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OECD LEGAL RULES OF GOOD PRACTICE FOR FIRST LOSS NOTICE IN INSURANCE

In this paper, the author invokes the OECD 2004 Guidelines for Insurance Claim Management, but briefly comments on the 1997 OECD views on insurance. The focus of the analysis of the legal rules of good practice from the OECD Guidelines was on the section describing the procedure for the first loss notice to the insurer. The author points out that the Draft Civil Code of Serbia should provide for a novelty – to print out, on the insurance policy, what is and what is not covered under particular insurance terms and conditions; thus the legal language of the text printed on the insurance policy would be completed with simple linguistic explanation. The 2009 Draft Civil Code of Serbia (Article 1170, Paragraph 3) proposed that the provision on writing onto the insurance policy and the provision according to which the written part prevails over the printed part of the policy should be omitted.

Keywords: *OECD Guidelines for Insurance Claim Management; first loss notice procedure; legal rules of good practice; Draft Civil Code of Serbia.*

Introductory Remarks

This article is based on a new international legal source of comparative insurance law – the OECD Guidelines for Good Practice for Insurance

Claim Management[1] (known as the Guide). The acronym in the title and the text - OECD - means the *Organization for Economic Co-operation and Development*. The OECD is an intergovernmental international organization[2] and the issuer of the Guide. The Guide consists of three parts, namely: the Introduction, Recommendations and Annex. The first two parts represent a combination of objectives and explications of the Guide. The Annex to the Guide consists of ten chapters which include legal rules of good practice. Each chapter treats either a general theme of the Guide, insurance claim management, or its specific aspects. The first chapter of the Annex to the Guide comprises legal rules of good practice for the first loss notice procedure in insurance. Legal rules of good practice described in this chapter, together with relevant commentaries, form the subject matter of the present article. The remaining nine chapters of the Annex were not possible to include, because of their size. Given that Serbia is on the path to EU, the existing insurance law and/or insurance and administrative practice are oriented towards harmonization with the EU insurance law - probably for these reasons, the authors of Serbian insurance law have shown little interest for the OECD views on insurance. However, such OECD views - in particular, legal rules of good practice for the first loss notice procedure - may be interesting for consideration at the public discussion of the Draft Civil Code.

Basic Data on Organization for Economic Co-operation and Development

1. The OECD was established in December 1960 in Paris, when 18 Western European countries plus the United States and Canada signed an international agreement on the establishment of the organization. It started to work in September 1961, with headquarters in Paris. The OECD is the legal successor of the Organization for European Economic Co-operation (OEEC), established in 1948, which was a regional international organization for implementation of the Marshall Plan to rebuild Europe after World War II. Yugoslavia had been an observer in the OEEC since 1955, and after the establishment of OECD, it continued its mission in the same capacity[3]. Serbia is not a member state of the OECD. Since the establishment of the OECD, number of member states has

1 www.oecd. org/finance/ insurance/33964905. Pdf Original title: *OECD Guidelines for Good Practice for Insurance Claim Management*.

2 Definition: *Organization for Economic Co-operation and Development*, Legal Lexicon, Second Amended Edition, „Savremena administracija", Beograd, 1970, pp.722.

3 Definition: *Organization for Economic Co-operation and Development*, Economic Lexicon, „Savremena administracija", Beograd, 1975, pp. 881-882.

gradually increased so that, in March 2015, it comprised 33 members from all five continents.

2. The main objectives of the OECD are: (1) improving high rates of economic growth; (2) contributing to the expansion of the world trade on a non-discriminatory basis; (3) coordination of development aid. The main bodies of the OECD are the Council, Executive Committee and Secretary General. The Council is made of representatives of all member states who are, as a rule, in the rank of ministers. The Executive Committee is elected by the Council from among the heads of delegations of member states, for a term of one year. The number of members of the Executive Committee grew in proportion to the increasing number of the OECD member states. The Secretary General manages the administrative apparatus of 2,000-3,000 employees and assists many working bodies with different names and scopes of activity[4] (directorates, committees, boards etc.). After the administrative apparatus gathers the information on a given topic, the preparation of the final document of the OECD includes, through the exchange of information, the opinions of about 40,000 senior experts from member states, gathered at the meetings in Paris or via special Internet network accessible only to those persons[5]. The OECD documents assumed the form of recommendations, decisions and other general acts, which may be mandatory or optional for member states.

3. The OECD is funded from the budget, which annually amounts to approximately 340 million Euros; the budget is adopted by the Council. The revenue side of the budget is made of contributions of member states, calculated on the basis of their GDP, so that the United States account for about 25% of the revenue of the budget, whereas other members - in proportion to their GDP[6]. It has been suggested that the method of work of the OECD focuses on accelerating the development of the underdeveloped rather than developed member states[7].

4 Definition: *Organization for Economic Co-operation and Development*, Legal Encyclopedia, „Savremena administracija", Beograd, 1979, pp.893-894.

5 Prof. Filip Turčinović, PhD: *Some Specific Traits of* OECD *Objectives,* Legal Life, No.14/2009, pp.193-210.

6 Ibidem

7 Definition: *Organization for Economic Co-operation and Development*, Kukoleča - Organizational and Business Lexicon of Words, Concepts and Methods, Institute for Legal Expertise, Beograd, 1990, pp. 947-948.

Brief Overview of Previous OECD Attitudes on Insurance Law

1. Lately, the 2004 Guide has not been the only international legal source of the OECD on insurance law matter. The Guide was preceded by legal recommendations on insurance for countries in transition, adopted at the regional OECD Conference in 1997 in Warsaw. The participants of this Conference were primarily countries of the East and Western Europe. The Conference adopted 20 recommendations. All these recommendations, inter alia, were included into an article written by a renowned Slovenian labourer and legal writer on the insurance matter. Without going deeper into the analysis of all or some of the recommendations, the said writer quoted them and concluded that they were in the spirit of the EU insurance law; however, particular recommendations allowed for a slight departure from the EU insurance law[8]. Given the above conclusion does not show which of the 20 recommendations are in the spirit of the EU insurance law, and which are not and allow for a slight departure, we shall be dealing in more detail with only one of the recommendations adopted at the mentioned Conference. With regard to the selected recommendation, we shall discuss which part of its wording is (and which is, perhaps, not) in the spirit and in compliance with the EU insurance law. Namely, we shall consider the third recommendation of the OECD regional Conference.

2. According to this legal writer[9], the third recommendation consists of three legal rules and/or three legal premise, namely: (1) only insurance companies can deal with insurance activity; (2) the insurance company must separate its life and non-life business; (3) an insurance company may not engage in both life and non-life insurance. In the view of the author of this article, the legal rules of the first two premises of this recommendation are consistent with the EU insurance law and the positive insurance law of Serbia; this is not the case with the rule of law, i.e. is the third premise of the recommendation. Namely, the author of this article considered in detail (in his earlier work) the question of whether the EU insurance law allowed an insurance company to simultaneously engage in life and non-life business[10]. In this article, the author came to the conclusion that the EU insurance law certainly allowed an insurance company to simultaneously engage in life and non-life insurance. In the comparative in

8 Prof. Šime Ivanjko, PhD: *Slovenian Insurance Meeting EU Law,* Proceedings of the Association for Insurance Law of Serbia and Montenegro from April 2006 Conference, at Palić Lake, the General Theme - *Insurance Coming Out to Meet Process of Accession of Serbia and Montenegro to European Community*, Palić, 2006, pp. 128-140.

9 Ibidem

10 Slobodan Ilijić, LLM: *Legal Position of Composite Insurance Company in Serbia - Law and Economy - No. 4-6/2014, pp.580-594.*

surance law literature, such insurance company, which engages in both life and non-life business is called - a composite insurance company. Given that knowledge, the question is: what were the reasons why the OECD Regional Conference adopted, in 1997, a rule of law (that is, the third premise), which was obviously inconsistent with the EU insurance law; moreover, the OECD addressed it all to European countries in transition[11] which were just about to access the EU? It goes without saying that those emerging countries had already had an obligation to harmonize their insurance legislation with the EU insurance law, including the status of insurance companies on the national insurance market.

3. According to the author of this work, the reasons which led the OECD Conference to adopt the third premise within the third recommendation should be sought in several directions. One of them is that the OECD Conference appeared as an interpreter of the interests of its member states worldwide, which are not the EU member states, but have tendencies towards the EU insurance market. Furthermore, the OECD experts were able to present the views of insurers and reinsurers seated in the member states of the OECD, but outside the EU, as well as the attitudes of their EU branches (daughter companies, etc.). The world's big insurers and reinsurers outside the EU, as well as their branches or capital share into the EU insurance companies, had already specialized, long before this Conference, for either life or non-life business. The world's big insurers and reinsurers themselves were parts of multinational companies[12], groups, conglomerates, etc., whereby they also interpreted the interests of the parts of the whole to which they belonged. Through the OECD Conference or by the said third recommendation, they confirmed the tendency to take an even greater share of the insurance market of the EU. They acted through the experts and recommendations of the OECD, suggesting that the EU insurers and reinsurers should, without exception, narrow down their specialization. In the earlier work, the author of this article showed a decades-long lively discussion within the EU and different arguments of individual EU member states on further issuance of operating permits or restrictions to the composite insurance companies within the EU and/or on the implementation/non-implementation of mandatory specialization of the EU insurers and reinsurers. The Warsaw OECD Conference was held in the midst of this lively discussion within the EU, so that the 1997 OECD recommendations were only one piece of

11 It is interesting that, in the quoted Article, Prof. Šime Ivanjko, PhD, included Slovenia amongst the countries in transition.

12 Charles Levinson: *Capital, Inflation and Multinationals,* BIGZ, Beograd, 1974, pp.16 et.al; a book showing numerous forms and combinations of investments outside the country of residence of the parent company. The author points out that a multinational company realizes 65-70% of its business and profits outside the country of residence.

evidence that there was external pressure (outside the OECD) on the outcome of the mentioned EU discussions. Hence, the 1997 OECD Conference insurance recommendations for the countries in transition aimed at the outcome of the EU discussions on the issue of whether composite insurance companies should be allowed or banned, so that only the first two premises of the third Conference recommendation were in line with the EU insurance law, while the third one was not.

Structure of OECD Guidelines for Insurance Claim Management

1. The Guide was adopted by the OECD Council on the 24 November 2004. The Committee for Insurance has initiated the insurance claim management project, and the Committee Working Group started implementing it in the mid2000. In the first phase of the information gathering, the Committee Working Group concluded that the international community had never before adopted any international multilateral convention which would regulate insurance claim management. Since the Committee Working Group considered the legislation and practice with regard to how insurers handle claims for compensation in the EU member states, the policyholder respondents indicated that there was room for insurance claim management improvement. The OECD Insurance Committee completed work on the Guide in four years.

2. Guide was not conceived as a binding and comprehensive rule for the member states, but rather a kind of support to public authorities of member states and/or insurers in regulating the insurance claims management. Also, in the introduction to the Guide, it was pointed out that member states may regulate their insurance claims management processes otherwise than prescribed under these recommendations and legal rules of good practice. Thus, it was established that the application of the Guide is not mandatory for all member states.

3. The second part of the Guide was composed of recommendations. According to these recommendations, the Guide was directed towards both the public authorities of national states and all interested parties: insurers, policyholders, insured and insurance beneficiaries. Starting from this basic orientation of the recommendations, the following five aspects arose: -

The first aspect dealt with the importance of insurance claim management. In this respect, it was explained that the insurance claim management protects the insured and policyholders, so it was recommended that countries should improve the efficiency, transparency and disclosure of the

entire insurance claim management process. In the view of the author of this article, it was omitted to point out that the insurance claim management is very important for the claimant, just like in compulsory automobile TPL insurance.

Second, the need to promote public awareness of various issues of insurance claim management was specially highlighted in the recommendations. For this purpose, the states were recommended to organize, on a national level, public programs of insurance claim management.

Third, it was underlined that the insurance claim management is a key element of success in the insurance market, because it improves the overall public image of the insurance industry.

Fourth, the recommendations identified a possible scale of impact of legal rules of good practice set out in Guide Annex. In this respect, it was stated that these legal rules of good practice set out in the Annex do not refer to management of insurance claims arising from natural catastrophes or man-made disasters. Thus, clear limits were defined for the legal rules of good practice within the casualty insurance law.

Fifth, the recommendations repeated the attitude expressed in the Introduction that the Guide is not compulsory for member states and the recommendations and rules of good practice do not represent the final solution.

The opinion of the author of this work is that re-emphasizing the fact that the Guide is neither binding upon member states nor final, suggests the following comparison: other international organizations had drawn up and published, in the past, legal rules of good practice, stating that these rules were optional and uncompleted; nevertheless, the passage of time and frequent usage modified these rules into model-laws or even multilateral conventions. The future will show the fate of these legal rules of good practice. In any case, the written introduction and recommendations show that the Guide was thoroughly prepared, assuming the legal rules of good practice could play a positive role in a comparative and national insurance legislation.

4. The Annex is the third part of the Guide, besides the Introduction and Recommendations. Each Chapter defines the legal rules of good practice as a well-rounded legal concept. This is the most important and extensive part of the Guide. The legal rules of good practice set out in the Annex are certainly the most valuable part of the Guide, from the aspect of insurance law – they have introduced novelties into the insurance law of Serbia.

Legal Rules of Good Practice for First Loss Notice in Insurance

1. The procedure for reporting claims in insurance is regulated under the first Chapter of the Annex. The Chapter comprises three paragraphs, two of which are indented, since they contain Items. The very title of this Chapter of the Annex is a quick read: first loss notice. The importance of legal rules of good practice in this Chapter reflects in the fact that a loss notice is the first contact between the insured and the insurer, upon concluding the insurance contract and paying the insurance premium (in instalments or at once) and, in case of liability insurance, first contact between the claimant and tortfeasor's insurer.

2. The first paragraph constitutes a rule that the basis for the first loss notice procedure is set already when concluding the insurance contract. Therefore, the legal rules of good practice require the insurer to print the terms and conditions of particular coverage onto the insurance policy form. In addition, it is marked as vital to clearly differentiate on the policy, what is the scope of coverage and what is not. Finally, it is specifically stipulated as desirable that the legal language of the printed text on the policy contain simple linguistic explanations. In view of the author of this article, the legal rules of good practice referred to under the first paragraph propose an update of the insurance law of Serbia; such novelties shall be considered from four angles:

2a) Under the Serbian insurance law, the policy has characteristics of being a: (1) proof of concluded insurance contract; (2) means of identification; (3) note loan. However, in many countries, the insurance policy has assumed a role of an agent that informs the insured of their most important duties[13]. In the light of the quoted classification, focus of the fourth property of the policy is, apparently, to inform the insured of their obligations. Thus, the question arose whether the legal rules of good practice referred to under the first paragraph of the Annex considered policy as only a tool for informing the insured about their duties or also as a means to define the actual obligations of the insurer? In the view of the author of this article, the first paragraph of the Annex did not consider an insurance policy as only a tool of informing the insured of their duties but also as a complete profile of the insurer, including their specific obligations as well. Diction of a legal rule of good practice referred to under the first paragraph aimed at representing the insurer as a conscientious and honest policyholder and his policy as a coverage warranty, clearly and unambiguously differentiating, in linguistic terms, and explaining what is and what is not covered under specific insurance. Simply said, the policy must include

13 Prof. Predrag Šulejić, PhD: *Specific Traits of Harmonization of Insurance Contract with the EU Law, Guide through EU Law*, PE Official Gazette, Beograd, 2009, pp. 443-447.

linguistically clear and unambiguous terms and conditions, stating what the insured event is, and what it is not, so that both explanations are devoid of juridical formulation. Starting from the exposed legal theory classification, such a policy is neither the evidence of concluded insurance contract, nor a means of identification/a note loan. The insurer, as a signatory of such policy, is legally reliable contracting party, who informs the potential insured of clearly and unambiguously defined terms and conditions of specific insurance coverage, which means that he is ready to perform his obligations under the policy and pay indemnity pursuant to the concluded insurance contract and paid premium. In other words, the legal rules of good practice referred to under the first paragraph are polyvalent. They do not question the policy as a means of informing the insured of their duties, nor challenge the given theoretical classification of the functions of insurance policy. Presented legal rules of good practice include the obligations of the insurer - where the insurer is a guarantor of the rights of the insured - to provide a clearly defined coverage under the relevant insurance. In the presented legal rule of good practice, the insurer is also a guarantor under the liability coverage of the injured party, having previously organized and implemented the principles of reciprocity, solvency, liquidity and other insurance principles. In the opinion of the author of this paper, the insurance policy is a part of the insurance contract and, in line with the contractual relations, it represents a means of informing the insured of their obligations and clearly defines the obligation of the insurer to indemnify the insured under an unambiguous coverage, against damage to the insured object.

2b) The second aspect of the first loss notice procedure was inspired by the theory of insurance law of Serbia. Namely, the policy is a form drawn up by the insurer[14]. The legal rule of good practice referred to under the first paragraph requires that the insurance policy include the explained or printed terms and conditions and the scope of specific insurance coverage provided under such a policy. The insurers of the second Yugoslavia were never placed before such a request when printing the insurance policies, so, if accepted in the Draft Civil Code of Serbia, it would presented a big novelty. Today, the insurers in Serbia are allowed to only print on the insurance policy an excerpt from the general and special or additional insurance terms and conditions, which is quite contrary to what comes out of the mentioned legal rule of good practice. In the view of the author of this article, the excerpt from the general and special or additional insurance terms and conditions, printed on an insurance policy, cannot replace an explanation, on such a policy, of what the particular coverage

14 Nikola Nikolić, PhD: *Insurance Contract (Doctoral Dissertation),* State Insurance Institute, Beograd, 1957, pp. 243.

terms and conditions include and what they exclude, with a simple linguistic explication of legal definitions. In the legal theory and practice, as well, an excerpt from the general, special and additional insurance terms and conditions, printed on the insurance policy, does not have the same actual and legal value as may be ascribed to the legal definitions of the particular insurance coverage terms and conditions, or the exclusions from such a coverage, written in a plain language. An excerpt from each primary normative act is a subjective picture of the provisions which are in line with aim of the makers of the excerpt; the same goes for the excerpt from the general and special or additional insurance terms and conditions. Instead of printing, on the back of a policy, an excerpt from the general and special or additional insurance terms and conditions, the Serbian legislator and national insurance companies should, according to the author of this work, be entrusted with the power to explain and/or print on the policy the terms and conditions and scope of particular insurance coverage, with the legal definitions explicated in a plain language.

2c) When signing the policy, unexpected circumstances may arise for one or both parties. At the time of the second Yugoslavia (when Draft Code of Obligations and Contracts[15] was prepared and later, when Draft Law on Contracts and Torts[16] was initiated), the starting point of printing an insurance policy was the policy wording typed on a mechanical typewriter and printed; in case an amendment was necessary when signing such a policy (or if the printed text needed to be altered), they used the handwriting. In case of any discrepancies between the handwritten text and the printed wording, the Law on Contracts and Torts favoured a handwritten text[17]. At the time of the second Yugoslavia and constitution of the above mentioned legal projects, there were neither computers nor printers, but the legislative process and practice relied on a mechanical typewriter; the handwritten text of the policy was, thus, an expression of the needs and everyday necessities of the insurance practice back then, but not today (half a century later). It should be noted that, at the time of project preparation of the Code of Obligations and Contracts and the Law on Contracts and Torts, a handwriting on the insurance policy, beside the printed text, was unthinkable in developed insurance industries of Europe[18]. The quoted scientific

15 Prof. Mihailo Konstantinović, PhD: *Obligatins and Contracts,* Faculty of Law, Belgrade, 1969, (Article 879 Paragraph 5), pp. 249.

16 *Official Gazette* of SFRY, No.29/1978 with subsequent amendments. Abbreviated: Law on Contracts and Torts (ZOO), Article 902, Paragraph 5.

17 Editor in Chief - Prof. Slobodan Perović, PhD: *Law on Contracts and Torts Commentary,* „Savremena administracija", Beograd, 1995, pp. 1475.

18 Prof. H.L.Mueller Lutz, PhD: *Fundamentals of Insurance Company Theory (Introduction into Company Organization),* Insurance and Reinsurance Institute „Yugoslavia", Beograd, 1971, pp.110-114.

source of comparative insurance law was available to legal experts engaged in defining the provisions of Law on Contracts and Torts (because it was translated), but apparently was neither appreciated nor assessed as relevant for defining the provisions on the insurance policy included in the Law on Contracts and Torts. The capital of majority of insurers in Serbian insurance market today originates from developed insurance industries of Europe, where the policy is not allowed a handwriting and such a handwriting may not prevail over a printed text (since no handwriting is allowed on the policies in developed insurance practices of Europe). Hence, according to the author of this work, the handwriting on the insurance policy should be left out from the provisions of the Draft Civil Code of Serbia[19], as obsolete in comparative insurance law and practice.

2g) The fourth aspect of the legal rule of good practice referred to under the first paragraph considers the implementation of such a rule onto the insurance policy, explaining what is excluded from the insurance coverage. In the theory of insurance of Serbia, attitude prevails that the general insurance terms and conditions are contractual provisions composed by one contracting party for a number of contracts under a particular line of business, for concluding contracts with interested parties[20]. Further in this paragraph of the insurance legal theory, it has been stated that the general terms and conditions of insurance are printed, typed or otherwise issued as a separate booklet and handed over to the insured, at the conclusion of insurance contract, along with a policy, except that it is customary to write, on the back of the policy, the excerpts from most important terms and conditions. In the view of the author of this article, the current general and special or additional terms and conditions for casualty insurance were made in the past (some of them even a decade ago) and went through many amendments. In legal reality, it has happened that certain provisions refer to other provisions and further on, all the way round. In this way, it was hard to determine what constitutes legally valid terms and conditions of the relevant coverage, i.e. what is the actual insured event and what is not, under the Serbian casualty law. If approved, a legal solution by which the insurers are authorized to explain (or print) on the insurance policy what is covered under a particular type of insurance (and especially what is not covered), will demand of the insurers an extraordinary knowledge of insurance and judicial practice regarding particular casualty business. Implementation of the legal rule of good practice stating what is not coverable under a particular insurance

19 Committee of the Government of Serbia for composing Civil Code: *Draft Law of the Civil Code of Serbia*, Second Book, Beograd, 2009, Article 1170. pp. 3.

20 Prof. Predrag Šulejić, PhD: *General Terms and Conditions as Integral Part of Contract (with Special View of Insurance Contract),* Legal Life, No. 3-4/2009, pp. 21-31.

will require highly technical terms and legal definitions from general and special or additional terms and conditions of a particular casualty business to be explained in plain language. In addition, it should be noted that, in the above mentioned legal rules of good practice, there is no reference to excerpts from the general and special or additional terms and conditions, nor mentioning the face and back of the policy. The text printed on the policy, including negative presentations, would comprise, for certain, the provisions on: voidability, loss of rights, limitations and exclusions of this insurance, towards which the Serbian insurers have always had a rather subjective than objective weakness. Thus, there is an obvious difference, in terms of contents of the policy, between domestic legal theory of insurance, valid regulations and insurance practice in Serbia on the one hand and the above mentioned legal rule of good practice, on the other hand; the expressed differences should at least be taken into consideration when defining the provisions of the Preliminary Draft Civil Code of Serbia on the contents of a policy.

3. The second paragraph of the Annex gives the list of rights and obligations of policyholders, insured persons and beneficiaries (in short: the claimants), which they acquire by signing the policy and use when notifying of a loss. Legal rules of good practice from this list can be deployed in at least four points. The first point stipulates the obligation of the claimant to try, by all means, to mitigate the property damage or try to avoid the accident. It is a standard obligation of the insured, recognized under the Serbian casualty insurance law as well; therefore, this introduces no novelties for insurance in Serbia. The second point regulates the obligation of the claimant to promptly notify of a loss. Also, this is a standard obligation of the insured, recognized under the Serbian insurance law – so, no novelties for Serbian insurance here, either. The third point includes the rights and obligations of the claimant to cooperate with the insurer at the first loss notice. The subject matter of the cooperation is, according to the legal rules of good practice, to define the relevant documents and data on the actual property loss or accident. In the opinion of the author of this article, the mentioned Item from the second Paragraph is very significant for the process of the first loss notice with insurers in Serbia. This is because the regulations on the financial system of Serbia (and therefore the relevant legislation in insurance) stipulate the submitting of (certified) copies and/or photocopies as relevant pieces of evidence. This attitude of legislative, administrative, business and judicial practice contradicts the mentioned legal rule of good practice, because it is beyond any doubt that this rule insisting clearly and unequivocally on original documents and cooperation of applicants with insurer on finding the original documents. Thus, the application of this Item of the legal rule of good practice would require a review of the entire legisla-

tive, administrative, business and judicial practice in the field of argumentation, which implies a broad legal consensus. The fourth Item sets up the right and obligation of the claimant to authorize the insurers to conduct the necessary verification and assessment of the extent of damage before any repair or replacement of the parts. In view of the author of this article, the practical implementation of the mentioned definition in Serbia would call for a universal consideration of its numerous aspects. The first aspect could be the consideration of (technical) legislation on money laundering, second - the protection of personal data. Moreover, it is known that, when repairing motor vehicles in Serbia, domestic rather than European standards apply for replacing damaged parts of motor vehicles – therefore, it would be good to consider the implementation of legal rules of good practice of fourth Item from the perspective of different standards, as well. In any case, the legal rules of good practice referred to under the third and fourth Items are relevant for insurance in Serbia.

4. The third Paragraph of the first Chapter of the Annex treats two groups of legal rules of good practice as relevant for the first loss notice, but from the standpoint of the legal system as a framework of particular industrial insurance coverage.

4a) The first group emphasizes that the first loss notice should be made in a peaceful procedure. The author of this article believes that the law of Serbia, with regard to the matter of compulsory civil liability insurance of the users of motor vehicles stipulates the peaceful procedure for the first loss notice by the damaged party and/or the completion of the peaceful procedure with the insurer as a procedural prerequisite for disaffected damaged party to file a suit[21]. Peaceful procedure has been introduced in other areas of the casualty law (state liability for damages) – it is no big news for positive insurance law of Serbia.

4b) The second group of legal rules of good practice advocated a written way of the first loss notice, where common, using the form whose creation should involve all parties interested in the insurance business and that the insurers will continue to provide the necessary additional information to the claimant. Also, according to the legal rules of good practice in this Paragraph, the insurer is obliged to provide the claimant with the Insurer's notice form, within a reasonable time, starting from the moment of submitting a claim. It is specified that such forms should include a combination of insurance terms,

21 Prof. Predrag Šulejić, PhD: *Positive and Negative Solutions of New Law on Compulsory Traffic Insurance,* Insurance Law Review No. 3/2010, pp. 75-77; Slobodan Ilijić, LLM: *Out of Court Procedure for Claims Compensation Pursuant to Law on Compulsory Traffic Insurance of Republic of Serbia,* Legal Life No. 11/2010, pp. 643-657; Slobodan Ilijić, LLM: *Harmonizing Serbian Law with EU in Compulsory Automobile TPL*, Legal Life No. 5-6/2012, pp. 99-116.

reasonable requirements of insurers and instructions of operating supervisory authorities, and that such forms for particular lines of business should be made by the operating supervisory authorities, insurers and administrative authority for issuance and revocation of permits to transact insurance[22]. An opinion has been expressed under the comparative insurance law, regarding the second group of legal rules - in particular concerning the introduction of reasonable deadlines into the national casualty law – stating that the above legal rules of good practice are important primarily because they advocate fair treatment of claimants[23]. Agreeing with that opinion, the author of this paper believes that the legal rule of good practice express an inspiring idea for domestic insurance law - it is about creating forms for particular lines of insurance business and the proposal to gather, on that occasion and on equal legal basis, all parties interested in Serbian insurance business. In other words, this legal rule of good practice sought to prevent that any of the parties interested in insurance act from the position of power when crating notice forms pursuant to the casualty insurance law.

Conclusions

1) The legal rules of good practice provided under the OECD 2004 Guidelines for Insurance Claim Management, especially the rules of procedure of first loss notice to the insurer, have indicated a number of new ideas how to make the basic legal institutions of positive insurance law of Serbia closer to the law of developed insurance industries.

2) The Draft Civil Code of Serbia should provide for a novelty – to print out, on the insurance policy, what is and what is not covered under particular insurance terms and conditions; thus the legal language of the text printed on the insurance policy would be completed with simple linguistic explanation.

3) The 2009 Draft Civil Code proposed that the provision on writing onto the insurance policy and the provision according to which the written part prevails over the printed part of the policy should be omitted from the Article 1170, Paragraph 3.

Translated into English by: ***Bojana Papović***

22 In Serbia (as opposed to majority of EU member states, where the administrative authority issues and revokes the permits to transact insurance), the National Bank is competent to issue and revoke permits to transact insurance business. In most EU member states, the operating supervision over the insurance business is done by agencies and other non governmental bodies, whereas in Serbia, the National Bank is competent for such supervision.

23 Prof. Marijan Ćurković, PhD: *Terms for Settlement of Claims in Compulsory Traffic Insurances,* Insurance World No. 6/2009, pp. 45-52.