




Protection of the consumer rights on the Polish insurance market

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Abstract

Motivation: The insurance market in Poland has undergone intensive changes resulting from the development of the market economy model. Poland's membership in the EU imposes adaptation of the domestic legal order to legislation introduced at the level of the European Community. Consequent on this insurance companies function in the constantly changing legal and economic conditions. Apart from the strive to become more competitive, to increase the demand for the insurance services, insurers must care for the correct relationships with their clients and respect their rights resulting from the signed contract. **Aim:** The objective of the article is to analyse the factors determining changes in the protection of consumer rights on the Polish insurance market. For a long time, this issue was a secondary subject of regulatory standards, practices and business initiatives introduced in Poland. Along with the progressive modification of the supervisory system and the introduction of new global solutions, the issue of protection of consumer rights has become particularly important.

Results: The conducted research indicates that the emergence of new threats and challenges faced by the insurance sector significantly affected the scope of protection, range of insurance products, their distribution channels and way in which the consumer rights are respected. The development of cross-sectoral cooperation, the creation of international capital groups, the spread of the bancassurance phenomenon, have tightened the system of supervision over the financial market. It has become necessary to implement new law regulations that will ensure the availability and high quality of insurance services and the safety of using them.

Keywords: protection; consumer; customer's best interest; insurance market

JEL: F65; G22; K12; M14; O31

1. Introduction

The issue of the protection of consumer rights on the insurance market hasn't played an important role so far. Recently, the situation has been improved because of a change in the regulatory and supervisory paradigm, which was a response to the negative phenomena observed in the insurance sector. Absolute faith in the rationality of financial market, pro-development impact of financial innovations — typical for the Washington consensus that has been in force since the 1980s — have given way to a new concept known as the Basel consensus (Monkiewicz & Monkiewicz, 2019, p. 36; Monkiewicz & Orlicki, 2015, pp. 14–19). In this case, the starting point was the assumption that the financial market is unstable, pro-cyclical and characterized by a tendency towards herd behaviour (Baker, 2013, pp. 115–118). Thus, it sometimes requires appropriate public intervention (in the form of a ban on the use of certain solutions regarding financial models, or a ban/restriction of sale of certain products). In this way, huge responsibility and reputational risk were transferred to the state (Monkiewicz & Monkiewicz, 2015, pp. 7–8).

The global crisis resulted in a decline in confidence in financial institutions. It showed that the strongest and most innovative entities had severe problems with their solvency because of the risk management systems that turned out to be ineffective in the unfavourable economic conditions. According to G. Bernardino (Chairman of the European Insurance and Occupational Pensions Authority in years 2011–2021), the prerequisite for regaining trust, the “rule number 1”, is to put the consumer at the “heart” of the activities of every entity operating in financial services (Łańcucki, 2015, p. 4). Insufficient protection of consumer rights may destabilize the entire financial system. Proper construction of the protection's model is in private and public interest (Monkiewicz & Orlicki, 2015, p. 19).

Concerned with the issues of transformations taking place on the insurance market in Poland, the author tried to indicate the factors determining the innovative processes. The analysis focuses on the protection of consumer rights and the modification of the main regulations. Insurers introduce product innovations or use alternative distribution channels. In this way, they try to attract new buyers and increase the loyalty of present customers. Apart from raising the demand for insurance services, an extremely important aspect is proper care for correct relations with the clients, ethical attitude towards them, respecting their rights resulting from the signed contract.

2. Literature review

Freedom to conclude the transactions, autonomy of private interests, responsibility for obligations accepted voluntarily by the parties of the contract constitute the foundation of the market economy, and in the ideological sense, the basis of the classical and neoclassical economics. The assumption of the au-

tonomy of economic entities raises however some doubts, whether the choices made in this way are beneficial to other market players/ the general well-being of the nation (Borkowska & Klimczak, 2015, pp. 30–31). According to Smith (2007, p. 305), the market plays the role of a tool for the realization of the autonomous interests of the consumers.

At the core of neoclassical economics, it is emphasized that the consumer's sovereignty requires protection not only through the market mechanism, but also through a democratic state (Schuman et al., 2007, p. 48). The aim of their mutual action is to eliminate negative phenomena in the form of information asymmetry, monopolistic, discriminatory, dominant, and corrupt practices. Based on economic theory of information, that last one is perceived as a commodity, the production and delivery of which is associated with a specific cost. Thus, economic entities are faced with a choice in terms of the quantity and quality¹ of information (Borkowska & Klimczak, 2015, pp. 31–32). The mentioned theory doesn't give an answer, what kind and amount of information is adequate for the customers. It is assumed that the consumer acts rationally, knows what is good for her/him, regardless of the objective features of individual goods.

The rational consumer paradigm was questioned with the global crisis of 2007–2010. According to behavioural economics, it is said that the buyer, while making decisions, is guided by psychological factors (mood, time of day, trends). Moreover, consumer tends to herd behaviour, is overly trusting and uses much of the available information in a selective manner, often without understanding it (Andenaes & Chiu, 2014, p. 204; Lefeuvre & Chapman, 2017, p. 10; Monkiewicz & Monkiewicz, 2019, p. 40). Activities in the field of protection are focused on the reduction or elimination of the asymmetry of information, that refers particularly to credence goods² (Andersen & Philipsen, 1998, pp. 2–19; Arrow, 1963, pp. 941–973; Borkowska & Klimczak, 2015, pp. 31–34, 42; Darby & Karni, pp. 67–88; Nelson, 1970, pp. 311–329; Tirole, 1994, p. 106). The market failure, on the other hand, justifies state interference in the form of appropriate regulatory measures.

Shaping the protection of customers is a dynamic process. Its course depends on the political cycle, the balance of political forces in parliament, the views of the president and government, and their advisers. In periods of deteriorat-

¹ It is determined by the honesty of market entities. In recent years, the issue of ethics in business has been the subject of following publications: Gasparski (2004, 2012), Klimek (2013), Lewicka-Strzałecka (2006). The concept of ethics in finance has been studied by, among others, Boatright (2010), Czechowska (2016), and Dembinski (2017).

² In their case customer has limited possibility to assess the utility before or even after the purchase. They have high pre-costs and high post-costs of quality detection. As a result, the buyer must rely on third-party judgements or on the seller's credentials, the undisputed record of honesty, competence, and determination with respect to the quality of supply. In comparison to *search* and *experience goods*, that are easy to cope with in microeconomic theory, economists lack adequate concepts of dealing with *credence goods*. One of the criteria for that classification are information costs borne by producers. They may differ depending on the form of competition, its intensity, or the degree of market development.

ing economic activity, exhausting possibilities of increasing profit by innovations, activities in the field of consumer protection are particularly intensified. The result of the certain steps taken by various economic, political, and social entities are intended on counteracting situations in which consumers cannot make sovereign decisions about the purchase of consumer goods and services. In this way arise different obligations of states, enterprises towards consumers. It leads to a conflict of interest. Business groups combine the aspect of protection with the necessity to bear its costs. In the literature, these problems are described as a choice between paternalism, a free-market economy and democracy (Borkowska & Klimczak, 2015, p. 34).

3. Methods

The conclusions presented in the publication are based on the studies of the subject literature, appropriate legal provisions and reports published by Polish Financial Supervision Authority, Financial Ombudsman, European Insurance and Occupational Pensions Authority. The results of the Provident & Spotdata (2019) study³ was compared with the author's own research⁴. Free expert interviews⁵ were conducted to obtain professional comments and to confront them with opinions presented in various publications. Analysis was aimed at finding answers to the following research questions:

1. What is the specificity and a legal status of the consumer?
2. What is the role of the insurance protection aspect and which institutions are responsible for that in Poland?
3. What is the effectiveness of implemented regulations?

³ It was carried out by Alicja Defratyka and Ignacy Morawski (from SpotData), based on the nationwide sample of n=1652 respondents, aged 15–54, between April 29 and May 9, 2019, based on CAWI method.

⁴ The own research was conducted among n=1253 respondents, aged 15–88, selected in accordance with the representation in the population in terms of gender, age, and size of the place of residence (between January and September 2022, mainly with the use of CAWI method).

⁵ Between June 2020 and October 2021, a total of 20 interviews with senior management were conducted (13 in insurance companies: AXA ŻYCIE TU S.A., AXA UBEZPIECZENIA TUIR S.A., TUnŻ CARDIF POLSKA S.A., CRÉDIT AGRICOLE TU S.A., METLIFE TUnŻIR S.A., PKO ŻYCIE S.A., PKO TU S.A., PZU ŻYCIE S.A., PZU S.A., UNIQA TUnŻ S.A., UNIQA TU S.A., TUIR WARTA S.A., TUnŻ WARTA S.A. and 7 among banks: BNP PARIBAS BANK POLSKA S.A., SANTANDER BANK POLSKA, CRÉDIT AGRICOLE, ING BANK ŚLAŃSKI, BANK POCZTOWY, PKO BP, ROYAL BANK OF SCOTLAND). The actions carried out jointly have an impact on the offer of entities, products' distribution, their demand, and respecting consumers' rights.

4. Results

4.1. Legal status of clients of insurance companies

The term consumer has been in use in Poland since April 23, 1964, when in Art. 384 of the Civil Code, its meaning was defined for the first time. Polish regulations refer to solutions based on EU law and emphasize the following features. It is a natural person who performs legal acts with the entrepreneur (not related directly to the conducted business or professional activity) and concludes the contract for a personal (not commercial) purpose. The restriction of the consumer only to natural persons is sometimes treated as an artificial limitation, excluding small entrepreneurs from this group. Additionally, other terms are also used: average consumer⁶ (Czarnecka, 2017, p. 119; Kunkiel-Kryńska, 2012, pp. 54–55; Tischner, 2012, p. 101), a mass consumer, or a reasonable consumer. In the face of such a variety of descriptions, the legislator's efforts to organize the terminology used in relation to buyers of financial services should be appreciated. An important step was an introduction of a new term into Polish law — a client of a financial market entity⁷ (Dąbrowska, 2015, p. 70; Młynarski, 2016). Definition adopted by the legislator includes only natural persons. Legal persons, or organizational units aren't treated as clients. In the case of civil law partnerships, a party concluding contracts and the subject of all other rights and obligations are all partners of the partnership (and not the partnership itself). Being a client may potentially mean any natural person, regardless of whether she/he conducts business activity and whether she/he acts as a consumer in relation to the financial market entity. Such a subjective scope of the provisions was determined primarily by the specificity of insurance services. Persons who are not parties to the insurance contract may act against an insurance undertaking (which applies to insurance concluded on behalf of someone else, third-party liability insurance and life insurance). Farmers are also given a protection, even if they don't have the features of a consumer (Młynarski, 2016).

⁶ The average consumer is well-informed, aware, reasonable, attentive, cautious, critical, perceptive, and independent, as well as: (sufficiently) educated, suspicious and enlightened. The European consumer searches for and uses the information addressed to him, relies on his ability to evaluate the offer of products and services, acts reasonably and prudently, trusts his own market decisions.

⁷ The entities of the financial market are domestic insurance company, foreign insurance company, main branch, pension funds, banks, saving and credit unions, etc.

4.2. The importance of consumer protection and the way, in which it is realized in Poland

The requirement of proper protection of consumers is related to the essence of business insurance, its basic functions and specific nature⁸ (Banasiński, 1993, p. 13; Krukowska, 1998, pp. 167–168; Wierzbicka, 2016, pp. 416–420). This implies the proper exercise of the rights of the agreement's parties. In return for paying the premium, the consumer has the right to expect real and full insurance coverage defined by the boundaries of the signed contract.

Changes in the sphere of consumer rights protection are a response to several phenomena observed on the insurance services market (intersectoral cooperation, digitization of financial services) and the risk connected with them (both for customers and the financial condition of companies). The neoliberal concept of the consumer left alone with financial institutions is abandoned in favor of the idea of a buyer supported by public institutions balancing the unequal powers of the parties on the market (Czechowska, 2017, pp. 35–39; Monkiewicz & Orlicki, 2015, pp. 36–37). New directives⁹ were aimed at solving problems¹⁰ observed on the insurance market (Dąbrowska, 2015, p. 65; Masiukiewicz, 2014, p. 41; Paś, 2021, pp. 161–168; Wierzbicka, 2017, pp. 36–37), indicated by EIOPA (2014, pp. 3–5; 2017, pp. 7, 20–27; 2021, pp. 6–7, 15–32) and Financial Ombudsman (2017, p. 5). Regulations introduced in Poland enforce the provisions of European law (Dąbrowska, 2015, p. 65). Strategy focused primarily on the needs of the consumer, protection of his rights, with simultaneous care for the solvency of financial institutions deserves appreciation but it's complicated in realization. Insurance companies are institutions of social trust (Ostrowska, 2012, p. 139), but more often perceived in this way only in theoretical considerations due to the collapse of the sense of mission and ethos of their activities (Monkiewicz & Monkiewicz, 2015, p. 10). In Poland, there are many institutions authorized to take actions in the field of irregularities in the activities of financial market entities, reported by their clients. After analyzing the signaled problem, they decide to implement actions according to their competences. An architecture of the consumer rights protection system is presented in the Scheme 1.

⁸ The function of insurance protection has a superior position, which results in further functions, including preventive and financial.

⁹ MIFID II, Solvency II, IDD, CDR, PRIIPs, KID which introduce the concept of acting in the best interest of a customer.

¹⁰ Inter alia: (1) insufficient transparency of marketing materials, often misleading; (2) lack of reliable information on costs and fees, on return on investment; (3) lack of knowledge, skills, and confidence, which customers need to properly evaluate or compare insurance products; (4) misselling, unethical seller's practices; (5) the operations of financial pyramids; (6) a continuing upward trend in terms of non-unjustified refusals to pay the benefit, disputes about the amount of compensation and delays in their payment.

4.3. Effectiveness of changes in the protection of consumer rights on the insurance market

Although changes in the legislation governing the protection of consumer rights are generally perceived as a positive trend on the insurance market and the benefits arising from them are not questioned, interviewed experts are concerned about the possibility of implementing provisions established at the EU level into national law. They indicate the risk of the so-called gold-plating¹¹. The research carried out by CSFI (Center for the Study of Financial Innovation) in 2015 highlighted the widespread concern of insurers, insurance intermediaries and entities that cooperate with them, about the effects of the “regulatory flood” which in recent years is experienced by the insurance industry (Łańcucki, 2015, p. 15). The adjustment process generates costs (related to meeting the new capital requirements), which may have a negative impact on profitability and sales volume. In addition, it consumes a lot of additional management time, which is not conducive to increasing competitiveness and undertaking innovations.

The introduction of new regulations — in an unfavorable economic climate for the entire financial sector — creates the risk of an intensification of the tendency to maintain or improve profitability at all costs. It turns out that in practice financial institutions succumb to the same temptations of greed and dishonesty as other market players. (Czechowska & Zatoń, 2018, p. 290; Monkiewicz & Monkiewicz, 2015, p. 10). It may cause further weakening of the consumer’s position and affect the quality of the services provided within the insurance sector. New rules may result in the elimination of smaller insurance companies and reduce the variety of products offered.

According to representatives of insurance companies, Europe has gone too far in consumer protection. There is a risk that clients won’t be able to use additional instruments because they won’t fully understand them. They emphasize that insurance companies are aware of the importance of a well-informed consumer. However, more information does not necessarily mean the better one. Providing too much data can distract clients from the most important issues (e.g., coverage and disclaimer of liability). Thus, attention should be paid to the quality rather than the amount of information given to the clients¹². Their problems may also be generated by unfair market practices. Sometimes employees strive for effectiveness at all costs. They focus on the advantages of a product

¹¹ The emergence of a situation in which national regulations will impose more stringent requirements on insurance companies than it would result from Community regulations.

¹² According to Insurance Europe’s estimates, a consumer buying an online insurance investment product from a broker had to receive about 75 different types of information before concluding a contract. However, with the entry into force of the provisions of the PRIIP, the Solvency II and the IDD, this number increased to 147.

and do not inform about the risk or additional costs, and do not explain the complicated content of the regulations (Czechowska & Zatoń, 2018, p. 290)¹³.

The phenomenon of “information asymmetry” can be prevented or minimized to some extent by educational activities¹⁴. These tasks are carried out in Poland by PFSA, Financial Ombudsman, OCCP, Insurance Education Foundation (in the form of permanent cooperation with scientific communities, conferences, trainings, seminars, expert duty hours, or through communication in the media, including social ones). However, it should be remembered that this process will bring the desired results if it is conducted in a thoughtful and systematic manner. The research cited by J. Łańcucki (2015, p. 18) shows that “the amount of knowledge transferred as part of financial education at various levels: primary school, secondary school, higher education, adult education, grows old quickly and after 20 months has a negligible impact on consumer behavior”. Increase of knowledge and insurance awareness can be favored by the state’s support for the activities of other public institutions, non-governmental organizations (especially the consumers’ federations) and the insurance companies. Their actions should be aimed at making consumer aware not only of his rights, but also of the obligations arising from the insurance contract.

The results of the Provident, & Spotdata (2019) study and own research of the author confirm the importance of above-mentioned aspects. Regardless of age, the surveyed Poles most often believe that schools should be responsible for financial education. 51 % of the interviewed Poles declare rather average level of their knowledge related to finance and protection of their rights. Saving principles (43%), investing (38%) and consumer protection (35%) are the main areas where Poles want to deepen their skills. Baby Boomers search information in TV, radio, or leaflets (46%), while X and Y mainly via net (42% and 39%). Generation Z, commonly perceived as the “living online”, easily use finance on Internet, but first consult their friends or family (44%). Moreover, they become reasonable citizens, being also aware of the necessity to work longer in the future to avoid the financial exclusion.

Interviewed experts indicate that an offer should be constructed according to simple and transparent rules. Its development requires customer orientation and an increase of the staff’s knowledge in the field of psychology of contact with the consumer. Then financial entity’s employees can support the client with each decision if they act ethically and do not use misselling.

¹³ In this case the so-called *particularly vulnerable consumers*, who due to difficulties in accessing and understanding relevant information, can be easily misled.

¹⁴ Financial education is defined by the OECD (2005, p. 4) as “the process by which consumers and financial investors improve their understanding of financial products, concepts and risks, and through information, instructions, objective advice, develop skills and confidence to become more aware of financial risks and opportunities, know where to seek help, and take other effective actions to improve financial well-being”.

5. Conclusion

Poland's membership in the EU requires constant adaptation of the domestic legal order to modifications introduced in legislation at Community level. EU regulations impose additional obligations on insurers to ensure an appropriate level of protection of consumer rights. The new regulations emphasize the aspect of insurers' solvency. Any threat to the company's financial stability may significantly affect the trust of its customers and the level of services provided.

Technological progress has contributed to the introduction of alternative service distribution channels, thanks to which financial institutions gain recipients who particularly value service time or the possibility of concluding a contract without necessity to go to the insurer or bank in person. On the other hand, technological innovations pose a significant challenge in the context of the financial institutions' operations. They must ensure the security of their clients' data and the transparency of the terms based on which the contract will be signed.

To sum up, it should be emphasized that the legislator's care (both at the EU and national level) to create an appropriate system of consumer rights protection on the insurance market is a desirable initiative. The application of the new regulations can certainly raise many questions and doubts. It remains to be hoped that in practice they consider the main goal of the implemented standards — protection of the weaker side of the legal relationship. The analysis shows how quickly the financial market, including the insurance market, is evolving. The effectiveness of the new regulations depends on the law's ability to keep pace with these changes, as well as the ability to anticipate future trends. The created law should be open to the future and consider the dynamics of the ongoing political, social, and economic transformations. The improvement of its effectiveness will be led by the legislator's keeping common sense and moderation in the number of implemented standards.

The obligation of insurers to inform customers must be focused primarily on the appropriate quality and transparency of the provided data. Facing an excessive amount of information may lead to irrational choice. The effective use of available details and their understanding should be fostered by educational activities initiated by various institutions. Then the consumer can make the right decision, in accordance with her/his real needs and purchasing possibilities.

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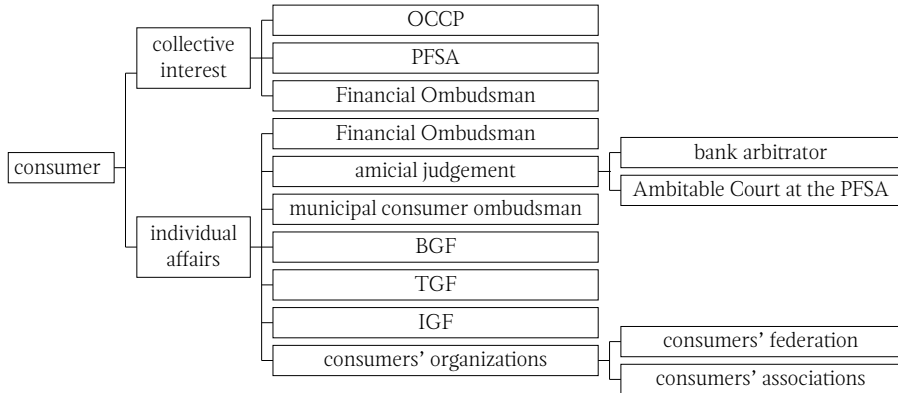
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Appendix

Scheme 1.

Institutions undertaking activities in the field of consumer rights protection in Poland



Source: Own preparation based on Czechowska (2017, p. 41).

