

<https://doi.org/10.22364/jull.10.15>

## Perception of Insurable Interest in European Insurance Law

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This article explores regulation of insurable interest in insurance law from the European perspective in general and the perspective of Latvian contract insurance law in particular. At the beginning, the present article provides overview of regulation of insurable interest at international law and national law from the perspective of European countries. Furthermore, the article analyses essential aspects of insurable interest such as understanding of the concept of insurable interest both at the doctrinal (academic) level and legislative level; the person who shall demonstrate insurable interest; and time when insurable interest by that person should be demonstrated. The analysis is based on discussion of various approaches employed by different European countries and comparison with the approach of Latvian insurance contract law. This article finishes with conclusions following the discussion contained therein.

**Keywords:** insurance law, insurance contract, essential element of a contract, insurable interest, lack of insurable interest, validity of a contract, European countries, Latvia.

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## Introduction

Insurable interest has been considered one of peculiarities of insurance law as such concept is employed only in the field of insurance law concerning regulation of an insurance contract. Importance of insurable interest relates to the fact that requirement of insurable interest is one of basic principles in insurance contract law alongside with requirement of insurable risk, principle of indemnity and subrogation. Similarly, as these principles, insurable interest is based on an objective criterion, which exists irrespectively of the will of parties to an insurance contract.<sup>1</sup> Considering the importance of insurable interest for characterisation of nature of insurance contract law, insurable interest is identified as one of essential elements of an insurance contract. Topicality of the theme of insurable interest for legal research in studies like the one reflected in this article is connected not only with its inherent meaning to insurance (contract) law but also with limited studies on regulation of insurable interest in Europe on a comparative basis identifying similarities and differences of its regulation among different European countries.<sup>2</sup>

Historically, establishing insurable interest as a requirement for a valid insurance contract was introduced in English law in 18<sup>th</sup> century in conjunction with subsequent statutes and case law of English courts, and was overtaken (or possibly developing simultaneously) by continental European countries becoming generally recognised insurable interest as one of essential elements of an insurance contract. However, considerable differences among the continental European countries in respect of perception of insurable interest and its regulation arose (as well as in respect of other insurance contract aspects, even in such aspect as termination of an insurance contract<sup>3</sup>). These differences may lead (and in some occasions do lead) to differences in practice by application of insurance law of various European countries concerning establishing insurable interest in particular cases.<sup>4</sup>

At the same time, studies on insurable interest are available mostly in Anglo-American legal literature, either as chapters in insurance law monographs<sup>5</sup> or

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<sup>1</sup> This conclusion means that lack of insurable interest leads to invalidity of insurance contract (see discussion below in Chapter 4 concerning different approaches regarding the time when insurable interest should be demonstrated). However, this conclusion does not deprive persons entitled to claim payment of insurance redress to refer to other remedies, if such are available for them, for instance, in the case of misleading allegations of an insurer concerning existence of insurable interest or either ordinary or gross negligence for omission for non-reporting of the fact of lack of insurable interest). Yet, studies concerning those issues are limited (see, as one of such rare examples, *Duesenberg, R. W. Insurer's Tort Liability for Issuing Policy without Insurable Interest: A Comment. California Law Review*, 1959, pp. 64–73).

<sup>2</sup> Several examples for studies of insurable interest on a comparative basis from the European perspective could be mentioned, such as: *Clarke, M. Policies and Perceptions of Insurance: An Introduction to Insurance Law*. Oxford: Clarendon Press, 1997, pp. 20–32; Expert Group on European Insurance Contract Law. Final Report of the Commission Expert Group on European Insurance Contract Law, pp. 34–35. Available at [http://ec.europa.eu/justice/contract/files/expert\\_groups/insurance/final\\_report.pdf](http://ec.europa.eu/justice/contract/files/expert_groups/insurance/final_report.pdf) [last viewed 20.07.2017].

<sup>3</sup> Expert Group on European Insurance Contract Law. Final Report of the Commission Expert Group on European Insurance Contract Law, pp. 34–35.

<sup>4</sup> The fact of differences of regulation of insurable interest among European countries is supported also by other studies, for instance, in the recent study prepared for the European Commission (Discussion Paper III. Differences in Insurance Contract Laws and Existing EU Legal Framework Insurance Contract Law – General Part 1, prepared by Yannis Samothrakis. Available at [http://ec.europa.eu/justice/contract/files/expert\\_groups/report\\_on\\_section\\_3\\_final\\_en.pdf](http://ec.europa.eu/justice/contract/files/expert_groups/report_on_section_3_final_en.pdf) [last viewed 20.07.2017]).

<sup>5</sup> For instance, those monographs of English or American law commentators referred to from time to time in this article.

influential articles in legal journals.<sup>6</sup> Regrettably, continental European legal commentators address insurable interest in a limited amount despite the fact that it is one of essential elements of an insurance contract.<sup>7</sup>

The aim of this article is twofold. One aim relates to the discussion of regulation of insurable interest in European countries on the basis of a comparative legal method. Another aim relates to discussion of insurable interest from the perspective of Latvian insurance contract law in conjunction in comparison with other European countries by exploring specific approaches of the Latvian legislator and Latvian courts for treatment of insurable interest. Topicality of discussion of insurable interest from the perspective of Latvian insurance contract law relates to the fact that discussion of insurable interest was carried out in Latvian legal literature on a fragmentary and obviously insufficient basis<sup>8</sup> despite the fact that it was assessed and tested in different disputes in Latvian court practice (mainly in property insurance and motor insurance, see the discussion of cases below).

The present article is structured, as follows. It consists of several important aspects of insurable interest, commencing with overview of regulation of insurable interest at international arena including EU law; further considering understanding of insurable interest; and exploring its essential elements like time when insurable interest must be demonstrated; by whom it must be demonstrated; and the consequences for lack of insurable interest both in relation to situations when insured risk (risks) have or have not taken place. The conclusions drawn from this analysis are provided at the end of the article.

## 1. International Law

### 1.1. General Overview

The so-called global international treaties address regulation of insurance law on a fragmentary basis, especially in relation to carriage of goods in such legal instruments as the Vienna Convention on Contracts for the International Sale of Goods,<sup>9</sup> and the CMR Convention concerning international carriage of goods by road.<sup>10</sup> Particularly, the CMR Convention provides that, “[w]here applicable, the consignment note shall also contain [...] [t]he sender’s instructions to the carrier

<sup>6</sup> Taylor, H. L. The Law of Insurable Interest in North Carolina. *North Carolina Law Review*, 1946, Vol. 24, pp. 247–266; Swisher, P. N. The Insurable Interest Requirement For Life Insurance: A Critical Reassessment. *Drake Law Review*, 2004–2005, Vol. 53, pp. 477–543; Patterson, E. W. Insurable Interest in Life. *Columbia Law Review*, 1918, Vol. 18, pp. 381–421.

<sup>7</sup> PEICL could be mentioned as one of such rare examples (Basedow, J., Birds, J., Clarke, M., Cousy, H., Heiss, H. (eds.). *Principles of European Insurance Contract Law (PEICL)*. Munich: Sellier. European Law Publishers, 2009, pp. 53–54).

<sup>8</sup> Rone, D. Apdrošināšanas tiesību principu ietekme uz apdrošināšanas atlīdzības izmaksu [Influence of insurance law principles on payment of insurance redress]. Available at [https://dukonference.lv/files/proceedings\\_of\\_conf/53konf/tiesibas/Rone.pdf](https://dukonference.lv/files/proceedings_of_conf/53konf/tiesibas/Rone.pdf) [last viewed 20.07.2017]; Torgāns, K. Saistību tiesības: Mācību grāmata [Law of obligations: A textbook]. R.: Tiesu namu aģentūra, 2014, 445. lpp.

<sup>9</sup> Article 32(3) Vienna Convention on Contracts for the International Sale of Goods (United Nations Convention on Contracts for the International Sale of Goods. Available at <https://www.uncitral.org/pdf/english/texts/sales/cisg/V1056997-CISG-e-book.pdf> [last viewed 20.07.2017]).

<sup>10</sup> Convention on the Contract for the International Carriage of Goods by Road (CMR). Signed on 19 May 1956 in Geneva, entered into force on 2 July 1961 [CMR Convention]. Available at [https://treaties.un.org/doc/Treaties/1961/07/19610702%2001-56%20AM/Ch\\_XI\\_B\\_11.pdf](https://treaties.un.org/doc/Treaties/1961/07/19610702%2001-56%20AM/Ch_XI_B_11.pdf) [last viewed 20.07.2017].

regarding insurance of the goods”.<sup>11</sup> However, neither this nor any other provision in the CMR Convention contains rules on insurable interest. At the same time, it should be noted that the CMR Convention provides that “a benefit of insurance in favour of the carrier or any other similar clause [...] shall be null and void”.<sup>12</sup> From this wording, however, it cannot be concluded that insurable interest is discussed, even in indirect way but with prohibition of limiting liability instead. Indeed, the essence of this provision lies in the fact that “if the cargo interest assigns his [or her] right to the insurance moneys to the carrier, the carrier is in effect relieved of all liability”,<sup>13</sup> which falls within prohibition for a carrier to evade liability<sup>14</sup>. Furthermore, the green card system established in 1949 on the basis of the Recommendation on Insurance of Motorists Against Third Party Risks No. 5<sup>15</sup> (adopted by the Working Party on Road Transport of the Inland Transport Committee of the United Nations Economic Commission for Europe), and mutual agreements between national insurers’ bureaux does not (and even cannot, due to the character of these agreements) address insurable interest requirement at all.

As regards regional treaties concerning Europe, except EU law discussed in the next sub-chapter, several treaties addressing insurance law regulation could be mentioned. One of these, is the European Convention on Compulsory Insurance against Civil Liability in respect of Motor Vehicles,<sup>16</sup> which was opened for signature to members of the Council of Europe in Strasbourg on 20 April 1959 and entered into force on 22 September 1969.<sup>17</sup> As this Convention deals with motor insurance law, its regulation naturally addresses insurable interest indirectly<sup>18</sup> similarly as in the case of EU motor insurance<sup>19</sup>. In addition, this Convention is not influential or is, as characterised by Advocate General Trstenjak, without “any great practical significance”<sup>20</sup> due to the limited number of accession countries, i.e. seven.<sup>21</sup> Another treaty that should be mentioned is the Hague Convention on the Law Applicable to Traffic Accidents which was concluded on 4 May 1971 and entered into force on 03 June 1975.<sup>22</sup> As this Convention states the law applicable to civil non-contractual liability arising from traffic accidents, it does not provide any regulation for insurable interest.

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<sup>11</sup> Article 6(2) (e) CMR Convention.

<sup>12</sup> Article 41(2) CMR Convention.

<sup>13</sup> *Messent, A., Glass, D. A. Hill & Messent CMR: contracts for the international carriage of goods by road*. 2<sup>nd</sup> ed. London a.o.: Lloyd’s of London Press, 1995, p. 311.

<sup>14</sup> Article 41(1) CMR Convention.

<sup>15</sup> Recommendation on Insurance of Motorists against Third Party Risks No 5. Available at <http://www.cobx.org/content/default.asp?PageID=58&DocID=40902> [last viewed 20.07.2017].

<sup>16</sup> The text of this Convention is presented at the webpage of the Council of Europe. Available at <http://conventions.coe.int/Treaty/en/Treaties/Html/029.htm> [last viewed 20.07.2017].

<sup>17</sup> Summary. Available at <http://conventions.coe.int/Treaty/en/Summaries/Html/029.htm> [last viewed 20.07.2017].

<sup>18</sup> Article 1(1) in conjunction with Article 3(1) Annex 1 of that Convention.

<sup>19</sup> For a discussion of EU motor insurance law, see sub-chapter 1.2. below.

<sup>20</sup> Case No. C-484/09 *Manuel Carvalho Ferreira Santos v Companhia Europeia de Seguros SA* [2011] ECR I-01821, Opinion of AG Trstenjak, para. 45.

<sup>21</sup> Status as of 18 July 2014. Available at <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=029&CM=4&DF=&CL=ENG> [last viewed 20.08.2014].

<sup>22</sup> Convention of 4 May 1971 on the Law Applicable to Traffic Accidents. Available at [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=81](http://www.hcch.net/index_en.php?act=conventions.status&cid=81) [last viewed 20.07.2017].

## 1.2. EU Law

Regulation of insurance in EU law, which is scattered among different EU legal acts (both in primary and secondary EU law) is mainly focused on supervision of insurance law subjects such as (re)insurers and (re)insurance intermediaries, rather than on contractual matters, except motor insurance and certain fragmentary aspects. Insurable interest is not among these aspects, and neither are other essential elements of an insurance contract. Consequently, the regulation of insurance contracts except those fragmentary aspects mentioned above, was never harmonised at the EU level. Therefore, essential elements of an insurance contract including insurable interest are not directly subject to any regulation of EU law neither in the Solvency II Directive<sup>23</sup> nor any other legal act, leaving these issues completely for national law. Therefore, one may agree with the opinion that “European [Union] law does not deal with this concept [i.e., insurable interest – author’s remark]”.<sup>24</sup>

It should be noted that the European Commission submitted to the Council in 1979 a proposal for the coordination of laws, regulations and administrative provisions relating to insurance contracts 1979<sup>25</sup> and after revision, an amended version in 1980.<sup>26</sup> This proposal contained, yet rudimentary, regulation of insurance either in favour of the policyholder or in the favour of a third person, i.e. an insured,<sup>27</sup> though insurable interest was not directly proposed to regulate under that proposal. However, this proposal never was adopted and was finally withdrawn by the European Commission on 24 August 1993.<sup>28</sup>

Despite the lack of direct regulation of insurable interest, as well as other essential elements of an insurance contract in EU law, indirect regulation of that concept in EU law could be identified. Particularly, EU motor insurance law, as well as national motor insurance law of EU Member States links the status of a person being insured within a motor insurance contract with a liable motor vehicle driver.<sup>29</sup> It means that insurable interest is demonstrated either by a motor vehicle driver himself or herself or a person who concludes motor insurance contract in the

<sup>23</sup> Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II). OJ, L 335, 17.12.2009, pp. 1–155.

<sup>24</sup> Expert Group on European Insurance Contract Law. Final Report of the Commission Expert Group on European Insurance Contract Law, p. 41.

<sup>25</sup> Commission, Proposal for a Council Directive on the coordination of laws, regulations and administrative provisions relating to insurance contracts, COM(79) 355 final; Proposal for a Council Directive on the coordination of laws, regulations and administrative provisions relating to insurance contracts [1979] OJ C190/2.

<sup>26</sup> Commission, “Amendment to the proposal for a Council Directive on the coordination of laws, regulations and administrative provisions relating to insurance contracts’ COM(80) 854 final; Amendment to the proposal for a Council Directive on the coordination of laws, regulations and administrative provisions relating to insurance contracts [1980] OJ C355/30.

<sup>27</sup> Article 11 of the proposal mentioned in the previous footnote.

<sup>28</sup> Withdrawal of certain proposals and drafts from the Commission to the Council [1993] OJ C228/4 (see specifically p. 14).

<sup>29</sup> Concerning EU motor insurance law, see Article 3(1) and (4) Codifying Motor Insurance Directive (Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability. OJ, 07.10.2009., L 263, pp. 11–31) (ex Article 3(1) and (4) First Motor Insurance Directive (Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability. OJ, 02.05.1972., L 103, pp. 1–4. Special edition, Series I, Vol. 1972 (II), pp. 360–362)).

favour of that driver. At the same time, a deviation from that rule may take place in some EU Member States, for instance, in Latvia, whose Supreme Court perceives the motor vehicle owner (instead of the motor vehicle driver) as the insured (considering that a liable motor vehicle driver who concluded a motor insurance contract as a policyholder did it in the favour of that owner).<sup>30</sup>

### 1.3. Influence on National Law of European Countries

The majority of European countries, including EU Member States provides a regulation of insurable interest within the regulation of an insurance contract, yet to a different extent. At least one similarity concerning regulation of insurable interest is common to all European countries, as all of them envisage insurable interest, as insurance law experts justly established it, as one of essential elements of an insurance contract.<sup>31</sup>

As it was discussed in the previous sub-chapters, global international treaties, as well as regional treaties covering Europe including EU law contain neither regulation of insurance contracts in general nor insurable interest particularly. Therefore, European countries including EU Member States were free to choose their own national approaches for treatment of insurable interest within the traditions of their civil law and its regulation. This freedom created various perceptions and regulatory approaches in respect of insurable interest among European countries, including EU Member States. As discussed below, understanding and, consequently, regulation of insurable interest among European countries depends on national approaches and, therefore, the concept of insurable interest should be discussed on the basis of insurance contract law of each respective country.

## 2. Understanding of the Concept of Insurable Interest in National Law

### 2.1. Emergence of Insurable Interest: Historical Traces

There is a consensus among legal commentators that insurable interest arose first in English law<sup>32</sup> and gradually expanded all over the world including European countries.<sup>33</sup> At the same time, it could be allowed that the understanding of necessity of insurable interest developed in continental European countries simultaneously with English law. So, already in the 18<sup>th</sup> century learned French jurist *Emerigon* wrote about distinction between insurance contracts properly so called and insurance by form of wager.<sup>34</sup> The first two legal acts adopted in England concerning insurance, i.e. an act adopted in 1746 concerning marine insurance and

<sup>30</sup> Judgment of the Supreme Court of the Republic of Latvia dated 17.12.2015 in case No. SKC-0246/2015 (C30744812).

<sup>31</sup> Expert Group on European Insurance Contract Law. Final Report of the Commission Expert Group on European Insurance Contract Law, p. 40.

<sup>32</sup> For a legislative history of regulation of insurable interest in English law (as well as Scots law), see generally Law Commission, Scottish Law Commission. Issues Paper 4: Insurable Interest, pp. 4–9; *Merkin*, R. Colinvaux's Law of Insurance. 8<sup>th</sup> ed. London: Sweet & Maxwell, 2006, pp. 73–76.

<sup>33</sup> *Jerry*, R. H., II, *Richmond*, D. R. Understanding insurance law. 4<sup>th</sup> ed. LexisNexis, 2007, pp. 273–277; *Mehr*, R. I., *Cammack*, E., *Rose*, T. Principles of Insurance. 8<sup>th</sup> ed. Homewood, Illinois: Richard D. Irwin, Inc., 1985, p. 101.

<sup>34</sup> *Emerigon* B. M. A Treatise of Insurances. Translated from the French; With An Introduction And Notes by S. Meredith, esq. London: Henry Butterworth, 1850, p. 3.



1774 in relation to life insurance, was related to combating such evils as gambling, wagering and intentional cause of insured risks.<sup>35</sup> In common law, it was and still is important to differentiate insurance contracts from other arrangements, such as gambling by using the criterion of insurable interest.<sup>36</sup> However, such a differentiation is not being of influential importance among continental European countries leading even to different perception of insurable interest than in English law.<sup>37</sup> Therefore, it is not a coincidence that European legal commentators usually link necessity of insurable interest with combating intentional cause of insured risks as it was pointed out in this regard in Latvian legal literature.<sup>38</sup>

Similar grounds may be identified also today for substantiation of the requirement of insurable interest<sup>39</sup> in addition to economic explanation of existence of insurable interest,<sup>40</sup> yet it is argued that wagering and gambling does not play any crucial role in insurance law.<sup>41</sup> Despite the fact that nowadays wagering and gambling have more suitable instruments than an insurance contract, such as gambling law, the requirement for necessity of insurable interest is retained as falling within public policy for prohibiting concluding insurance contracts without any economic or legal link between the insured and the insured object.

## 2.2. Academic Perception of Insurable Interest

Insurable interest allows to insure a particular insurance object, in whose preservation a policyholder has lawful interest either of economic or legal nature. This insurance object may be either a corporeal or incorporeal thing (in property insurance); material condition (in liability insurance); or life, health or physical integrity (in personal insurance). The requirement of insurable interest was introduced and still is perceived from the perspective of public policy. As Professor Malcolm Clarke pointed out, “[t]he insured must be acceptable as a risk – not only to the insurer but also to society, which must be satisfied that he is a person whose purpose in seeking insurance is a proper purpose”.<sup>42</sup> The requirement of insurable interest is an objective one and, therefore, as it is correctly stated in legal literature, “[t]he insurer [and, surely, also the policyholder – author’s remark] cannot waive the insurable interest requirement”.<sup>43</sup>

<sup>35</sup> For general overview of necessity to adopt these legal acts, see Law Commission, Scottish Law Commission Issues. Paper 4: Insurable Interest, pp. 4–6; *Merkin, R.* Gambling By Insurance – A Study of the Life Assurance Act 1774. *Anglo-American Law Review*, pp. 331–333; *Birds, J.* *Birds’ Modern Insurance Law*. 10<sup>th</sup> ed. London: Sweet and Maxwell, 2016, pp. 41–43.

<sup>36</sup> *Merkin, R., Steele, J.* *Insurance and the Law of obligations*. Oxford: Oxford University Press, 2013, pp. 39.

<sup>37</sup> For these different perceptions, see subchapter 2.4. below.

<sup>38</sup> *Torgāns, K.* *Saistību tiesības: Mācību grāmata [Law of obligations: A textbook]*. R.: Tiesu namu aģentūra, 2014, 445. lpp.

<sup>39</sup> *Mehr, R. I., Cammack, E., Rose, T.* *Principles of Insurance*. 8<sup>th</sup> ed. Homewood, Illinois: Richard D. Irwin, Inc., 1985, pp. 100–101.

<sup>40</sup> *Clarke, M.* *Policies and Perceptions of Insurance: An Introduction to Insurance Law*. Oxford: Clarendon Press, 1997, pp. 21–22.

<sup>41</sup> *Clarke, M.* *Policies and Perceptions of Insurance: An Introduction to Insurance Law*. Oxford: Clarendon Press, 1997, p. 20.

<sup>42</sup> *Clarke, M.* *Policies and Perceptions of Insurance: An Introduction to Insurance Law*. Oxford: Clarendon Press, 1997, p. 20.

<sup>43</sup> *Mehr, R. I., Cammack, E., Rose, T.* *Principles of Insurance*. 8<sup>th</sup> ed. Homewood, Illinois: Richard D. Irwin, Inc., 1985, p. 101.

It is a common opinion among legal commentators that insurable interest in property and civil liability insurance<sup>44</sup> must be viewed separately from life insurance.<sup>45</sup> Therefore, a different approach shall be used for testing insurable interest in indemnity insurance and insurance of fixed sums, which is frequently reflected in regulation of insurable interest in different European countries, as revealed further in this chapter.

### 2.3. Interrelationship Between Insurable Interest and Principle of Indemnity

Insurable interest has been traditionally (and justly!) linked with the principle of indemnity.<sup>46</sup> Operation of this link, however, is possible only within the field of indemnity insurance, as the principle of indemnity does not work in the case of personal insurance, with an exception of English law.<sup>47</sup> Due to different scope and legal consequences, both concepts shall be differentiated, as it was justly pointed out in legal literature.<sup>48</sup> Therefore, one can hardly agree with the opinion that insurable interest is not necessary today as the principle of indemnity could be sufficient.

As regards the differences concerning the scope between the principle of indemnity and insurable interest, two different motives could be indicated, both of which, on the one hand, emphasise necessity of insurable interest and, on the other, indicate necessity for its differentiation from the principle of indemnity.

The first motive relates to indemnity insurance, which is strictly linked with actual damage. Insurable interest, however, as it is understood in several European countries discussed below, could be perceived broader and may cover not only actual damage but also (and quite frequently) other economic interests. Another motive for differentiation of both concepts relates to personal insurance where insurable interest operates rather based on presumptions than on the strict application of the principle of indemnity.

As regards the consequences, both concepts produce different results. The principle of indemnity should not invalidate the validity of an insurance contract, as it leads just to refusal of the claim allowing for the right person who sustained the damage claim insurance redress. The lack of insurable interest, at the same time, leads to invalidity of an insurance contract as it is provided in insurance law of different European countries.<sup>49</sup>

The importance of distinction between the principle of indemnity and insurable interest may be analysed on the basis of several Latvian court cases. As it will be

<sup>44</sup> Yet, different legal commentators discuss only separation of property insurance and life insurance, therefore, obviously covering civil liability insurance with the concept of property in this regard (see, for instance, *Mehr, R. I., Cammack, E., Rose, T. Principles of Insurance*. 8<sup>th</sup> ed. Homewood, Illinois: Richard D. Irwin, Inc., 1985, p. 100).

<sup>45</sup> *Mehr, R. I., Cammack, E., Rose, T. Principles of Insurance*. 8<sup>th</sup> ed. Homewood, Illinois: Richard D. Irwin, Inc., 1985, p. 100

<sup>46</sup> See, for instance, Jerry R. H., II, *Richmond D.R. Understanding insurance law*. Fourth ed. LexisNexis, 2007, pp. 277–278; *Merkin, R. Colinvaux's Law of Insurance*. 8<sup>th</sup> ed. London: Sweet & Maxwell, 2006, p. 77.

<sup>47</sup> For discussion of insurable interest in English law and its grounding on the principle of indemnity, see, for instance, *Birds, J. Birds' Modern Insurance Law*. 10<sup>th</sup> ed. London: Sweet and Maxwell, 2016, pp. 46–57.

<sup>48</sup> *Merkin, R. Colinvaux's Law of Insurance*. 8<sup>th</sup> ed. London: Sweet & Maxwell, 2006, p. 77.

<sup>49</sup> *Merkin, R. Colinvaux's Law of Insurance*. 8<sup>th</sup> ed. London: Sweet & Maxwell, 2006, p. 77. For consequences of lack of insurable interest, see sub-chapter 2.5. of this Article below.



clear from the discussion of these cases, Latvian courts does not always separate both concepts, which could lead to different outcomes in particular cases.

The situation of the first case was related to the fact that a living house as the insured object was insured against fire risk. A policyholder, who was simultaneously an insured, i.e. concluded an insurance contract in its own interest, insured the house in its full value despite the fact that this person owned 1/3 of that house. After occurrence of the insured risk, which fully destroyed the house, the insurer paid out insurance redress for 1/3 of the full value of the house. The insured brought a claim to the court for collection of insurance redress that would correspond to the full value of the insured object. All three instances of Latvian courts refused that claim. The Supreme Court, which heard the case at the last – cassation – instance, established that an insurance contract “relates only to the property owned by a particular person”, therefore the claimant “cannot receive insurance redress for destruction of property’s part owned by third parties”.<sup>50</sup>

As it could be observed from the reasoning cited in the previous paragraph, the Supreme Court did not mention the requirement of insurable risk, but rather was guided by the principle of indemnity. It led to the situation that, if lack of the insurable interest was not established, the insurance contract in the remaining part, i.e., in respect of insurance of the 2/3 of the house, is still valid and other co-owners of that house may apply with a claim for payment of insurance redress for the part of damage corresponding to their parts in that house. Therefore, although Latvian courts correctly refused the claim brought by co-owner of 1/3 for collection of the insurance redress in the amount of full value of the insured object, the reasoning in this situation should be linked with the lack of insurable interest rather than the principle of indemnity.

In another case, Latvian courts faced the situation that the acquirer of a residential property (living house) insured it against fire risk. The insured risk took place during the validity period of the insurance contract, when the acquirer was the owner of that house. However, the previous owner re-gained ownership rights for that house in the time period between occurrence of the insured risk and the moment of adoption of the decision of the insurer for payment of insurance redress. As the insurer paid out insurance redress to the previous owner, the ex-acquirer brought claim to the court for collection of insurance redress. The Supreme Court was guided by the principle of indemnity and established that the crucial point for establishing a person who sustained damage is the moment when the insured risk took place. Consequently, the claim was satisfied in the favour of the person who was the owner at the moment of occurrence of the insured risk.<sup>51</sup> In this case, Latvian courts correctly refused the claim and rightly applied the principle of indemnity as the crucial question did not concern a person who had an interest for conclusion of the insurance contract, but a person who sustained damage.

An approach similar to the latter case was also used by Latvian courts in another court case by correctly applying the principle of indemnity instead of the insurable interest test. This court case concerned the insurance contract, which was concluded by a carrier for insurance of international cargo carriage transported by roads, and provided payment of insurance redress to the consignor. The appeal

<sup>50</sup> Judgment of the Civil Case Department of the Senate for the Supreme Court dated 13.03.2013 in case No. SKC-145/2013.

<sup>51</sup> Judgment of the Civil Case Department of the Senate for the Supreme Court dated 30.10.2002 in case No. SKC-469.

court satisfied the claim for payment of insurance redress, which was brought by the carrier for disappearance of cargo and necessity to pay the indemnity to the person who sustained loss, i.e. consignor. By revoking this judgment, the Supreme Court referred to the principle of indemnity and held that this principle precludes satisfying such a claim, considering the fact that the appeal instance court had not established losses sustained by the carrier.<sup>52</sup> In this case, the Supreme Court correctly omitted to apply the insurable interest test, as the consignor had such an interest, and instead applied the principle of indemnity, precluding the payment of insurance redress to a person which has not sustained loss due to loss of cargo, in this case, the carrier.

## 2.4. Approaches Employed by European Countries

It is difficult to find any European country, whose law is not familiar with either legal definition or explanation of insurable interest. Yet, perceptions of insurable interest differs among different countries, as it was justly established by insurance law experts,<sup>53</sup> which might lead to different outcomes in particular cases in different European countries. Several perceptions may be identified among European countries for the understanding of insurable interest.

### 2.4.1. Strict Approach

English law (similarly as Scots law, yet with some differences) traditionally has employed a strict approach for establishing insurable interest by linking it with the principle of indemnity (even in personal insurance), and distinguishing different legal regimes of insurable interest in indemnity insurance and life insurance.

English law provides that insurable interest in indemnity insurance consists of two requirements: a person must demonstrate not only economic interest<sup>54</sup> in the insured object but also legal relation with it.<sup>55</sup> As regards the insurable interest in life insurance, four different narrow application schemes could be distinguished: “(1) interest arising out of natural affection; (2) interest arising out of a potential financial loss, which is recognised by law and can be shown at the time of the contract; (3) interest arising out of statutory provisions; and (4) interest recognised by the courts that does not fit into any of the above categories”.<sup>56</sup> At the same time, the very existence of necessity of insurable interest is questioned in English law due to adoption of new gambling regulation,<sup>57</sup> however, this opinion is not likely

<sup>52</sup> Judgment of the Civil Case Department of the Senate for the Supreme Court dated 28.01.2004 in case No. SKC-27.

<sup>53</sup> Expert Group on European Insurance Contract Law. Final Report of the Commission Expert Group on European Insurance Contract Law, p. 41.

<sup>54</sup> See generally: *Clarke, M. A., Burling, J. M., Purves, R. L.* The Law of Insurance Contracts, 6<sup>th</sup> edition. London: Informa, 2009, p. 135 *et seq.* (including case law discussed).

<sup>55</sup> *Clarke, M.* Policies and Perceptions of Insurance: An Introduction to Insurance Law. Oxford: Clarendon Press, 1997, pp. 29–30; *Clarke, M. A., Burling, J. M., Purves, R. L.* The Law of Insurance Contracts, Sixth edition. London: Informa, 2009, pp. 142–146; *Birds, J.* Birds’ Modern Insurance Law. 10<sup>th</sup> ed. London: Sweet and Maxwell, 2016, pp. 62–63.

<sup>56</sup> See Law Commission, Scottish Law Commission. Insurance Contract Law Issues. Paper 4. Insurable interest. 14 January 2008, p. 10 *et seq.* See generally: *Clarke, M. A., Burling, J. M., Purves, R. L.* The Law of Insurance Contracts, 6<sup>th</sup> edition. London: Informa, 2009, p. 121 *et seq.* (including the discussed case law).

<sup>57</sup> Law Commission, Scottish Law Commission. Insurance Contract Law Issues. Paper 4. Insurable interest. 14 January 2008, p. 42.

to be true, as gambling and insurance contract are of different nature,<sup>58</sup> and yet no authority is available to support this opinion.

The discussed strict approach in respect of establishing insurable interest is unreasonably burdensome and, therefore, English legal commentators have criticised such approach, proposing to reform the regulation of insurable interest requirement.<sup>59</sup> By reacting to the shortcomings of existing regulation of insurance contracts including insurable interest, discussion of the necessary reform of this regulation in the UK also covering insurable interest was started in 2008<sup>60</sup> but so far it has not resulted in an adopted legal act.<sup>61</sup>

#### 2.4.2. Economic Interest Approach

Another – more liberal – approach is shared by different European countries, as well as other world's countries such as Australia, Canada, the United States which, as Professor Malcolm Clarke elegantly characterised, drops off the legal relation and relies on economic interest alone.<sup>62</sup>

Switzerland is one of the countries, which *expressis verbis* provide a link between economic interest and insurable interest in its law by envisaging that “[t]he subject-matter of property insurance can be any economic interest that someone has in the failure of a feared event”.<sup>63</sup> Although Swiss insurance contract law links the value of insured event with the moment when an insurance contract enters into force,<sup>64</sup> it is clear that this value may be revised if it does not correspond to the actual value of the insured object.<sup>65</sup>

France shares a similar approach as Switzerland. Indeed, French insurance contract regulation in relation to non-marine insurance provides that “[a]ny person who has an interest in safeguarding a property may have it insured”.<sup>66</sup> This interest is defined broadly by stating that “[a]ny direct or indirect interest in the non-occurrence of a risk may be the subject of insurance”.<sup>67</sup>

Also, the Dutch insurance law yet indirectly refers to the concept of interest. It provides that “[w]here the cover relates to interests of a third person, whose identity is known when the insurance is entered into”.<sup>68</sup> Although this provision relates to disclosure of facts before conclusion of a contract, it nonetheless could simultaneously serve for establishing perception of insurable interest. Also, concerning personal insurance, the Dutch legislator points out to the concept

<sup>58</sup> Merkin, R. Colinviaux's Law of Insurance. 8<sup>th</sup> ed. London: Sweet & Maxwell, 2006, pp. 80–83.

<sup>59</sup> Birds, J. Birds' Modern Insurance Law. 10<sup>th</sup> ed. London: Sweet and Maxwell, 2016, pp. 68–69.

<sup>60</sup> See, for instance, the joint statement of Law Commission and Scottish Law Commission on insurable interest (Law Commission, Scottish Law Commission. Insurance Contract Law Issues. Paper 4. Insurable interest. 14 January 2008).

<sup>61</sup> See generally: Birds, J. Birds' Modern Insurance Law. 10<sup>th</sup> ed. London: Sweet and Maxwell, 2016, pp. 55–57, 68–69.

<sup>62</sup> Clarke, M. Policies and Perceptions of Insurance: An Introduction to Insurance Law. Oxford: Clarendon Press, 1997, pp. 29–30.

<sup>63</sup> Article 48 Swiss Insurance Contract Act (Bundesgesetz über den Versicherungsvertrag). Available in German at <https://www.admin.ch/opc/de/classified-compilation/19080008/index.html> [last viewed 20.07.2017].

<sup>64</sup> Article 49(1) Swiss Insurance Contract Act.

<sup>65</sup> Articles 50–51 Swiss Insurance Contract Act.

<sup>66</sup> Article L121-6(1) French Insurance Code. Available in English at [https://www.legifrance.gouv.fr/content/download/1961/13731/version/2/file/Code\\_38.pdf](https://www.legifrance.gouv.fr/content/download/1961/13731/version/2/file/Code_38.pdf) [last viewed 20.07.2017].

<sup>67</sup> Article L121-6(2), French Insurance Code.

<sup>68</sup> Article 928(2) Book 7 Dutch Civil Code; in: The Civil Code of the Netherlands. Warendorf, H., Thomas, R., Curry-Sumner, I. (transl.). Alphen aan den Rijn: Wolters Kluwer, 2009.

of “the risk of a third person”,<sup>69</sup> therefore employing more economic than strict approach for perception of insurable interest.

A similar perception of insurable interest exists also in Italy, understood in more economic meaning. Indeed, Article 1904 of the Italian Civil Code, which contains regulation on interest insurance, stipulates that a contract of insurance of property, and more generally, an indemnity contract is void if, at the time when of the beginning of insurance, the insured has no interest in the property for which he/she may be compensated in case of damage.<sup>70</sup> This provision links the insurable interest requirement with “any legally recognised insurance relationship, as a consequence of which the policyholder can suffer a prejudice for the loss of the property or a benefit by its safety”.<sup>71</sup>

The German Insurance Contract Act provides that insurable interest is linked with the value of insurance object<sup>72</sup> to be established in the time when insured risk takes place<sup>73,74</sup>. As it follows from these and other provisions of this Act, specifically concerning claims to be brought by mortgage creditors<sup>75</sup> as persons in whose favour a contract could be concluded,<sup>76</sup> German insurance contract law perceives this interest as an economic interest. German legal literature, therefore, describes legal relationship existing between a policyholder who concludes an insurance contract in the favour of a third person and this person as an insured as ‘internal relationship’ (*Innenverhältnis* in German) grounded on either contractual or legal relationship.<sup>77</sup> The German Federal Supreme Court (*Bundesgerichtshof* in German) established a similar approach (concerning similar regulation of insurable interest, yet included in the previously effective legal act) that insurable interest covers economic interest to be established in each individual insurance contract separately.<sup>78</sup> The German Federal Supreme Court later upheld this approach anew.<sup>79</sup>

Similarly to the case of Germany, Estonian insurance contract law in relation to non-life insurance provides that “[i]nsurable interest is the interest of the policyholder in being insured against a certain insured risk”.<sup>80</sup>

<sup>69</sup> Art. 928(3) Book 7 Dutch Civil Code

<sup>70</sup> Art. 1904 Italian Civil Code. Available at [http://www.jus.unitn.it/cardozo/obiter\\_dictum/codciv/Codciv.htm](http://www.jus.unitn.it/cardozo/obiter_dictum/codciv/Codciv.htm) [last viewed 20.07.2017].

<sup>71</sup> Cerini D. Insurance Law in Italy. AH Alphen aan den Rijn: Kluwer Law International, 2012, p. 80.

<sup>72</sup> Art. 74(1) German Insurance Contract Act (*Gesetz über den Versicherungsvertrag (Versicherungsvertragsgesetz – VVG)*). Available in German at [http://www.gesetze-im-internet.de/vvg\\_2008/BjNR263110007.html](http://www.gesetze-im-internet.de/vvg_2008/BjNR263110007.html) [last viewed 20.07.2017].

<sup>73</sup> Art. 88 German Insurance Contract Act.

<sup>74</sup> For application of these legal norms, see generally, for instance, *Steinbeck, R., Terno, C. Materiellrechtliche Grundsätze. in Höra, K. (Hrsg.) Münchener Anwaltshandbuch Versicherungsrecht. 3., überarbeitet und erweiterte Auflage. München: Verlag C.H. Beck, 2013, S. 95–98, 116–117.*

<sup>75</sup> Art. 94 German Insurance Contract Act.

<sup>76</sup> Art. 43(1) German Insurance Contract Act; *Steinbeck, R., Terno, C. Materiellrechtliche Grundsätze. in Höra, K. (Hrsg.) Münchener Anwaltshandbuch Versicherungsrecht. 3., überarbeitet und erweiterte Auflage. München: Verlag C.H. Beck, 2013, S. 88.*

<sup>77</sup> *Steinbeck, R., Terno, C. Materiellrechtliche Grundsätze. in Höra, K. (Hrsg.) Münchener Anwaltshandbuch Versicherungsrecht. 3., überarbeitet und erweiterte Auflage. München: Verlag C.H. Beck, 2013, S. 90.*

<sup>78</sup> BGH, NJW-RR 1988, 727.

<sup>79</sup> BGH, IV ZR 100/99.

<sup>80</sup> Art. 478(1) Estonian Law of obligations. Available in English at <https://www.riigiteataja.ee/en/eli/506112013011/consolide> [last viewed 20.07.2017]).

### 2.4.3. Actual Loss Approach

The third perception of insurable interest links the insurable interest with actual loss (damages) and, therefore, excludes expectancy of damages in future or economic (financial) disadvantages by narrowing the perception of insurable interest.

Latvia is one of European countries employing this perception of insurable interest. According to Article 1, Point 2 of the Latvian Insurance Contract Act,<sup>81</sup> insurable interest is defined as “interest not to suffer damages upon the occurrence of insurance risk”. Latvian law of obligations interprets the concept of damages as diminution of one’s property<sup>82</sup> which, in turn, means that the legal definition of insurable interest is understood similarly to the principle of indemnity.

Two obvious weaknesses of such a perception of insurable interest and, to be more precise, of such a legal definition of insurable interest may be identified. The first one relates to the fact that the link between necessity to avoid suffering damages and occurrence of the insured risk is obscure; in other words, which damages and in relation to what occurrence shall not be suffered is not stated in the Latvian legal definition of the concept of insurable interest. Although Latvian courts have not interpreted the understanding of insurable risk<sup>83</sup> (at least, as far as the publicly known Latvian court practice is concerned), it follows from this wording that insurable interest must be interpreted strictly within the application field of the principle of indemnity. Such interpretation would correspond to the opinion expressed in pre-war literature, yet in relation to different legal regulation existing at that time. According to this opinion, “[i]nterest is in the basis of an insurance contract to avoid probability that i[n]sured] event (for inst[ance], fire) does not diminish or destroy i[n]surance] object. This interest is legal but not economic [saimniecisks in Latvian – author’s remark] concept, therefore, it is not possible to conclude this c[ontra]ct on the basis of economic [saimniecisks in Latvian – author’s remark] interest. For inst[ance], a merchant cannot insure a factory which supplies him [or her] with goods”.<sup>84</sup>

Another weakness of the above legal definition of insurable interest employed by Latvian insurance contract law relates to artificial exclusion of personal insurance from the requirement for demonstration of insurable interest. Particularly in the case of life insurance, but also in the case of accident insurance no damages (loss) are suffered if damages are considered within the category of pecuniary damage (harm) in opposition to non-pecuniary damage (harm) relating to mental sufferings and pain covered by both the above types of personal insurance.

<sup>81</sup> Law “On insurance contracts”. Its official translation in English is available at [http://vvc.gov.lv/image/catalog/dokumenti/On\\_Insurance\\_Contracts.doc](http://vvc.gov.lv/image/catalog/dokumenti/On_Insurance_Contracts.doc) [last viewed 20.07.2017], Latvian Insurance Contract Act.

<sup>82</sup> Article 1770 Civil Law of the Republic of Latvia of 1937. Its official translation in English is available at [http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/The\\_Civil\\_Law.doc](http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/The_Civil_Law.doc) [last viewed 20.07.2017].

<sup>83</sup> For the sake of truth, it should be noted that the Supreme court reviewed cassation appeals in two recourse claim cases arising from insurance contracts for insurance of apartments concluded in the favour of a bank (obviously being as a mortgagee). Yet, the Supreme Court did not consider these cases from the point of view of existence of insurable interest within these insurance contracts (Judgment of the Supreme court of the Republic of Latvia dated 17.12.2015 in case No. SKC-0244/2015 (C28449911); Judgment of the Supreme court of the Republic of Latvia dated 19.02.2016. in case No. SKC-0022/2016 (C28359512)).

<sup>84</sup> Apdrošināšanas līgums [Insurance contract]. In: Švābe, A., Būmanis, A., Dišlers, K. (red.). Latviešu konversācijas vārdnīca. Pirmais sējums. A-Bekons. R.: A. Gulbja apgādnība, 1927–1928, 647. lpp.

Lithuanian insurance contract law resembles the Latvian perception. Indeed, the legal definition of insurable interest is provided by Article 2(14) of the Lithuanian Insurance Act<sup>85</sup> by defining it as “a loss that the policyholder, the insured person, or the beneficiary may incur upon occurrence of an insured event”. Although Lithuanian Civil Code provides that “[o]nly the interests protected by laws may be insured”,<sup>86</sup> the former act defines the concept of insurance object as “property interests related to a person’s life, health, property, or civil liability”<sup>87</sup> which, therefore, links the concept of insurable interest not so much with economic but proprietary interests, i.e. application of the principle of indemnity

Different perceptions characterised above may in practice provide different outcomes. For instance, in the case of mortgagees, there may be an economic interest in insurance of a particular property either as property or liability insurance. If the insurable interest is understood as economic interest, mortgagees would have insurable interest in respect of insurance of houses which are pledged to them. However, if the insurable interest is linked with actual loss, i.e. the application of the principle of indemnity, then it is not possible for mortgagees to demonstrate such loss. A similar situation relates to bailees: if the English law allows that bailees, for instance, warehouse keepers, may insure goods of their customers and receive the full value of the goods from the insurer in the form of insurance redress,<sup>88</sup> such situation cannot be used in Latvia due to the strict legal definition of the concept of insurable interest as discussed above.

## 2.5. Legal Consequences Brought by Lack of Insurable Interest

The consequences brought by the lack of insurable interest in European countries are rather similar. The lack of insurable interest leads to invalidity of insurance contract (either fully or partly), and, as a result, non-existence of obligation on the part of the insurer to provide insurance redress. Regulation of these consequences is frequently envisaged by European legislators in statutes. However, there are European countries who state that principle *expressis verbis* but other countries focus on the duty of payment of insurance premium only by presuming invalidity of the insurance contract. For instance, the UK (unless this contract falls within gambling regulation when it is unenforceable<sup>89</sup>) and Latvia are among such countries that state this principle *expressis verbis* in their regulation.<sup>90</sup>

Legal consequences caused by a lack of insurable interest may be not only of civil but also of criminal character. This is the position of the English law, providing that, if a marine insurance contract is concluded without interest, a policyholder shall be

<sup>85</sup> Law on Insurance of the Republic of Lithuania, adopted on 18 September 2003 No. IX-1737 [Lithuanian Insurance Act]. Available in English at <https://www.lb.lt/ix1737> [last viewed 20.07.2017].

<sup>86</sup> Article 6.988, Civil Code of the Republic of Lithuania. Available in English at [https://e-seimas.lrs.lt/rs/legalact/TAD/TAIS.245495/format/MSO2003\\_DOC/](https://e-seimas.lrs.lt/rs/legalact/TAD/TAIS.245495/format/MSO2003_DOC/) [last viewed 20.07.2017].

<sup>87</sup> Article 2(19) Lithuanian Insurance Act.

<sup>88</sup> Clarke, M. *Policies and Perceptions of Insurance: An Introduction to Insurance Law*. Oxford: Clarendon Press, 1997, p. 31.

<sup>89</sup> Law Commission, *Scottish Law Commission Issues*. Paper 4: Insurable Interest, p. 9.

<sup>90</sup> Art. 10(1) and (4) Latvian Insurance Contract Act; Section 1 Life Assurance Act 1774. Available at <http://www.legislation.gov.uk/apgb/Geo3/14/48/section/1> [last viewed 20.07.2017], for the effect of this article, see, for instance, Merkin, R. *Gambling By Insurance – A Study of the Life Assurance Act 1774*. *Anglo-American Law Review*, pp. 353–354, Law Commission, *Scottish Law Commission Issues*. Paper 4: Insurable Interest, p. 20; Section 4(1) Marine Insurance Act 1906. Available at <http://www.legislation.gov.uk/ukpga/Edw7/6/41/contents> [last viewed 20.07.2017].



guilty of an offence, and shall be liable either to imprisonment or fine.<sup>91</sup> This rule is still valid, yet no one has been found liable for breach of this provision,<sup>92</sup> and currently it is proposed to abandon this rule.<sup>93</sup>

At the same time, the lack of insurable interest shall be distinguished from the lack of consent of a subject who should demonstrate insurable interest (to be discussed in the next chapter). This consent is required by some countries like France<sup>94</sup> or Lithuania<sup>95</sup> concerning life insurance but in other countries like Latvia this person in life insurance (i.e., a beneficiary) is entitled to refuse to be such a person.<sup>96</sup> Necessity for distinguishing both situations is obvious due to their different character which, however, produces the same results. In case of lack of insurable interest as objective criterion, public policy precludes validity of insurance contract irrespective of will of insurance contract parties or those who are entitled to have claims under that contract. However, in the latter case, the person subjectively refuses from insurance redress without necessarily invalidating the insurance contract but leaving it unenforceable.

### 3. Subject, Who Should Demonstrate Insurable Interest

Another essential aspect of regulation of insurable interest relates to a person who should demonstrate insurable interest. As a general principle, a policyholder, being one of two subjects to the insurance contract (the insurer is another), shall demonstrate insurable interest. This principle is directly provided by insurance law of some European countries, for instance, Estonian insurance law provides that “[i]nsurable interest is the interest of the policyholder in being insured against a certain insured risk”.<sup>97</sup>

Another generally recognised principle is that a policyholder may conclude an insurance contract either in his or her own favour or in favour of a third party. As it is justly stated in legal literature, such distinction is provided in different European countries such as Austria, Belgium, Czech Republic, the Netherlands, France, Germany, Greece, Hungary, Italy Luxembourg, Poland, Portugal, Spain, Sweden, Switzerland, the United Kingdom.<sup>98</sup> Additionally, all three Baltic States can be mentioned in this regard.<sup>99</sup> Thus, the possibility for the policyholder to conclude an insurance for the account of another person, i.e. in favour of a third person, is widely accepted in European countries and beyond.

A policyholder insuring either his or her own property or its part, his or her own liability, or his or her own life, health or physical integrity, will always have an

<sup>91</sup> Section 1(1) Marine Insurance (Gambling Policies) Act 1909. Available at <http://www.legislation.gov.uk/ukpga/Edw7/9/12/section/1> [last viewed 20.07.2017].

<sup>92</sup> Law Commission, Scottish Law Commission. Issues Paper 4: Insurable Interest, pp. 8–9, 24, 41, 45–46.

<sup>93</sup> *Ibid.*, p. 65, 69.

<sup>94</sup> Article L132-2(1) French Insurance Code.

<sup>95</sup> Article 98(3) Lithuanian Insurance Act.

<sup>96</sup> Art 53(4) Latvian Insurance Contract Act.

<sup>97</sup> Art. 478(1) Estonian Law of Obligations. Available in English at <https://www.riigiteataja.ee/en/eli/506112013011/consolide> [last viewed 20.07.2017].

<sup>98</sup> *Basedow, J., Birds, J., Clarke, M., Cousy, H., Heiss, H.* (eds.). *Principles of European Insurance Contract Law (PEICL)*. Munich: Sellier. European Law Publishers, 2009, p. 263.

<sup>99</sup> Latvia: Article 1(6) and 12 Latvian Insurance Contract Act; Lithuania: Articles 1(2), 86, 88, 90(1), 112(1) Lithuanian Insurance Act; Estonia: 424(1) Estonian Law of Obligations.

insurable interest over these insurable objects. Therefore, establishing of insurable interest in these situations may not cause any problems.

However, when the policyholder insures the insurable object for the account of another person, the existence of the requirement of insurable interest is more difficult to establish and it depends solely on a perception of insurable interest in a particular jurisdiction as characterised above.<sup>100</sup>

Furthermore, the character of insurable interest to be demonstrated should be discussed, as an insurance object may be of either pecuniary (material) or non-pecuniary (non-material) nature. In such a way, insurable interest in relation to property and liability insurance, on the one hand, shall be differentiated from personal insurance, on the other.<sup>101</sup> As regards personal insurance, insurable interest could be identified by blood relatives or those being in a partnership irrespective of whether it is registered or not. This opinion coincides with the opinion expressed by Professor Kalvis Torgāns concerning personal insurance. He stated that “parents in relation to [their] children are not strangers”.<sup>102</sup>

At the same time, if an insurance contract is concluded in the favour of a third party, i.e. the insured, insurance law of particular European countries links the demonstration of insurable interest with that person, but not with the policyholder itself. Indeed, Latvian insurance contract law defines the concept of an insured as “a legal or natural person who has the insurable interest and for the benefit of whom the insurance contract has been entered into [...]” by a policyholder (defined as “a legal or natural person who enters into an insurance contract for the benefit of himself or herself or of another person”<sup>103</sup>) in relation to a specific insurance object (property, civil liability or life, health of physical state).<sup>104</sup> Considering this regulation of Latvian insurance contract law, it is erroneous to state that this regulation does not stipulate, which person must demonstrate insurable interest,<sup>105</sup> because it shall be demonstrated by the insured.

By providing that insurable interest must be demonstrated by the insured, Latvian insurance law is identical to the PEICL, which also contains the same regulation. Indeed, Article 1:202 of the PEICL establishes that the insured “means the person whose interest is protected against loss under indemnity insurance”.<sup>106</sup> Therefore, the PEICL provides within indemnity insurance that “[t]he insured is the one entitled to the insurance money”.<sup>107</sup> As regards insurance of fixed sums, the PEICL employs the concept of beneficiary, which “may be compared to the insured, but his entitlement to the insurance money is not dependent on suffering loss”.<sup>108</sup>

<sup>100</sup> See Section 3.4. of this article above.

<sup>101</sup> See, for instance, *Clarke, M. A., Burling, J. M., Purves, R. L.* The Law of Insurance Contracts, Sixth edition. London: Informa, 2009, p. 114.

<sup>102</sup> *Torgāns, K.* Saistību tiesības: Mācību grāmata [Law of obligations: A textbook]. R.: Tiesu namu aģentūra, 2014, 445. lpp.

<sup>103</sup> Article 1(6) Latvian Insurance Contract Act.

<sup>104</sup> Article 1(12) Latvian Insurance Contract Act.

<sup>105</sup> *Rone, D.* Apdrošināšanas tiesību principu ietekme uz apdrošināšanas atlīdzības izmaksu [Influence of insurance law principles on payment of insurance redress]. Available at [https://dukonference.lv/files/proceedings\\_of\\_conf/53konf/tiesibas/Rone.pdf](https://dukonference.lv/files/proceedings_of_conf/53konf/tiesibas/Rone.pdf) [last viewed 20.07.2017].

<sup>106</sup> *Basedow, J., Birds, J., Clarke, M., Cousy, H., Heiss, H.* (eds.). Principles of European Insurance Contract Law (PEICL). Munich: Sellier. European Law Publishers, 2009, p. 53; see also comments on this provision (Article 1:202 PEICL, C3, pp. 53–54).

<sup>107</sup> *Ibid.*, Article 1:202 PEICL, C3, p. 54.

<sup>108</sup> *Ibid.*, Article 1:202, C4, p. 54

Lithuania employs a similar approach by providing that an insured could be one of the persons that should demonstrate insurable interest. Article 2(14) of the Lithuanian Insurance Act gives the legal definition of the insurable interest as “a loss that the policyholder, the insured person, or the beneficiary may incur upon occurrence of an insured event”.

#### 4. Time, When Insurable Interest Must Be Demonstrated

In addition to a person who should demonstrate insurable interest, a separate issue of regulation of insurable interest relates to the time when this person must demonstrate the insurable interest. This issue is also linked to the validity of insurance contract, since, if the insurable interest is not demonstrated at the right time, it makes the insurance contract null and void. In general, two approaches may be distinguished among the European countries: the approach of English law and that of the continental European law.

English law distinguishes life and property (non-life) insurance concerning the time when insurable interest must be demonstrated. If in case of property (non-life) insurance English law requires demonstrating insurable interest at the moment of occurrence of the insured risk,<sup>109</sup> then in the case of life insurance – at the moment, when insurance contract is concluded, i.e. effected.<sup>110</sup>

Another approach is shared by continental European countries, which demand demonstration of insurable interest throughout the whole period of validity of an insurance contract. Germany, as well as France and other European countries link the insurable interest with “proof of actual loss at the time of claim”, as characterised by Professor Malcolm Clarke.<sup>111</sup> Yet, this principle is *expressis verbis* provided in regulation of insurable interest only in separate European countries.<sup>112</sup> According to this approach, the insurable interest must be demonstrated from the moment of entry into force of an insurance contract to the very moment when the insurance risk occurs. Therefore, the fact that the insurable interest no longer exists at the very moment of payment of insurable redress may not lead to the conclusion that insurance contract is not valid and the claim for payment of insurance redress has no ground.

#### Conclusions

The discussion carried out within this article shows that insurable interest as a concept, as well as its essential elements, are perceived and, consequently, regulated differently across the European countries. This discussion reveals that it is not possible to discuss the insurable interest on the basis of common understanding or a general rule common to all European countries, rather its understanding and, consequently, regulation depends on national approaches and should be discussed on the basis of national insurance contract law of each respective country. Another conclusion brought by the review is that the differences among European countries regarding regulation of insurable interest cannot be explained as minor deviations

<sup>109</sup> *Birds, J.* *Birds' Modern Insurance Law*. 10<sup>th</sup> ed. London: Sweet and Maxwell, 2016, p. 60.

<sup>110</sup> *Birds, J.* *Birds' Modern Insurance Law*. 10<sup>th</sup> ed. London: Sweet and Maxwell, 2016, p. 44.

<sup>111</sup> *Clarke, M.* *Policies and Perceptions of Insurance: An Introduction to Insurance Law*. Oxford: Clarendon Press, 1997, p. 30.

<sup>112</sup> For instance, in the case of Latvian insurance law (Article 10(1) and (4) Latvian Insurance Contract Act).

from some general rule, but rather as different and sometimes opposite perspectives of insurable interest in different European countries. A further initiative of the European Commission would be welcomed in this situation, as far as EU Member States are concerned, by reanimating its own proposal for regulation of insurance contracts. Otherwise, due to the differences in perception of insurable interest, as well as insurance contract regulation in general, it is not possible to establish a truly common European insurance market. At the same time, introducing shared regulation of insurable interest is not, however, easy to ensure, considering the fact that this regulation, as well as regulation of other insurance contract aspects is deeply rooted in national civil law traditions, regulatory approaches and peculiarities of existing insurance environment in each European country.

## Acknowledgement

This study was supported by National Research Programme 5.2. “Economic Transformation, Smart Growth, Governance and Legal Framework for the State and Society for Sustainable Development – a New Approach to the Creation of a Sustainable Learning Community (EKOSOC-LV)”.

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**Latvijas Universitātes Žurnāls "Juridiskā zinātne", Nr. 10, 2017**

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