

## **Insurance contract in the 21<sup>st</sup> century, de lege lata and de lege ferenda**

This thesis examines the legal regulation of the insurance contract and whether it is possible to conclude it with the exclusion of the human factor on the side of the insurer, i.e. purely through artificial intelligence. The research question to be answered by this thesis is therefore: Is it possible to conclude an insurance contract using only artificial intelligence on the insurer's side?

The following questions are also formulated in the thesis:

- What risks does the use of AI entail?
- Who is liable for any defects of the AI used in the underwriting process?
- Is it necessary to modify the provisions on the insurance contract contained in the Civil Code in order to use AI for the conclusion of an insurance contract?

The main research methods chosen are analysis, deduction, induction, synthesis and descriptive methods. Comparative and historical methods are also used to a limited extent.

The thesis is developed mainly from a private law perspective. Public law is thus mentioned only marginally.

In the first part of this thesis the elements of an insurance contract are examined, which are:

- definition of the contracting parties (specification of the insurer and the policyholder),
- the obligation to pay the beneficiary in the event of an insured event (which also includes the need to define the insured peril and the insured event),
- the obligation of the policyholder to pay the premium,
- the existence of an insurable interest.

The second part outlines the possible uses of AI in relation to an insurance policy. The use of AI is identified as a possible application:

- when taking out an insurance policy,
- in the administration of an insurance policy,
- in the settlement of an insurance claim,
- detecting insurance fraud.

However, due to the limited scope of this thesis, only the issue of using AI for insurance policy conclusion is subsequently examined in more detail. Then, the various private law steps that an insurer must fulfil when entering into an insurance contract are identified and analysed to ascertain how they can be fulfilled using AI.

In conjunction with the formulated hypotheses, the author then concludes that the main risks associated with the use of AI are:

- the risk of incorrect conversion of text from paper to digital form,
- the risk of AI acting contrary to its programming,
- the risk of their decisions not being sufficiently explainable.

Regarding the question surrounding who is liable for a defect caused by AI, the author's hypothesis is that the insurer is the liable party. Only in the case of an injury caused by a defect in the property could the insurer liberate itself if it proves that it did not neglect the AI. If the insurer liberates itself, the law does not provide for any person to take its place as liable to the injured party. Thus, the injured party would lose the right to any compensation for damages in these situations. However, the author does not consider this to be an appropriate state of affairs, and therefore considers that the duty of supervision (which, if not disregarded, could lead to the insurer's liberation) should be interpreted so broadly that the possibility of the insurer's liberation falls to a minimum number of situations.

The research did not find any legal deficiencies ("hard law" or "soft law") that would require its modification in order for the insurer to use AI for the conclusion of the insurance contract. However, several *de lege ferenda* considerations are put forward in the paper that could make its use more transparent for AI decision makers.

The answer to the research question in light of the above is that no barriers to AI replacing humans were found from a private law perspective. However, given the risks involved, the author would recommend its use be limited to „simple“ products, where the assessment of the insurance risk of future insureds will not be too complicated and where all documents will be delivered in digital text form.

### **Keywords**

Insurance contract, contractual process, artificial intelligence