiklik õigus rohkem tarbijat kaitsev (Helmut Heiss, Mandeep Lakhan, Principles of European Insurance Contract Law: A Model Optional Instrument, Sellier European Law Publishers, 2011, lk 96).

[11] Eestis reguleerib kindlustuslepingut võlaõigusseaduse neljas peatükk. Võlaõigusseadus 29. september 2001. – RT I 2001, 81, 487; RT I 2010, 7, 30.

[12] The Insurance Contract Law (Latvia), Latvijas Vēstnesis No. 188/189 on 30 June 1998, No. 56 04.04.2007

[13] The Civil Code of the Republic of Lithuania. Valstybės žinios, 2000, Nr. 74-2262

[14] Law on insurance. Valstybės žinios, 2003, Nr. 94–4246

Töö eesmärgiks on leida vastus järgmisele põhimõttelisele küsimusele:

> *"Milline on mõistlik standard, milles seadus peab kaitsma kindlustusvõtja kui kindlustuslepingu nõrgema poole huve? Kas PEICL-is on kindlustusvõtja huvide kaitse laialdasem kui Eesti, Läti või Leedu kindlustuslepinguõiguses? Kui jah, kas see on põhjendatud?"*

Autor piirab PEICL-i analüüsi Eesti, Läti ja Leedu kindlustuslepinguõigusega a) lepingueelsete suhetega teavitamiskohustuse kontekstis, b) lepinguliste suhetega seoses kindlustusmakse tasumisega, c) kindlustusjuhtumi eelsete suhetega kindlustusriski muutumise ja ohutusnõuete täitmise kontekstis, d) kindlustusjuhtumi järgsete õigussuhetega. Muu uurimuse seas esitab autor järgmised küsimused: Kas meetod, kus kindlustusvõtja peab kindlustusandjat teavitama seoses lepingueelsete kohustustega kõikidest riskiasjaoludest ja kus kindlustusandja ei esita vastavate riskiasjaolude kohta küsimustiku, on põhjendatud modernses kindlustuslepinguõiguses? Kas Eesti hüpoteegipidajad võivad olla mittemotiveeritud aktsepteerima PEICL-i rakendamist kindlustuslepingutele, kuna see paneb nad ebasoodsamasse olukorda võrreldes võlaõigusseadusega? Kas PEICL-i nõue, et kindlustusriski suurenemine peab olema selgelt defineeritud kindlustuslepingus, on mõistlik? Kas olukord, kus seadus sätestab ohutusmeetmete definitsiooni ja samuti eraldi regulatsiooni ohutusmeetme rikkumise kohta kaitseb kindlustusvõtja huve rohkem kui ilma selleta? Kas põhimõte, mille kohaselt kindlustusandja vabaneb alati hüvitamiskohustusest, kui kindlustusvõtja ei teavita tahtlikult kindlustusjuhtumist viivitamatult, on mõistlik?

Väitekiri põhineb autori poolt avaldatud viiel õigusteaduslikul artiklil:

1) Aggravation of Risk and Precautionary Measures in Non-Life Insurance: A Tricky Scope for the Insurer?[15], Baltic Journal of Law & Politics, 2015 (8:2), pp. 1–45. Antud artiklis analüüsib autor kindlustusriski suurenemist ja ohutusmeetmeid. Tihti on kindlustusriski suurenemine ja ohutusmeetmete mittetäitmise vahele piiri tõmbamine raskendatud, kuna kindlustusvõtja tegu võib vastata mõlemale korraga. Samas on kindlustusandja õiguskaitsevahendid nende kahe erineva olukorra jaoks erineva ulatusega. Just kindlustusriski suurenemine ja ohutusmeetmete mittetäitmine on peamised alused mistõttu kindlustusandjad praktikas vähendavad kindlustushüvitist või keelduvad kahju hüvitamisest.
2) Policyholder Obligations After an Insured Event: Are Baltic Insurance Laws Too Insurer-Friendly Compared to the Principles of European Insurance Contract Law?[16], Baltic Journal of Law & Politics, 2012 (5:1) , pp. 137–164. Antud artiklis analüüsib autor kindlustusvõtja kindlustusjuhtumi järgseid kohustusi. Kindlustusjuhtumijärgsetele kohustustustele pööratakse õiguskirjanduses vähe tähelepanu Samas on neil kolmel põhikohustusel: (i) kahju

[15] Autorid: Olavi-Jüri Luik, Rainer Ratnik ja Magnus Braun.
[16] Autor Olavi-Jüri Luik.

vähendamise kohustus, (ii) kindlustusjuhtumist teatamise kohustus ja (iii) koostöökohustus, oluline roll kindlustusandja täitmiskohustuses. Just nimetatud kohustuste kohasest täitmisest oleneb kui kiiresti kindlustusvõtja saab kätte kindlustusjuhtumi toimumisel kindlustushüvitise. Antud kohustuste rikkumine võib tuua ka kaasa teatud juhtudel kindlustushüvitise väljamaksmisest keeldumise.

3) Does the insurance premium payment regulation as stipulated in the Principles of European Insurance Contract Law protect policyholders sufficiently enough?[17], Current Issues of Business and Law, 2012, 7(1), pp. 85–107. Antud artiklis analüüsib autor kindlustusmakse tasumise kohustust. Kindlustustusleping on kahepoolne: kindlustusvõtja põhikohustuseks on tasuda kindlustusmakseid ja kindlustusandja põhikohustuseks on hüvitada kindlustusriski realiseerumisel tekkinud kahju. Seega on kindlustusmakse kui kindlustusvõtja põhikohustuse analüüsimine oluline, et määrata poolte subjektiivsete õiguste sisu.
4) Significance of the Principles of European Insurance Contract Law for the pre-contractual information duty: Experience of the Baltic States[18], "Current Issues of Business and Law" journal, Vol. 6, No 2 (2011) pp. 192–215. Antud artiklis analüüsib autor kindlustusvõtja kindlustuslepingu eelseid kohustusi. Kindlustusvõtja üks põhikohustusi on teatada kindlustusandjale talle teadaolevad asjaolud, mis on olulised kindlustusandja poolt riski ülevõtmiseks. Nimetatud kohustus on seotud *uberrimae fidei* põhimõttega *(ubberimae fidei* – "the utmost good faith"), mis on tsiviilõiguses keskse heausu printsiibi erijuhtum.
5) Do the Principles of European Insurance Contract Law Go Too Far in Protecting the Policyholder?[19], Juridica International, XVIII 2011, pp. 73–83 Antud artiklis analüüsib autor PEICL-it võrdluses Eesti võlaõigusseadusega.

Autor uuris PEICL-it võrdluses Eesti, Läti ja Leedu kindlustuslepingut reguleerivate õigusaktidega ajavahemikul 2011–2014 (viimase artikli[20] valmimise aeg). Kuigi tõenäosus PEICL-i rakendamiseks EL-is on käesolevaks hetkeks autori subjektiivsel arvamusel oluliselt vähenenud, ei vähenda see vajadust "*optional instrumendi*" järgi, et tagada EL-is ühtne ja tõrgeteta kindlustusturg.

Alljärgnevalt esitab autor kokkuvõtte töös esitatud väidetest ja nende põhjendustest:

[17] Autorid: Olavi-Jüri Luik ja Tomas Kontautas.
[18] Autorid: Olavi-Jüri Luik ja Magnus Braun.
[19] Autor Olavi-Jüri Luik.
[20] Aggravation of Risk and Precautionary Measures in Non-Life Insurance: A Tricky Scope for the Insurer?, Baltic Journal of Law & Politics, 2015 (8:2), pp. 1–45.

I Kindlustusvõtja kindlustusjuhtumi eelsed kohustused
Kaitsmisele kuuluv väide:
Kindlustusjuhtumi eelsete kohustustega seoses on mõistlikuks standardiks see, kui seadus sätestab, et kindlustusvõtja peab kindlustuslepingu eelselt teavitama kindlustusandjat ainult nendest olulistest asjaoludest, mille kohta kindlustusandja on esitanud otsese küsimuse. Moderne kindlustuslepinguõigus ei peaks tuginema "*oma initsiatiivi*" meetodil.

Probleemi kirjeldus ja põhjendused:
Kindlustusvõtja üks põhikohustusi on teatada kindlustusandjale talle teadaolevad asjaolud, mis on olulised kindlustusandja poolt riski ülevõtmiseks. Nimetatud kohustus on seotud *uberrimae fidei* põhimõttega *(ubberimae fidei* – "the utmost good faith"). Lepingueelset teavitamiskohustust võib kindlustuslepingute puhul reguleerida kahel viisil: kindlustusandja esitab kindlustusvõtjale küsimustiku ja kindlustusvõtja vastab kõigile küsimustele (i) või kindlustusvõtja peab kindlustusandjale teatama kõigest olulisest (ii). Need kaks võimalikku regulatsiooni erinevad selle poolest, kumb lepingupool peaks kandma riski, et kõik kindlustuslepingu seisukohast olulised asjaolud saaksid välja selgitatud.

PEICL artikli 2:101 lõike 1 kohaselt lasub kindlustusvõtjal lepingu sõlmimisel kohustus teavitada kindlustusandjat asjaoludest, millest ta on teadlik või peaks olema teadlik ning mille kohta on kindlustusandja esitanud talle selgeid ja täpseid küsimusi. Artiklis 2:101 sätestatud küsimuste meetodi valik tuleneb sellest, et tavapäraselt on kindlustusvõtjatel oluliselt raskem hinnata, milline informatsioon on kindlustusriski hindamise seisukohalt oluline. Selgete küsimuste esitamise kohustuse panemine kindlustusandjale vähendab hilisemaid vaidluseid kindlustusandja ja kindlustusvõtja vahel.

Eestis peab kindlustusvõtja VÕS § 440 lõike 1 kohaselt lepingu sõlmimisel teatama kindlustusandjale kõikidest talle teada olevatest asjaoludest, millel on nende olemusest tulenevalt mõju kindlustusandja otsusele leping sõlmida või teha seda kokkulepitud tingimustel (olulised asjaolud). Samas eeldatakse antud paragrahvi järgi, et oluline on asjaolu, mille kohta kindlustusandja on otseselt kirjalikku taasesitamist võimaldavas vormis teavet nõudnud. Eesti õiguskirjanduses on leitud[21], et võlaõigusseaduses on valitud pigem kahe äärmusliku regulatsiooni kesktee: ühelt poolt peab kindlustusvõtja teatama kindlustusandjale omal algatusel kõigist talle teadaolevatest lepingu sõlmimise aspektist olulistest asjaoludest, teiselt poolt tuleb igal juhul teatada sellest, mille kohta on kindlustusandja eraldi teavet nõudnud. Eestis eeldatakse, et asjaolu, mille kohta kindlustusandja ei ole eraldi teavet nõudnud, ei ole ka oluline[22]. Siinkohal esineb autori arvates vastuolu. Juhul kui väita, et asjaolu, mille kohta ei ole kindlustusandja eraldi teavet nõudnud, ei ole oluline, siis ei ole autori hinnangul võimalik

[21] J. Lahe. Kindlustusõigus [Insurance law]. Tallinn, 2007, lk 50.
[22] P. Varul *et al*. Võlaõigusseadus II. Kommenteeritud väljaanne [Law of Obligations Act II, Executive edition]. Tallinn, 2007, lk 475

samal ajal asuda seisukohale, et võlaõigusseaduses on valitud kesktee ning kindlustusvõtja peab lisaks kindlustusandja poolt küsitule teatama sellele omaalgatuslikult kõigest muust olulisest. Suurim erinevus PEICL ja võlaõigusseaduse vahel seisneb selles, et võlaõigusseadus käsitleb vaid infot, mis on kindlustusvõtjale teada, samas kui PEICL-s on oluline ka informatsioon, mis kindlustusvõtjale peaks olema teada. Erinevus on siiski näiline, sest võlaõigusseaduse kohaselt toob negatiivse tagajärje kaasa vaid teadlik käitumine.

Lähtudes asjaolust, et VÕS § 440 on dispositiivne, sätestavad paljud Eesti kindlustusandjad nn "*oma initsiatiivi*" meetodi. Nii näiteks sätestavad Seesam Insurance AS üldised lepingutingimused 1/2008[23] p 11.1., et:

> *"Kindlustusvõtja peab lepingu sõlmimisel edastama Seesamile tõese ja täieliku info kõigi kindlustusvõtjale teadaolevate oluliste asjaolude kohta, mis võivad oma olemuse tõttu mõjutada Seesami otsust sõlmida leping või seada lepingu sõlmimiseks kindlad tingimused. Teavitamiskohustus kehtib ka juhul, kui kindlustusvõtja eeldab, et vastav asjaolu võib olla Seesamile juba teada".*

Lätis peavad samas kindlustusvõtja ja kindlustatud isik ICL § 5 lg 1 kohaselt esitama kogu kindlustusandja poolt nõutud informatsiooni asjaolude kohta, mis on vajalikud riski realiseerumise tõenäosuse hindamiseks ja mis on kindlustuslepingu sõlmimise seisukohalt olulised. ICL § 5 lg 2 kohaselt vastutavad kindlustusvõtja ja kindlustatud isik esitatud informatsiooni tõelevastavuse eest. Seega on ICL ja PEICL enda regulatsioonidelt sarnased juba täna ning Läti kindlustusvõtjate suhtes ei kehti "*oma initsiatiivi*" meetodit.

Leedus peab kindlustusvõtja CC artikkel 6.993 p 1 kohaselt enne kindlustuslepingu sõlmimist esitama kindlustusandjale kogu tema valduses oleva teabe (i) asjaoludest, milledel võib olla oluline mõju kindlustusjuhtumi toimumise tõenäosusele ja (ii) kindlustusjuhtumi toimumisega kaasneda võiva kahju suuruse kohta, kui kindlustusandja selliseid asjaolusid ei tea ega peagi teadma. Sama sätte 2 punkti kohaselt peetakse kindlustusvõtja poolt teatavatest asjaoludest olulisteks neid, mida on nimetatud kindlustuslepingu tüüptingimustes ning neid, mille kohta kindlustusandja kirjalikult teavet on nõudnud. CC erinevus PEICL-ist on asjaolus, et kindlustusvõtja peab lisaks küsimustikule olema võimalikult täpselt kursis ka kindlustusandja tüüptingimustega. Autor leiab, et sisuliselt on selline regulatsioon pigem lähedane "*oma initsiatiivi*" meetodile, kuna eeldada, et tarbija suudab adekvaatselt ja põhjalikult keerulised ning tihti pikad tüüptingimused läbi töötada, ei pruugi vastata tavapraktikale. Samuti ei pruugi õigusteadmisteta isik eristada tüüptingimustes küsimusi, mida kindlustusandja peab eriti oluliseks.

Kolme analüüsitud Balti riigi kindlustusõiguse kohaselt toob PEICL-i võimalik rakendamine vähim muutusi kaasa Läti kindlustusvõtjatele, kelle lepingu-

[23] Seesam Insurance AS üldised lepingutingimused 1/2008, kättesaadav veebis: https://www.seesam.ee/uploads/files/%C3%9Cldised%20lepingutingimused%20(01.07.2008)_EST_2011.pdf (11.04.2016).

eelne teavitamiskohustus on analoogne *optional instrument*'iga. Samas Leedu ja eriti Eesti kindlustusvõtjate olukord paraneb oluliselt, kuna kindlustusvõtjad ei pea PEICL-i alusel sõlmitud kindlustuslepingute puhul enam järgima nn "*oma initsiatiivi*" meetodit. Seega kaitseb PEICL nimetatud küsimuses kindlustusvõtja huve laialdasemalt. Tulenevalt autori analüüsist on see põhjendatud.

II Kindlustusmakse tasumisega seotud regulatsioon

Kaitsmisele kuuluv väide:
Kindlustusmakse tasumise regulatsiooniga seoses on mõistlikuks standardiks see, kui kindlustusandjale rakendub *pro rata* printsiip ja seadus sätestab järgmaksetega seoses ajapikenduse (*period of grace*).

Probleemi kirjeldus ja põhjendused:
VÕS § 459 sätestab, et kui kindlustusleping lõpeb kindlustusperioodi jooksul ülesütlemise või taganemisega või muul põhjusel ennetähtaegselt, on kindlustusandjal õigus kindlustusmaksele üksnes kuni lepingu lõppemiseni kulgenud aja eest. Samas sätestavad mõned Eesti kindlustusseltsid oma tüüptingimustes nn asjaajamiskulud. Näiteks on AS Inges Kindlustus reisikindlustuse tingimuste[24] p-s 2.12. sätestatud, et:

> *"Kindlustuslepingu ennetähtaegsel lõpetamisel arvestatakse kindlustuslepingu asjaajamise ning lepingu sõlmimise kuludeks 25% kindlustuspoliisi kasutamata perioodi maksumusest. Enam tasutud kindlustusmakse, millest on maha arvatud asjaajamise ning lepingu sõlmimise kulud, kuulub tagastamisele kindlustusvõtjale".*

VÕS § 427 lõike 1 kohaselt on VÕS § 459 imperatiivne ja seega kerkib küsimus, kas sellise täiendava asjaajamiskulu eest tasu võtmine on õiguspärane või mitte. Juhul kui asuda seisukohale, et kindlustusandjal on õigus kehtestada asjaajamiskulusid, viiks see selleni, et tehniliselt oleks võimalik tüüptingimustes sätestada, et asjaajamiskulu on sama suur kui võimalik tagastatav kindlustusmakse ehk kindlustusperioodi lõpuni jääv kindlustusmakse. Seega saaks tekitada olukorra, kus kindlustusvõtja on kohustatud tasuma kindlustusmakse kogu kindlustusperioodi eest, vaatamata lepingu ülesütlemisele. See ei oleks aga kooskõlas VÕS § 459 eesmärgiga. Autor leiab lisaks, et selline regulatsioon on VÕS § 42 lõigete 1 ja 2 alusel tühine, sest ta kahjustab teist lepingupoolt ebamõistlikult, kuna kaldutakse kõrvale seaduse olulisest põhimõttest ja selline tüüptingimus piirab lepingu olemusest tulenevaid kindlustusvõtja õigusi. Kindlustusvõtja tasub kindlustusmakse kindlustusandja poolt üle võetava riisiko eest.

[24] AS Inges Kindlustus reisikindlustuse tingimused. Kättesaadav veebis: http://www.inges.ee/wp/wp-content/uploads/2015/03/Reisikindlustuse-tingimused-30.03.2015.pdf (11.04.2016).

Juhul kui leping lõppeb ülesütlemise tõttu, lõppeb ka riisiko ülekandumine kindlustusandjale ja seega puudub viimasel õigus edaspidi tasu saada.

Samas on Lätis nn kindlustuslepingu lõpetamise tasu sätestatud seaduses (ICL § 9 lg 3), mis võimaldab lõpetamistasuna sätestada kuni 25% kindlustusmaksest. Nii näteks sätestavad Läti kindlustusandja AAS Baltikums General Reisikindlustuse tingimused 9F[25] p 5.4.2.:

> *"Kindlustusandjal on õigus kinni pidada kuni 25% (kakskümmend viis protsenti) kindlustusmakse, kui leping lõpetatakse enne algust kindlustusvõtja algatusel. Kindlustusmakset ei tagastata kindlustusvõtjale, kui kindlustusleping on jõustunud ja kindlustusjuhtum on toimunud".*

Leedu IL artikkel 98 sätestab, et kindlustusmakse tagastamisel tuleb arvestada kindlustusvõtja süüga (lepingu rikkumisel), kindlustusandja administratiivkuludega lepingu sõlmimisel, ettemakstud kindlustusmaksega ja muude oluliste asjaoludega.

PEICL artikkel 5:104 sätestab, et kui kindlustusleping lõpetatakse ennetähtaegselt, siis on kindlustusandjal õigus kindlustusmaksele kuni katkestamise hetkeni. PEICL kommenteeritud väljaandes[26] tuuakse välja, et kui kindlustusmakse on ette makstud, siis peab tagastamine toimuma *pro rata*, sest nüüdisaegne infotehnoloogia võimaldab virtuaalset kuludeta arvestust *pro rata temporis* (a), samuti ei ole riisiko vähenemise tõttu kindlustusandja solventsuse seisukohast kindlustusmakse enam vajalik (b), kindlustusrisk on majanduslikus mõttes jagatav päevade/kuude/aasta peale (c), kindlustusmakse säilitamist ei saa õigustada leppetrahvina (d) ning selline makse endale jätmine oleks kindlustusvõtja karistamine, mida ei saa õigustada (e). Analoogselt on Soome kindlustuslepingu seaduse[27] artiklis 45 sätestatud, et mis tahes ülemäärane makse tuleb kindlustusvõtjale tagastada. Autor leiab, et kindlustusandjatel ei ole õigus võtta lepingu ülesütlemisel täiendavat asjaajamistasu.

Oluline vahe on, kas kindlustusvõtja hilineb esimese või teise (või järgneva) kindlustusmakse tasumisega. VÕS § 458 lõige 1 sätestab, et kui kindlustusvõtja ei tasu teist või järgnevat kindlustusmakset tähtaegselt, võib kindlustusandja kirjalikku taasesitamist võimaldavas vormis määrata kindlustusvõtjale maksmiseks vähemalt kahenädalase tähtaja, ehitise kindlustamise korral vähemalt ühekuulise tähtaja. Juhul kui kindlustusvõtja ka täiendava tähtaja jooksul teist või järgnevat kindlustusmakset ei tasu, võib kindlustusandja kindlustuslepingu ette teatamata üles öelda (VÕS § 458 lg 3). Kindlustusandja võib juba VÕS

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[25] AAS Baltikums General insurance rules applicable to the persons going abroad No 9F, Kättesaadav veebis: http://www.baltikums.lv/system/user_files/Files/EN_Izbrauceji_noteikumi_9F_lielie.pdf (11.04.2016).

[26] J. Basedow, J. Birds, M. Clark jt. Principles of European Insurance Contract Law (PEICL). Sellier European Law Publishers 2009, lk 203–204.

[27] Vakuutussopimuslaki 28.6.1994/543. Kättesaadav veebis: http://www.finlex.fi/fi/laki/ajantasa/ 1994/19940543 (11.04.2016) (Soome keeles).

§ 458 lõikes 1 nimetatud teates avaldada, et peab lepingut tähtaja möödumisel ülesöelduks, kui kindlustusvõtja tähtaja jooksul ei ole makseid tasunud. Tegemist on järgmakse tasumata jätmise võimaliku õigusliku tagajärjega – kindlustusandja õigusega leping üles öelda. Tegemist on analoogse regulatsiooniga, nagu on sätestatud VÕS § 196 lõikes 2.[28] Kui kindlustusjuhtum toimub teise või järgneva kindlustusmakse tasumiseks antud täiendava tähtaja sees (seega enne täiendava tähtaja möödumist), kuid kindlustusvõtja ei ole kindlustusjuhtumi toimumise ajaks teist või järgmist kindlustusmakset tasunud, on kindlustusandja küll kohustatud täitmiseks, kuid ta võib VÕS § 456 alusel oma täitmise kohustusega tasaarvestada sissenõutavaks muutnud kindlustusmakse. Kui aga kindlustusvõtja ei ole pärast teise või järgneva kindlustusmakse tasumiseks antud täiendava tähtaja möödumist võlgnetavat makset tasunud ning pärast täiendava tähtaja möödumist toimub kindlustusjuhtum, vabaneb kindlustusandja oma täitmiskohustusest, välja arvatud juhul, kui kindlustusmakse tasumata jätmine toimus kindlustusvõtjast mittetuleneva asjaolu tõttu (VÕS § 458 lg 2). J. Lahe leiab[29], et VÕS § 458 lõike 2 viimasest lausest tuleneb kindlustusvõtja võimalus vabandada oma kohustuse rikkumist näiteks VÕS § 103 kohaselt vääramatu jõu esinemisega. Küsitav on, kas selliseks olukorraks võiks olla näiteks kindlustusvõtja maksejõuetus, mille on tinginud kindlustusvõtja võlgnike kohustuste mittekohane täitmine. Võrdlusena saab esile tuua, et Soome kindlustuslepingu seaduse[30] § 39 lõike 3 kohaselt juhul, kui kindlustusmakse tasumata jätmine on põhjustatud kindlustusvõtja haigusest, töötusest või muust olulisest asjaolust, mis ei ole otseselt kindlustusvõtja enda põhjustatud, ei saa lepingut 14-päevase täiendava tähtaja andmisega lõpetada enne, kui on lõppenud nimetatud kindlustusmakse tasumist takistanud asjaolu, kuid seda mitte kauem kui kolm kuud pärast täiendava tähtaja andmist. Seega annab Soome kindlustusõigus töötule/haigele sisuliselt kolm kuud tasuta kindlustuskaitset olukorras, kus kindlustusvõtjal ei ole võimalust kindlustusmakset tasuda.

Läti ICL artikkel 19 sätestab, et juhul kui kindlustusmakse ei ole tasutud, võib kindlustusandja katkestada kindlustuskaitse kuni kindlustusmakse täieliku tasumiseni. Katkestamise perioodil puudub kindlustusandjal täitmiskohustus. Enne kindlustuskaitse katkestamist peab kindlustusandja tegema kindlustusvõtjale ettepaneku tasuda kindlustusmakse ja kindlustuskaitse katkeb vastava kirja saatmisele järgnevast päevast. Kui kindlustusvõtja ei tasu kindlustusmakset kindlustuskaitse katkestamise perioodil, mis ei või olla lühem kui 15 päeva, siis on kindlustusandjal õigus kindlustusleping katkestada. Analoogselt sätestavad ka Läti kindlustusandjad enda tüüptingimustes. Seega ei taga Läti

[28] VÕS § 196 lg 2: „Kui mõjuv põhjus seisneb selles, et teine lepingupool rikub lepingulist kohustust, võib lepingu üles öelda alles pärast kohustuse rikkumise lõpetamiseks määratud mõistliku tähtaja tulemusteta lõppemist. Tähtaja määramine ei ole vajalik VÕS § 116 lõike 2 punktides 2–4 sätestatud juhtudel."

[29] *Op cit* Note 21, lk 80.

[30] Insurance Contract Act. No 543. Kättesaadav veebis: http://www.finlex.fi/en/laki/kaannokset/1994/en19940543.pdf (11.04.2016).

kindlustuslepinguõigus kindlustusvõtjale järgmaksetega seoses ajapikendust (*period of grace*).

Leedu IL artikkel 94 sätestab samas kindlustusvõtjale kahjukindlustuse korral 15 päevase ajapikenduse (*period of grace*).

Seega PEICL kaitseb kindlustusvõtja huve seoses kindlustusmakse regulatsiooniga mõnes aspektis laialdasemalt kui Eesti, Läti ja Leedu kindlustuslepinguõigus. Tulenevalt autori analüüsist on see põhjendatud.

III Kindlustusriski suurenemine ja ohutusmeetmed

Kaitsmisele kuuluv väide:
Kindlustusriski suurenemise ja ohutusmeetmetega seoses on mõistlikuks standardiks see kui riski suurenemiseks loetakse vaid asjaolu, mis on selgelt defineeritud/loetletud kindlustuslepingus ning kus seadus sätestab ohutusmeetmete regulatsiooni koos ohutusmeetmete rikkumise õiguslike tagajärgedega.

Probleemi kirjeldus ja põhjendused:
Kindlustuslepingu sõlmimisel eeldab kindlustusandja, et kindlustusrisk püsib kindlustusperioodil muutumatuna – läbi kindlustusriski taseme hindamise määrab kindlustusandja kindlustusmakse: kindlustusmakse on riski hind – *pretium periculi*. Kindlustuslepingu esemeks ongi kindlustusrisk, mis võib seisneda kas kindlustusvõtja majandusliku olukorra halvenemises (enda kindlustamine kahju tekkimise ohu vastu kahjukindlustuses), kindlustusvõtja vastu esitatavates nõuetes (vastutuskindlustuse korral) või muus kindlustusvõtja jaoks negatiivses tagajärjes (nt kindlustusvõtja haigestumine või surm).[31] Siinjuures on oluline, et kindlustusriski realiseerumine on alati ebaselge. On võimalik, et kindlustusrisk ei realiseeru kunagi: näiteks ei lähe kindlustusvõtja kodu, mis on tulekahjuohu vastu kindlustatud, kogu kindlustuslepingu kehtimise ajal põlema. Olukorras kus kindlustusrisk suureneb kindlustusperioodil, muutub ka lepingu tasakaal. Riski suurenemine tekib reeglina olukord kus kindlustusandja ei oleks antud hinnaga olnud valmis riski üle võtma, s.o. suurema riski korral oleks kindlustusmakse olnud suurem[32] või siis poleks kindlustusandja üldse olnud valmis kindlustuslepingut sõlmima. Seega on kindlustusvõtja kohustus tagada kindlustusriski taseme säilimine ja selle muutumisel on ta kohustatud sellest kind-

[31] E. Deutsch. *Versicherungsvertragsrecht*. [Insurance contract processing]. Karlsruhe: Verlag Versicherungswirtschaft GmbH. 2005, lk 6 (in Germany).

[32] Näiteks Eesti Vabariigi Riigikohus jaatas enda 17.11.2004 lahendis nr 3-2-1-131-04 kindlustusandja õigust vähendada kahju hüvitist olukorras, kus kindlustuslepingu sõlmimisel kindlustusvõtja teavitas kindlustusandjat, et hoones on tagatud 24h valvuri olemasolu. Kindlustuslepingu kehtivuse ajal kindlustusvõtja valvurist aga loobus. Kohus leidis, et see oli oluline kindlustusriski suurenemine, mistõttu kindlustusandja oli tulekahju korral õigustatud kindlustushüvitist vähendama 80%. Kättesaadav veebis: http://www.nc.ee/?id=11&tekst=RK/3-2-1-131-04, (11.04.2016).

lustusandjat informeerima. Riski suurenemine toob kaasa kindlustusandjale õiguse teatud olukorras kindlustushüvitist vähendada või hüvitamisest keelduda. Kuigi kindlustusrisk ja selle suurenemine tunduvad olevat selged ja konstantsed õigusmõisted, siis Balti riikide regulatsioon on vastavas osas erinev ning tarbijatel, kes liiguvad tihti antud kolme väikeriigi vahel võib erinevates riikides kindlustuslepingut sõlmides tekkida olulised raskused enda kohustusest arusaamisega.

Kindlustusriski suurendamise keeld kannab endas eesmärki tagada kindlustussuhte stabiilsus. Kindlustusriski suurenemine viib asümmeetrilise informatsioonini (*asymmetric information*).

PEICL artikkel 4:201 sätestab, et kui kindlustusleping sätestab klauslid seoses kindlustusriski suurenemisega, siis peavad need olema olulised ja sätestatud kindlustuslepingus.

Leedu CC artikkel 6.1010. (1) seab eelduseks, et muutuma peavad kindlustuslepingus asjaolud ja tegemist peab olema olulise muutusega, mis põhjustab kindlustusriski võimaliku suurenemise, s.o. ka Leedu kindlustusvõtja ei pea teatama mistahes abstraktsest riski suurenemisest vaid ainult lepingus üheselt viidatud riskiasjaolude suurenemisest. Leedu CC kohaselt on olulised asjaolud need asjaolud mis on sätestatud kindlustuslepingus.

Läti ICL artikkel 14 (1) kohaselt peab kindlustusvõtja teavitama riski suurendamisest ja teavitama peab sellisest riskist mille kohta kindlustusvõtja on kindlustuslepingu sõlmimisel küsinud andmeid (ICL artikkel 5).

Võlaõigusseadus ei sea eelduseks, et kindlustusriski olulise suurenemise asjaolud peaks olema sätestatud kindlustuslepingus. VÕS § 443 paneb kindlustusvõtjale kohustuse teavitada mistahes abstraktsest kindlustusriski suurenemisest, ainsaks eelduseks on VÕS § 447 lg 2 alusel, et riski suurenemine peab olema oluline. On küsitav kas selline võlaõigusseaduse poolt valitud abstraktne kindlustusriski suurendamise keeld pole mitte liialt kindlustusvõtjat koormav. Ka praktikas ei täpsusta Eesti kindlustusandjad tihti mida nad kindlustusriski suurenemise all silmas peavad. Nii näiteks Eestis tegutsev Salva Kindlustuse AS sätestab enda Kindlustuse üldtingimuste[33] punktis 14.2., et:

> *"Kindlustusvõtja peab kindlustusriski suurenemisest (sh suurendamisest) viivitamata kindlustusandjale kirjalikult teatama, sh juhul, kui kindlustusriski suurenemise põhjustas üldiselt teadaolev asjaolu, mis ei mõjuta üksnes selle kindlustusvõtja kindlustusriski".*

[33] Salva Kindlustuse AS. Kindlustuslepingu üldtingimused KÜ-13. Kättesaadav veebis: https://www.salva.ee/sites/default/files/content-editors/tingimused/kindlustuse_uldtingimused_ku-13.pdf (11.04.2016).

Nimetatut paraku ei täpsusta ka Salva Kindlustuse AS kindlustustoote tingimused, nt Ettevõtte varakindlustuse tingimused[34] .

Autor nõustub H. Cousy'ga[35], et kindlustusriski suurenemine peab olema sätestatud selgelt kindlustuslepingus. PEICL-i nõue, et suurendamine saab toimuda üksnes *vis-à-vis* riski suhtes, mis on kindlustuslepingus sõnaselgelt määratletud ei täida ju üksnes eesmärki suurendada kindlustusvõtjate valvsust ning suunata teda kindlustuslepingut hoolikalt lugema vaid ka annab lepingu nõrgemale poolele võimaluse mõista mida üldse kindlustusandja peab riski suurendamiseks. Selline õigusselgus toob kaasa ka kindlustusandja väiksema koormatuse ebaoluliste riski suurenduse teadetega. VÕS § 447 lg 2 sätestab küll, et riski suurenemist puudutavad normid ei kuulu kohaldamisele kui kindlustusriski suurenemine ei ole oluline või kui lepingupooled leppisid kokku, et kindlustusriski suurendamine ei mõjuta kindlustuslepingut. Võlaõigusseaduse tõlgendamisel on Eesti õigusteadlased asunud seisukohale, et küsimus kindlustusriski suurenemise olulisest on eelkõige hinnanguline ning sellele saab vastuse anda eelkõige kindlustuslepingu tõlgendamise teel.[36] Eeltoodu kokkuvõtteks saab järeldada, et hetkel on Eesti, Läti ja Leedu kindlustusõiguses erinev lähenemine küsimusele missugusest kindlustusriski suurenemisest üldse peab kindlustusandjat teavitama. Seega hõlbustaks PEICL-i rakendumine nn 2 režiimi õigusaktina tarbijatel oluliselt kergemini naaberriiki tööle, kooli vms minnes, ilma konkreetse riigi õigussüsteemi põhjaliku tutvumise vajaduseta, sõlmida igapäevases elus vajalikke kindlustuslepinguid.

Ohutusmeetmeid iseloomustab see, et see hõlmab juhiseid kahju tekkimise vältimiseks või tekkinud kahju piiramiseks[37]. Läbi ohutusmeetmete sätestamise määratleb kindlustusandja enda jaoks printsiibi millist mõistlikku käitumist saab ja millist mitte kindlustusvõtjalt oodata. Läbi ohutusmeetmete võib kindlustusandja määrata teatud juhtudel ka kindlustusvõtjalt eeldatava kvalifikatsiooni – näiteks selle, et sõidukijuhil peavad olema juhiload jne.

PEICL artikkel 4:101 sätestab, et ohutusmeetmed tähendavad kindlustuslepingu tingimusi, mis nõuavad kindlustusvõtjal või kindlustatud isikul enne kindlustusjuhtumi toimumist käituda ühel või teisel viisil või teha teatud toiminguid.

Eesti, Läti ja Leedu kindlustuslepingut reguleerivad õigusaktid ei defineeri ohutusmeetmete mõistet eraldi ja tegemist on kindlustusvõtja üldiste lepinguliste kohustustega – nimetatu võib olla ka üheks põhjuseks, miks praktikas

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[34] Salva Kindlustuse AS. Ettevõtte varakindlustuse tingimused. Kättesaadav veebis: https://www.salva.ee/sites/default/files/content-editors/tingimused/Ettevqtte_vara/evt-14.04.pdf (11.04.2016).

[35] H. Cousy. The Principles of European Insurance Contract Law: Duty of Disclosure and the Aggravation of Risk. ERA-Forum, September 2008, Vol 9, No 0, lk 131.

[36] *Op cit* Note 22 lk 487, punkt 3.2.

[37] Hoppu, E.; Hemmo, M. (2006). *Vakuutusoikeus* [Insurance law]. Helsinki: WSOYpro, lk 165.

nendes riikides esineb segadust riski suurenemisel ja ohutusnõuete rikkumisel vahettegemisel. Samas kindlustusandjad kasutavad ohutusmeetmete regulatsiooni enda tüüptingimustes laialdaselt, nt Salva Kindlustuse AS Apple seadmete kindlustamise tingimuste[38] p 6.3. sätestavad, et:

> *"Kindlustatud eset tuleb hoida selliselt, et kolmandatel isikutel puudub sellele vaba või lihtsustatud juurdepääs. Näiteks ei tohi kindlustatud eset jätta järelevalveta toitlustusasutuse (baar, restoran) lauale".*

Soome õiguskirjanduses leitakse, et ohutusmeetmed omavad kahjukindlustuses olulist rolli ja nende täitmiskohustust võib pidada keskseimaks kohustuseks[39].

Kuna Eesti, Läti ja Leedu kindlustuslepingut reguleerivad õigusaktid ei defineeri ohutusmeetmete mõistet eraldi, siis ei eksisteeri ka vastavates seadustes eraldi sätteid nende rikkumise kohta. Küll aga saavad kindlustusandjad tugineda üldistele lepingulisi kohustusi ja nende rikkumise tagajärgi sätestavatele normidele. Näiteks VÕS § 452 lg 2 p 1 sätestab, et kindlustusandja ei või tugineda kokkuleppele, mille kohaselt ta vabaneb kindlustusjuhtumi toimumise puhul täitmise kohustusest kindlustusvõtja kohustuse rikkumise tõttu, kui kindlustusvõtja on rikkunud muud kui kindlustusmakse tasumise kohustust, mis tuleb v*is-à-vis* täita kindlustusandja suhtes enne kindlustusjuhtumi toimumist ja rikkumine toimub muul põhjusel kui kindlustusvõtja süü tõttu või kui rikkumine ei mõjutanud kahju tekkimist või kahju suurust. Seega Eesti võlaõigusseadus seab ohutusmeetmete rikkumisel kindlustusandjale täitmiskohustusest vabanemiseks kaks formaalset eeldust: (i) rikkumine peab olema toimunud kindlustusvõtja süül (süü vorm ei ole oluline[40]) või (ii) rikkumine peab mõjutama kahju tekkimist või kahju suurust. Märkimisväärne on ka, et võlaõigusseadus võimaldab *a priori* välistada tüüptingimustes kindlustusandja täitmiskohustus kindlustusvõtja raske hooletuse korral. Autori arvates on selline *all-or-nothing* süsteem kaasaegses kindlustusõiguses tarbijakaitselistel kaalutlustel küsitav.

PEICL kaitseb kindlustusvõtja huve seoses kindlustusriski suurenemise ja ohutusmeetmete regulatsiooniga laialdasemalt kui Eesti, Läti ja Leedu kindlustuslepinguõigus. Tulenevalt autori analüüsist on see põhjendatud.

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[38] Salva Kindlustuse AS Apple seadmete kindlustamise tingimused. Kättesaadav veebis: https://www.salva.ee/sites/default/files/content-editors/tingimused/Apple/apple_seadmete_kindlustuse_tingimused_ask-13.05.pdf (11.04.2016).

[39] Norio-Timonen, J. (2010). *Vakuutussopimuslain Pääkohdat* [The main points of insurance contract act]. Helsinki: Talentum, lk 155.

[40] Autor leiab, et abstraktsed tingimused, mis annavad kindlustusvõtjale õiguse keelduda hüvitise maksmisest olenemata kindlustusvõtja süü astmest võivad olla proportsionaalsuse ja hea usu põhimõttega vastuolus, olles kindlustusvõtja ehk nõrgema poole kahjuks ja seega on sellise tingimuse kohaldamine küsitav.

IV Kindlustusjuhtumi järgsed kohustused (kindlustusjuhtumist teavitamine)

Kaitsmisele kuuluv väide:
Kindlustusjuhtumi järgsete kohustustega seoses (seoses kindlustusjuhtumist teavitamisega) on mõistlikuks standardiks see, kui kindlustusandja vabaneb seoses kindlustusjuhtumist tahtliku mitteteatamisega kahju hüvitamisest vaid selles ulatuses, milles ta kandis hilise teatamisega seoses kahju.

Probleemi kirjeldus ja põhjendused:
Kindlustusjuhtumist teavitamine on teine oluline kindlustusvõtja kohustus (kahju vähendamise ja koostöökohustuse kõrval). Nimetatud kohustus on oluline selleks, et kindlustusandja saaks võimalikult kiiresti asuda läbi viima olulisi toiminguid: kahju vähendamine, kahju suuruse tuvastamine, kahju hüvitamine ja vajadusel kahju põhjustanud isiku tuvastamine. Ilma kindlustusjuhtumist *ex post* kiiresti teavitamata võib tekkida olukord kus kindlustusandja ei saa enda õiguseid piisavas mahus realiseerida ja see võib tuua talle kaasa lisakulud ning teatud juhtudel ka võimatuse tuvastada vajaminevaid andmeid. Samas on kindlustusjuhtumist *ex post* teatamine oluline ka kindlustusvõtjale, kuna just see on *trigger*'iks kindlustusandjalt kindlustushüvitise saamiseks.

Eesti sätestab VÕS § 448 lg 1, et kindlustusvõtja peab kindlustusjuhtumi toimumisest viivitamata kindlustusandjale teatama. Seega eeldab Eesti õigus kindlustusjuhtumist viivitamatut teavitamist.

Näiteks sätestavad AS Inges Kindlustus Varakindlustuse tingimused[41] p 9.1.1.1., et:

> *"Kindlustusjuhtumi saabumisel on kindlustusvõtja või soodustatud isik muuhulgas kohustatud teatama kindlustusjuhtumist ühe (1) tööpäeva jooksul kindlustusandjale ning kahe (2) tööpäeva jooksul edastama vastava kirjaliku teate".*

Seega eeldab vastav kindlustusandja, et teade tuleb esitada 1 tööpäeva jooksul. Kindlustusjuhtumist teavitamise kohustuse rikkumise tagajäjena sätestab VÕS § 449 lg 1, et kui kindlustusandjal tekib kindlustusvõtja võlaõigusseaduse §-s 448 sätestatud kohustuse rikkumise tagajärjel kahju, võib kindlustusandja selle ulatuses täitmise kohustust vähendada. Täiendavalt toob VÕS § 449 lg 2 välja, et kui kindlustusvõtja rikub võlaõigusseaduse §-s 448 sätestatud kohustust tahtlikult, vabaneb kindlustusandja täitmise kohustusest.

Eesti õiguskirjanduses leitakse, et eristada tuleb tahtlikku ja mittetahtlikku kohustuste rikkumise tagajärgi. Kui mittetahtliku kohustuste rikkumise tõttu tekib kindlustusandjal kahju, siis võib kindlustusandja vastavas ulatuses täitmise kohustust vähendada. Seda ka juhul, kui rikkumine on vabandatav. Tuleb silmas

[41] AS Inges Kindlustus Varakindlustuse tingimused. Kättesaadav veebis: http://www.inges.ee/wp/wp-content/uploads/2015/02/Varakindlustuse-tingimused-31-03-2015.pdf (11.04.2016).

pidada, et VÕS § 449 lg 1 nimetatud tagajärje kohaldamise eelduseks on kahju tekkimine kindlustusandjal. Antud kohustuse rikkumisest täitmise kohustuse vähendamiseks ei piisa. Kahju võib kindlustusandjal tekkida nt olukorras, kus kindlustusvõtja VÕS § 448 sätestatud kohustuse rikkumise tagajärjeks on see, et kindlustusjuhtumi toime pannud kolmandaid isikuid ei õnnestu tuvastada, mistõttu kindlustusandjal puudub võimalus tagasinõude esitamiseks. Kui kindlustusvõtja rikub VÕS §-s 448 sätestatud kohustust tahtlikult, siis vabaneb kindlustusandja täitmiskohustusest. VÕS § 449 lg 2 kohaldamise eelduseks ei ole seega kahju tekkimine kindlustusandjal, piisab vaid kindlustusvõtja tahtlikust kohustuse rikkumisest[42]. Autor ei nõustu käsitlusega, et kindlustusandja vabaneb alati täitmiskohustusest kui kindlustusvõtja vastav kohustuse rikkumine oli tahtlik. Puudub mistahes mõistlik põhjendus vabastada kindlustusandja täitmiskohustusest olukorras kus kindlustusvõtja teavitamiskohustuse rikkumine oli küll tahtlik aga sellel puudus mõju kindlustusandja täitmiskohustusele. Eesti Riigikohus[43] on samas 2001 aastal leidnud, et olukorras kus kindlustusvõtja teavitas kindlustusandjat, et temalt varastati metsaveotraktor aga unustas teavitamast, et koos metsaveotraktoriga varastati ka metsaveokäru (tegemist oli kahe eraldi kindlustuslepinguga), ei oma tähtust kindlustusvõtja hilisem seletus kohtus, et ta pidas traktori all silma ka metsaveokäru, mis kindlustusvõtja arvates moodustavad terviku, kuna neid kasutatakse ainult koos ja seetõttu oli kindlustusandja õigustatud metsaveokäru kahju hüvitamisest keelduma seoses hilise teatamisega. Seega on Eestis kohus jaatanud kindlustusvõtja poolsest hilisest teatamisest tulenevat kindlustusandja poolset vabanemist täitmiskohustusest ka ilma põhjusliku seose olemasoluta[44].

Leedu CC artikkel 6.1012. (1). sätestab, et kindlustatud isik peab kindlustusjuhtumi toimumisel sellest kindlustusandjat teavitama kindlustuslepingus sätestatud tähtaegadel. Seega eeldab Leedu CC, et teavitamise tähtaeg on tüüptingimuste regulatsiooni objekt. Autori poolt analüüsitud Leedu kindlustusandja Lietuvos Draudimase tüüptingimustes[45] sätestati 24 tunnine teavitamistähtaeg (v.a. puhkepäevad ja riiklikud pühad). Selline 24 tunnine teavitamistähtaeg on küll kindlustusandja õiguseid kaitsev aga võib teatud asjaoludel osutuda kindlustusvõtjat liialt koormavaks. Näiteks olukorras kus kindlustusvõtja perekond jääb tulekahjus ilma enda elamispinnast, on ilmne, et esimesel päeval/päevadel tegeleb kindlustusvõtja enda perekonnale ajutise elamise tagamisega ning ei pruugi jõuda tegeleda kindlustustusandjaga suhtlemisega. CC artikkel 6.1012. (2) sätestab õigusliku tagajärjena, et kui kindlustusvõtja ei teavita kindlustus-

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42 *Op cit* Note 22, lk 488–489.

43 Riigikohtu 10.04.2001 lahend nr 3-2-1-56-01, Kättesaadav veebis: http://www.nc.ee/?id=11&indeks=0,2,10246,10419,10426&tekst=RK/3-2-1-56-01 (11.04.2016).

44 Nimetatud lahend on tehtud siiski enne võlaõigusseaduse jõustumist.

45 AB Lietuvos Draudimas Home Insurance Policy Wording. No. 064. Kättesaadav veebis: http://web.archive.org/web/20130406150705/http://www.ld.lt/uploads/files/dir52/dir2/13_0.php (11.04.2016).

juhtumist tähtaegselt, siis on kindlustusandjal õigus kindlustushüvitist vähendada või hüvitamisest keelduda. CC ei erista õiguslikke tagajärgi vastavalt süü vormile. Samas eeldab CC aga põhjusliku seose olemasolu kindlustusvõtja rikkumise ja kindlustusandja täitmiskohustuse vahel, s.o. olukorras kus rikkumine ei mõjuta kindlustusandja täitmiskohustust, ei vabane kindlustusuandja hüvitamiskohustusest.

Läti ICL artikkel 21. (1) sätestab omakorda, et kindlustatud isik peab kindlustusjuhtumist teavitama esimesel võimalusel. Õiguslike tagajärgede osas kindlustusjuhtumist õigeaegselt teavitamata jätmise osas toob ICL artikkel 22. (1) välja, et kui kindlustatud isik ei täitnud enda kohustusi pahauskselt või raskest hooletusest, on kindlustusandjal õigus keelduda kindlustushüvitise tasumisest. Autor leiab, et pahausksuse puhul kindlustusandja vabastamine täitmiskohustusest on õigustatud, kuna kindlustusvõtjat ei saa "premeerida" kindlustusandja takistamise eest. Samas ICL artikkel 22 (2) sätestab, et kindlustusandja võib vähendada hüvitist, aga mitte rohkem kui 50%, kui kindlustusvõtja ei täitnud enda kohustusi hooletusest. Autor leiab, et pigem võiks eelistada lähenemist, et kindlustusandja vabaneb täitmiskohustusest ulatuses millises hiline teatamine suurendas kindlustusandja kahju, kuna raske on esitada argumente miks peaks võimaldama kindlustusandjal hüvitise vähendamist näiteks 50% ulatuses olukorras kus teavitamisega hilinemine toimus raskest hooletusest aga see ei mõjutanud kahju suurust või ei raskendanud kindlustusandjal täitmikohustuse muude asjaolude väljaselgitamist.

PEICL artikkel 6:101 (2) sätestab, et kindlustusjuhtumist tuleb teavitada viivitamatult ja kui kindlustuslepingus on sätestatud kindlustusjuhtumist teavitamise tähtaeg, siis see peab olema mõistlik ja mitte mingil juhul lühem kui viis päeva. Seega on PEICL võrreldes Eesti, Läti ja Leedu kindlustuslepinguseadustega oluliselt tarbijakesksem eeldades põhjendamatu viivituseta teavitamist ja sätestades, et teatamistähtaeg peab olema mõistlik ning mitte lühem kui viis päeva. Autor peab sellist lähenemist põhjendatuks, kuna see võimaldab kindlustusvõtjal lahendada õnnetuse (näiteks kodu ära põlemine) korral esmalt eluliselt tähtsad küsimused ja mitte eelistada kindlustusvõtja huve kindlustusandja eluliselt primaarsetele huvidele. Teavitamiskohustuse rikkumise sanktsioonide osas sätestab PEICL artikkel 6:101 (3), et kindlustushüvitist võib vähendada ulatuses, milles kindlustusandja tõendab, et ta sai hilise teatamise tõttu kahju. Seega paneb PEICL kahju tõendamiskoormise olukorraks, kus ta soovib kindlustushüvitist seoses hilise teatamisega vähendada, kindlustusandjale.

Veelgi tarbijakesksem on näiteks Soome kindlustusõiguse alane regulatsioon. Soome kindlustuslepingu seaduse ei sätesta kohustust teatada kindlustusjuhtumist. Jaana Norio-Timonen leiab, et kindlustushüvitise saamise eelduseks ei saa seada tingimust, et kindlustusandjale tuleb kindlustusjuhtumist teatada teatud tähtaja jooksul, näiteks kahe nädala jooksul kindlustusjuhtumi toimumisest. Kindlustushüvitise taotleja enda huvides on saada hüvitist võimalikult

kiiresti[46]. Autor nõustub sellise Soome õigusteoreetikute lähenemisega. Raske on põhjendada miks peaks kindlustusandja vabanema hüvitamiskohustusest kui ta saab teate kindlustusjuhtumist alles 5 kuu pärast ja sealjuures ei ole kahju suurus ega asjaolude tuvastamine sellest häiritud. Näiteks olukorras, kus toimub korterivargus ja politsei on sündmuskoha üle vaadanud, ei muutu kindlustusandja jaoks sisuliselt midagi, kuna pädevad riigiametnikud on sündmuskoha fikseerinud. Jaana Norio-Timonen viitab, et Soome kindlustuslepingu seaduse artikkel 73 tingimused seavad hüvitise taotlejale hüvitistaotlejale tähtaja läbi hüvitistaotluse esitamise ja aegumise tähtaja. Selle aluseks on eeldus, et kindlustuslepingut puudutav kahju hüvitamise nõue peab olema kindlustusandjale esitatud ühe aasta jooksul alates ajast millal hüvitise taotleja sai teada kehtivast kindlustuslepingust, kindlustusjuhtumist ja kindlustusjuhtumist tingitud kahjust[47].

Seega toob PEICL olulise muutuse Eesti, Läti ja Leedu kindlustusvõtjatele seoses kindlustusjuhtumist teavitamisega. PEICL on oluliselt tarbijakesksem ja ei piira kindlustusvõtjat liialt kindlustusjuhtumi tähtaegade ja võimaliku rikkumise sanktsioonide osas. Samas on Soome vastav regulatsioon veelgi tarbijakesksem. PEICL kaitseb kindlustusvõtja huve seoses kindlustusjuhtumist teavitamise regulatsiooniga laialdasemalt kui Eesti, Läti ja Leedu kindlustuslepinguõigus. Tulenevalt autori analüüsist on see põhjendatud.

Autor leiab, et kindlasti muutuks tarbijate elu PEICL-i rakendumisel oluliselt kergemaks, kuna see võimaldab neil valida unifitseeritud kindlustustooteid. Ka kindlustusandjate jaoks peaks PEICL-i rakendumine tooma kaasa olulise säästuefekti, kuna näiteks mitmetes riikides opereerides saab PEICL-il baseeruvate kindlustustoodete puhul rakendada ühist IT lahendust, samuti kaob vajadus ära paljude dubleerivate töökohtade osas ja ka ühtlustuv kohtupraktika aitab paremini hinnata opereerimisriske.

Autor leiab, et PEICL kui Euroopa *ius commune* on võrreldes Baltikumi kindlustusõigust reguleerivate õigusaktidega oluliselt tarbijakesksem, paindlikum ja piirab kindlustusandja vabanemist täitmiskohustusest. Tegemist ei ole aga liigse radikaalsusega, vaid poolte huvide ja võimaluste mõistliku tasakaaluga. *Win-win* olukord ei saa seisneda vaid kindlustusandjate kulude optimeerimises läbi kindlustustoodete unifitseerimise "pan-Euroopa kindlustustoodeteks". Võites kulude kokkuhoius, peab ka teine pool midagi võitma. Kindlustusvõtja ei ole reeglina enda teadmistelt ja majanduslikult võimekuselt võrreldav kindlustusandjaga ja seega väärib tema õiguste kaitse kõrgendatud tähelepanu. Kulude kokkuhoid ja teenuse osutamise lihtsus pan-Euroopalises tegevuses peaks autori arvates olema argumentideks, miks kindlustusandjad peaksid valima PEICL-i isegi olukorras, kus siseriiklik õigus oleks neile mõnes küsimuses soodsam.

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[46] *Op cit* Note 39, lk 197.
[47] *Ibid*, lk 197

PEICL-i rakendumine viib artikli autori arvates selleni, et suured kindlustus-korporatsioonid, mis tegutsevad mitmetes EL riikides, unifitseerivad "*optional instrumenti"* kasutades kulude kokkuhoiu mõttes enda kindlustustooted "*pan-Euroopa* kindlustustoodeteks" ja seetõttu võib mõnedes riikides muutuda PEICL-i rakendamine eelduslikult valdavaks. Autor leiab seega, et termin "*optional*" (valikuline) ei pruugi tegelikkuses kõigile pooltele valikuõigust tagada, kuna olukorras, kus suured korporatsioonid unifitseerivad enda tooted, ei pruugi nad enam siseriiklikul õigusel baseeruvaid tooteid pakkuda ja seega jääb tarbija ainsaks "valikuks" (eeldusel, et ta eelistab sellist rahvusvahelist korporatsiooni) PEICL-ile tuginevad tooted. Samas ilma kindlustuslepinguõiguse harmoni-seerimiseta ei ole võimalik koostada näiteks pan-Baltikumi standardiseeritud tüüptingimusi.

Autor ei tuvastanud ühtegi olulist puudust PEICL-is võrreldes Eesti, Läti ja Leedu siseriikliku õigusega. Vaid artiklis "Does the insurance premium payment regulation as stipulated in the Principles of European Insurance Contract Law protect policyholders sufficiently enough?[48]" käsitletud hüpoteegipidaja õiguste kaitse osas omab hüpoteegipidaja seisukohast Eesti võlaõigusseadus olulist eelist PEICL ees. Nimelt sisaldab Eesti võlaõigusseadus PEICL-ist ja Läti ning Leedu kindlustuslepinguõigust reguleerivatest õigusaktidest erinevalt eriregulatsiooni hüpoteegipidaja õiguste kaitseks. Samas ei ole tegemist kindlustusvõtjat täiendavalt kaitsva sättega ja seega teenuse tarbija seisukohast tuleb siiski eelistada PEICL-it.

Autor leidis, et kuigi üksikutes küsimustes võib kindlustusandja õiguslik positsioon PEICL-i rakendumisel muutuda halvemaks, siis arvestades vastu-kaaluks saadavaid hüvesid, s.o. ühtsete pan-Baltikumi toodete koostamise võimalus ja seeläbi enda tegevuskulude kokkuhoid (IT teenused, personalikulud jne), kaaluvad saadavad hüved üle negatiivsed küljed. Lisaks ei oleks PEICL-I puhul tegemist kohustusliku ja ainukese kindlustuslepinguõigust reguleeriva õigusaktida vaid tegemist oleks "*optional instrumendiga*", s.o. olukorras kus mõni kindlustusandja ei soovi pakkuda teenuseid PEICL-ile tuginedes, saab ta jätkata teenuste pakkumist siseriiklikule õigusele tuginedes.

Autor järeldab analüüsi tulemusena, et kindlustuslepinguõiguse harmoni-seerimine omab endas olulist tähtsust, et tagada reaalselt ühtse EL kindlus-tusturu toimima hakkamine. Ilma PEICL-i, kui "*optional instrumendi*", mis on ainus käesoleval hetkel kaalumisel olev alternatiiv, rakendamiseta ei saa EL ühtne kindlustusturg hakata reaalselt ja sisuliselt toimima, kuna tarbijatel on keeruline erinevaid õigussüsteeme endale selgeks teha ja kindlustusettevõtetel puudub majanduslik mõttekus väiksemate turgude jaoks (nagu autori poolt analüüsitud Eesti, Läti ja Leedu) enda tooteid piireüleselt pakkuda.

Hetke olukorra kohta saab aga esitada küsimuse kindlustusandja täitmis-kohustusest vabanemise kontekstis: Kas kindlustusvõtja "süü suureneb" kui ta tuleb Soomest, Helsingist 80km lõuna poole Eestisse, Tallinna, ning käitub

[48] Current Issues of Business and Law, 2012, 7(1), pp. 85–107.

täpselt analoogselt või kas kindlustuse "olemus transformeerub" kuigi tihti on neis naaberriikides kindlustusandjaks ühe ja sama kindlustuskorporatsiooni firmad? Tõenäoliselt ei saa antud küsimustele vastata muudmoodi kui eitavalt – seega selleks, et vältida väitekirja aluseks olevates artiklites kirjeldatud erisusi, mis raskendavad inimeste probleemideta reisimist, elamist või töötamist naaberriigis ning viia ellu unistust tõeliselt piirideta EL-ist, on PEICL-i, kui 2 režiimi õigusakti, rakendamine tervitatav.

PUBLICATIONS

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Institutional activities

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2011–….	Member of council at Pelgulinna Maternity Hospital Support Fund

Main areas of research

Insurance law, law of torts

List of main publications

Luik, Olavi-Jüri; Ratnik, Rainer; Braun Magnus, "Aggravation of Risk and Precautionary Measures in Non-life Insurance: Tricky Scope for Insurer?", Baltic Journal of Law & Politics, Vol 8, No 2, 2015 , pp 1–45.

Policyholder Obligations After an Insured Event: Are Baltic Insurance Laws Too Insurer-Friendly Compared to the Principles of European Insurance Contract Law?, Baltic Journal of Law & Politics, 2012 (5:1), p. 137–164.

Does the insurance premium payment regulation as stipulated in the Principles of European Insurance Contract Law protect policyholders sufficiently enough?, Current Issues of Business and Law, 2012, 7(1), pp. 85–107.

"Significance of the Principles of European Insurance Contract Law for the pre-contractual information duty: Experience of the Baltic States", "Current Issues of Business and Law", Vol. 6, No 2 (2011), pp 85–107.
Do the Principles of European Insurance Contract Law Go Too Far in Protecting the Policyholder?, Juridica International, XVIII 2011, pp. 73–83.
Eighteen Years of Application of Motor Third Party Liability Insurance Act in Estonia. How to proceed?, Juridica Abstract, 2011, no.4, pp. 298–309.
The Duty of Disclosure of the Parties prior to Entry into an Insurance Contract, Juridica Abstract, 2011, no.2, pp.109–117.
The Obligation to Pay Insurance Premiums as the Primary Obligation of the Policyholder in a Non-Life Insurance Contract, Juridica Abstract, 2010, no.3, pp.184–195.
Mortgagees – Privileged Subjects in Indemnity Insurance, Juridica Abstract, 2009, no.7, pp.428–438.
Defining the Concept of Insured Risk and Its Use in Insurance Contract Standard Terms, Juridica Abstract, 2008, no.3, pp.164–170.
Motor third party liability insurance as obligatory liability insurance, Master thesis, Tartu University, 2004.

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Peamiste publikatsioonide loetelu

Luik, Olavi-Jüri; Ratnik, Rainer; Braun Magnus, "Aggravation of Risk and Precautionary Measures in Non-life Insurance: Tricky Scope for Insurer?", Baltic Journal of Law & Politics, Vol 8, No 2, 2015, pp 1–45.

Policyholder Obligations After an Insured Event: Are Baltic Insurance Laws Too Insurer-Friendly Compared to the Principles of European Insurance Contract Law?, Baltic Journal of Law & Politics, 2012 (5:1), p. 137–164.

Does the insurance premium payment regulation as stipulated in the Principles of European Insurance Contract Law protect policyholders sufficiently enough?, Current Issues of Business and Law, 2012, 7(1), pp. 85–107.

"Significance of the Principles of European Insurance Contract Law for the pre-contractual information duty: Experience of the Baltic States", "Current Issues of Business and Law", Vol. 6, No 2 (2011), pp 85–107.

Do the Principles of European Insurance Contract Law Go Too Far in Protecting the Policyholder?, Juridica International, XVIII 2011, pp. 73–83.

18 aastat liikluskindlustuse seaduse kehtimist Eestis. Kuidas edasi?, Juridica, 2011, nr.4, lk.298–309.

Poolte teavitamiskohustus enne kahjukindlustuslepingu sõlmimist, Juridica, 2011, nr.2, lk.109–117.

Kindlustusmakse tasumise kohustus kui kindlustusvõtja põhikohustus kahjukindlustuses, Juridica, 2010, nr.3, lk.184–195.

Hüpoteegipidaja – privilegeeritud subjekt kahjukindlustuses, Juridica, 2009, nr.7, lk.428–438.

Kindlustusriski mõiste sisustamine ja kasutamine kindlustuslepingute tüüptingimustes, Juridica, 2008, nr.3, lk.164–170.

Liikluskindlustus kui kohustuslik vastutuskindlustus, Teadusmagistritöö, Tartu Ülikool, 2004.

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