

## New e-insurance regulation in Bulgaria



Author: Yordanka Dimova  
Senior Associate

Copyright © 2023 Yordanka Dimova

On 16 October 2023 the Ministry of Finance launched public consultation regarding the proposed amendments to the Bulgarian Insurance Code (IC). The consultation will last until 15 November 2023. The proposed amendments will strongly affect the insurance regulation in Bulgaria as they are not solely focused on the transposition of the Directive (EU) 2021/2118 which is due until the end of this year, but also extend to the introduction of national law provisions aimed at improving the overall insurance environment in the country. One of the domains of insurance that is proposed to be amended is e-insurance. The notion of e-insurance shall include every action regarding the insurance contract that could be executed remotely, more specifically the remote conclusion of the insurance contract and the remote exercise of the insured's rights.

The main amendments concern the following matters:

1. Obligation for the insurers to introduce means of electronic submission of insurance claims, at least by announcing an email of the insurer for that purpose;
2. Introducing the conclusion of a contract via a platform of the insurer as a means of remote conclusion of the insurance contract;
3. Removing the payment by credit or debit card of the policyholder as a means of fictitious signature of the insurance contract in case of its remote conclusion;
4. Obligation for the insurers to send the remotely concluded contract on durable carrier upon its conclusion;
5. Obligation for the insurer or the insurance intermediary to sign the remotely concluded contract with a qualified electronic signature.

In the motives of the amendments, the Ministry of Finance has pointed out that the dynamics of the insurance relations in recent years prove that the existing regulation is outdated and needs improvement. But is it an improvement that the amendments will bring in the insurance relations?

1. One aspect of the amendments shall be considered rather positive and that is the obligation for the insurers to provide the insured means to exercise their rights electronically. According to the amended

# ROKAS

al. 1 of art. 106 of the IC, the insurer shall assure means for the insured to submit their claims electronically, at least by announcing an email thereto. Although the existing legal framework does not prohibit the electronic submission of insurance claims, what changes with the amendments is that this will be an obligation for the insurers from now on.

The e-commerce dynamics have naturally affected the insurance sector. This has led in recent years to a steady and amplifying tendency to create more consumer-friendly, easy and contemporary means for insured to conclude the policy and to submit their claims. Thus, a good part of the insurers has already introduced means for electronic submission of insurance claims – at least for some of their insurance products. With the proposed amendments, the insurers will be obliged to introduce such means for all of their products.

However, the option of announcing an email for submission of insurance claims as means of electronic submission of the claims, seems a bit of a timid step towards the digitalization of the insurance process. Understandably, the all-digital submission of insurance claims needs time and appropriate security measures, for installation and testing. But a true and strong will for modernization and digitalization of the insurance relations should have given the insurers the appropriate time to set forth their processes and systems by delaying its implementation, not by giving an option “B” – submission by email. Because this option was always there but is not fully a digitalized process.

According to art. 106 IC, the insurer is obliged to register every claim and document that is sent to him by the insured or the injured party. The fact that the document, statement or the claim is sent by email has never entitled the insurer to deny its receipt or treat it differently from the ones that are submitted on paper, since neither the abovementioned provision, nor any other relative legal stipulations (including especially the regulation regarding the registry of the identification information of the insurer in the Commercial Register which almost always includes the official email of the company) gives ground for such denial or differentiated treatment. Saying that, it should be considered, that so far, almost every insurer declares to the insured or the injured parties an email as a means of electronic exchange of documents or submission of additional documents regarding a claim. Thus, this option does not really bring anything new to insurance relations.

It should be also considered that the exchange via email of documents, especially of those that contain personal or sensitive data (which the insurers are allowed to process in a wide range according to art. 454 IC), is not taking into account all the possible threats to its unlawful or accidental disclosure. Even the best of internal and operational processes of the insurer could not assure a data security equal to the encryption algorithms of an information system.

Regarding all of the above, the option “B” – submission by email, is not new to the business and is definitely not a step towards the digitalization of the insurance process. It stands quite far from the overall European goals of secure exchange and storage of personal and sensitive data of the individuals and thus seems outdated. =A strong will for digitalization would have forced the insurers to put in place secure and modern means (such as a web platform or web portals) for digital submission of insurance claims, giving them the proper time to prepare for the incorporation of new system and processes.

Nevertheless, the establishment of insurers’ obligation to set forth means for the insureds to submit their claims electronically is a, however timid, step forward to the adoption of e-insurance processes in Bulgaria.

# ROKAS

2. Going further into the motives of the Ministry of Finance underlying the amendments of the IC, it appears that the major step towards the e-insurance is undertaken in the process of conclusion of the insurance contract.

The reasoning of the Ministry that the provision on the means of remote conclusion of the insurance contract is related to the insurance contract itself and not its distribution is an interesting one. But is that the correct conclusion? Is the means of conclusion of the contract related to the contract itself or is it related to its distribution? Is the e-insurance a different type of insurance contract or is it related only to its means of conclusion? It seems that the answers lead to the opposite conclusion to the one made by the proposer of the amendments, since the main difference between an e-insurance and a paper insurance is in the way of its distribution, since the e-insurance doesn't derogate in anything else from the paper insurance other than the handwritten signature. The main difference remains the means of the insurance contract's conclusion and its distribution, not the insurance contract itself which has the same characteristics and consequences regardless of the way of its conclusion.

Nevertheless, the first important step of the proposer of the amendments, was to acknowledge that the law in force is outdated and shall be brought up to date with the dynamics of the e-commerce in Bulgaria. Generally, the main update that the amendments introduce is the possibility of conclusion of an insurance contract via a platform, not only via a website (as it is currently stipulated in art. 331 IC). Even if it is presented as a novelty, is the conclusion via a platform really a new means of remote conclusion or was the conclusion via a platform somehow hindered by the existing regulation? The answer imposes to be rather negative. The essential difference between a platform and a web site is in the integrated, two-way communication between insurer (or any other trader who manages a platform) and claimant, in other words – in the consumer's experience. Otherwise, the two means are technically quite similar, been essentially based on a web site<sup>1</sup>. Thus, it appears that this otherwise essential amendment brings nothing new and nothing different to the e-insurance domain. No matter if the legislation envisages it expressly or not, the option of concluding a contract through a platform was always included in the opportunity for the insurer to distribute insurances through his own website.

3. What is also new, is that the acceptance of payment with the policyholder's credit or debit card cannot thereafter be regarded as a means of fictitious signature of the insurance contract that is concluded remotely. The certification of the lawful conclusion of the insurance contract is exclusively based upon the electronic identification of the concluding parties according to Regulation (EU) 910/2014 and the confirmation of such conclusion, obliging the insurer to send the policyholder the concluded contract on a durable carrier of information. Meanwhile, the definition of a 'durable carrier of information' itself was not amended, allowing for the accrual of many issues since the durable carrier of information (including sending the insurance contract as an electronic document via email) is a means for document exchange alternative to the priority paper document exchange. This stipulation itself, contradicts the relevant local and European regulation regarding written documents which understandably does not differentiate between the paper and the electronic document regarding their authenticity and their legal value.

---

<sup>1</sup> More on the difference between a web site and a platform – Nathan Moore, 03.11.2016, The difference between a web site and a web platform - <https://www.linkedin.com/pulse/difference-between-website-web-platform-nathan-moore>; Websites vs. Platforms: What We Need to Know, 25.10.2021 - <https://www.oomphinc.com/insights/what-is-difference-between-websites-platforms/>

5. But what goes further such contradiction is the other amendment – the obligation for the insurer or the insurance intermediary to sign the document with a qualified electronic signature. It is true that an insurance policy must be in writing to be validly concluded. However, the proposed amendment imposes a way more rigorous rules for the insurance contracts than any other contract that, according to the Bulgarian law, should be concluded in writing to be valid. The obligation to sign the contract with a qualified signature is, in the first place, a quite expensive operation and, secondly, unnecessary. If it could be agreed for the preexisting option of a remote conclusion of an insurance contract in the form of an electronic document, without using a web site or a platform, for the latter the inclusion of such option is to say the least not understandable.

According to the amendments, the web site or the platform shall use, in order to identify the policyholder, the means provided by the Electronic Documents and Electronic Trust Services Act (EDETSA). Art. 3 EDETSA stipulates that the requirement for a document to be in writing shall be considered met, as long as the document is composed as an electronic one and contains an electronic statement. According to art. 3, pt. 35 of Regulation (EU) 910/2014 an electronic document is a content, stored in an electronic form containing text or audio/visual recording. Considering jointly both regulations, we come to the conclusion that, since a document containing text input is stored electronically, it shall be considered a document in writing.

Going further to the identification of the parties to the contract, the following conclusion arises: the amendments imply that, for the identification of the policyholder, it suffices that the requirements of the EDETSA are met, so that the identification by electronic signature and advanced electronic signature is deemed equivalent to a handwritten one as long as it is accepted by the parties. Thus, a simple check box, containing the policyholder's acceptance that this will be the means of identification for the purposes of the conclusion of an e-insurance suffices to accept it as a binding way of identification of the policyholder. Let alone the mere fact that a consumer that chooses to conclude a contract via a web site or a platform, generally agrees with the "remote rules" such as signature by electronic or advanced electronic signature.

A two-factor authentication is the better practice in those cases, but still, according to the EDETSA even a simple electronic signature suffices. And here comes the least understandable amendment – the insurer (or the insurance intermediary) shall sign the contract with a qualified electronic signature. The main question remains – why is that necessary? Why the legislator is concerned about the identity of the insurer when the remote conclusion of the insurance is a well recorded process of consecutive electronic actions of the policyholder, recorded in precise time with multiple electronic logs, followed by the payment of the insurance premium and the issuance of an electronic document, sent to the policyholder on a durable carrier, especially when this process started on the web site or the platform of the insurer? Is this a way to show that the Ministry does not trust the electronic exchange enough to accept the remote conclusion of an insurance contract? Such reasoning is not legally justified especially considering the whole identification chain and electronic logs that precede the issuance of the insurance policy. And what is even less understandable is that such rigorous regulation is implied only towards the insurance contract and not towards any other e-contract that requires a simple writing form for its validity. No legal stipulation implies the necessity of such differentiation and the need to derogate the national and the European legal framework related to the remote conclusion and identification of the concluding parties. Additionally, the law doesn't differentiate between remotely or presently concluded insurance contract when requiring that a document provided on durable carrier shall be provided in paper if such demand is expressed by the

# ROKAS

policyholder or the insured (art. 330, para. 3 IC). It should be also considered that an insurer could hardly deny the conclusion of an insurance contract once the premium (or its first instalment) has been paid. What is even less understandable is that the amendments can cause the policyholder concluding the policy remotely to feel that he needs further identification of the insurer in order to be sure that the contract is really concluded. This appears to bring unnecessary insecurity in the policyholders.

Furthermore, according to the Distance Marketing of Financial Services Act, the remotely concluded contract is part of a system of distance marketing organized by the supplier of the service (art. 6), in the sense that the conclusion of the contract comprises a system of actions executed in the means provided by the supplier. In the case of an e-insurance, the supplier being the insurer, and the system of servicing being the web site or the platform with the electronic chain of actions executed on them, it seems that this suffices to accept that the insurer and the policyholder have concluded an e-insurance, any further identification not being required and thus necessary. The Electronic Commerce Act, on the other hand, obliges the supplier to confirm the consumer's statement for conclusion of the contract, this confirmation being presumed as received as long as the consumer has access to it. Thus, in the case of an e-insurance, the receipt of the e-insurance on durable carrier meets both the obligation for confirmation and the receipt of the confirmation requirements.

Going through the whole process, it can be concluded that what could be questioned is the identity of the policyholder, having also in mind that a risk of personal data and personal access abuse or fraud is always possible. But the proposer of the amendments does not concentrate his efforts in regulating this risk but leaves it to the insurers to put in place appropriate measures to limit such risk, instead. In the same time, a risk that is hardly there – the identity of the insurer, being the sole owner or the coproprietor of the web site or the platform – is mitigated by an additional requirement for a qualified electronic signature of the insurer on the e-insurance.

In view of the above, an inference which can be derived is that a well-put process of conclusion of the e-insurance that meets all the existing legal requirements should suffice in order to identify precisely the parties and the content of an insurance contract. The additional requirement for a qualified electronic signature by the insurer definitely does not correspond with the current e-commerce dynamics that the amendments try to meet.

It seems that the Bulgarian law is implying a more conservative approach when it comes to e-insurance. If the amendments are accepted as they stand without further discussions, possibly the aimed modernization of the e-insurance will not be met. Or at least not in the manner to fully correspond to the commercial dynamics. If this was an amendment proposed some 5 years ago approach would be understandable. But in the current dynamics, with the e-commerce and the e-identification being a preferred means of communication, this conservative approach seems outdated and unsusceptible to bring the desired modernization and protection. On the contrary, the additional requirements set will put less pressure on the insurers to set up reliable electronic means of conclusion of policy and insurance claims and could slow down the digitalization processes opposing to nearly every other e-commerce domain that becomes more and more flexible and digitalized day by day.