

Małgorzata Więcko-Tułowicka

# Challenges of the Payment Protection Insurance Market – Analysis of European Tendencies in the Context of the Need for Legal Actions in Poland

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The article contains an analysis of current legal regulations on Payment Protection Insurance (PPI) in Poland and main tendencies regarding PPI in Europe with a focus on the situation in Great Britain. Bearing in mind that PPI have been problematic in both Great Britain and Poland, it is important to know what the conclusions for that type of situations are. Poland, at a European level, is subject to governance rules provided by the European Insurance and Occupational Pensions Authority and therefore its point of view regarding PPI is worth noting as well. The article describes challenges that supervision authorities, regulators and consumers faced in the last years on the PPI market and tries to identify solutions to similar situations in the future.

**Keywords:** Payment Protection Insurance, PPI, bancassurance, consumer protection, insurance supervision.

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## 1. General comments on Payment Protection Insurance (PPI)

Payment Protection Insurance (PPI) is an insurance product designed to provide coverage for consumer of a financial obligation (generally mortgage or consumer loan repayment) in case he or she is unable to fulfill the payment obligations. The risks covered by PPI generally include accident, sickness and unemployment, and for certain products also life. PPI generally covers risks that are related to a person having a financial obligation; however, it is sometimes combined with coverage that is related to the underlying property (mortgage credits are often sold together with insurance covering damage to the property). In Poland PPI sometimes includes investment insurance that is offered together with a credit contract. The definition is wide and evolving and may also be understood as any insurance product sold together with a banking product (bancassurance). However, the payment obligation PPI provides coverage for is generally associated with a loan product.

Payment Protection Insurance (or – in a broader sense – bancassurance) was mainly developed in Poland around 2005. Initially, there were no concerns over this type of contracts, although the knowledge of its significant elements was not wide enough, as well. Neither banks nor creditors themselves had the ability to analyze PPI in the context of coverage, exclusions, price or actual benefits. At that time PPI was a product widely distributed as an add-on to each and every consumer creditor and was understood as a protection in case of situations when the payment of credit was impossible. Over time PPI emerged as

a replacement for loan collaterals and was praised by many as a tool to help consumers obtain credit even in case of their bad credit score (unsecured personal loans). All in all, PPI became a huge and profitable market for banks and began to be sold massively. However, over time, alarming information became public – lack of actual coverage of PPI and unfair practices including mis-selling. Information on high commissions of banks was a turning point in view of PPI (90% of the premium paid as a commission was not a surprise at that time). It was discovered that in some cases the amount of insurance premium was 40% of the credit itself. There was information on profit sharing of banks and insurers in PPI. A discussion was raised on whether PPI was actually a product that served consumer needs and how to provide consumers with an adequate protection not only from unfair practices of huge financial providers but also within the PPI product itself, as it was obvious that massive sale of insurance could never guarantee adequate protection of each insured consumer. Conversely, creating insurance products that were supposed to “fit-all” resulted in selling insurance without any coverage. The problems identified for the first time in Poland by the Insurance Ombudsman in 2007<sup>1</sup> had much in common with the situation that had occurred earlier in Great Britain.

### 2. PPI in Great Britain

Widespread and regular failure on the part of many firms to comply with Financial Services Authority's<sup>2</sup> rules and insurance law resulted in a massive mis-selling scandal in Great Britain. A total of £247.6m was paid in September 2016 to customers who complained about the way they were sold payment protection insurance. This takes the amount paid since January 2011 to £25.5bn<sup>3</sup>.

The problems with the PPI in Great Britain started in the early 2000s and it was the first European country to deal with this malfunction. In 2005, British FSA published a report on the sale of PPI in the UK. The FSA stated that practices of many firms posed a risk to consumers. This was because of various aspects of their selling practices and/or their lack of proper compliance controls as set out in the report<sup>4</sup>.

Mis-selling has been defined by the Financial Services Authority as “a failure to deliver fair outcomes for consumers”. This included providing customers with misleading information or recommending that they purchase unsuitable products. The most common misleading information was information that taking out PPI was compulsory by law, information that PPI was an integral part of the loan product and that consumers could not abstain from PPI or that taking out PPI improved the chances of obtaining the loan. Misguiding infor-

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<sup>1</sup> The report of the Polish Insurance Ombudsman – Main problems of bancassurance in Poland, December 2007, [https://rf.gov.pl/files/108\\_40\\_Raport\\_bancassurance.pdf](https://rf.gov.pl/files/108_40_Raport_bancassurance.pdf)

<sup>2</sup> Now the Financial Conduct Authority (FCA).

<sup>3</sup> Monthly PPI refunds and compensation by FCA: <https://www.fca.org.uk/consumers/payment-protection-insurance/monthly-ppi-refunds-and-compensation>

<sup>4</sup> The sale of payment protection insurance – results of thematic work, FSA November 2005, [http://www.fsa.gov.uk/pubs/other/ppi\\_thematic\\_report.pdf](http://www.fsa.gov.uk/pubs/other/ppi_thematic_report.pdf)

mation also concerned main features of the policy (not disclosing it at all or disclosing incorrect information) the fees (if they were paid in relation to the insurance or credit product) or the refund of the premium.

In a 2014 market study<sup>5</sup>, the British FSA, found competition in the markets for general insurance add-ons not effective, which might lead to poor consumer outcomes. Consumers can be significantly overpaying when they buy products as add-ons. Consumers are likely to focus on the purchase of the primary product and pay comparatively little attention to the add-ons on offer. Not focusing on the add-on insurance in turn increases the likelihood that consumers fail effectively to assess the information provided about the add-on product. This raises the risk of consumers buying add-ons they do not need or which do not meet their particular requirements.

The FSA believed that the new rules (Insurance Conduct of Business Handbook “ICOB”) introduced at that time would address concerns about specific poor selling practices related to PPI. As soon as the FSA concentrated on regulation of PPI, actions were taken to assess sales practices and compliance with the new ICOB requirements. The FSA issued a number of communication documents to firms explaining the findings from reviews of 2005 to 2008 and took enforcement action against a number of firms and individuals. However, in 2005–2007 the FSA did not appreciate the full extent of profit made by a few high street retail banks. The FSA lacked the capability to conduct market wide analysis. Consequently, the true picture of the extent of banks’ PPI sales, profits and associated market failures had not been completely clear to the FSA until the Office of Fair Trading and then the Competition Commission’s work was available (2007–2009).

In October 2006 the British Office of Fair Trading (OFT) issued a report and proposed a decision to conduct a market investigation<sup>6</sup>. The report focused on issue of how consumers purchased their PPI and what their understanding of the product and the quality of information available to them were. According to the OFT the market practices hindered competition, the complex nature of PPI made comparison between different policies difficult and consumers displayed poor understanding of PPI, its price and the detail of their cover, with suppliers initially doing little to remedy this situation. Eventually, the OFT assessed that consumers were receiving poor value from their PPI. In February 2007 the OFT referred the Payment Protection Insurance (PPI) market to the Competition Commission (CC) for investigation.

In 2009 actions of the Competition Commission were undertaken. In its report<sup>7</sup> the Commission recorded that PPI was commonly sold as part of a package with the loan itself, and in those cases usually provided for a single

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<sup>5</sup> Market study MS14/1. General insurance add-ons. Provisional findings of market study and proposed remedies. <https://www.fca.org.uk/publication/market-studies/ms14-01.pdf>

<sup>6</sup> Payment protection insurance. Report on the market study and proposed decision to make a market investigation reference, OFT October 2006, [http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.offt.gov.uk/shared\\_offt/reports/financial\\_products/oft869.pdf;jsessionid=526BB8BD402D4C14782FDD592A85BB38](http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.offt.gov.uk/shared_offt/reports/financial_products/oft869.pdf;jsessionid=526BB8BD402D4C14782FDD592A85BB38)

<sup>7</sup> Market Investigation into Payment Protection Insurance (29 January 2009).

premium to be paid upfront at the time of the transaction and added to the amount borrowed. Commissions payable to intermediaries were high, typically between 50 and 80 per cent of gross written premium for policies sold in connection with a personal loan. These levels of commission were much higher than those payable for introducing the loan itself, which meant that a large proportion of the profits of loan brokers was derived from selling PPI policies. The Commission found that the market for PPI sold as a package with loans was characterised by limited competition and low levels of substitutability, and that these factors resulted in high premiums relative to what would be expected in a well-functioning market. They made a number of recommendations, including the ultimate one – a prohibition of selling PPI in a package with a loan and a prohibition on single premium policies that was finally enforced in Great Britain 2011. *All actions undertaken by competent authorities in Great Britain since the time of ban on PPI were focused on securing fair redress for past mis-selling. Execution of consumers rights was made mainly through the Financial Ombudsman, where consumers could receive their money back.*

British problems with PPI were defined by the Financial Ombudsman as an iceberg<sup>8</sup> rising from a foundation of at least 45 million policies sold – possibly to as many as 60 million. From these sales, well over 16.5 million claims for compensation have already been brought forward by consumers – the vast majority stimulated by claims management companies (CMCs). At the top of the iceberg, 1.3 million of these claims have converted into complaints brought to the ombudsman service. Over 1 million cases have been closed by the ombudsman service, with average “uphold” rates as high as 89% in 2009, dropping to a “mere” 62% in 2015. The ombudsman service continues to handle large volumes of PPI complaints from consumers. Since October 2010 the Ombudsman has been receiving up to 5,000 of these complaints each week.

### **3. EIOPA’s opinion on PPI**

The bad fame of PPI finally reached the European Supervision Authority – EIOPA. Consumer protection is key to EIOPA<sup>9</sup>, and therefore the European authority takes a leading role in promoting transparency, simplicity and fairness in the market for consumer financial products and services across the EU. EIOPA’s mandate in the area of consumer protection and financial innovation is broad. EIOPA seeks to identify possible consumer protection issues arising from consumer trends and adopts guidelines and recommendations to promote safety and soundness of markets as well as convergence of regulatory practice. In 2014 EIOPA was equipped with a new product intervention power – in case of an emergency situation EIOPA may temporarily ban certain finan-

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<sup>8</sup> The impact of PPI mis-selling on the Financial Ombudsman Service, January 2016, <http://www.financial-ombudsman.org.uk/publications/pdf/Impact-of-PPI-mis-selling-report.pdf>

<sup>9</sup> <https://eiopa.europa.eu/consumer-protection/consumer-protection-financial-innovation>

cial activities. EIOPA is now also entitled to temporarily ban an insurance-based investment product, even on a precautionary basis i.e. no need for an emergency situation<sup>10</sup>. This is why, EIOPA also took action in relation to problems with the PPI and presented its' detailed opinion<sup>11</sup> with a background note<sup>12</sup> analysing the situation in each European country at that time.

In its opinion, EIOPA recommended that National Competent Authorities (NCAs) should analyse their national markets and on this basis decide whether PPI merits (further) investigation and any possible (further) supervisory and/or regulatory action at national level, based on the findings of this opinion. NCAs were requested to provide feedback on previous actions in this field and on their decision whether they undertake any action on the basis of EIOPA's opinion, including the details of any market investigations, regulatory or supervisory actions regarding PPI, within six months of publication of the opinion.

EIOPA stressed that it is generally true that any PPI intervention must take into consideration the specific characteristics of the local products concerned. Given the complexity of the coverage and the sometimes extensive lifetime of the product (especially in the case of mortgages), some countries may only allow the distribution of certain PPI products on an advised basis. EIOPA estimated that apart from mis-selling (an issue that certainly drew a lot of public and media attention), there were further market imperfections that resulted in regulatory and supervisory intervention in a number of countries.

Apart from misselling – the most problematic within PPI – EIOPA identified eligibility issues (marketing policies to consumers who were not eligible to claim benefits at all because their individual situation is not covered by the policy or PPI is not in their best interest, although it is required by national law) and suitability issues (where even if being eligible to claim benefits, the product was not always suitable for the consumer, and thus undertakings have not acted in the best interest of the consumer).

PPI markets in the view of the European Authority seem to be highly profitable in a number of countries. It is stressed that some market imperfections are quite frequent for PPI, and they might result in consumers being unable to take advantage of a properly functioning market. This includes tying and bundling practices with which loan providers are potentially able to exert market power and charge excessive prices for PPI and make supernormal profits from it.

Moreover, in its documents EIOPA underlined the issue of group insurance that was extremely problematic in Poland, although it seemed unnoticed in other European countries.

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<sup>10</sup> Art. 16 of the Regulation No. 1286/2014 of the European Parliament and of the Council of 26 November 2014 on Key Information Documents for Packaged Retail and Insurance-based Investment Products.

<sup>11</sup> EIOPA's opinion on PPI, 28th June 2013, [https://eiopa.europa.eu/Publications/Opinions/EIOPA\\_PPI\\_opinion\\_2013-06-28.pdf](https://eiopa.europa.eu/Publications/Opinions/EIOPA_PPI_opinion_2013-06-28.pdf)

<sup>12</sup> Background Note on Payment Protection Insurance, EIOPA-BoS-13/116, 28th June 2013 [https://eiopa.europa.eu/Publications/Opinions/EIOPA\\_PPI\\_Background\\_Note\\_2013-06-28.pdf](https://eiopa.europa.eu/Publications/Opinions/EIOPA_PPI_Background_Note_2013-06-28.pdf)

EIOPA's opinion was a starting point for National Authorities to look over the situation in their countries and was followed by a feedback report in 2014<sup>13</sup>. According to the replies there has been some kind of regulatory or supervisory development in the field of PPI in ten (10) Member States during the six months' period following the adoption of the Opinion; further three (3) NCAs have reported that they are considering taking action, and two (2) NCAs (Great Britain and Norway) have reported that there have been relevant actions previously and that no additional steps are envisaged. 12 NCAs have reported that they consider no action necessary in their PPI markets. The primary reason for that was that they had seen no consumer protection issues in this market, or that they would like to address potential problems in a more general framework examining sales practices. Despite the fact that EIOPA's opinion was much more general in its scope than one would expect, it was a starting point for actions taken by the Polish Supervision Authority because of the obligation to report back to EIOPA on the situation of PPI.

#### **4. Legal status of PPI in Poland**

Legal regulations concerning PPI contracts in Poland are rudimentary (29 articles in the Polish Civil Code regulating insurance contracts, and a number of provisions in the Act on Insurance Activity). There is no legal definition of PPI in the Polish law. There are no legal rules on the process of distributing insurance by banks. In 2005, when PPI was introduced in Poland, many questions had been raised if such contracts were (or should be identified as) life-insurance or non-life insurance contracts. No legal provisions regulated the scope of PPI, the protection from mis-selling, the level of insurance premium or remuneration of the distributor. It is worth noticing that Polish provisions have never regulated these issues and no fundamental problems had existed until PPI was introduced.

PPI in Poland was sold as an add-on product that consumers agreed to buy because of the need of signing the credit contract. It was not the consumer that made a decision on buying PPI, it was the bank that refused to sign a credit contract if additional PPI was not added. The situation in Poland was much alike PPI in Great Britain.

A perfect environment for the sale of PPI in Poland began to change in the year 2007. First consumer issues were identified. First reports of national offices were published<sup>14</sup>. Since that time PPI, bancassurance and group insurance in general have been the issues of concern of consumer organizations, bank and insurance associations, financial authority and the regulator. However, the actions undertaken at that time were very restrained and limited. The Polish Financial Supervision Authority (Komisja Nadzoru Finansowego) was of

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<sup>13</sup> Report On Feedback from National Competent Authorities Regarding EIOPA's Opinion on Payment Protection Insurance, EIOPA-BoS-14/067, 25th June 2014. [https://eiopa.europa.eu/Publications/Reports/PPI\\_follow-up\\_report\\_publication.pdf#search=PPI](https://eiopa.europa.eu/Publications/Reports/PPI_follow-up_report_publication.pdf#search=PPI)

<sup>14</sup> The report of the Polish Insurance Ombudsman – Main problems of bancassurance in Poland, December 2007, [https://rf.gov.pl/files/108\\_\\_40\\_\\_Raport\\_bancassurance.pdf](https://rf.gov.pl/files/108__40__Raport_bancassurance.pdf)

the opinion that consumer issues were not the main concern of a supervision authority and during the first year praised PPI for bringing huge profits into the insurance market. The Polish Competition and Consumer Protection Office (Urząd Ochrony Konkurencji i Konsumentów) identified the problems and supported the idea of increasing consumer protection but was not keen on being decisive on financial issues that were obviously in the competence of the financial authority. The Polish Insurance Ombudsman with no authority to even issue binding decisions in individual cases could not influence financial services providers to change their practices. Any suggestions on the need for amending legal acts was deemed unnecessary and inadequate at that time.

Therefore, the only result of the discussions on PPI in Poland were the soft law provisions introduced by the Polish Bank Association<sup>15</sup>. The banks and the insurers themselves were strongly opposing the need for a new regulation and the soft law was a palliative that was accepted by all market stakeholders at that time.

The result of introducing the soft law was not as effective as one would assume. Some issues were resolved – this includes for example a ban on charging consumers for a mortgage payment protection insurance<sup>16</sup>. However, the problems of mis-selling, high provisions and adequate protection were not solved. Other shortcomings have been replaced with new unfair practices – not directly forbidden by the soft law. For example, refund of premium in case of earlier repayment of the loan that was regulated in the soft law as one of the basic consumer rights, has again become problematic because of the fact that PPI single premium is now often collected at the point of sale of credit contract but is combined with a short period of insurance protection – 3, 6 or 12 months. This way insurers and banks again deny premium refund if a credit is repaid in the second, third or next year.

Polish PPI, however, among typical issues of coverage and price included a problem of creditors' rights as a party to the insurance contract. PPI was sold in Poland in the form of group insurance that was specific on the European market. Group insurance resulted in a situation when there was no contractual relationship between a consumer and an insurance company. In fact, legal re-

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<sup>15</sup> The Polish Bank Association introduced three Acts of Soft Law to prevent consumer detriment that related to insurance sold in banks:

- a. Recommendation of good practices on the Polish bancassurance market of protection insurance connected with bank products,
- b. Second Recommendation of good practices on the Polish bancassurance market of insurance connected with banking mortgage products,
- c. Third Recommendation of good practices on the Polish bancassurance market of insurance with investment or savings element.

<sup>16</sup> Mortgage PPI (ubezpieczenie pomostowe) was an insurance product that was supposed to repay the credit in a limited period of time – after signing credit contract until the day bank is included in the land register of a real estate (this formal act in Poland could take up to many months or even a year). In case the consumer was unable to pay credit at that time, insurer was supposed to repay the mortgage. However, the insurer was also authorized by law to have subrogation claim to the consumer to repay what was paid off to the bank. The consumer in this type of insurance received no protection, although was obliged to pay a premium for an insurance that actually covered interests of bank and was still obliged to repay the credit.

lation between a bank and a consumer was also not defined in the provisions of law. As a result, consumers had been deprived of many rights that the party to the contract was entitled to. The basic effect was that in a group insurance bank representatives were never responsible for the adequacy of insurance products offered to consumers and therefore no claims could be made at that time. This is why it was discussed to amend the provisions of the Polish Civil Code to include the regulation of group insurance.

A very important – yet not much discussed – problem related to the PPI in Poland is the product design. Limitations in coverage, complex terms and conditions of contract, exclusions of coverage, unfair terms, mismatches in the duration of the loan product and insurance product or selling PPI with a single premium (paying premiums as a lump sum at the start of the contract) make it difficult to assess whether PPI is actually a product that intends to help the consumer with repayment of his or her credit<sup>17</sup>. The result is a very limited coverage or even no cover at all. Provisions of the Polish law have never regulated such matters and it seems impossible to do so, based on the basic principle of freedom of contracts.

In 2007 when the first report of the Polish Insurance Ombudsman was published the discussion on the role of a bank in the sale of PPI in Poland had been started. Because of the fact PPI was sold in the form of a group insurance, there were no formal grounds for defining such actions as contrary to the law and that was also the opinion of the Polish Supervision Authority. Following 7 years of discussion, when problems with PPI became a strategic issue and after EIOPA's opinion on the PPI and request to report back on situation in member states, the Polish Supervision Authority finally decided to publish a recommendation about group insurance in the context of insurance intermediation and obliged banks to fulfill requirements for intermediaries if offering PPI<sup>18</sup>. It is still too early to assess if this recommendation is enough to change the reality on the Polish PPI market. A change in the form of insurance sold by banks has already been observed – from mainly group insurance to offering individual contracts. In 2015 56% of PPI was sold as individual contracts preserving more consumer rights. Bearing in mind the British experience, the Polish Supervision Authority should remember that compliance of insurers and banks with the recommendation should be assessed in the next years.

The question, however, is raised once again about the need for a new regulation in the Polish Civil Code and/or the Act on Insurance Activity. The practice of the recent years has proved that current legislation (or the lack of sufficient provisions of law) may be interpreted by banks and insurers to the detriment of the consumer. Nevertheless, one could also say that such an interpre-

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<sup>17</sup> In the article "Insurance contract as a securitization tool for banks", *Rozprawy Ubezpieczeniowe*, nr 7, s. 19–36, the Author widely explains why PPI should not replace legal loan collaterals and raises a question if PPI is a product designed to repay the loan or actually to provide profit for financial services providers.

<sup>18</sup> Recommendation of good practices in bancassurance – U Recommendation, [https://www.knf.gov.pl/Images/Rekomendacja\\_U\\_tcm75-38338.pdf](https://www.knf.gov.pl/Images/Rekomendacja_U_tcm75-38338.pdf)

tation could have been avoided if competent authorities paid enough attention to the situation of consumers on the PPI market<sup>19</sup>.

### 5. Conclusions

PPI products, when properly designed and sold, serve legitimate consumer needs. Insurance contract is the contract of the utmost trust (*ubberimae fides*), thus the insured must reveal the exact nature and potential of the risks that they transfer to the insurer, while at the same time the insurer must make sure that the potential contract fits the needs and benefits of the insured. The doctrine of utmost good faith provides general assurance that the parties involved in a transaction are being truthful and act in an ethical way. This basic feature of insurance must be at stake at all times, as any actions directed at shifting insurance contracts from contracts of utmost trust to pure economic contracts will result in damage to the insurance market itself. The industry has to start talking more about its responsibility and duty towards its customers – before it can expect customers to take more responsibility for their actions.

The experience of PPI development in Poland is an example that must be reflected in a discussion about the need for a new regulation of insurance in Poland. It is true that provisions of the Polish law are not detailed in the context of PPI, life insurance and non-life insurance, however generality of the provisions of law is a system of flexibility of the legal rules. Detailed regulations are often complex and still do not cover all practical issues, as we can never predict how practice is going to develop within the next years. It is worth remembering that after introducing the soft law in Poland (premium refund described above) banks changed their practices to act according to the soft law, but still in contradiction to what is fair to consumer.

What we must have in mind is that complexity of law results in even greater lack of its knowledge among consumers. If consumers are not aware of their rights – they cannot benefit from legal provisions providing them. The Insurance Distribution Directive, with the preparatory Product Oversight and Governance Guidelines, Conflict of Interest, Suitability and Reporting to Customers Delegated Acts, the Insurance Product Information Document Implementing Technical Standards, the Key Information Document for PRIIPs Regulation – are just a few of the new regulations coming into force that will have a huge impact on consumers. Still, introducing new regulations does not guarantee fairness of the market. A question arises if any legal rules may prevent unfair actions of distributors. The author of this article is of the opinion that this is not possible. The system of supervision of financial institutions was created to prevent such situations and it is the role of supervisory authorities to build and sustain a fair financial market. If the diagnosis of the market failures reveals the lack of fairness of its

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<sup>19</sup> In the EIOPA's Background Note on Payment Protection Insurance, EIOPA-BoS/13-116 dated June 28, 2013. EIOPA stresses that non-compliance with the rules governing consumer relations is best tackled by enforcement actions targeting the poor behaviour of the supervised undertakings (p.11), [https://eiopa.europa.eu/Publications/Opinions/EIOPA\\_PPI\\_Background\\_Note\\_2013-06-28.pdf](https://eiopa.europa.eu/Publications/Opinions/EIOPA_PPI_Background_Note_2013-06-28.pdf)

stakeholders, the only way to control the situation is adequate action of authorities. While fair, clear and not misleading information is valuable, there will always be asymmetry of knowledge between an intermediary and a client in most cases. High professional standards and good redress systems will, therefore, remain vital components of consumer protection. No matter how many pieces of legislation are being passed at EU or national level and no matter how close EU institutions are to national supervisors and how much support they get, it is the transposition of these regulations, the attitude of the local regulators towards enforcing them and that of the insurance undertakings towards offering customers a fair deal and good value for money that matters the most!

Financial services are one of the most complicated of all consumer services on the market and the most valuable ones. The consumer should be able to choose from services that are provided by institutions acting fair and it is the role of competent offices and authorities to clear the market from unfair practices and/or entities.

The experience of Great Britain is essential to each and every European country, as we can all assess the effectiveness of each step undertaken in the field of consumer protection within the PPI. As it was identified in the document, *Journey to the FCA*<sup>20</sup>, one of the key lessons the supervision authority has learned from market failures such as PPI is that it can be much more effective to intervene early to pre-empt and prevent widespread harm from happening to consumers in the first place, rather than clearing up after the event. Taking this into consideration, actions of amending provisions of law and introducing soft law are actions that are taken after the damage is done and may not be effective. It is worth focusing on redress of consumers of unfair products.

In Great Britain the procedure of analysing the situation on the PPI market was broad and many institutions took actions in relation to PPI with a result that each of these entities identified other specific issues. This presents the problem of PPI from a wide perspective and therefore the cooperation between authorities is essential to resolve problems.

In Great Britain a guidance to firms was produced<sup>21</sup> in relation to payment protection products, where authorities presented a joint opinion that when designing new payment protection products (or reviewing the design and distribution of existing ones) companies should (i) identify the target market for the protection, (ii) ensure that the cover offered meets the needs of that target market, and (iii) ensure that the product does not create barriers to comparing, exiting or switching cover. This guidance is obviously indicating the basics of insurance product composition. It is quite surprising that in the Twenty-First Century we need the authorities to write down such rules for insurers to have the power to then question unfair practices. Still, this is an example cooperation between authorities is needed.

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<sup>20</sup> Journey to the FCA at <http://fsa.gov.uk/static/pubs/other/journey-to-the-fca-standard.pdf>

<sup>21</sup> Finalised guidance. Payment protection products FSA/OFT joint guidance, <https://www.fca.org.uk/publication/finalised-guidance/fsa-fg13-02.pdf>

An important issue – apart from mis-selling – is the scope of PPI contract and the problem of financial institutions introducing contracts that provide lack of coverage. This question may also be addressed by supervision authorities, although it would not be easy to provide a remedy for unfair practices in this field. However, there is a clear example of Italy where regulation of its supervision authority prescribes the minimum content of life insurance contracts related to mortgages and personal loan products<sup>22</sup> and this may be a good solution to implement in Poland. The minimum contents referred to in the Italian regulation shall represent the basic contract offer and be instrumental to the comparison between the various estimates submitted to the customer. Insurance conditions that are more favourable to the customer may be agreed between parties. It is worth noting that Regulation obligates to provide PPI minimum coverage against the risk of death regardless of the cause, without territorial limits. Exclusion from guarantee of death is possible only if caused by willful misconduct of the policyholder, insured or beneficiaries and, unless otherwise agreed, death by suicide occurred in the first two years from the entry into force of the insurance contract, or of death due to catastrophe risks. The Regulation also defines the insurance benefit and provides that sum insured is equal to or in line with the outstanding balance of the real estate loan or consumer credit. Such a recommendation rewards simple products that are understandable to the consumer and also provide adequate protection. Despite being connected with loads of work, such initiatives are probably much more effective than writing reports and discussing the soft law regulations.

As financial services providers are incomparably stronger contract parties continuing work is needed by regulators and supervision authorities to keep consumers at the heart of insurance business. Effectiveness of such work is essential and hoped for by many consumers of the insurance market.

**Małgorzata Więcko-Tułowicka, Ph.D.**  
*Attorney At Law, Member of EIOPA's IRSG*

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<sup>22</sup> ISVAP (2012) Regulation, no. 40 dated May 3rd, 2012, [http://www.ivass.it/ivass\\_cms/docs/F5091/Regulation%2040.pdf](http://www.ivass.it/ivass_cms/docs/F5091/Regulation%2040.pdf)

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## Wyzwania rynku ubezpieczeń kredytu – analiza tendencji europejskich w kontekście potrzeby wprowadzenia odpowiednich regulacji prawnych w Polsce

Niniejszy artykuł zawiera analizę aktualnych regulacji prawnych w zakresie tzw. ubezpieczeń kredytu w Polsce, jak również głównych tendencji występujących w tym zakresie w Unii Europejskiej, ze szczególnym uwzględnieniem sytuacji w Wielkiej Brytanii. Biorąc pod uwagę fakt, iż ubezpieczenia kredytu stanowiły istotny problem zarówno w Wielkiej Brytanii, jak i w Polsce ważne jest, zdaniem Autorki, przeanalizowanie wniosków, jakie wynikają z dotychczasowych doświadczeń tych państw. W związku z powyższym, Autorka w niniejszej publikacji skupiła się w pierwszej kolejności na analizie zidentyfikowanych na rynku ubezpieczeń kredytu nieprawidłowości, które zarówno w Polsce, jak i Wielkiej Brytanii były podobne, choć podkreślenia wymaga fakt, że Wielka Brytania przeprowadziła dużo bardziej szczegółowe postępowania kontrolne w zakresie identyfikacji nieuczciwych praktyk, jak również bardziej stanowczo informowała o praktykach banków i ubezpieczycieli, które uznaje za niewłaściwe.

Polska, jako członek Unii Europejskiej, podlega zasadom ustanawianym przez Europejski Urząd Nadzoru Ubezpieczeniowego (EIOPA), stąd punkt widzenia tego nadzorca w zakresie ubezpieczeń kredytu jest równie istotną wskazówką w zakresie podejmowanych na szczeblu państwowym decyzji. Artykuł zawiera więc analizę podjętych przez EIOPA działań i wskazanie, jakie zalecenia zostały skierowane do krajowych organów nadzoru.

**Słowa kluczowe:** ubezpieczenia kredytu, bancassurance, ochrona konsumenta, nadzór ubezpieczeniowy.