Pre-contractual Information Duties of Insurers. A German and Polish Approach

Information is the key element of consumers and customers protection in insurance. Implementation of Insurance Distribution Directive (IDD) by EU member states in 2018 was yet another step – at least in theory – in expanding access to basic knowledge about insurance products. Nevertheless, despite certain new solutions included in IDD, pre-contractual duties of insurers still remain primary source of mentioned information for policyholders. EU member states have adopted various approaches to IDD implementation and – in particular – legal shape of pre-contractual obligations of insurance contract parties. Hence, the purpose of this paper is to introduce contemporary perspective on insurers pre-contractual information duties in German and Polish legal systems. First part includes a basic outline of insurance law in both countries in scope of IDD implementation. It is followed by comparative commentaries on “demands-and-needs test” as well as general information duties set out i.a. in German Insurance Contract Act (VVG) and Polish Insurance Distribution Act (UDU). The paper closes with certain conclusions and findings.

Keywords: information, insurance, VVG, Polish Civil Code, IDD.

1. Introduction

Pre-contractual duties in insurance contracts play a vital role in providing information to policyholders and ensuring – at least in theory – proper understating of insurance products. This has become even more visible after the Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution¹ was passed and implemented by member states thus adding to national laws yet another set of obligations imposed on insurance distributors such as intermediaries, ancillary insurance intermediaries and – especially – insurance undertakings. As a result, pre-contractual duties of insurers in the EU became even more complex and precise, e.g. by setting a standardized Insurance Product Information Document (IPID or Produktinformationsblatt)² in relation to the distribution of non-life insurance products³. Of course one may argue whether customers make good use of such information (that is whether it

¹ OJ L 26, 2.2.2016, p. 19–59 (IDD).
² Of course it must be noted that the obligation to provide clients with IPID is not attributed only to insurers but to all distributors that create a specific insurance product (hence IPID may be delivered e.g. by insurance broker if the broker is a creator of specific insurance product).
constitutes a significant factor in their decision making process⁴), nevertheless EU legislator still considers said duties as one of key methods of customer protection⁵. This makes delivering information, documents, etc. to prospective policyholders a common piece of landscape in every national law regulating insurance business across the EU.

The purpose of this paper is to introduce contemporary perspective on insurers pre-contractual information duties in both German and Polish legal systems and provide some commentary to the latest developments in this field. Of course for obvious reasons of time and space, I will focus on general obligations of insurance undertakings after IDD implementation and only sporadically mention e.g. duties that concern insurance intermediaries or specific types of insurance like insurance-based investment products. This will be preceded by a brief sketch of mentioned national legislation in neighboring countries and insides on process of IDD implementation.

2. National insurance law and implementation of IDD in Germany and in Poland

The core of German insurance law consists of two major acts which are: Insurance Contract Act⁶ and Act on Supervision of Insurance Undertakings⁷, that establishes Federal Financial Supervisory Authority (BaFin). When it comes to standard terms of insurance contract (general policy conditions)⁸ – however mainly outside the scope of this paper – also certain provisions of German Civil Code shall apply⁹. Both VVG and VAG include sections on information duties. I will further elaborate in details on those of private law nature, i.a. embodied in

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⁶ Gesetz über den Versicherungsvertrag (Versicherungsvertragsgesetz) of 23.11.2007, BGBl. I S. 2631 (VVG). However according to section 209 of VVG the provisions of this act shall not apply to reinsurance and insurance against risks in shipping (maritime insurance).

⁷ Gesetz über die Beaufsichtigung der Versicherungsunternehmen (Versicherungsaufsichtsgesetz) of 1.04.2015, BGBl. I S. 434, (VAG).

⁸ Allgemeine Versicherungsbedingungen (AVB).

⁹ See i.a. § 305-310 of German Civil Code (Bürgerliches Gesetzbuch – BGB of 18.08.1896, BGBl. I S. 42, 2909; 2003 I S. 738 oraz BGB. I S. 1190) in areas such as binding force and interpretation of AVG.
VVG and developed in Regulation on Information Obligations for Insurance Contracts\textsuperscript{10}, passed under section 7(2) of VVG.

Before the implementation of IDD, basic provision on information provided to the policyholder were included in mentioned section 7 of VVG as well as VVG-InfoV and in some sections of VAG (mainly concerning specific types of insurance)\textsuperscript{11}. By the act of 20.07.2017 IDD was implemented to German legal system, thus amending i.a. both VVG and VAG\textsuperscript{12}. As a result section 7 of VVG was amended and VVG itself complemented with new sections 7a–7d which concern respectively information duties in: cross-selling, insurance-based investment products and group insurance. Moreover, VVG-InfoV was also amended by Regulation of 6.03.2018\textsuperscript{13}, to meet and develop further standards set out in IDD, not directly included in sections 7–7d.

Sources of Polish insurance law are more diverse and consist of several acts. Insurance contract – except reinsurance and maritime insurance – is governed by articles 805–834 of Polish Civil Code\textsuperscript{14}. Nevertheless, a significant number of provisions that directly affect insurance contracts (i.a. obligatory content of standard terms of insurance) are also embodied in Act on Insurance and Reinsurance Activity\textsuperscript{15} and Act on Insurance Distribution\textsuperscript{16}. The latter of course constitutes implementation of IDD to Polish legal system. Staring from October 1\textsuperscript{st}, 2018 when UDU entered into force, yet another set of rules was added to this – already complicated – legal framework. In addition, UDU consist of mainly incoherent with KC and UDUR conceptual grid, based almost solely on literal implementation of IDD\textsuperscript{17}. However, despite mentioned problems we are able to point out crucial provisions that create the core of insurers information duties in Polish legal system. Those are: articles 8, 9 of UDU articles 17, 19, 20, 21, 22 and 25 of UDUR and, last but not least, article 384 of KC (regarding the delivery of standard terms of insurance).

**Despite legislative differences we can pinpoint major information duties imposed on insurers in both German and Polish law that will be subjected to further considerations. Those include:**

\textsuperscript{10} Verordnung über Informationspflichten bei Versicherungsverträgen (VVG-Informationspflichtenverordnung) of 18.12.2007, BGBl. I S. 3004 (VVG-InfoV).

\textsuperscript{11} As an example, section 144 imposes some duties in insurance employee pension schemes.


\textsuperscript{13} Erste Verordnung zur Änderung der VVG-Informationspflichtenverordnung (BGBl. I S. 225).

\textsuperscript{14} Kodeks cywilny of 23.04.1964, consolidated text: Dz. U. 2018 item 1025 (KC).

\textsuperscript{15} Ustawa o działalności ubezpieczeniowej i reasekuracyjnej of 11.09.2015, consolidated text: Dz. U. 2019 item 381 (UDUR).

\textsuperscript{16} Ustawa o dystrybucji ubezpieczeń of 15.12.2017, consolidated text: Dz. U. 2018 items 2210 and 2243 (UDU). Furthermore when it comes to compulsory insurance see: act on compulsory insurance, the Insurance Guarantee Fund and the Polish Motor Insurers’ Bureau of 22.05.2003, consolidated text Dz. U. 2018 item 473.

• the obligation to perform \textit{demands-and-needs} test, which results constitute a foundation for certain and further information duties;
• the obligation to deliver standard terms of insurance;
• the obligation to provide specific information that concern all insurance contracts and detailed information that concern specific types of insurance contracts (like insurance-based investment products).

3. \textit{Demands-and-needs} test in German and Polish law

Delivery of specific information must be preceded by \textit{demands-and-needs} test in accordance with section 6 and 6a of VVG\textsuperscript{18} or article 8 of UDU. During that test, insurers must identify said needs and wishes in order to provide a proper advice or information towards every insurance offered. Despite the fact that wording of German and Polish\textsuperscript{19} provisions which concern mentioned test are quite similar we can pinpoint at least few major differences between VVG and UDU.

First, according to section 6(1) of VVG \textit{demands-and-needs} test is performed “if the difficulty in assessing the insurance being offered or the policyholder himself and his situation gives occasion thereto (...)”. In other words only mentioned difficulties trigger the test\textsuperscript{20}. There is no such condition in article 8 of UDU, meaning that the test is obligatory in every case, even regarding “simple” insurance contracts i.a. compulsory motor third party liability insurance (which scope is regulated by statutory provisions). Furthermore, article 8 of UDU – unlike section 6 of VVG – connects the test with insurance product and not insurance contract, which seems to make German provisions more specific in terms of test performance. Moreover, article 8 of UDU, just as article 20 of IDD, does not impose on insurers an obligation to advice policyholder – the purpose of article 8 is to acknowledge the needs and provide the policyholder with information.

\textsuperscript{18} It must be noted that section 6 of VVG established \textit{demands-and-needs} test even prior to implementation of IDD and to that extent the wording of section 6(1) of VVG was neither amended nor altered during IDD implementation process.


\textsuperscript{20} This may raise some concern as regards conformity of section 6(1) as well as section 61(1) of VVG with article 20(1) of IDD which sets out that “Prior to the conclusion of an insurance contract, the insurance distributor shall specify, on the basis of information obtained from the customer, the demands and the needs of that customer and shall provide the customer with objective information about the insurance product in a comprehensible form to allow that customer to make an informed decision” – the latter does not stipulate the condition of difficulty and enables the test to every insurance contract.
on insurance product. In other words, in Polish law not every insurance distributor is also a client’s advisor as the necessity to advise is reserved only to insurance brokers, in accordance with article 32 section 1 item 4 of UDU.

Second, even though both acts introduce said test, Polish insurance distributors have no obligation to document the performance of test itself. VVG on the other hand distinguishes documentation of test (which must consider the complexity of insurance contracted offered) from documentation of advice. Further, Polish policyholders are not equipped with the overall right to waive demands-and-needs test (and the delivery of mentioned documentation). In accordance with section 6(3) of VVG policyholder can make a written statement that they waive the rights guaranteed in section 6(1) and 6(2), however the statement must include an acknowledgment of negative consequences that may follow mentioned waiver (i.e. possible negative influence on asserting a claim for damages against insurer). Going further, unlike article 8 of UDU, sections 6(4) and 6(5) of VVG provide respectively:

- that the obligation to provide advice to policyholder is not limited only to pre-contractual stage but is also in force during the performance of insurance contract (on demand of the policyholder);
- that if insurer fails to perform its obligations as established under section 6(1), 6(2) and 6(4), it shall be liable to indemnify the policyholder for any loss or damage resulting therefrom (this however does not apply if the insurer is not responsible for the breach of obligation) – it must be noted that latest jurisprudence of German Federal Court (Bundesgerichtshof) emphasizes the importance of insurers pre-contractual duties in a manner allowing policyholders or insureds to use all accessible in BGB remedies for breach of contract if the insurer fails to perform said obligations. As it may be derived from Bundesgerichtshof judgment of June 28, 2017 (IV ZR 440/14), as well as from prior judgment of May 20, 2015 (IV ZR 127/14), any economic disadvantag...
vantage resulting in particular loss and associated with insurance contract that was concluded as a result of breach of information duty by insurer is sufficient for a claim for damages (if the policyholder or insured are able to prove said loss).

Finally, section 6 of VVG does not apply to large (jumbo) risks and to situations in which insurance contract is concluded with the mediation of insurance broker (Versicherungsmakler). First exception is a common feature of UDU and VVG, the second however is not. UDU does not distinguish the performance of demands-and-needs test by insurers and insures intermediaries as it is set out in VVG. The latter is regulated in sections 60 to 63 of VVG. In this scope it is worth noting that insurance broker is obligated to base his advice on a sufficient number of contracts of insurance and insurers available on the market so that the broker is in a position to make their recommendation, based on professional criteria, regarding which contract of insurance is suited to meeting the needs of the person wishing to take insurance out. If the difficulty of assessing the insurance being offered or the person wishing to take out insurance itself and their situation so requires, the insurance intermediary must ask that person about their wishes and needs and provide them with proper advice, i.a. state reasons for each advice given in respect of a particular insurance (this – as in section 6 – must also be documented with consideration of complexity of insurance contracted offered). Finally, the person wishing to take out insurance may also waive the right to mentioned advice or documentation by separate written declaration. In addition, section 59(1) of VVG provides that already mentioned VVG sections 1a, 6a, 7a, 7b and 7c apply as appropriate to insurance intermediaries.

Requirements on how to deliver mentioned documentation to policyholders are included in section 6a of VVG which – as article 9 of UDU – almost literally repeat the content of article 23 of IDD. Hence, said information are presented to policyholder:

29 This however shall not apply if insurance broker explicitly informs the person wishing to take out insurance in individual cases prior to contractual acceptance of the limited selection of insurers and contracts (see section 60(1) of VVG). There are some similarities between insurance brokers obligations in the field in German and Polish Law, as article 32 section 1 item 4 of UDU states that prior to conclusion of insurance contract, insurance broker “provides advice based on a thorough analysis of insurance products available on the market in sufficient numbers to introduce a recommendation of the most appropriate contract, and explains the basis on which the recommendation is made, taking into account the complexity of the insurance contract or insurance guarantee and the type of customer, unless the customer submits a written statement waiving the right to mentioned advice”. It must be noted that UDU separates broker’s recommendation from performance of demands-and-needs test itself. As a result recommendation must be preceded by the test. Moreover, recommendation concerns insurance contract (not insurance product as article 8 of UDU) which must be “most appropriate” for the client – in order to establish which contract meets such criterion, information gathered during the performance of demands-and-needs test ought to be used.
30 Also bearing in mind the relations between the time and effort spent providing the advice and the premium to be paid by the policyholder.
1) on paper;
2) in a clear and accurate manner, comprehensible to the policyholder;
3) in an official language of the Member State in which the risk is situated or of the Member State of the commitment or in any other language agreed upon by the parties; and
4) free of charge. By way of derogation from pointed principles, information referred to in section 6 of VVG may be provided to policyholders on one of the following media:
   • a durable medium other than paper, where the following conditions are met – first, the use of the durable medium is appropriate in the context of the business conducted between the insurer and the policyholder and second, the policyholder has been given the choice between information on paper and on a durable medium, and has chosen the latter medium;
   • a website which meets certain conditions.31

Finally, as stated also in IDD and UDU, also VVG includes a guideline that the provision of information using a durable medium other than paper or by means of a website shall be regarded as appropriate in the context of the business conducted between the insurer and the policyholder if there is evidence that the customer has regular access to the internet (provision of an e-mail address for the purposes of that business is regarded as such evidence).

4. General pre-contractual information duties of insurers in German and Polish law

It is safe to say that sections 7 to 7d of VVG and VVG-InfoV constitute a core of information duties in German insurance law32. Prior to IDD implementation section 7(1) was the source of general pre-contractual information obligations of German insurers, even though this particular provision is mainly – however not exclusively – focused on standard terms of insurance (AVB)33. Wording of said provision was not changed by the act of 20.07.2017 amending VVG34 – VVG-Info developed the content of information

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31 Which are: (1) the provision of that information by means of a website is appropriate in the context of the business conducted between the insurer the policyholder; (2) the policyholder has consented to the provision of that information by means of a website; (3) the policyholder has been notified electronically of the address of the website, and the place on the website where that information can be accessed; (4) it is ensured that that information remains accessible on the website for such period of time as the policyholder may reasonably need to consult it.
32 Towards both policyholders (see: VVG sections 7 to 7c) as well as insureds (see: VVG section 7d).
33 This is i.a. a result of a so-called “standard-form contract model” approach towards consumer protection – see: T. Wilhelmsson, Various approaches to unfair terms and their background philosophies, Juridica International 2008, vol. XIV, p. 53-54
34 “The insurer shall inform the policyholder in writing of his terms of contract, including the general terms and conditions of insurance, as well as the information set out in a statutory ordinance referred to in subsection 2 (which is VVG-Info - author’s note), in good time before the
provided to clients in a manner required by IDD provisions\textsuperscript{35}. Hence it still remains a core regulation and a primary source of information allowing policyholder to make informed choice before conclusion of insurance contract\textsuperscript{36}. On the other hand section 7 is also designed to improve the bargaining power of the policyholder and allow – at least in theory – to compare different insurance contracts offered on the market\textsuperscript{37}. In this scope German and Polish legislations differ substantially as;

- the delivery of standard terms of insurance in Poland is governed by a general provision that concerns all contracts i.a. article 384 of KC;
- further information duties – as well as means and terms of their delivery – are included in already mentioned articles 8 and 9 of UDU and several articles of UDUR such as article 25 that obliges insurers to inform the policyholder, prior to conclusion of contract, about law applicable and procedure of handling complaints.

When standard terms of insurance are considered, in both VVG and KC they must be delivered before the formation of contract. In German law delivery must be performed “in good time” before the insured makes their declaration to enter the contract. It is commonly understood that standard terms of insurance must “reach” the person interested in conclusion of contract in time allowing them to read and comprehend received information\textsuperscript{38}. As a result, when estimating exact time span, the complexity of insurance contract, its duration and scope of coverage must be taken into account by the insurer\textsuperscript{39}. In Polish law, article 384 of KC as well as article 8 of UDU require to deliver standard terms of insurance as well as other relevant information prior to contract conclusion – interpretation of this term is quite the same as in Germany\textsuperscript{40}. However, it must be pointed out, that section 7 does not differentiate the situation of consumers and professionals when it comes to delivery of standard terms of insurance as well as other information. Article 384 § 2 of KC on the policyholder submits their contractual acceptance. This information shall be provided clearly and comprehensibly in keeping with the means of communication employed. If, upon the request of the policyholder, the contract is concluded by telephone or using another means of communication which does not permit the information to be provided in writing prior to the policyholder’s contractual acceptance, that information must be provided without undue delay after the contract is made; this shall also apply if the policyholder explicitly waives the right to information by a separate written declaration prior to submitting their contractual acceptance”.

\textsuperscript{35} Those include i.a.: name of insurer, contact details, basic characteristics of indemnities or any other benefits, complex information on insurance premiums, conclusion and termination of insurance contract, duration of contract, law applicable to insurance contact etc. (see more: section 1 and 2 of VVG-Info).


\textsuperscript{37} \textit{Op. cit.}


\textsuperscript{39} \textit{Op. cit.}

\textsuperscript{40} See: M. P. Ziemiak, \textit{Postanowienia niedozwolone na tle umów ubezpieczenia. Studium cywilnoprawne}, Toruń 2017, p. 254 et seq.
other hand includes an important exception – where the use of standard terms of contract is customarily accepted in a given kind of relationships, it shall also be binding upon the other party if such party might have easily learned about its contents\(^{41}\). However, this is not valid for contracts concluded with the participation of consumers, except for contracts commonly made in petty current matters of quotidian life. In conclusion, when it comes to other information that must be provided by insurer to clients – next to standard terms of insurance – general rules established i.e. in article 8 and 9 of UDU must apply (and not article 384 § 2 of KC). Hence, a client who is not a consumer may not receive standard terms of insurance, however further information obligations as set out in UDU must be performed, since UDU provisions do not differentiate clients into professionals and consumers.

**Section 7a is entirely dedicated to cross-selling and in fact repeats key features of article 24 of IDD just as article 10 of UDU.** Hence, when an insurance product is offered together with an ancillary product or service which is not insurance, as part of a package or the same agreement, the insurer\(^ {42} \) distributor shall inform the customer whether it is possible to buy the different components separately and, if so, shall provide an adequate description of the different components of the agreement or package as well as separate evidence of the costs and charges of each component. Insurer must offer the policyholder the possibility to buy the good or service separately if a particular insurance product is ancillary to that good or a service which is not insurance, as part of a package or the same agreement. Where the risk or the insurance coverage resulting from mentioned agreements or packages offered to policyholders differs from that associated with the components taken separately, insurer shall provide an adequate description of the different components of the agreement or package and the way in which their interaction modifies the risk or the insurance coverage. Finally, provisions that concern cross-selling do not apply to certain types contracts i.a. credit agreements as defined in point 3 of Article 4 of Directive 2014/17/EU\(^ {43} \). It is safe to say, that residual architecture of section 7a of VVG and article 10 of UDU in both acts is the same due to appliance of identical legislative techniques. However, unlike article 10 of UDU, section 7a(5) of VVG provides that when PPI (payment protection insurance – *Restschuldversicherung*)\(^ {44} \) is offered as ancillary product or part of a package, the policyholder must informed one more time i.a. about the

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\(^{41}\) It is safe to say that insurance contract comes within the scope of article 384 § 2 of KC.  
\(^{42}\) Or insurance intermediary – see: section 59 of VVG.  
\(^{44}\) So-called credit (loan) insurance – insurance product that provides protection of scope of credit (loan) repayment if the borrower e.g. dies becomes disabled or faces other circumstances that may prevent earning income to service the debt. See more about PPI on Polish and other European markets: M. Więcko-Tułowiecka, *Challenges of the Payment Protection Insurance*
right to revoke insurance contract within 7 days. Moreover an instruction on
the right of revocation must be delivered to policyholder

Sections 7b and 7c concern insurance-based investment products (Versicherungsanlageprodukten). First provision is focused primarily on
information on risks that accompany investment strategies as well as all costs
and fees to be paid by the policyholder. Said data ought to be delivered to policy-
holder also “in good time” before the contact is concluded. A Polish equivalent
of section 7 bis article 22 of UDUR. Similarities of those provisions include i.a.
that information must be worded in a legible and non-misleading manner and
presented in an unambiguous manner. Section 7c on other hand deals with
prevention of miss-selling practices on insurance-based investment products
market, just as article 21 of UDUR. As a general rule in both legislations we
may point out the following: insurer is obliged to obtain from the policyholder
information on their knowledge and experience in the field of life insurance (or
investment), as well as its financial position. Basing on analysis of said inform-
ation insurers may offer to the policyholder only insurance adequate for their
needs.

Finally, section 7d encompasses information obligations of policy-
holders towards insureds in group PPI contracts. It establishes a simple
rule, that in group insurance of this particular type, the policyholder performs
all information duties of the insurer towards the insureds. In other types of
group insurance, overall rules on information duties apply. Polish law does not
include provision analogical to VVG section 7d that would deal exclusively with
PPI contracts. Yet, both KC and UDUR also set out certain duties for policy-
holders in group insurance. For example, where life insurance is linked to an
insurance capital fund and concluded for the account of a third party – in par-
ticular group insurance – it is the task of the policyholder to communicate to
the person interested in entering into such a contract all information men-
tioned in article 22 of UDUR. Moreover, in any type of group insurance, policy-
holder is also obliged to provide i.a. following information to mentioned per-
sons: name and address of the insurer and the insurer’s complaints or ADR in-
ternal procedures

When it comes to VVG-Info, this particular regulation is divided
into seven sections that develop and specify general information obli-
gations set out in sections 7 to 7c of VVG. It is yet another significant dif-
ference between German and Polish legislation as the latter was not equipped
with such sui generis overall extension of statutory provisions that concern all
information duties. In Poland such extensions have limited and specific scope

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45 The 7 days term for insurance contract revocation is counted from the day of delivery of men-
tioned information and instruction.
46 See: article 18 section 4 of UDUR.
47 Since a detailed analysis of VVG-Info would drastically exceed the limits if this paper, I will
pursue only with a brief characteristics of this particular regulation.
such as e.g. specification of information included in standard terms of insurance or minimal content of questionnaires (surveys) used by insurers prior to insurance-based investment contracts conclusion. As already mentioned section 1 of VVG-Info develops – in scope of obligatory content – section 7(1) of VVG. Following two section concerns i.e. life and health insurance. What is interesting are certain features of VVG-Info. Those include:

- obligation to deliver IPID by insurers only to consumers – neither UDU nor UDUR provisions distinguish the rights of policyholders in this scope;
- obligation to update the policyholder on changes that concern certain information delivered before conclusion of contract (i.e. seat and address of the insurer, costs and fees, etc.);
- specific obligation when a contact with the person interested in conclusion of insurance contract is made by phone.

Of course – as regards last two features of VVG-Info – we can indicate certain similar provisions in Polish law such as e.g. article 20 section 3 of UDUR or act on consumer rights of 30.05.2014. However, the scope of said provisions is much more narrow then in German law.

5. Conclusions and findings

The comparative analysis included in this paper allows to formulate following conclusions as regards pre-contractual duties of insurers in German and Polish law. First, German solutions seems to be more compact (i.e. included mainly in one act) and precise, especially when it comes to certain categories of insurance – e.g. VVG-Info divides analyzed duties (and packages of data) in accordance with specific types of insurance contracts. UDU treats every insurance contract with same manner, with certain exceptions and additions provided by UDUR as regards e.g. insurance-based investment products. More over German provisions on information obligations are integrated with the duty to deliver standard terms of insurance – as a result policyholders receive a packet of details on particular insurance contract or product. Second, in both

49 See: Council of Ministers regulation of 16.12.2016 on information included in standard terms of insurance used by an insurers (Dz. U. 2016, item 2189)
49 See: Council of Ministers regulation of 02.02.2016 on minimum scope of data included in survey regarding the needs of the policyholder or the insured (Dz. U. 2016, item 167).
50 In other words, insurers in Poland are obliged to deliver IPID to every policyholder, unless – just as stated in section 7(5) of VVG – insurance contract of insurance guarantee contract concerns large (jumbo) risks.
51 According to this provision when it comes to life insurance contracts, insurer shall inform the policyholder, at least once a yearabout an amount of benefits appertaining under the concluded insurance contract where the value of benefits is being changed during the validity of the insurance contract, as well as about the insurance surrender value. Where a benefit, determined on the basis of the sum insured expressed in a fixed amount, is available under an insurance contract, insurer shall inform the policyholder about each change relating to the sum insured. Said information must be communicated to the policyholder for the first time not earlier than within 10 months and not later than within 14 months from the date of conclusion of the contract.
52 Consolidated text: Dz. U. 2019, item 134. It must be noted that mentioned act deals only with consumers and in scope of all transactions (hence it is not limited to insurance transactions).
legislations we may observe intensification information obligations with relevance to different criteria such as: policyholders statute (e.g. in Germany IDIP is delivered only to consumers) or type of insurance contract (with more detailed information range in insurance-based investment products or PPI contracts in Germany). Third, even though VVG included at least some solutions common to IDD, German implementation appears to fit better to VVG conceptual grid and previous regulation, despite at least few almost literal repetitions of IDD provisions (e.g. section 7a). As already mentioned, one of the biggest flaws of UDU is that said act is, so to speak, a “perfect copy” of IDD, which makes it difficult to synchronize UDU provisions with KC or UDUR and – as a result – ensure proper execution of information duties. Fourth, legal framework of demands-and-needs test is more flexible in VVG than in UDU. Moreover, non-performance or ill-performance of such test is secured with explicit sanction in form of claim for damages, none of which exists in UDU. Under Polish law, that is under article 84 of UDU, Financial Supervisory Commission is entitled to impose administrative sanctions on distributors such as: issue a public statement indicating the person responsible for the violation of i.a. information obligations and the nature of the violation or impose a fine.

In conclusion, pre-contractual duties of insurers in German law seem to be better fitted to needs of policyholders and insureds, due to its flexibility and diversity towards different types of insurance contracts.

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References


Przedkontraktowe obowiązki informacyjne ubezpieczycieli z perspektywy prawa niemieckiego i polskiego

Prawo do informacji stanowi jedno z podstawowych narzędzi ochrony konsumentów i klientów w ubezpieczeniach. Implementacja dyrektywy o dystrybucji ubezpieczeń (IDD) – przynajmniej w teorii – miała poszerzyć dostępność oraz zakres informacji o produktach ubezpieczeniowych. I choć dyrektywa wprowadziła pewne nowe rozwiązania, to jednak przedkontraktowe obowiązki ubezpieczycieli wciąż pozostają podstawowym źródłem wiedzy dla ubezpieczających czy ubezpieczonych (choć państwa członkowskie UE w różny sposób kształtują przepisy w omawianym zakresie). Celem niniejszego artykułu jest próba spojrzenia na współczesne uregulowania przedkontraktowych obowiązków informacyjnych zakładów ubezpieczeń w prawie polskim oraz niemieckim, a także przeprowadzenie podstawowej analizy prawno-porównawczej rozwiązań przyjętych na skutek implementacji IDD. Pierwsza część artykułu zawiera podstawowe rozważania na temat niemieckiego i polskiego prawa ubezpieczeniowego w kontekście implementacji IDD. Kolejne rozdziały odnoszą się do tzw. testu wymagań i potrzeb oraz ogólnych przedkontraktowych obowiązków informacyjnych w niemieckiej ustawie o umowie ubezpieczenia (VVG) oraz polskiej ustawie o dystrybucji ubezpieczeń. Artykuł zamykają wnioski i konkluzje.

Słowa kluczowe: informacja, ubezpieczenie, VVG, Kodeks cywilny, IDD.