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Polish Insurance Law – The Outline of Key Issues

I. Genesis

The prototype of the insurance in Poland was a kind of mutual society [Porządku Ogniowe (Fire cleanup)], which was established in Poznań in 1544 in order to protect the society against fire. The salient feature of this society was its social character and mutuality.

Due to the fact that Poland has access to the sea, the early insurance in Poland was marine insurance. The origins of the contract of insurance are found in the practices adopted by marine insurance provisions of the Wilkierz Gdanski (*Danziger Willkür – Ius publicum civitatis Gedanensis*).

The real development of non-marine insurance in Poland dates back to the times of historical partition of Poland and the policy of Prussia, which occupied the western provinces of Poland from the end of the eighteenth century.

A Royal Decree of 1803 established an insurance office in Poznań to provide mutual fire insurance for buildings. After the unification of Germany in 1871 there emerged a trend to establish several new public insurance offices for separate branches of insurance. I want to stress the initiative of a group of the liberal Polish patriots in Poznań, who put up capital to finance a new stock insurance company „Vesta”, which had only Polish shareholders and insured solely Polish people. The project was a part of a general programme to protect the Polish community against the growing pressure of economic Germanization.

When Poland regained independence in 1918 the existing systems continued to be in operation, but were adapted to the requirements of modern society. The public insurance General Institute for Mutual Insurance (PZUW) was set up in 1927. This institution was based on Polish capital. However, private companies involved in voluntary insurance were still largely in German, French and Italian hands.

The post-war development of insurance under the regime of the People’s Republic of Poland (Polska Rzeczpospolita Ludowa) begins with two decrees which had a double effect: the nationalization of the whole industry and the adaptation of insurance to the socialist concept of a planned economy. Except for the PZUW all stock and mutual companies were dissolved. However PZUW as an institution of public utility was given a monopoly for all branches of insurance. Later the PZUW was transformed from a traditional mutual insurance association into a State Insurance Establishment.

Within the political transformation and changes of economic and social relations in the beginning of the last decade of the 20th century, Polish insurance market experienced a rebirth (restoration). 28 July 1990 is considered to be the beginning of the revival of the insurance market in Poland with the Act on Insurance Activity¹ being passed, which took into consideration the European Union directives concerning the functioning of the common

¹ Act on Insurance Activity dated 28 July 1990 – consolidated text of 1996, *Journal of Laws* No 11, item 62

financial market and simultaneously gave the new legal foundations for the modern insurance business operating within the market economy. The authors of the regulations had two basic aims in mind: privatization and breaking the monopoly. The monopoly stopped and the insurance activity was reserved for private insurance companies. PZUW was transformed once again from the state insurance establishment into a joint stock company but it was forced to compete with many other private companies. However, it was still the leader on the Polish market.

An important date for the development of the Polish insurance market was 22 May 2003, when a package of four insurance acts was established². These new regulations were introduced to the Polish market on 1 January 2004. All these acts took into account solutions proposed in the European Union directives, which were supposed to create a legal framework for the functioning of a uniform insurance market in the EU.

Considered as a complex branch of law – insurance law includes the economic insurance law and social insurance law. Despite the differences in methods of regulating it, there is a tendency to treat the insurance law as one scientific specialization. Legislative actions are aimed at the application of insurance instruments specific to the economic insurance law for the purposes of social insurance. The doctrine increasingly emphasizes the importance of insurance as a method to "double" the application: the insurance in a market economy and in social policy insurance (social security)³. Insurance law includes standards of private law (civil, commercial, labour) and public (administrative, criminal) on the rules of functioning of the insurance market, public oversight in this market, insurance brokerage and issues arising from the establishment of legal insurance relationship. The essence of the insurance relationship is the supply of insurance protection.

II. Polish insurance market as part of a single insurance market

Insurers may be organized as a joint stock company and mutual insurance societies. On the Polish insurance market conducting insurance business is permitted in only these two legal forms, which are a continuation of the historical development of the two-pronged insurance: mutual and commercial type. Apart from this a foreign insurer, whose main seat is outside the EU, can pursue insurance activity in Poland through a branch (without creating a subsidiary company).

The Polish insurance market is dominated by foreign investors. They hold 77 percent of stake in life insurances and nearly 80 percent in property companies. Germany is the biggest foreign investor in both life and property branch. As for life insurance companies; the United Kingdom, the United States and the Netherlands are also shareholders.

The insurers whose main seat is in one of the EU Member States can operate in Poland on the basis of the principle of single license, by creating a branch or using the freedom of services rules. The insurer having their main seat in any EU State may pursue insurance activity in Poland or in Hungary on the condition that they are permitted to pursue that activity in the State in which its seat is located (according to single license rule).

² Act on Insurance Activity dated 22 May 2003 – *Journal of Laws* No. 124, item 1151; Act on Insurance Mediation dated 22 May 2003 - *Journal of Laws* No. 124, item 1154; Act on Compulsory Insurance, Insurance Guarantee Fund and Bureau of MTPL Insurers dated 22 May 2003 - *Journal of Laws* No. 124, item 1152; Act on Insurance Supervision and Insurance Ombudsman dated 22 May 2003 - *Journal of Laws* No. 124, item 1153

³ Thus thought the "fathers" of the Polish insurance law in the previous century: W. Warkallo: *Insurance Law*. (script UW). Warsaw, 1968. pp. 9. and In *Property Insurance. Insurance protection of public property*. edited by W. Warkallo, ed. IV, Warszawa 1971. pp. 146-150.; W. Warkallo, *Insurance Law. Outline of the lecture and materials normative*. Warsaw, 1974. pp. 13-19.; A. Wąsiewicz, Z.K. Nowakowski, *Economic insurance Law*. Warsaw-Poznań, 1980. p. 25.; T. Szumlicz: *Classification of insurance*. (in) *Insurance*, edited by J. Monkiewicz, J. Handschke, Warsaw, 2010. p. 75.

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Due to the social and economic importance of the insurance business it has been subjected to the supervision of a specialized body of state administration, which in Poland is the Polish Financial Supervision Authority. The main objective of insurance supervision is the adequate protection of policyholders (insuring party) and beneficiaries. The term beneficiary is intended to include any natural or legal person who, under the insurance contract is entitled to insurance protection (i.e. victim in liability insurance, insured or beneficiary in life insurance). Other objectives of the supervision of insurance companies, such as financial stability and fair and stable markets, should also be taken into account, but only if it does not undermine the main objective.

The pursuit of an activity by such insurers is subject to supervision by a competent body of EU Member State in which its seat is located. In accordance with the principle of home country supervisory Polish Financial Supervision Authority⁴ supervises all financial institutions (insurers, insurance brokers, banks, investment firms) which are established in Poland. It oversees their activities on the territory of the European Union. Generally – with some exceptions – the foreign insurer is excluded from the competencies of the Polish Financial Supervision Authority.

Institutional financial supervision in Poland was substantially amended on 19 September 2006 when the Act on Financial Market Supervision⁵ entered into force. This Act introduced an integrated financial supervision of the entire financial market and established a new authority competent in matters of financial market supervision: the Polish Financial Supervision Authority⁶.

The data on the activities of foreign companies in Poland shows that in 2010 on the Polish territory under the freedom to provide services there operated 227 foreign insurance companies, and 13 insurance companies through a branch. Hungarian insurers use only freedom of services in Poland. On the other hand, only 4 national insurance companies led cross-border activities in 2010. The freedom to provide services is used by PZU SA and Warta SA. Only three Polish insurers (PAPTUnŻiR, AMPLICO-LIFE SA and COMPNENSA TU SA VIG) make use of freedom of establishment. They open branches in Lithuania and Latvia⁷.

Insurance protection can be provided by insurers not only directly, but through insurance intermediaries. The European Union legislature provides only a definition of intermediation. Consequently, Member States are free to determine national requirements and practices in insurance brokerage. Regardless of the legal form adopted, all insurance intermediaries are required to fulfil the obligation to register, preceded by the fulfilment of certain requirements relating to professional qualifications, good reputation and financial capabilities.

Polish national law has limited the forms of activities of intermediaries – registered by the Polish supervisory authority (Polish Financial Supervision Authority). They act only as insurance agents or insurance brokers. According to the so-called principle of single registration, intermediaries registered in other Member States can act on the Polish market, without meeting the additional requirements.

Other than in the banking and capital markets, the problem of the insured (entitled from insurance contracts) who has benefitted from the insurance protection provided by insurance undertakings that have become insolvent (bankrupt, liquidated) remains beyond the EU regulations. In Poland, the Insurance Guarantee Fund to a limited extent acts as an "anti

⁴ J. Gluchowski: *Polish Financial Supervision Authority and Financial Supervision Authority Office*. In *The system of financial law*. Volume IV. Law currency. Foreign exchange law. The law of the financial market, edited by J. Gluchowski, Warsaw, 2010. pp. 145. and n.

⁵ Act of 21 July 2006 on Financial Market Supervision - *Journal of Laws* No. 157, item 1119

⁶ During the first stage of integration the supervisory authority took over the capital market and insurance market. During the second stage, which occurred on 1 January 2008, an integrated supervisory authority (Polish Financial Supervision Authority) took over bank supervision and supervision of electronic money institutions.

⁷ *The activities of foreign insurance undertakings and national insurance undertakings abroad in 2010*. Polish Financial Supervision Authority, Warsaw, February 10, 2012. pp. 15-17.

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insolvency" – a fund to protect insured persons⁸. The legislature clearly defined types of insurance subject to a guarantee from the Fund. Only those persons who are linked with the bankrupt or liquidated insurer by a legal relationship arising from the agreement of compulsory insurance and life insurance contracts can claim against the Fund. Only victims of the holder of the vehicle or the farmer who insured its liability for an insolvent insurance undertaking and the farmer for losses compensated under the compulsory insurance of farm buildings can count on full compensation. On the basis of the remaining compulsory insurance contracts and life insurance contracts, only individuals are entitled to claim from the Fund. In accordance with Article 98 paragraph (2) of the Act on Compulsory Insurance, Insurance Guarantee Fund and Bureau of MITPL Insurers their claims are compensated at 50 percent. The other insured by insolvent insurance companies cannot rely on the compensation of the Fund.

III. Insurance contract

On the Polish market, insurers always provide insurance protection on the basis of insurance contracts concluded with insuring parties. Apart from that, there may be more entities interested in the insurance relationship, that is, the insured – not being the insuring party (in the case of the insurance contract for the benefit of third party), the person injured – having the right to direct claim against the insurer and the beneficiary – in life insurance. The insurance contract is a contract, named and regulated by the Civil Code (Articles 805-834 of the Civil Code)⁹. The insurance contract belongs to a broader category of contracts for financial services, due to the classification of the insurance contract as a financial service in the classification of economic activities adopted in Poland.

According to the insurance contract, the insuring party agrees to pay a premium in return for protection granted by the insurer during the period of insurance. Due to the nature of the insurance contract, the obligation of the insuring party to pay premiums is an inherent part of every insurance contract. The agreement, which does not provide for such an obligation on the policyholder, cannot be regarded as a contract of insurance. The amount of premium depends on the insurer's estimation of the degree of risk. The insurer determines the amount of premiums after the underwriting insurance risk on the basis of statistical data (Art. 18 para.(1) to (3) of Act on Insurance Activity). Insurance premiums cannot be set at a level that does not provide the insurer financial safety. Even in the case of compulsory insurance, whose conditions are determined by law, the issue of determining the amount of contributions is beyond the scope of legal regulation (Art. 8 of the Act on Compulsory Insurance). However, the insurer is required to submit information to the supervisory authority about the scales of premiums and the data used to determine them.

Insurable interest is a basic requirement of the insurance contract. At a general level, it means that the party to the insurance contract must have a particular relationship with the subject matter of insurance, whether it is a life insurance or property or liability to which he might be exposed. The absence of the required relationship will render the contract void. The insurable interest was introduced to the Polish Civil Code in 2007 with respect to the non-life insurance. According to this rule, the subject matter of the non-life insurance can be any interest that may be expressed in a pecuniary form and is not contrary to the law. Insurance contracts usually protect all rights to property (usufruct, easement, pledge, mortgage, a co-operative society member's right to an apartment, etc.), not only the ownership rights.

⁸ M. Monkiewicz: *Insurance Guarantees Funds on global markets*. Warsaw, 2007. p. 127.

⁹ E.Kowalewski: *Insurance contract*. Bydgoszcz-Toruń, 2002. pp. 40-55., 78-112.

In the case of a personal insurance, the insurance can concern in particular: in life insurance – the death of the insured person or his reaching a certain age, and in accident insurance – bodily injury, loss of health or death due to an accident.

According to the traditional convention, insurance protection constitutes a kind of "stuff" which – although immaterial – has a specific value and price. This "commodity" is a sense of protection against certain types of risk, and more precisely to obtain a guarantee to cover the financial implications of implementing this risk. The development of civilization has many features, which significantly facilitate human life, their loss or destruction leading to interference resulting in discomfort, destabilization and loss of sense of security. The use of insurance protection by the owner of the car or movables left in the flat gives him the confidence to receive compensation for loss of or damage to such items as a result of the events and conditions specified in the insurance contract. The risk affects the insured. Insurance protection does not reduce the level of uncertainty, but gives the insured person a guarantee of a favourable event: the payment of a sum of money by the insurer – in the event of an accident, specified in the insurance contract. Polish insurance law standards allow to conclude that the insurance protection should be understood as the risk of paying a certain sum of money in the event of an accident specified in the contract (Article 812 para. (4), Art. 813 para. (1), Art. 829 para. (2) of the Civil Code and Art. 2 1 point 18, Art. 3 para. (4) point 4, Art. 12 para. (1) of Article. paragraph 16. 1 and 2 of the Law on Insurance Activity). Compensation is a result of providing protection¹⁰. On the basis of the theory of bearing the burden of the danger (more commonly accepted in Polish doctrine), the nature of compensation is complex and consists in taking over responsibility for the consequences of the risk, i.e. the protection of insurance.

The insured is an entity whose financial interest or personal goods are covered by insurance. In general, insurers and the insured are the same entity. However the insurance contract can also be concluded in favor of a third party. The possibility of concluding the contract for the benefit of a third party is directly expressed in Article 808 of the Civil Code. The third person is granted a right to get the indemnity directly from the insurance contract. However, this person is also obliged to perform certain obligations, except for the payment of the premium, which should be paid by the insuring party.

The insurance contract liability is characterized and distinguished by, among other types of insurance, the presence of the victim, in addition to the insuring party and the insured. This is the person who has suffered damage for which the insured is responsible. The victim has a claim to the insured as person causing the damage under the provisions of (tort liability), or contractual provisions (contractual liability). It is not a party to the insurance contract, but he is entitled to claim directly against the insurer of the insured liability offender, in accordance with Art. 822 para. (4) of the Civil Code.

The beneficiary is the person entitled to receive the sum insured in the case of death of the insured (Article 831 para. (1) of the Civil Code). The beneficiary occurs only in those types of personal insurance, where the event insured is the death of the insured (life insurance, personal accident insurance covering the death). For obvious reasons the payment of the sum insured for dead insured is not possible.

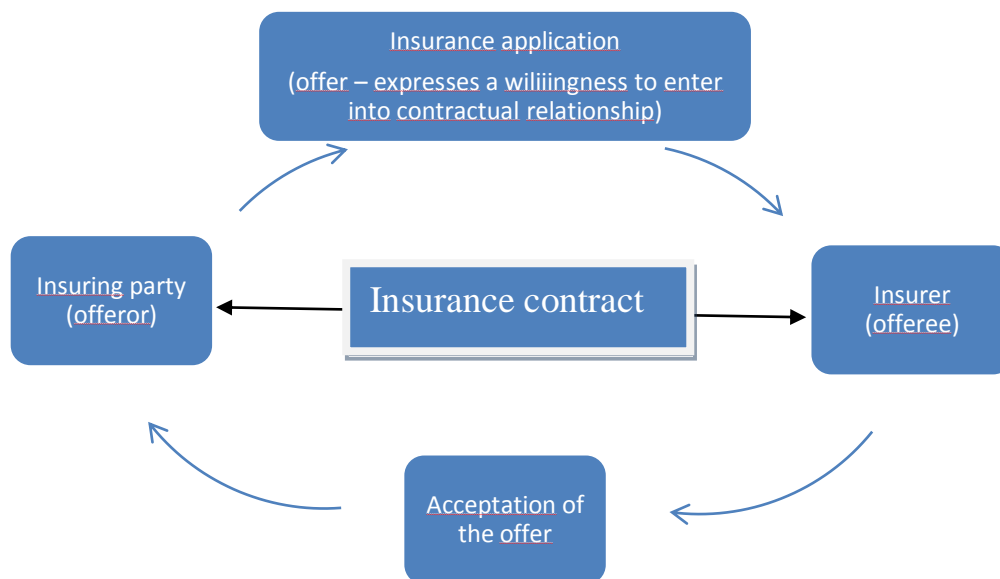
Modern insurance contracts are concluded upon all the methods used in Poland for conclusion of any other type of civil contracts, which means via an offer, negotiations and a bid. But the standard is concluding of an insurance contract via an offer.

With regard to insurance contract, the insurance application is treated as an offer submitted by the insuring party. Once the insurance form expresses a willingness to enter into a contractual relationship with the insurer as offeree, the insurer may accept the offer. No particular form of

¹⁰ M. Orlicki: *Insurance contract*. In System of private law, Volume 8, Law obligations - part detailed edited by J. Panowicz-Lipska, Warsaw, 2011. pp. 809-811.; K.Malinowska: *Insurance contract*. In Insurance law. Commentary, Volume 2, Warsaw. 2010., pp. 301-304.

mode of expression is required by the Civil Code, although there must be a clear expression that the insurer agrees to be bound by the terms of the offer

Fig. 1. The concluding of an insurance contract via an offer



Source: own elaboration

A contract is considered to be concluded at the moment of the acceptance of an offer. With regard to insurance contracts, the contract is deemed (considered) to be concluded at the moment of delivery of an insurance document (which is usually a policy). It reflects *essentialia negotii* (basic provisions of the contract such parties, the event insured and premium).

The conclusion of the insurance contract should be confirmed by the insurer with the insurance document. This document has only a function of an instrument evidencing the conclusion of a contract. In practice, the insurers use many forms of insurance policies, depending on the kind of insurance contract. The most common on the market are group policies, general policies, unit policies, and so on.

With regard to the two other methods of concluding insurance contracts (bid and negotiations) it seems that they are used for specific and big value contracts, concluded with corporate insured (e.g. in the case of group insurance concluded by an employer for the employees), as well as in a situation where public funds are concerned (in this case, according to the Act on Public Orders¹¹, the bid procedure is obligatory).

The standardization of an insurance contract is a worldwide phenomenon, although it imposes considerable restrictions on the freedom of contract. The reflections of the standardization of the insurance contracts are general insurance terms and conditions used as a pattern for concluding insurance contracts. The insurer is obliged to provide the insuring party with the text of general insurance terms and conditions before concluding the insurance contract.

11 Act on Public Orders dated 29 January 2004 – Journal of Laws No. 9 item 177.

IV. Consumer protection

Consumer protection was one of the most important problems that Polish legislators were supposed to take into account in the course of adjusting the Polish legal system to the standards of the EU. According to the Article 22¹ of the Civil Code, the consumer shall always refer to a person concluding a contract for personal purposes, not directly connected with any business activity. The regulation regarding general terms and conditions introduced by certain enterprises (such insurers) is a basis for concluding contracts with consumers. It should be noted that certain contractual clauses can be claimed ineffective if they are proved to be unfair.

It is also important to note that, as a result of the amendments of the Civil Code in 2007, the consumer protection was significantly broadened with respect to the insurance contract. First, the consumer protection was given also to the insuring party being a natural person, if the insurance is directly related with the business activity of the insuring party. If the insuring party is a natural person pursuing business activity, he/she may assert the ineffectiveness of the general conditions of insurance, so far as these include unfair contract terms in consumer trade. Second, the consumer protection was afforded not only to the insuring party, but also to the (insured) persons for the benefit of which the insurance contract is concluded, if such insurance is not related with the business activity of the person insured.

It is regulated expressly that in case of negligent and unclear wording of the insurance general terms, all the doubts should be interpreted in favour of the insured and not the insurer, being a professional with respect to the drafting of the insurance general terms.

V. Bancassurance

One of the most significant changes in the Polish financial services sector over the past few years has been the expansive development of *bancassurance*. Fruitful and intense cooperation between insurers and banks, called *bancassurance*, has lasted for many years. However, following the increased *bancassurance* development a number of problems and practical issues have emerged. Legal and practical problems primarily result from the fact that legal regulations do not directly regulate issues related to bank and insurance cooperation and that there is no legal definition of the term "*bancassurance*". The representatives of the doctrine agree that *bancassurance* is not a legal term, but rather the notion defining the cooperation of the professional entities: banks and insurers for the sales of insurance products through banks' distribution network. *Bancassurance* agreements are not specifically regulated by Polish law (i.e. the regulations relating to insurance contracts do apply to these contracts but these do not correspond fully to their terms), it may be years before new laws are passed to address these issues.

From the point of view of the relationships with banks, insurance can be divided generally into two groups: a) directly linked to the banking activity, and 2) not directly connected with the activity of the bank. Both groups include all types of insurance within the meaning of the Annex to the Act on Insurance Activity (both Group I and Group II)¹².

Bank credit is the main banking product, which is related to insurance. Both the non-life insurance (low down payment insurance, insurance against loss of property value, property insurance against fire and other perils) and life insurance (insurance against loss of life of the borrower or insurance against loss of ability to work) provide a method to secure the repayment of the credit. Insurance against loss of payment card is also popular in the market.

¹² The division into groups corresponding to the European Union adopted in the different segments of insurance: insurance live and non-life insurance - Annex No.1 and Annex No. 2 to Directive 2009/138/EC of the European Parliament and the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)

The second group consists of insurance, where the main objective is to use the dissimilarity insurance activities for the development of the financial market. It is about flexibility activities of banks and insurers for the mutual (or threefold, taking into account customers) benefit. This group includes both non-life insurance and life insurance. Insurance products, which have the character of an investment and a savings, play a special role. They often use the structure of the insurance contract of life and endowment with the insurance capital fund. Several insurance offered under the so-called bancassurance – related contracts bank account or credit cards, also belong to this group.

According to the standards of insurance law (Article 18. 1 point. A) of Directive 2009/138/EC and Article 3 para. (2) of the Insurance Activity Act (adapted to the provisions of the Directive), insurance activity cannot be combined with the activities which are not directly related to it. This ban prevents linking insurance activity with the banking activity by a single entity - one undertaking. Distribution of insurance by the bank on the service provider level is only possible through the employment of the same employee by the bank and the insurer.

The Bank participates in the distribution of insurance as the policyholder who enters into a contract with the insurer. The bank as the insuring party may conclude a contract in its own name (e.g. low down payment insurance, insurance against loss of property value) or a contract in favor of a third party (often life insurance in the event of death of the borrower). In the second case, the borrower (bank customer) will be insured. In both cases, the insurance premium should be paid by the bank, what is in conflict with the interests of the bank and there is not observed in practice.

Another way of cooperation between banks and insurers is the use of insurance intermediaries' model. The Bank is not a party to the insurance contract, but merely mediates in the conclusion of agreements between the clients and the insurer. Then the client of the bank is obliged to pay the insurance premium as a policyholder (insuring party). Instead, the bank receives from the insurer remuneration (commission) in respect of mediation for the conclusion and exercise of insurance operations. The bank acquires the status of an insurance intermediary in accordance with the provisions of the Act on Insurance Mediation. On the territory of the European Union, only registered insurance intermediaries can act. If a bank wants to act as an insurance agent, it is obliged to meet certain statutory requirements (including completion of training conducted by the insurer). Registers of insurance intermediaries are conducted by supervisors; in the case of Poland it is the Polish Financial Supervision Authority.

VI. Conclusions

Both in the sphere of private law and public law, Polish national insurance law does not keep pace with practice. Important practical issues, such as *bancassurance*, group insurance, insurance with insurance capital fund remain unregulated, hence the draft amendments to the Civil Code are relating to the insurance contract. On the other hand, we are witnessing a change in the activity of insurers that have been forced by Directive 2009/138 / EC, which introduces a new model of Solvency - Solvency II. It is not surprising that it is precisely insurance issues that are governed by the so-called soft law, which includes the Recommendations¹³ and sets of rules such as the Principles of European Insurance Contract Law¹⁴.

¹³ such as Recommendations of good practice in the field of bancassurance developed in cooperation with the Polish Chamber of Insurance adopted by the Board of the Association of Polish Banks

¹⁴ Project Group on a Restatement of European Insurance Contract Law (Insurance Group – www.restatement.info; K. Malinowska, Insurance contract (In) *Insurance Law*. Commentary, Volume 2, edited by Z.Brodecki, M. Serwach, Warsaw, 2005. pp. 1385-1386.

Representatives of the doctrine of insurance law postulate the adoption of Polish Insurance Code, whose purpose would be to create common rules setting out the principles functioning of the insurance market¹⁵. Such a solution has been operating successfully in France. This task is very ambitious and it seems difficult to achieve in the near future. It shows, however, how important is the issue of insurance and the need for its comprehensive regulation.

¹⁵ *About the need Polish Insurance Code*, edited by E.Kowalewski, Toruń, 2009.