

## Definition of insurance contract<sup>1</sup>

Member State	
<b>Austria</b>	<p>§ 1 VersVG: (Versicherungsvertragsgesetz, Insurance contract law act)</p> <p>In the case of indemnity insurance, the insurer is obliged to compensate the policyholder the financial damage suffered. In the case of life assurance and accident insurance, the insurer is obliged to pay to the policyholder the agreed amount.</p> <p>The policyholder is obliged to pay the agreed premium.</p>
<b>Bulgaria</b>	<p><u>Art. 183 Code for the Insurance:</u> An insurance contract shall bind an insurer to undertake certain risks in return for the payment of premium, and upon occurrence of an insured event to pay the insured or a third beneficiary party an insurance indemnity or an amount in cash.</p> <p><u>Articles 214, 215, 216, 217, 222, 222a, 223, 230, 230a</u> provide definitions for specific Insurance contracts.</p> <p><u>Art.195:</u> A contract concluded without insured interest is null and void. Insured interest is defines as <i>legally recognised necessity for protection against the consequences of an insured event.</i></p>
<b>Croatia</b>	<p>Pursuant to Article 921 of the Civil Obligations Act under the insurance contract, an insurer undertakes to a policyholder to pay the indemnity to the insured person or insurance beneficiary upon the occurrence of an insured event, while the policyholder undertakes to pay insurance premiums to the insurer.</p>
<b>Estonia</b>	<p>Law of Obligations Act (LOA) defines the insurance contract through the main obligations of the contracting parties: <u>§ 422 (1)</u> Pursuant to an insurance contract, a person (insurer) undertakes, upon the occurrence of an insured event, to compensate for damage caused by the insured event or to pay the agreed amount of money as a lump sum or in installments, or to perform the contract as otherwise agreed (insurer's performance obligation). The other person (policyholder) undertakes to pay insurance premiums to the insurer.</p>
<b>Finland</b>	<p>Under the Finnish civil law insurance contract in the field of voluntary insurance is based on an agreement/contract between the insurance company and the policyholder. After the conclusion of the insurance contract the insurance company is to transfer the insurance policy to the policy holder. The insurance policy document should contain the most relevant points of the insurance contract and terms of the policy and all other requirements stipulated in the Finnish Insurance Contract Act. An insurance contract is considered valid through an offer-response mechanism under</p>

<sup>1</sup> The information in this table is provided by insurance experts or insurance organisations from respective country. It does not contain a thorough review of all Member States' insurance contract laws and does not reflect the official opinion of the Commission.

	<p>the Finnish civil law.</p> <p>In the Finnish Insurance Contract Act (543/1994), there is no definition of an insurance contract</p> <p>Despite the absence of a definition in law, insurance activity is defined by practitioners and legal literature as having the following characteristics:</p> <ul style="list-style-type: none"> <li>• The risk must be uncertain (not inevitable).</li> <li>• The risk must involve potential economic damage (therefore meaning that the insurable interest can be expressed in terms of money).</li> <li>• There must be a correspondence between the risk and the premium.</li> <li>• The risk must be divided between a large number of policyholders.</li> <li>• The insurer and the policyholder must be separate entities.</li> </ul>
<p><b>France</b></p>	<p>There is no legal definition of an insurance contract in the Insurance Code. However, it commonly refers to an agreement where one party (the insurer), agrees to provide coverage to another party (the insured), on the occurrence of a specified event that is beyond the control of either party, in exchange for receiving payment of premiums from the policyholder<sup>2</sup>.</p> <p>Insurance contracts are not regulated <i>per se</i>, in the sense that prudential supervision applies to entities and not to contracts. For instance, there is no pre-approval of contract terms, nor does the ACP systematically check terms and conditions for compliance. Nevertheless, all insurance contracts are subject to a wide variety of rules to be found in the Insurance Code, as well as in other codes or statutory provisions. There is also extensive case law applying to insurance contracts<sup>3</sup>.</p> <p>As a general rule, the most regulated contracts are consumer insurance contracts, with an exceptionally protective set of rules applying to unit-linked life assurance contracts<sup>4</sup>.</p> <p>Insurers and reinsurers established in France must obtain a licence from and are supervised by the ACP. However, reinsurers are subject to a less restrictive set of rules<sup>5</sup>. Reinsurance contracts stay outside the scope of the rules applying to insurance contracts.</p> <p><u>Art. 1964 Civil code:</u> Insurance contracts are considered aleatory contracts.</p> <p><u>Article R. 332-3-3, Insurance Code:</u> Modifié par Décret n°2008-1437 du 22 décembre 2008 - art. 6</p> <p>French insurers can be reinsured by non-EEA reinsurers. Non-EEA reinsurers must provide collateral to the ceding insurers to secure their obligations. EEA reinsurers are exempt from doing so<sup>6</sup>.</p>

<sup>2</sup> [http://uk.practicallaw.com/4-501-3670?qaq=W\\_q3&qaid=9-501-3248](http://uk.practicallaw.com/4-501-3670?qaq=W_q3&qaid=9-501-3248) ; Yannis Samothrakis, Dewey & LeBoeuf LLP.

<sup>3</sup> [http://uk.practicallaw.com/4-501-3670?qaq=W\\_q4&qaid=9-501-3248](http://uk.practicallaw.com/4-501-3670?qaq=W_q4&qaid=9-501-3248) ; Yannis Samothrakis, Dewey & LeBoeuf LLP.

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<sup>5</sup> [http://uk.practicallaw.com/4-501-3670?qaq=W\\_q4&qaid=9-501-3248](http://uk.practicallaw.com/4-501-3670?qaq=W_q4&qaid=9-501-3248) ; Yannis Samothrakis, Dewey & LeBoeuf LLP.

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<p><b>Germany</b></p>	<p>In DE law there is no legal definition.</p> <p>§ 1 Insurance Contract Act (VVG) deals with the main obligations of both parties: “By making a contract of insurance the insurer undertakes to cover a certain risk of the policyholder or a third party by paying a benefit upon occurrence of the agreed insured event. The policyholder is obligated to pay the agreed contribution (insurance premium) to the insurer.”</p>
<p><b>Greece</b></p>	<p><u>Art. 1 of Law 2496/97 in regard to insurance contract:</u></p> <p>“ By the insurance contract an insurance undertaking (the insurer) undertakes to make payments or if specifically agreed, to make provision in kind to the other party (the policyholder) or to a third party, in return for a premium, on the occurrence of the event on which it has been agreed that the insurer’s obligation depends (the insured event)”.</p>
<p><b>Hungary</b></p>	<p><b>(Ptk. 6:439)<sup>7</sup></b></p> <p>Insurance company is obliged to supply insurance cover stipulated in the insurance contract, and when insurance event occur the insurer must perform in the way that it has been fixed in the contract. Performance can be e.g. payment of prefixed sum, compensation of the effective damage suffered by the insured person, or providing assistance.</p> <p>The Hungarian civil law distinguishes two kinds of insurance. One is the “insurance against damage” where compensation of damage is paid by the insurer. The so called “sum-insurance”, where insurer pays the pre-fixed sum stipulated in the contract (typically life insurance).</p> <p>The contracting party is obliged to pay an insurance premium.</p> <p style="text-align: center;"><i>Section 6:439</i></p> <p><i>“(1) Under an insurance contract the insurer undertakes to provide coverage for the risk specified in the contract, and to provide settlement or benefits for loss arising upon the occurrence of a specific future event after the starting date of risk coverage, and the insured person undertakes to pay an insurance premium agreed upon.</i></p> <p><i>(2) The insurance company’s service covers the payment for the insured person’s loss in the amount and in the manner defined in the contract and other policy benefits (hereinafter referred to as „indemnity insurance”) or the payment of a sum specified in the contract (hereinafter referred to as „fixed-sum policies”).</i></p> <p style="text-align: center;"><i>Section 6:440</i></p> <p><i>[Insurable interest]</i></p> <p><i>An insurance contract may be concluded by any person who has a vested interest in avoiding the occurrence of an insured event under some form of property or personal relationship; or who has a vested interest in the occurrence of an insured event in respect of life insurance policies which comprises assurance on survival to a stipulated age only, birth assurance or marriage assurance, or those who concludes the contract</i></p>

<sup>7</sup> ■ Ptk. – Hungarian Civil Code; Act of V of 2013.

■ Bit. – Act on Insurance Institutions and Insurance Business; Act of LX of 2003.

	<i>on behalf of an interested person. Any indemnity insurance and group fixed-sum policy concluded in contradiction to this provision shall be null and void."</i>
<b>Italy</b>	<p><u>Art. 165 d.lgs. 209 7/9/2005</u> (rule of coordination between Civil Code and Code of Private Insurance): The Civil Code still applies for insurance contracts [where not derogated by the Code of Private Insurances ]</p> <p><u>Art. 1882 Civil Code</u>: Insurance is the contract with which an insurer (in exchange of the payment of a certain premium) obliged himself: 1) to pay an indemnity to the insured equivalent to the damage caused by an accident; 2) to pay an income or a capital if a life-related event occurs.</p> <p>It is considered to be an "upon payment" and synallagmatic contract: in fact, this assumption has to be clarified. Insurance is consider by a large part of the doctrine to be a synallagmatic contract even if it is at the same time an aleatory contract, we can also say that it has a synallagmatic element with reference to the genetic moment where the insurer assume the duty to cover and even if the insured event will never occur.</p>
<b>Portugal</b>	<p>There is (there has never been) a legal definition of insurance contract</p> <p><b>Article 1</b> of the Legal Regime states:</p> <p style="text-align: center;"><i>Typical content</i></p> <p>Under the terms of a contract of insurance, the insures covers a specific risk of the policyholder or of another party, and undertakes to make the agreed payment should the random event provided for in the contract occur, and the policy holder undertakes to pay the corresponding premium:</p>
<b>Romania</b>	<p>The definition of insurance contract in regulated by the Civil Code of Romania.</p> <p>Article 2199 of Civil Code states that the insurance contract is a contract in which the policyholders or the insured is obliged to pay the insurance premium and the insurer, has to pay an indemnity in the event of the insured risk occurs, to the insured or injured third party insurance beneficiary.</p>
<b>Slovakia</b>	<p>§ 788 of Civil Code No. 40/1964 Coll. (CC)</p> <p>Under an insurance contract, the insurer undertakes to pay a benefit in the agreed extent if it comes to a contingent event specified in the contract and natural person or the legal entity who concluded the insurance contract with the insurer undertakes to pay an insurance premium.</p> <p>The insurer's general insurance terms are a part of the insurance contract to which the insurance contract refers and they are attached to the contract or the person who concluded the contract with the insurer was informed about them before conclusion of the contract. The insurance contract may deviate from the insurance terms only in cases specified in the insurance terms. In other cases, the deviation shall be admissible only if it is to the insured party's benefit.</p>

	<p>§ 797 of CC</p> <p>The right to the claim payment shall belong to the person to whose property, life or health or liability for damage the insurance applies (the insured person).</p> <p>The right to the benefit shall arise if it comes to the event with that rise of the insurer's duty to pay the benefit is connected (the insurance event).</p>
<b>Spain</b>	<p><u>Art. 1 Insurance Contract Act (Ley 50/1980, de Contrato de Seguro, LCS)</u></p> <p>According to the Spanish Insurance Contract Act a <b>contract of insurance</b> is the contract by virtue of which the insurer agrees, for a specified consideration (premium) and when an event occurs (the risk of which is the object of the coverage), to indemnify, within the agreed limits, the damage suffered by the insured or to pay a capital sum, a rent or other agreed compensation.</p>
<b>Sweden</b>	<p>There is no definition of insurance contract in Swedish national law.</p> <p>The legal doctrine has displayed great interest in the matter. According to an article published in a Nordic insurance law publication<sup>8</sup> there were already in 1931 at least 200 definitions suggested.</p>
<b>United Kingdom</b>	<p><b>General definition:</b></p> <p><b>There is no statutory definition of an insurance contract.</b></p> <p>For the purposes of both contract law and regulation, a description of an insurance contract which is typically employed is the one adopted by Channell J in <i>Prudential v Commissioners of Inland Revenue</i> [1904] 2 KB 658, namely a contract whereby one party (the insurer) promises in return for a money consideration (the premium) to pay the other party (the insured) a sum of money or to provide him with a corresponding benefit upon the occurrence of one or more specified events. There are a number of products which lie on the margins of this description, a number of which are discussed in the Perimeter Guidance of the Financial Conduct and Prudential Regulation Authorities (PERG 6), together with references to the relevant case-law.</p> <p><b>Specific definitions:</b></p> <p><u>Marine Insurance Act 1906, Section 1:</u>  "A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in a manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure."</p> <p><u>The Consumer Insurance (Disclosure and Representations) Act 2012, Section 1</u>  defines a consumer insurance contract as "a contract of insurance between an individual who enters into the contract wholly or mainly for purposes unrelated to their trade, business or profession" and a person who carries on the business of insurance.</p> <p><i>[Note: the definition simply determines whether, if a contract is one of insurance, it is made with someone who for the purposes of the Act is to be treated as a consumer.]</i></p>

<sup>8</sup> Nordisk Försäkringstidskrift 1931, p. 214, Ingvarsson, T., Borgensliknande säkerhetsrätter, 2000, p. 144.

It is sometimes more relevant to consider what is a *regulated* contract of insurance, whether within the mandatory scheme for regulation of insurance under EU Directive (the minimum mandatory framework) or under wider protections permitted and afforded in national law of Member States: see eg the recent decision of the UK Supreme Court in *Re Digital Satellite Warranty Cover* [2013] 1 WLR 605.

Some forms of Credit Default Swap appear functionally identical to insurance, but are not treated as insurance (and are not regulated as such)

There is also an important distinction drawn in European law between insurance and reinsurance: see eg *Universal General Insurance Co v Group Josi Reinsurance Co SA* (Case C-412/98) which has been acknowledged in England: *Agnew v Lansforsakringsbolagets AB* [2001] 1 AC 223 HL