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Consumer Protection Mechanisms in the Polish Market of Unit-linked Insurance Products

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ABSTRACT

The insurance market in Poland is developing dynamically. Insurance companies offer customers various products, including a unit-linked insurance plan/product (ULIP), which combines protection and investment functions. Customers' insurance premiums are invested in these funds, and their assets are divided into units. There are risks for consumers in the ULIP market: a need for financial literacy (regarding products and choosing the right product for the financial situation and knowledge of the risk) and market imperfections (product design, sales practices, investment practices). Given the above rationales for tighter regulation, the regulations for these products have been amended with the objective of increasing consumer protection. The paper presents a descriptive analysis of the market and a comprehensive discussion of the regulatory changes in consumer protection for unit-linked insurance products in Poland in 2014-2021. The study consists of two parts. The first part presents the characteristics of unit-linked insurance products and their popularity in the European and Polish markets. The second part describes regulatory changes in the Polish market regarding protecting consumers purchasing ULIP products. The last part of the article concludes the conducted study.

Keywords: consumer protection, unit-linked life insurance products, insurance in Poland

1. Introduction

The insurance market in Poland is developing rapidly. Insurance companies offer various products to customers, including unit-linked insurance plan/product (ULIP), which combines a protection function with an investment function. The hallmark of a unit-linked life insurance product is, on the one hand, to reduce the insurance component and, on the other hand, to give the investment component greater importance. The basis of the design of this type of product is insurance capital funds. Customers'

funds paid for insurance premiums are invested in these funds, and their assets are divided into units. The fund's investment activities are carried out at risk and for the policyholder's account. In practice, consumers buy these products at their own risk without knowing the final investment effect, bearing the risk of losing part or even all of the funds paid. The accumulated are invested in various financial instruments. The functioning of ULIP products is accompanied by problems relating to consumers. The following could be noted:

- The problem of passing the business risk to consumers. It refers to the regulations related to the liquidation fees.
- The problem of lack of knowledge for the products. It refers to the regulations/recommendations for insurers to publish more information.
- The problem of lack of knowledge for their (consumers')

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- financial situation. It refers to the recommendations for selling products adequate to the needs of consumers.
- The problem of market misconduct. It refers to the regulations for prudent product design and selling practices and to the court judgements.

Thus, there are risks for consumers in the ULIP market both: in the form of a lack of financial literacy (regarding products and choosing the right product for the financial situation and knowledge of the risk) and in the form of market imperfections (product design, sales practices, investment practices). Considering the reasons mentioned above for stronger regulations (the complicated construction of the ULIP for consumers, the lack of financial knowledge and potential market failures), the regulations concerning these products have been modified. By changing the regulations, the caretaker of financial markets in Poland pursued the goal of increasing consumer protection.

The article provides a descriptive analysis of the market and an extensive review of the consumer protection regulatory changes related to unit-linked insurance products in Poland in 2014-2021. The paper informs about the regulatory changes in Poland's ULIP consumer protection mechanisms. The study consists of two parts. The first part presents the characteristics of unit-linked insurance products and their popularity in the European and Polish markets. The second part describes changes in regulations in the Polish market to protect consumers purchasing ULIP products. In the article's final part, conclusions from the study are formulated.

II. The Relevance and Importance of Unit-linked Insurance Products

ULIPs are insurance products with a complex construction and operating mechanism. They provide the consumer with a required protection. The peculiarity of insurance products, their intangible form or complex structure makes it difficult for customers to understand the offer (Pisarewicz et al., 2020). Help may be needed to assess the risk associated with purchasing such a product¹.

Such an assessment of the ULIP product is highlighted by Lakhani (2021), recognising that after many years of ULIPs on the market, customers may need to be made aware of the intricacies of their operating mechanisms. Many authors have studied unit-linked insurance products. They have analysed their popularity, the motives influencing customers' choices, the level and specificity of regulation, and the practice of misselling occurring in sales. The issue of misselling in the Indonesian market, for example, was described by Yusuf and Wahyuningati (2022). Ostrowska-Dankiewicz (2017), on the other hand, focused on describing the problems occurring with unit-linked products, pointing out not only misselling but also low fund efficiency. The subject of the study by Wankhede et al. (2021) was factors influencing retail investors' decisions to buy unit-linked insurance products. Shanmuganathan et al. (2020) analysed ULIP as an investment solution and studied the level of investor satisfaction with this insurance product and the services offered by insurance companies. The issue of customer rights and the benefits of acquiring ULIP products was dealt with by Dimitrov (2022). Homa (2017) analysed the benefits of purchasing this type of product. The attention of Ciumas et al. (2016) was devoted to a study of guarantee issues in unit-linked products, while the study of unit-linked life insurance products, as a new type of life insurance products, especially in developing countries, was dealt with by Dacev (2017).

It is worth mentioning that ULIPs are products often chosen by customers. They are an alternative to other savings methods, such as bank deposits. In the case of ULIPs, however, the level of return on investment needs to be defined in advance. Therefore, they can provide higher returns than a bank deposit, but at the same time, there is a higher exposure to the investment risk. Remembering that these are long-term products is also essential, which means freezing the funds for a more extended period. ULIPs combine features of investment and insurance products, so they have a broader scope, which may be attractive to customers. A SWOT analysis of ULIP products is presented in Figure 1.

In order to show the importance of unit-linked insurance

insurance capital fund from January 2022
https://www.knf.gov.pl/knf/pl/komponenty/img/Stanowisko_76997_prezentowanie_oplat_w_umowach_ubezpieczenia_na_zycie_z_UFK_76997.pdf (30.09.2022).

¹ The Position of the Office of the Polish Financial Supervision Authority on the presentation of fees in life insurance contracts with

Strengths <ul style="list-style-type: none"> - An alternative way of saving money. - A product combining an investment and insurance component. - Possibility to define individual parameters of the contract (amount of premium, selection and change of funds in which money is invested). 	Weaknesses <ul style="list-style-type: none"> - The unpredictable result of the investment and so the is the possibility of losing the invested funds. - Funds are not covered by a system of guarantees. - The need to allocate funds for an extended period of time. - The cost of withdrawal before the end of the contract. - Complicated product construction and insufficient product knowledge among customers.
Opportunities <ul style="list-style-type: none"> - Continuous and regular monitoring of the contract terms and conditions by the supervisory authorities and institutions supporting consumers protecting of their rights. - Implementation of legal changes to eliminate practices that abuse consumers' rights. 	Threats <ul style="list-style-type: none"> - Identification of an unacceptable condition of agreements after a certain period time. - Regulatory changes should be implemented more quickly. - The risk of misselling. - Unexpected circumstances that may have an impact on investment results.

Source: author's analysis

Figure 1. SWOT analysis of unit-linked products

products in the insurance market, let us analyse the information on the level of premiums paid by insurance companies to purchase such products. On the other hand, the areas of risk for consumers concerning these products, where intervention in the field of consumer protection was required, were indicated in regulations. In more than a dozen regulations/recommendations in the 2014-2021 period, the market for unit-linked insurance products was adjusted in such a way as to increase the safety of their purchasers through regulatory adjustments and recommendations, as well as decisions by those involved in the insurance field and the supervisors responsible for its operation. The scale of consumer problems in relation to the purchase of unit-linked insurance products is illustrated by the information published by the Financial Ombudsman.

It is worth taking a closer look at these products because their share of the life insurance market is substantial. In order to identify the importance of ULIP products, annual premium revenue (using gross premiums written) in unit-linked contracts and in the total life insurance market was studied. Information was analysed for 18 EU countries for which values of premiums written for the two categories, as mentioned above, were available². The study of the size of this market covered a five-year period from 2016 to 2020. The results are presented in

Table 1. In 2020, the value of premiums written in unit-linked contracts (taken together) was €149,670 million. However, the ratio of premiums written by unit-linked contracts to premiums written in the total life insurance market was 23% in 2016 and grew in subsequent years, reaching 32% in 2020. Meanwhile, in Poland, the share of premiums collected from this product declined from 43% in 2016 to 28% in 2021, connected to their poor rating and lack of confidence among customers.

Figure 2 shows the gross premiums written for ULIP products and life insurance in general in Poland. From 2012-2017, the premiums written for ULIP products ranged from PLN 10.3 billion to PLN 13.1 billion. The most significant sales of this type of insurance occurred in 2013. In 2018-2021, there was a noticeable decline in spending on ULIPs, with premiums written for ULIP products decreasing from PLN 7.9 billion in 2018 to PLN 5.7 billion in 2021³. The years in which the highest share of gross premiums written for ULIP products concerning premiums for life insurance was generally noted were from 2013 to 2017, amounting to more than 40% during this period and peaking in 2015 at 47%. In the

² <https://www.insuranceeurope.eu/> (05.10.2022).

³ Unit-linked insurance is a long-term product, often paid as a regular premium. The conclusion of a contract thus causes an obligation to pay premiums not only in the year the contract is taken out but also in future years. Therefore, the sum of premiums customers pay in a particular year also includes premiums paid under contracts signed in previous years.

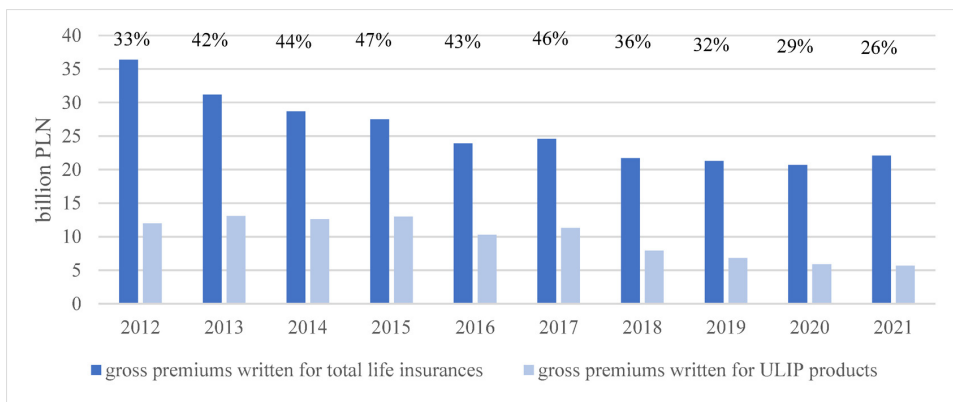
Table 1. Share of Premiums written in unit-linked contracts in EU countries, 2016-2020

Country	Premiums written	2016	2017	2018	2019	2020
BE	ULIP	2 209	3 169	3 517	3 325	3 439
	Total	14 852	14 572	15 551	16 137	15 058
	Share	15%	22%	23%	21%	23%
BG	ULIP	30	36	40	47	55
	Total	185	180	174	179	173
	Share	16%	20%	23%	26%	32%
CH	ULIP	1 619	1 593	1 730	1 764	1 834
	Total	28 557	25 287	26 108	26 917	23 003
	Share	6%	6%	7%	7%	8%
CZ	ULIP	969	1 012	980	752	695
	Total	2 083	2 117	2 037	1 857	1 773
	Share	47%	48%	48%	40%	39%
DE	ULIP	15 033	15 469	29 423	34 860	36 547
	Total	90 774	90 643	92 607	103 210	103 232
	Share	17%	17%	32%	34%	35%
ES	ULIP	2 261	3 364	3 462	4 105	4 158
	Total	31 608	29 730	29 020	27 398	21 773
	Share	7%	11%	12%	15%	19%
FI	ULIP	3 813	3 813	3 660	5 225	3 354
	Total	18 667	19 158	19 463	21 954	18 155
	Share	20%	20%	19%	24%	18%
FR	ULIP	30 551	42 926	42 136	39 981	40 240
	Total	145 403	152 238	152 323	138 895	111 099
	Share	21%	28%	28%	29%	36%
GR	ULIP	273	299	322	371	576
	Total	1 911	1 877	1 875	2 199	2 085
	Share	14%	16%	17%	17%	28%
HR	ULIP	64	74	61	57	40
	Total	389	401	430	420	357
	Share	16%	18%	14%	14%	11%
HU	ULIP	29	26	23	21	22
	Total	1 411	1 477	1 477	1 556	1 498
	Share	2%	2%	2%	1%	1%
IT	ULIP	43 458	51 501	47 432	44 679	44 250
	Total	125 022	120 955	123 113	126 737	119 050
	Share	35%	43%	39%	35%	37%
MT	ULIP	37	38	43	45	46
	Total	357	394	415	378	361
	Share	10%	10%	10%	12%	13%
NO	ULIP	3 603	3 740	3 777	4 488	4 372
	Total	10 161	9 458	10 087	11 096	9 704
	Share	35%	40%	37%	40%	45%

Table 1. Continued

Country	Premiums written	2016	2017	2018	2019	2020
PL	ULIP	2 341	2 701	1 843	1 593	1 325
	Total	5 402	5 875	5 045	4 950	4 669
	Share	43%	46%	36%	32%	29%
PT	ULIP	1 686	2 187	1 767	1 704	1 909
	Total	6 676	7 090	8 123	6 993	4 559
	Share	25%	31%	22%	24%	42%
RO	ULIP	104	119	109	142	123
	Total	447	517	535	573	569
	Share	23%	23%	20%	25%	22%
SE	ULIP	6 296	6 556	6 454	6 384	6 684
	Total	21 320	22 959	24 103	24 674	28 671
	Share	30%	29%	27%	26%	23%
ALL	ULIP	114 376	138 623	146 779	149 542	149 670
	Total	505 224	504 928	512 485	516 126	465 789
	Share	23%	27%	29%	29%	32%

Source: based on data from <https://www.insuranceeurope.eu/> (05.10.2022). (current exchange rates, in million euro)



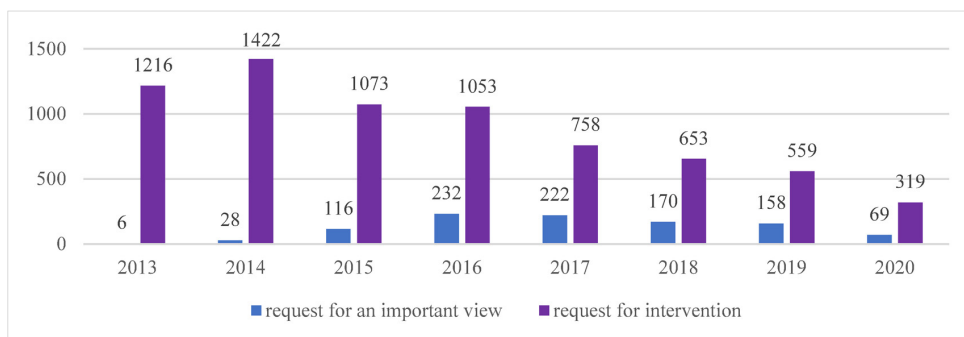
Source: based on the Polish Chamber of Insurance (PCI) reports - Insurance in Numbers. The insurance market in Poland for the following analysed years.

Figure 2. Premiums written for ULIP products and total life insurance products in Poland, 2012-2021

following years, the share began to decline and decreased from 36% in 2018 to 26% in 2021. However, this type of product still accounts for a substantial share of the total life insurance group.

Based on the Financial Ombudsman Reports, it was determined that in 2013-2016 consumers submitted more than a thousand requests per year for intervention. The most significant number of applications (1,422) was filed in 2014. After 2016, the number of requests for intervention began to decrease significantly (although a decline was

already evident from 2015), and in 2020 there were only 319. See Figure 3. As for requests for an important opinion in a unit-linked case, during the period analysed from 2013-2020, the number gradually increased from six in 2013 to 232 in 2016. Then, as in the case of requests for intervention by the Financial Ombudsman, the number began to decrease. In 2020, there were 69 requests submitted by consumers to the Financial Ombudsman for a critical opinion. There has been a reduction in applications for an important view and intervention over the



Source: Financial Ombudsman Position dated 16.07.2021 <https://rf.gov.pl/2021/07/16/rzecznik-finansowy-pozytywnie-o-intervencji-produktowej-knf/> (05.10.2022)

Figure 3. Number of requests from consumers to the Financial Ombudsman for important opinions and interventions, 2013-2020

period under review. However, the decrease in demand for ULIP over this same period must also be taken into account.

III. Review of Implemented Regulations Designed to Protect the Consumer in the Polish Market

The conclusion of insurance contracts, including ULIP, is regulated by law. The high popularity of this type of product and the continuous development of the offer generates the need for constant control and updating regulations to protect customers who decide to purchase ULIP. Consumers are protected on many levels through participation in the unit-linked market supervisory process carried out by a number of entities. On the EU-wide scale, the European Insurance and Occupational Pensions Authority (EIOPA) is the European supervisory authority. A key objective of EIOPA's operation is to ensure consumer safety, and one of its main tasks is to create rules for the supervision of the insurance market⁴. In the Polish market, the tasks of the primary supervisor in this field belong to the Polish Financial Supervision Authority (PFSA). Other entities also participate in the process: the Office of Competition and Consumer Protection (OCCP) and the Financial Ombudsman (FO offices responsible

for protecting customers of, among others, insurance market entities. Also of significant importance for the functioning of the insurance market is the Polish Chamber of Insurance (PCI), whose tasks, as a statutory organization of industry self-government, include⁵: supporting the legislator in forming of insurance law, cooperation with the above-mentioned supervisory authorities and consumer protection, cooperation with foreign institutions for the benefit of Community law and raising insurance awareness among the society.

This section of the article presents chronologically (2014-2022) the main changes that have occurred in the ULIP product market in the context of consumer protection, thanks to the entities mentioned above. The changes were carried out by the Polish Chamber of Insurance (PCI), Financial Ombudsman (FO), Office of Competition and Consumer Protection (OCCP), The Polish Financial Supervision Authority (PFSA), EIOPA, as well as the Minister of Finance (MF).

A. Recommendation of Informational Good Practices for Life Insurances related to Insurance Capital Funds (2014)⁶

On April 14, 2014, the Polish Chamber of Insurance

⁴ https://www.eiopa.europa.eu/browse/consumer-protection_en (03.10.2022).

⁵ <https://piu.org.pl/organizacja/> (03.10.2022).

⁶ Recommendation of good information practices for life insurance related to insurance equity funds dated 14.04.2014. Microsoft Word - REKOMENDACJA_UFK_nowelizacja - 14 kwietnia 2014 (piu.org.pl) (28.09.2022).

(PCI) issued the Recommendation of Informational Good Practices for Life Insurance Related to Insurance Capital Funds. The document does not have the character of a mandatory law. It is a list of recommendations for insurance companies to disseminate good practices for transparently informing consumers about the terms of unit-linked contracts. The recommendation indicates the information that an adequately constructed Product Card should contain, including information on all fees associated with the service. In addition, the recommendation mandated identical naming of fees for each insurer. What is essential, the PCI recognized that each Product Card should contain information about the risks associated with the investment. It was recommended that the customer be provided with simulations of the value of the insurance, made available in three variants: base, reduced return, and increased return.

B. The Act on Insurance and Reinsurance Activity (2015)⁷

The draft of the Act noted that unit-linked insurance products are highly complicated and contain elements of an investment nature. The purpose of the amendments was to address the disproportion in customer protection in the capital and insurance markets by introducing additional obligations on insurance companies, resulting in better consumer protection as a consequence. The Law introduced an obligation for insurance companies to analyse customer needs. Consumers were allowed an opportunity to withdraw from the contract before its end, i.e. within 60 days of receiving the annual information for the first time⁸. In addition, the Law introduced significant regulations regarding the early liquidation fee. It was specified that the insurance company should pay the consumer a benefit in the number of the value of the premiums paid, reduced by no more than 4%. In addition, an obligation was imposed on insurance companies to post general insurance terms and conditions on their websites.

⁷ Act of 11.09.2015 - The Act on Insurance and Reinsurance Activity (Journal of Laws of 2015, item 1844).

⁸ The information concerns the amount of benefits due under the concluded insurance contract, if the amount of benefits changes during the term of the insurance contract, as well as information on the insurance surrender value if there is an insurance withdrawal under the concluded insurance contract.

C. Report of the Financial Ombudsman (FO) Life Insurance with Insurance Capital Fund (2016)⁹

The FO Report from March 2016 on unit-linked products highlighted the inadequacy of preventive measures by supervisory institutions to ensure consumer protection in the Ombudsman's view. The issue of the liquidation fee, which violates the interests of consumers, was highlighted. Reference was made to the long-term nature of such contracts, the possibility of termination of contracts by customers, as well as the issue of misselling. Numerous court proceedings pending in cases of unit-linked contracts were pointed out. A large number of applications received by the FO in unit-linked insurance cases was identified, indicating the importance of this problem. For example, in 2015, 172 requests from consumers were submitted to the Financial Ombudsman to provide a statement containing a substantial view of the case, 116 concerned unit-linked products¹⁰.

D. Regulations of OCCP on Liquidation Fee (2016)¹¹

One of the biggest problems reported by consumers to various institutions regarding unit-linked products was liquidation fees. Contracts contained provisions for very high fees in case of resignation before the indicated term. The consumer could lose as much as 80%-100% of the amount paid in, especially during the first term of the contract. As the contract term continued, the share tended to drop, but early resignation was usually connected with incurring costs. In the situation of unit-linked agreements signed for an extended period (10-15 years), the consumer was often left in a difficult situation, e.g. when they needed money for private purposes and wanted to withdraw from the product. Then, by paying a hefty liquidation fee, they made a loss. The OCCP took steps to regulate liquidation fees, accusing insurance companies of trans-

⁹ Life insurance with insurance capital fund. Financial Ombudsman Report Part II, March 2016. https://rf.gov.pl/wp-content/uploads/2020/05/UFK_raport_2016.pdf (03.10.2022).

¹⁰ https://rf.gov.pl/wp-content/uploads/2020/05/UFK_raport_2016.pdf (03.10.2022).

¹¹ https://uokik.gov.pl/aktualnosci.php?news_id=12288 (03.10.2022). <https://uokik.gov.pl/html/finanse/ufk/kalendarium/ubezpieczyciele-0bnizaja-oplaty-likwidacyjne.html> (03.10.2022).

ferring costs to customers that should be considered a business risk. In March 2016, OCCP reported¹² the finalisation of proceedings in this matter, processed in the case of 17 insurance companies that committed themselves voluntarily to reduce the number of liquidation fees in already signed contracts and eliminate liquidation fees from new agreement templates. In the case of contracts, the first year of its term, for which the fee was the highest and amounted to about 80%-100% of the premiums paid, there was a decrease in the fee to a level of about 15%-25%. The OCCP reported on agreements in effect since January 1, 2017, under which 16 insurers were supposed to reduce liquidation fees for specific insurance products with an investment element¹³.

E. PFSA Reminds Insurance Companies to Publish General Insurance Terms, Conditions, and other Contract Templates on Websites (2017)¹⁴

PFSA has undertaken numerous activities to ensure excellent consumer protection in the unit-linked service market. As part of these activities, in April 2017, PFSA sent a letter to all insurance companies, reminding them of the obligation, i.e. the Insurance and Reinsurance Activity of 2015, to post general terms and conditions of insurance and other contract templates on the websites of insurance companies as of 01.01.2016. Such a solution was intended to provide consumers with access to information about the concluded contracts and to unify how they are presented by increasing the transparency of offers and the possibility of comparing them.

F. Regulation of the Minister of Finance on the Maximum Amount of Fixed Remuneration of a Company for Managing an Open-ended Investment Fund or a Specialized Open-ended Investment Fund (2018)¹⁵

The Finance Minister's Regulation of 2018 implemented, starting in 2022, a limitation of the maximum amount

of a fund company's fixed remuneration for fund management to 2% of the average value of the fund's net assets per year. The project's justification indicates that the recommended solutions to the TFI remuneration rules, also affecting unit distributors, will increase the protection of investors' interests, enabling investment in units to be made on fair and attractive terms. The draft also notes that remuneration for fund management, including remuneration for distributors, affects the rate of return on unit-linked product investments.

G. PFSA's Position on Product Customization and Consumer Knowledge of Risk (2018)¹⁶

In a position issued in 2018, PFSA noted that the product offered to the consumer should match the consumer's needs and knowledge of the risks involved in purchasing a unit-linked product through an appropriate procedure¹⁷, carried out before concluding an insurance contract. The procedure includes an analysis of the consumer's financial situation and life insurance knowledge and experience by conducting a so-called needs survey. Subsequently, the provider of the unit-linked product should assess whether the insurance contract suits the customer's needs. If not, the consumer should be informed. The Regulation, as mentioned above, is complemented by the Regulation of the Minister of Finance guidelines of February 2, 2016, on the minimum scope of data to be included in a questionnaire on the policyholder's needs. This Regulation implies that the product offeror should obtain information from the customer regarding the level of investment risk that he or she can accept when deciding to enter into an insurance contract.

¹² https://uokik.gov.pl/aktualnosci.php?news_id=12288 (03.10.2022).

¹³ <https://uokik.gov.pl/html/finanse/ufk/kalendarium/ubezpiezczyciele-olnizaja-oplaty-likwidacyjne.html> (03.10.2022).

¹⁴ Letter from the KNF, 04.04.2017. [stanowisko_UKNF_publicacja_OWU_przez_ZU_4_04_2017_50687.pdf](https://www.knf.gov.pl/aktualnosci/publikacje/2017/04/04/2017_50687.pdf) (03.10.2022).

¹⁵ Regulation of the Minister of Finance of December 13, 2018, on the maximum amount of fixed remuneration of a company for managing an open-ended investment fund or a specialized open-ended investment fund.

¹⁶ KNF's Position on the Application of Article 21 of the Act on Insurance and Reinsurance Activity https://www.knf.gov.pl/knf/pl/komponenty/img/Stanowisko_w_sprawie_stosowania_art_21_ustawy_o_dzialalnosci_ubezpieczeniowej_i_reasekuracyjnej_63502.pdf (03.10.2022).

¹⁷ It was introduced in Article 21 of the Act on Insurance and Reinsurance Activities, dated September 11, 2015.

H. Position of PFSA on Analysing the Needs of Customers and Offering Products Adequate to the Needs, as well as Selecting Assets and Following the Prudent Investor Principle (2019)^{18,19}

In 2019 PFSA again highlighted the need for consumer protection in the context of analysing customers' needs and offering products adequate to meet their needs, as well as asset selection and adherence to the prudent investor principle. The supervisory authority stressed the importance of assessing the client's investment profile and identifying the client's acceptable level of risk. PFSA pointed out that it is necessary to ensure effective internal control mechanisms for the distribution of the products described, to activate monitoring tools, and to ensure that information is presented to consumers in a reliable manner. In addition, it stressed the obligation of product distributors to take measures to eliminate improper practices and provide reliable and understandable information, especially regarding the purpose of the contract, its duration and the risks associated with the purchased product.

I. EIOPA's Supervisory Statement on Assessment of Value for Money of Unit-linked Insurance Products under Product Oversight and Governance (2021)²⁰

EIOPA, in the period 13.04.2021-16.07.2021, conducted a public consultation on unit-linked products. EIOPA stressed that these are the dominant insurance-based investment products on a European scale. As stated on the website - according to EIOPA's estimate, unit-linked products account for a significant portion - over EUR 2.8 trillion of the total asset under management in Europe²¹.

EIOPA assumes that consumers should be assured that the investment insurance products offered to them have a favourable ratio of costs and fees in relation to benefits. The EIOPA report²² pointed out that meeting the requirement - value for money should manifest itself in offering consumers products tailored to their needs, goals and characteristics of the target market and should not adversely affect customers' interests. It was noted that it is crucial for relevant authorities to monitor the market for unit-linked products and “ensure that customers receive fair value unit-linked product”²³.

J. Product Intervention - PFSA Decision (2021)²⁴

In the middle of 2021, a crucial decision of the PFSA arrived, representing a product intervention in the market for insurance investment products - life insurance contracts linked to an insurance capital fund. This is one of the most critical changes in the system of offering unit-linked products recorded during the period under review. The decision took effect in 2022. The PFSA made the following changes²⁵:

- prohibiting the marketing, distribution and sale of insurance investment products and life insurance contracts linked to an insurance capital fund, for which the average return is less than 50% of the interest rate for period N according to the relevant risk-free rate term structure.
- prohibiting the marketing, distribution and sale of insurance investment products and life insurance con-

ering-better-value-money-consumer-centric-way_en (03.10.2022).

¹⁸ Position of the Office of the Financial Supervision Authority on insurance from group 3 of division I of the Appendix to the Law of September 11, 2015, on insurance and reinsurance activity https://www.knf.gov.pl/knf/pl/komponenty/img/Stanowisko_UKNF_dot_UFK_66545.pdf (03.10.2022).

¹⁹ KNF's Decision No. DNM-DNMZWP.6065.79.2021, dated 15.07.2021. - product intervention https://dziennikurzedowy.knf.gov.pl/DU_KNF/2021/16/akt.pdf (03.10.2022).

²⁰ EIOPA's Supervisory Statement on assessment of value for money of unit-linked insurance products under product oversight and governance, 30.11.2021 (03.10.2022). https://www.eiopa.europa.eu/content/eiopa-sets-out-framework-delivering-better-value-money-consumer-centric-way_en (03.10.2022).

²¹ <https://www.eiopa.europa.eu/content/eiopa-sets-out-framework-deliv>

²² Supervisory statement on assessment of value for money of unit-linked insurance products under product oversight and governance, 30.11.2021. https://www.eiopa.europa.eu/document-library/supervisory-statement/supervisory-statement-assessment-of-value-money-of-unit_en (03.10.2022).

²³ Supervisory statement on assessment of value for money of unit-linked insurance products under product oversight and governance, 30.11.2021. https://www.eiopa.europa.eu/document-library/supervisory-statement/supervisory-statement-assessment-of-value-money-of-unit_en (03.10.2022).

²⁴ KNF's Position on the implementation of the obligations referred to in Article 8(1), (3) and (4) and Article 2(3)(2) of the Act on Insurance Distribution by insurance distributors https://www.knf.gov.pl/knf/pl/komponenty/img/Stanowisko_praktyki_%20dystrybucja_1-10-2021.pdf (03.10.2022).

²⁵ Based on the announcement of the KNF to issue a decision on prohibitions on the marketing, distribution and sale of insurance investment products - life insurance agreements if they are linked to an insurance capital fund (product intervention). https://www.knf.gov.pl/komunikacja/komunikaty/articleId=74171&p_id=18 (03.10.2022).

tracts, if they are associated with an insurance capital fund, where the rules and investment restrictions set out in the fund rules do not include the prohibition of investment of funds in contingent convertibles²⁶, involving high risk.

K. Position of the PFSA on the Implementation of the Duties of the Act on Insurance Distribution by Insurance Distributors (2022)²⁷

In this position, PFSA referred to the issue of the distribution of insurance products. Attention was paid to analysing the customer's requirements and needs for insurance coverage from the perspective of matching a product to the customer's needs and knowledge of the product. The supervisor's goal was to eliminate inappropriate sales practices and control entities' responsibility in distributing insurance products.

L. PFSA's Position on how to Present Fees in Life Insurance Agreements with Insurance Capital Fund (2022)

In this position, PFSA referred to how fees are presented in life insurance contracts with insurance capital funds and identified deficiencies in how fees are described, resulting in violations of the interests of policyholders

and the insured. PFSA noted the occurrence of cases in which the unit-linked insurance contract does not contain information (or the information needs to be completed) that fees are charged separately by the insurance company and by the investment fund company in connection with the conclusion of the contract. The contractual provisions need to contain precise information about which entity, and to what extent, charges fees from the premiums consumers pay. This limits ULIP purchasers' knowledge regarding the fees charged from the funds they have paid. Among the failings of ULIP service providers, the lack of information about fees for these products on their websites was also pointed out. It was stressed that in the contractual provisions relating to fees, there are terms that need to be clarified or defined in a way that does not make it clear what activities and on what date are covered by charging fees. The assessment noted that the contracts should have described the issue of fee indexation more clearly. In addition, the fee tables only sometimes included all fees detailed in the body of the insurance terms and conditions, and there was an imprecise description of the elements that affect the final value of fees.

M. Announcement of the PFSA on the Draft Act on Investment Activities with the Funds of Insurance Capital Funds (2022)²⁸

The Polish Financial Supervision Authority describes further changes to the unit-linked insurance market in Poland. In a draft of amendments to the Act on Insurance and Reinsurance Activity, an explanatory memorandum and a draft regulation concerning the conclusion by insurance companies of agreements involving derivatives when investing funds of an insurance capital fund. The purpose of these regulations is to *"permanently increase the level of protection of customers of insurance companies - natural persons, concluding insurance contracts with insurance capital fund, to the level already occurring in the open-ended investment fund market"*²⁹. The changes

²⁶ Contingent convertibles are capital bonds, subordinated loans or other instruments and contracts for which, upon the occurrence of an initiating event specified in terms of issue or contract, the issuer or obligor redeems them, either in the form of a permanent write-down or a temporary write-down reducing the par value of the instrument or obligation in whole or in part, or converts them into shares, or it shall write off the interest in whole or in part for a given interest period or withhold it for an indefinite period, if these capital bonds, subordinated loans, instruments or contracts are issued or entered into by the debtor in order to qualify them or have already qualified for the regulatory capital of banks and brokerage houses or the own funds of insurance and reinsurance companies.

Based on the announcement of the KNF to issue a decision on prohibitions on the marketing, distribution and sale of insurance investment products - life insurance agreements if they are linked to an insurance capital fund (product intervention). https://www.knf.gov.pl/komunikacja/komunikaty?articleId=74171&p_id=18 (03.10.2022).

²⁷ Position of the Office of the Financial Supervision Authority on the presenting of fees in life insurance contracts with insurance capital funds, January 2022. https://www.knf.gov.pl/knf/pl/komponenty/img/Stanowisko_76997_prezentowanie_oplat_w_umowach_ubezpieczenia_na_zycie_z_UFK_76997.pdf (28.09.2022).

²⁸ Announcement of KNF dated 01.02.2022 on the draft of a comprehensive legal regulation on the rules for insurance companies to invest funds of the insurance capital fund https://www.knf.gov.pl/komunikacja/komunikaty?articleId=77012&p_id=18 (03.10.2022).

²⁹ Announcement of KNF dated 01.02.2022 on the draft of a complex legal regulation on the rules of investment of financial assets of the insurance capital fund by insurance companies https://www.knf.gov.pl/komunikacja/komunikaty?articleId=77012&p_id=18 (03.10.2022).

are intended to reduce the level of investment risk for ULIP purchasers, through restrictions on investment activities with the funds of insurance capital funds, to the same extent as in the open-ended mutual fund market. The planned regulations are intended to prevent the practice of regulatory arbitrage as well as the offering to individuals of “*complicated and risky capital market products and instruments that are unavailable to non-professional customers*”³⁰.

N. Court Judgments

In addition to more than a dozen regulatory actions on contracts for unit-linked insurance products as mentioned above, the courts have issued numerous decisions indicating that there were violations of consumer rights in the contracts concluded. Such decisions include, for example, the judgment of the Supreme Court on 28.09.2018, ref. I CSK 179/18³¹, declaring as an unlawful practice the failure to clearly and unambiguously indicate in the insurance contract the method of determining liquidation fees “*charged upon cancellation of the continuation of the agreement, as well as the impact of such fees on the effectiveness of the investment*”³². In another case, the Supreme Court, in a decision dated May 21, 2020, ref. I CSK 772/19³³, maintained the decision³⁴ expressed in the Judgment of the Court of Appeals, favourable to consumers, in which the “*Overstatement of the liquidation fee and its incompatibility with the interest of the consumer*”³⁵ was indicated.

pl/komunikacja/komunikaty?articleId=77012&p_id=18 (28.09.2022).

³⁰ Announcement of KNF dated 01.02.2022 on the draft of a complex legal regulation on the rules of investment of financial assets of the insurance capital fund by insurance companies https://www.knf.gov.pl/komunikacja/komunikaty?articleId=77012&p_id=18 (28.09.2022).

³¹ <http://www.sn.pl/sites/orzecznictwo/Orzeczenia3/19%20CSK%20179-18-1.pdf> (03.10.2022).

³² The judgment of the Supreme Court on 28.09.2018, ref. I CSK 179/18.

³³ <http://www.sn.pl/sites/orzecznictwo/Orzeczenia3/19%20CSK%20772-19.pdf> (03.10.2022).

³⁴ The court refused to accept the cassation complaint of the defendant (insurance company) for processing.

³⁵ Judgment of the Court of Appeals in Warsaw dated 24.05.2019, ref. No. V ACa 451/18.

O. Discussion

To sum up, the aim of the indicated regulations and recommendations was to permanently increase the level of protection of customers from insurance companies. This allows to reduce the investment risk by eliminating misselling problems which occur when a person’s concludes insurance contracts with ULIPs. In addition, the aim was to prevent regulatory arbitrage of offering complex and risky capital market products and instruments not available to non-professional clients. This was achieved by influencing the practices related to the information provided. As a result of the analysis of the ULIP market, inappropriate sales practices by insurance companies were noticed regarding the quality of the information provided to customers, which needed to be completed, clear, and transparent. The insurance market supervisors and monitors ordered the introduction of good practices in this regard, consisting of posting on insurers’ websites offering ULIP a designated range of data that is also standardised in terms of presentation. As highlighted in these regulations, information on fees, especially liquidation fees for early termination, played a unique role. Insurance companies were obliged to: provide information (based on a uniform nomenclature) on all fees, their scope, timing, a detailed description of the elements influencing their final value, and an unambiguous way of determining the liquidation fees charged when cancelling the continuation of the contract, to stop overstating the liquidation fee contrary to the consumer’s interest, to inform about the separate collection of fees by insurance companies and investment funds. It obliges insurance companies to provide information on the risks associated with the investment and to identify the impact of the fees on the effectiveness of the investment, maintaining a proper cost-benefit ratio. The above information is to be fair, understandable, and unambiguous.

Another tool for increasing consumer protection is the obligation to analyse consumers’ needs, requirements, and knowledge about risk. Based on the information from the survey, ULIP products are tailored to the consumers’ investment profile and risk acceptance. Insurance companies present consumers with simulations of the product’s value in three variants (base, reduced yield, and enhanced yield). Consumers were also given the right to withdraw from/terminate the contract before the end of the contract, i.e. within 60 days of receiving annual information on

the investment results. In addition, it was prohibited to market the distribution and sale of insurance investment products linked to an insurance equity fund, for which the average return is less than 50% of the interest rate for period N according to the relevant risk-free rate term structure. A further prohibition concerned the marketing of investment products in contingent convertibles involving high risk. The regulations emphasise that for a well-functioning, consumer-safe ULIP market, the role of internal control mechanisms and market monitoring by supervisory authorities is also essential.

IV. Conclusion

Unit-linked insurance products are offered worldwide and have a substantial share in the life insurance market in Poland and other European Union countries. Unit-linked insurance products are complex and risk-linked instruments. Consumers' awareness and knowledge of the design and factors affecting the investment outcome and the risk level associated with purchasing unit-linked insurance are often limited. In this situation, given the complexity of these products, the level of complexity of the design of the contracts and profit calculation rules, and their level of popularity, financial supervisors needed to introduce regulations modifying their functioning. These regulations aimed to increase consumer safety by, among other things, simplifying the design of ULIP products, introducing clear rules for assessing investment risk, setting liquidation fees, and making available on insurers' websites the information needed by consumers to make rational decisions on the use of products appropriate to their needs. The overview of changes presented abbreviated due to the limited framework of the study, concerned many regulations in the market for ULIP-insured products. A large number of these changes were introduced in response to the identified problems specific to these products, namely the asymmetry of information and the lack of clarity of the information provided causing misunderstanding. The problems were affecting the safety and economic interest of the consumer. For the safety of the consumer and for the protection of his economic rights, a number of changes have been made to the mechanisms of the ULIP instruments. The analysis of the changes

in the legislation shows that internal control and monitoring of this market is advisable, which may result in further modifications, increasing the level of consumer protection and levelling out the asymmetry occurring there.

Based on the analysis of the numerical information on ULIP irregularities reported by consumers to the Financial Ombudsman, it can be noted that in the period studied (2014-2020), since 2016, there has been a noticeable reduction in the number of requests stating problems in connection with the conclusion of a unit-linked contract. The number of requests for intervention decreased from 2020 to 2016 (when the peak level of applications was recorded) by more than 3.5 times. Similar results can be observed for the number of applications to the Financial Ombudsman for a significant view on ULIP. The downward trends of the insurance markets in the last decade can explain this situation. The design of innovative products (with an investment component) such as ULIP should revive the demand for life insurance products. However, the problems associated with these products may affect confidence in insurance and dissimulate the desire for insurance. Better filling the regulatory gap of this market in terms of consumer protection mechanisms for ULIPs can play a crucial role in ensuring consumer confidence in insurance and increasing demand for such products.

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