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Dispute Resolution in the Market for Insurance Distribution as one of the Tasks of Supervisory Authorities – Selected Issues

Introduction

The purpose of this study¹ is to indicate certain tasks of micro-prudential supervisory authorities (the European Insurance and Occupational Pensions Authority – EIOPA and the Polish Financial Supervision Commission – KNF) in the area of out-of-court dispute resolution in the market for insurance distribution that may directly affect customers of insurance distributors. In the second part of the study, the tasks of the micro-prudential supervisory authorities are presented that solve problems in the market for insurance distribution by indirectly affecting the customer and by ensuring security to the customer, for example, the resolution of cross-border disputes by EIOPA is discussed.

The Polish Act on insurance distribution² provides the definition of a customer of an insurance distributor. In the context of insurance contracts, an insurance distributor's customer is a party seeking insurance cover,³ a policyholder,⁴ or an insured person.⁵ On the other hand, under Polish law, the term insurance distributor refers to an insurance undertaking and insurance intermediaries, i.e., insurance agents, agents offering supplementary insurance, and insurance or reinsurance brokers. The Polish

¹ This study was prepared as a part of the program POTENCJAŁ no. 46/EPG/2020/POT – Krakow University of Economics.

² Act of 15 December 2017 on insurance distribution (Dz. U. item. 2486, as amended), hereinafter referred to as IDD. The date of entry into force was moved from 23.02.2018 to 1.10.2018. The Act is an effect of implementing IDD.

³ This means any party that has expressed, to an insurance distributor, an intention to take steps leading to conclusion of an insurance contract.

⁴ This is a party to an insurance contract, natural person, legal person or organizational unit without legal personality who enters into an insurance contract with an insurer and undertakes to pay an insurance premium.

⁵ This is a third party for whose benefit an insurance contract is concluded, subject to insurance protection.

legislator concluded that, as far as insurance distribution services are concerned, every customer (not only consumers) deserves to be covered by the protective information regime. This means that protection through information will be afforded to every civil law subject being a party to an insurance contract (not only consumers), as well as to the insured person. The Polish legislator did not take advantage of the possibility to differentiate the scope of protection according to the division into professional and non-professional customers, as expressly provided for in the provisions of IDD,⁶ although the Directive allows covering the former with a lesser scope of information protection in the area of insurance distribution of investment products.⁷

Consequently, the purpose of information provided by an insurance distributor is to protect the customer (and not only the consumer). Currently in the insurance market in Poland, it is hard to talk about mere consumer protection through pre-contractual information under IDD. The legislator established its own regime of protection through information and that regime embraces every legal subject (customer of insurance distributors).

For the purposes of this study, it is important that after the implementation of the provisions of IDD, an insurance distributor is obliged to notify any customer about the procedure for submitting and processing complaints, by indicating the method and place for submitting a complaint, the deadline for its processing, and the method of notifying the customer about the outcome and about the possibility of out-of-court dispute resolution.⁸

In the financial market, the system of out-of-court resolution of disputes in Poland is implemented by a non-public sectoral entity established by the Polish Bank Association, that is the Bank Arbitrator,⁹ and by public sectoral entities, i.e., the Financial Supervision Commission and the Financial Ombudsman. By way of example, one can point to the Arbitration Court attached to the Financial Supervision Commission,

⁶ Art. 22(1) IDD.

⁷ In European Union Law, in the financial market, evolution is still apparent toward customer protection, and not just consumer protection. For more on this subject, see: M. Szaraniec, *Information as a public law instrument of customer (consumer) protection on the economic insurance market. Considerations against the background of the Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (IDD)* [in:] *The influence of the European legislation on national legal systems in the field of consumer protection*, eds. A. Vigliani Ferraro, M. Jagielska, M. Selucka, Milano 2018, pp. 245–255.

⁸ See: Arts. 22, 23, 32 of the Act on insurance distribution. This obligation arises also under IDD – see: Art. 18 IDD.

⁹ Banking Consumer Arbitration is attached to the Polish Bank Association. It was established to resolve disputes between banks' customers (including consumers) and banks relating to monetary claims arising from non-performance or improper performance by banks of banking activities or other operations for the consumer. The Banking Consumer Arbitration is a member of the FIN-NET network, that is a cross-border network established by the European Commission to examine out-of-court complaints in relation to financial services. FIN-NET operates based on a network of national out-of-court systems of resolving disputes arising out of consumer use of financial services, especially banking services, insurance services, and services relating to the securities market. For more information about FIN-NET, visit: <https://ec.europa.eu/info/fin-net> [accessed: 2023.01.10].

which resolves disputes between financial institutions and their customers, including consumers. Within the Arbitration Court's structure, one can distinguish the arbitration and mediation centers.¹⁰ Additionally, since 1 January 2016, natural person customers (including consumers) can take advantage of the possibility of the out-of-court resolution of a dispute with a financial institution before the Financial Ombudsman.¹¹ In this last case, the customer has this possibility only upon exhausting the complaint procedure as specified in statutory provisions.¹² Before entry into force of the Act on out-of-court resolution of consumer disputes¹³ and of the Act on processing complaints by entities in the financial market and on the Financial Ombudsman,¹⁴ the legal framework of out-of-court dispute resolution methods was imperfect¹⁵ and, to a large extent, it was based on the provisions of the Code of Civil Procedure¹⁶ on arbitration courts.

1. Arbitration Court at the Financial Supervision Commission

The KNF was obliged to create the Arbitration Court under Art. 18 of the Act of 21 July 2006 on supervision over the financial market.¹⁷ The Arbitration Court attached to the KNF was established on 31 March 2008 and the Court resolves disputes between all actors in the financial market, especially between financial institutions and their customers. Every customer of a financial institution who feels injured by the institution may request the Arbitration Court attached to the KNF to help resolve the dispute. This

¹⁰ The Arbitration Court attached to the KNF holds out-of-court proceedings in the form of mediation or arbitration on the terms specified in the Code of Civil Procedure, but it can also proceed under the terms specified in the Act on out-of-court resolution of consumer disputes and the Court's rules of procedure.

¹¹ Currently the court handles about 3,500 cases.

¹² Act of 5 August 2015 on processing complaints by entities in the financial market and on the Financial Ombudsman (Dz. U. item. 1348).

¹³ The Act entered into force on 10 January 2017.

¹⁴ Chapter 4 on out-of-court procedures for resolving disputes between a customer and financial market operator entered into force on 1 January 2016.

¹⁵ See, among others: K. Gajda-Roszczyńska, *Sprawy o ochronę indywidualnych interesów konsumentów w postępowaniu cywilnym*, Warszawa 2016, p. 408; B. Gnela, *Czy reguły postępowania przed sądem polubowym są przydatne w dążeniu do skutecznego rozstrzygnięcia sporów konsumenckich*, "Arbitraż i Mediacja" 2009, no. 1, p. 115 *et seq.*; K. Marak, K. Poroś, *Ochrona konsumenta usług finansowych w świetle prawa wspólnotowego – wybrane zagadnienia* [in:] *Ochrona konsumenta usług finansowych*, ed. B. Gnela, Warszawa 2007, pp. 135–136; J. Maliszewska-Nienartowicz, *Ewolucja ochrony konsumenta w europejskim prawie wspólnotowym*, Toruń 2004, pp. 154–155.

¹⁶ Act of 17 November 1964 – Code of Civil Procedure (consolidated text: Dz. U. of 2021, item. 1805). See: the possibility to hold mediation proceedings under statutory provisions – Art. 183(1) *et seq.*

¹⁷ Consolidated text: Dz. U. of 2018, item. 621. An essential task of the Financial Supervision Commission, as a part of supervision over the financial market is, beside other activities, to open up possibilities for financial market actors to amicably solve disputes. This refers to disputes specified above which – as already pointed out – arise out of contractual relationships between entities in the financial market subject to supervision by the KNF and their customers.

solution is voluntary and requires consent from both parties. The Arbitration Court examines disputes in which the value in dispute is, in principle, higher than 500 PLN and disputes for intangible rights. The data published in annual reports of the Arbitration Court attached to the KNF show that most requests for initiating proceedings by the Court relate to the insurance sector (in 2020 – 95.9% cases), the banking sector (in 2020 – 3.6% cases), and the capital sector (in 2020 – 0.05% cases).¹⁸ The data show that over recent years, among the matters examined by the court, the most frequently addressed problems were the refusal or partial refusal to pay indemnity or render provision under an insurance contract (over 80% cases), the performance of an insurance contract, the inappropriate maintenance of a securities account, or the performance of a credit or loan agreement.¹⁹

There are two types of conciliatory proceedings before the Arbitration Court – mediation and arbitration.

1.1. Essence of mediation – mention

The very concept of mediation has no legal definition in the Polish legal system. Mediation is included among the basic forms of implementing the postulates of restorative justice. Its purpose is the conclusion of a settlement between the parties to the conflict, following an attempt to achieve voluntary agreement.²⁰ Although this is a statutory term present both in the Code of Civil Procedure and in the context of specifying the requirements for entry in a list of permanent court mediators under the Act of 27 July 2001 – Law on the ordinary courts organization,²¹ there is no statutory definition of mediation in the Polish legal system. In light of the above, according to the principle *natura abhorret vacuum*, one should resort to the definition of mediation from the Standards of Handling Mediation and Mediator Conduct, adopted by the Social Council for Alternative Methods of Conflict and Dispute Resolution attached to the Minister of Justice on 26.06.2006, according to which “Mediation should be understood as a voluntary, confidential process in which a professionally trained, independent, impartial person, at the parties’ consent, assists the parties in handling a conflict. Me-

¹⁸ See: Reports on the activity of the Arbitration Court attached to the KNF for specific years (2018–2020), https://www.knf.gov.pl/dla_konsumenta/sad_polubowny/informacje_ogolne/sprawozdania?articleId=55606&p_id=18 [accessed: 2023.01.10] and: https://www.knf.gov.pl/dla_rynku/sad_polubowny_przy_knf/informacje_ogolne/sad_polubowny_rozwiazywanie_sporow_konsumenckich [accessed: 2021.06.30].

¹⁹ See: Report on the activity of the Arbitration Court attached to the KNF regarding out-of-court resolution of consumer disputes in 2019, https://www.knf.gov.pl/knf/pl/komponenty/img/Sprawozdanie_z_dzialalnosci_Sadu_Polubownego_przy_KNF_2019.pdf [accessed: 2023.01.10].

²⁰ For more on this subject, see: Ch. Moore, *The Mediation Process: Practical Strategies for Resolving Conflict*, San Francisco 2003, p. 252 *et seq.*; D. Peters, *An introduction to mediation theory and skills*, Gainesville 2006, p. 1; A.J. Stitt, *Mediating commercial disputes*, Aurora 2003, p. 33. Relevant Polish literature: P. Nowak, B. Kornacka, *Mediacja i inne polubowne formy rozwiazywania sporow na rynku finansowym*, Warszawa 2016, p. 8; A. Kalisz, A. Zienkiewicz, *Mediacja sadowa i pozasadowa. Zarys wykladu*, Warszawa 2014, p. 42.

²¹ I.e. the Act of 16 October 2020 (Dz. U. item. 2072).

diation allows its participants to define disputable questions, reduce communication barriers, develop proposals for solutions and, if such is the will of the parties, conclude a mutually satisfactory settlement." Also Art. 3 of the Directive 2008/52/EC²² defines mediation as "structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator. This process may be initiated by the parties or suggested or ordered by a court or prescribed by the law of a Member State." One can put forward and generally defend the thesis that the solutions adopted by the legislator with regard to mediation, introduced in the Directive discussed, are supposed to facilitate the parties' solution of their dispute precisely because of the mediator's presence. Many authors and researchers are eager to use the term "third force," whose task is to assist the parties in reaching an agreement. In both definitions of mediation cited, its voluntary nature is manifest.

In light of the above, the characteristic features of mediation reflecting its essence are voluntariness, acceptability, impartiality, neutrality, and confidentiality. Voluntariness means that the parties are not forced to initiate mediation, to participate in mediation, or to reach agreement. Acceptability relates to the parties' consent to the mediating person, and to the solution worked out with the involvement of the mediator, and to the possibility of withdrawing from mediation at any stage. Voluntariness relates to the possibility to choose or change the mediator. Impartiality relates to the mediating person, whose main task is to assist in working out a solution satisfactory to both parties with maximum objectivity and without favoring any of the parties. Neutrality, just as impartiality, relates to the mediator and means that the mediator does not take a stance with regard to the subject matter of the dispute. Mediation is characterized by confidentiality, which means that both the origins of the conflict and any information and findings provided and made in the mediation process are secret.²³

The main types of mediation distinguished in theory are, according to the following criteria: 1) of the mediation's purpose – mediation resolving a dispute (based on the parties' interests and their analysis, aimed at resolving a conflict) and transformative mediation (aimed at changing the nature of the relationship arising from the conflict); 2) of voluntariness – voluntary mediation (depending only on the parties' intention) and mandatory mediation (decreed by a court); 3) of the role and function of the mediator – facilitative mediation (mediator organizes mediation, and the mediator's role is limited only to facilitating contacts between the parties and pursuit of the conflict's solution) and evaluative mediation (beside organizing and chairing mediation, the mediator, together with the parties, actively seeks a solution to the conflict).²⁴

²² Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (OJ L 136, 24.5.2008, p. 3).

²³ So: M.J. Skrodzka, A. Szafranek, M.H. Ziemblicki, *Mediacja w sporach na rynkach finansowych na przykładzie Centrum Mediacji Sądu Polubownego przy Komisji Nadzoru Finansowego*, "Wiadomości Ubezpieczeniowe" 2021, no. 2, p. 68.

²⁴ *Ibid.*, p. 68 and literature of the subject cited therein.

1.2. Mediation Centre of the Arbitration Court attached to the Financial Supervision Commission

The Mediation Centre of the Arbitration Court at the KNF operates under Resolution No. 106/2019 of the Financial Supervision Commission of 26 March 2019 concerning "Rules of Procedure of the Arbitration Court attached to the Financial Supervision Commission."²⁵ Mediation proceedings are initiated when both parties to the dispute agree to initiate mediation with regard to their dispute. Mediation is a method of reaching an amicable solution and not of deciding disputes. The voluntariness of mediation implies that the parties not only have to consent to the procedure, but also that they can withdraw from mediation at any time. Mediation consists of the pursuit, in the presence of a mediator, of the resolution of a dispute that is satisfactory to both parties with a view to concluding a settlement acceptable by both parties to the dispute.²⁶ An important part is the presence of the mediator, whose purpose is to assist in reaching an agreement between the parties to the dispute. The mediator is an impartial person selected jointly by the parties. The mediator is not an advisor or spokesperson for any of the parties. The only task of the mediator is to assist the parties in reaching an agreement. If the parties cannot agree on a mediator, the choice is made by the President of the Arbitration Court at the Financial Supervision Authority, that is the Chairperson of the Financial Supervision Authority. A settlement concluded between the parties to a dispute has, upon approval by the materially and territorially competent ordinary court, the same legal force as a judgment of an ordinary court. If the parties cannot reach an agreement and mediation ends unsuccessfully, the parties may take advantage of a possibility to submit their dispute to resolution by the Arbitration Court at the KNF. In this situation, separate consent is required from both parties.

1.3. Arbitration proceedings before the Arbitration Court attached to the Financial Supervision Authority

In arbitration proceedings before the Arbitration Court attached to the KNF, the arbitrator decides who is right in the dispute examined. Proceedings can be held if both parties consent to the resolution of their dispute by the Arbitration Court at the Financial Supervision Authority. When parties fail to conclude a settlement in mediation, the matter is automatically referred to an arbitrator of the Arbitration Court at the KNF, who resolves the dispute. This solution has many advantages. KNF arbitrators are professionals in the area of finance and law, which offers a chance for the fair resolution

²⁵ https://www.knf.gov.pl/knf/pl/komponenty/img/Regulamin_Sadu_Polubownego_przy_KNF_tekst_jednolity_76349.pdf [accessed: 2023.01.10].

²⁶ In 2021, altogether 18,190 requests for mediation were filed with the Arbitration Court at the Financial Supervision Authority. In 16,799 cases, the parties started mediation. In the first half of 2022, 9,411 requests for mediation were filed with the Arbitration Court, of which the other party consented to mediation in 8,863 cases. In 2021, almost 76% of all mediations concluded with a settlement, and in 2022 parties reached a settlement in 69% of cases. So: https://www.knf.gov.pl/dla_rynku/sad_polubowny_przy_KNF?articleId=78726&p_id=18 [accessed: 2023.01.10].

of the dispute. This is important since ordinary courts do not always have adequately trained personnel in the complicated matters of the financial market. An advantage of this solution is the parties' impact on the choice of arbitrators, confidentiality, and lower proceeding costs than would be incurred before an ordinary court. Moreover, importantly enough, the length of proceedings before the Arbitration Court is much shorter than before an ordinary court. It is also possible to hold appellate proceedings before another panel of arbitrators. An award of the Arbitration Court in arbitration proceedings has, upon approval by the materially and territorially competent ordinary court, the same legal force as a judgment of an ordinary court.

2. Resolution of cross-border disputes by EIOPA

2.1. Cooperation between European and national supervisory authorities in cross-border situations

An important area of cooperation between EIOPA and national supervisory authorities are EIOPA's activities undertaken in emergency situations. Emergency situations are defined in regulations as situations capable of seriously threatening the proper operation of financial markets and their integrity or the stability of the financial system of the European Union as a whole or in part. In such cases, EIOPA is obliged to actively facilitate and, if necessary, coordinate any measures taken by competent national authorities.²⁷ For these reasons, EIOPA should be notified by national supervisors of any material changes relating to emergency situations and be invited to participate, as an observer, in any respective meetings organized by national supervisory authorities. EIOPA may also deliver individual decisions addressed to national supervisory authorities, obliging such authorities to undertake necessary action under the provisions of EU law on the financial market to prevent the escalation of the emergency situation. If the national supervisor does not comply with EIOPA's decision, EIOPA may issue individual decisions obliging insurance distributors to take specific measures. Such decisions have priority over any other decision adopted by the competent national supervisory authority in the same matter.²⁸

2.2. EIOPA's powers within the framework of binding mediation

An important role in cooperation between EIOPA and the Financial Supervision Authority is played by the legal framework of resolving disputes between competent supervisory authorities in different Member States in cross-border conditions.

²⁷ See: Art. 18(1) of the Regulation (EU) No. 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48, as amended).

²⁸ Art. 18(4–5) of the Regulation (UE) No. 1094/2010.

This procedure, provided for in Art. 19 of Regulation 1094/2010, is referred to in the literature as so-called binding mediation.²⁹ In a situation when the competent national supervisory authority does not agree with an application of procedural rules, activities undertaken, or omission to undertake activities by a competent national supervisory authority of another Member State, EIOPA “may assist the authorities in reaching an agreement.” Under Art. 19(1) of Regulation 1094/2010, the action mentioned above can be taken by EIOPA, in principle, at the request of at least one competent national supervisory authority. Notably, if none of the conflicting parties decides to request EIOPA to resolve the dispute, the Authority’s power will never be exercised. Admittedly, “where on the basis of objective criteria, disagreement between competent authorities from different Member States can be determined,” EIOPA may of its own initiative take measures to enable the relevant authorities to work out an agreement according to the procedure set out in Art. 19(2-4) of Regulation 1094/2010. In practice, however, this provision will not be applied by EIOPA since no EU legislation or the Solvency II Directive expressly accounts for such situations.

Implementation by EIOPA of measures intended to enable conflicting national supervisory authorities to work out an agreement initiates the procedure under Art. 19(2–4) of Regulation 1094/2010. This is a specific conciliation procedure between the conflicting national supervisory authorities, in which EIOPA assumes, at this stage, the role of mediator. If, within the framework of the conciliatory proceedings, no agreement is reached between the conflicting national supervisory authorities, then EIOPA may deliver decisions obliging those authorities to take specific measures or to refrain from action, with binding effect on the interested competent authorities, to ensure conformity with EU law under Art. 19(3) of Regulation 1094/2010. Also in this context, EIOPA may deliver decisions addressed directly to insurance distributors, which shall have priority over decisions of the national supervisory authority under Art. 19(4) of Regulation 1094/2010.³⁰ It must be emphasized that EIOPA is empowered to deliver an individual decision directly to insurance distributors only in a situation when the competent supervisory authority does not comply with a prior decision addressed to the authority (under Art. 19(3) of Regulation 1094/2010). It is pointed out in the literature that decisions issued by EIOPA to insurance distributors as a part of binding mediation are auxiliary in nature.³¹ In addition, the very fact of delivery by the European Supervisory Authorities (ESA) of decisions addressed directly to financial institutions

²⁹ The procedure can be initiated only in situations provided for in EU legislation specified in Art. 1(2) of Regulation (UE) No. 1094/2010 and in the Solvency II Directive (Art. 33, 231, 248 of the Directive).

³⁰ Art. 19(4) of Regulation (UE) No 1094/2010.

³¹ A. Nadolska, *O charakterze prawnym decyzji Europejskich Urzędów Nadzoru – rozważania w kontekście sprawy C370/12 Pringle oraz sprawy C270/12*, “Zeszyty Prawnicze BAS” 2014, no. 1, p. 24. The author indicates that EIOPA delivering decisions addressed to financial institutions is an important and unprecedented regulatory measure, especially since EIOPA does not exercise direct supervision over financial institutions. It turns out that the legal relationship between the financial supervisor and a financial institution is intervened, in certain situations, by a third party, whose resolutions, differing from resolutions of that financial supervisor, have a superior status, being, at the same time, superior to decisions of national supervisory authorities and exclusively applicable.

is a new and, thus far, unprecedented regulatory measure, especially since EU supervisory authorities do not directly supervise financial institutions. The legal relationship between a national supervisory authority and a financial institution is intervened by a third party, whose resolutions are different from resolutions of the national supervisory authority, have priority over the latter, and are simultaneously superior to the decisions of national supervisory authorities and exclusively applicable.³²

2.3. Consequences of EIOPA delivering decisions within the framework of binding mediation

EIOPA's powers discussed above vis-a-vis national supervisory authorities reach far beyond activities intended to enable the national authorities to work out an agreement since EIOPA has been given the possibility to resolve disputes between national supervisory authorities with binding effect, and the related power to deliver individual decisions to financial institutions.³³

Delivery by EIOPA of individual binding decisions will be a method of potential psychological extortion of a course of action desired by EIOPA from the national supervisory authority and from the financial institution.³⁴ In the literature, it is pointed out that the institution of binding mediation in its present shape will perform a function of a "bugbear" motivating conflicting national authorities to independently solve conflicts.³⁵

It has been noted in the literature that the priority of ESA decisions is not absolute since this does not challenge all decisions of the national supervisory authority but only those that cannot be reconciled with the authorities' decisions in a given subject matter, that is with the decisions issued in a specific case.³⁶

Nevertheless, a legal consequence of the priority of ESA decisions may be, in certain situations, problems concerning the challengeability of administrative decisions or the effects of a final, legally binding decision.³⁷ Doubts also arise from the specification of the subjective scope in which decisions of national supervisory authorities are superseded by EIOPA's decisions. Moreover, the EU legislator did not indicate the

³² So: A. Nadolska, *Komisja Nadzoru Finansowego w nowej instytucjonalnej architekturze europejskiego nadzoru finansowego*, Warszawa 2014, p. 147.

³³ So: G. Komarnicki, *Analiza wybranych uprawnień Europejskiego Urzędu Nadzoru Ubezpieczeń i Pracowniczych Programów Emerytalnych oraz ich wpływu na kompetencje Komisji Nadzoru Finansowego*, "Studia Prawa Publicznego" 2015, no. 9, p. 135.

³⁴ M. Fedorowicz, *Reforma nadzoru nad rynkiem finansowym w Unii Europejskiej a samodzielność krajowego nadzorca* [in:] *Nowe koncepcje i regulacje nadzoru finansowego*, ed. W. Rogowski, Kraków-Warszawa 2014, p. 37.

³⁵ G. Komarnicki, *Analiza wybranych uprawnień...*, p. 130.

³⁶ So: A. Michór, *Nowa europejska architektura nadzoru nad rynkiem bankowym*, "Bezpieczny Bank" 2011, no. 1, p. 82.

³⁷ A. Michór, *Administracyjnoprawne formy ingerencji europejskich organów nadzoru na rynku finansowym Unii Europejskiej*, "Ekonomia i Prawo" 2011, vol. 7, p. 313.

scope of possible liability relating to the repeal of a decision issued by a national supervisory authority and its supersession by EIOPA's decision.

In addition, the EU legislator did not specify the legal consequences of delivering decisions and opinions addressed to national supervisory authorities when such decisions or opinions have indirect consequences for actors in the financial market. These issues must be clarified and call for the intervention of the EU legislator.³⁸ It should be pointed out in this context that a decision issued by EIOPA may be appealed only to the Board of Appeal. This means that with regard to a decision delivered by EIOPA, one cannot apply the national appellate procedure under the Code of Administrative Procedure.

Conclusion

In the Act on insurance distribution, the Polish legislator included in the protective information regime every party seeking insurance protection, every policyholder, every insured person being a customer of an insurance distributor. An insurance distributor is obliged to notify every customer about the procedure for submitting and processing complaints, by indicating the method and place for submitting a complaint, the deadline for its processing, and the method of notifying the customer about the outcome and about the possibility of out-of-court dispute resolution. Analysis of the solutions applicable in this regard demonstrates that one of the KNF's tasks is the out-of-court resolution of disputes within the framework of non-binding mediation between the customer and the insurance distributor. This legal regime directly affects customers of insurance distributors, although mediation in Polish legislation, as part of conciliatory dispute resolution, is not always non-binding, which constitutes the essence of mediation. Obligatory participation of an insurance distributor in out-of-court proceedings before the Financial Ombudsman raises doubts,³⁹ as this contradicts the essence of mediation.⁴⁰

On the other hand, binding mediation and the method of its initiation by EIOPA is an incentive for national supervisory authorities to amicably resolve disputes. It must be emphasized that the mechanism of binding mediation presented, as a task of EI-

³⁸ *Ibid.*, p. 314.

³⁹ D. Maśniak, *Znaczenie ustawowych zasad wnoszenia reklamacji i powołania Rzecznika Finansowego dla rynku ubezpieczeniowego*, "Prawo Asekuracyjne" 2015, no. 4, pp. 24 and 25; M.P. Ziemiak, *Ustawa reklamacyjna a obrót ubezpieczeniowy*, "Wiadomości Ubezpieczeniowe" 2015, no. 3, pp. 29–30; A. Dąbrowska, *Ochrona klienta usług ubezpieczeniowych – nowa ustawa o działalności ubezpieczeniowej i reasekuracyjnej oraz ustawa o rozpatrywaniu reklamacji przez podmioty rynku finansowego o Rzeczniku Finansowym – wybrane zagadnienia*, "Rozprawy Ubezpieczeniowe" 2015, no. 2, p. 71.

⁴⁰ Art. 37 of the Act of 5 August 2015 on processing complaints by entities in the financial market and on the Financial Ombudsman (consolidated text: Dz. U. of 2022, item. 187, 1488). See also: Regulation of the Minister of Finance of 14 January 2016 on out-of-court procedure before the Financial Ombudsman (Dz. U. item. 92).

OPA, ensuring the security of the insurance market points to a new approach to the protection of customers of an insurance distributor based on the presumption that such customers are protected not only on the level of a Member State's legal system but also within the framework of EU legislation. This is a consequence of the fact that the previous supervisory instruments protecting the customer have not worked, and customer protection on national levels has not prevented many irregularities in the market for economic insurance. It became necessary to confer EIOPA with authoritative supervisory measures affecting not only competent national supervisory authorities in the Member States but also insurance distributors directly. In addition, the mechanism of binding mediation offers to national supervisory authorities an opportunity to reach agreement without EIOPA's intervention and has a positive influence on cooperation among these authorities.

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Summary

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Dispute Resolution in the Market for Insurance Distribution as one of the Tasks of Supervisory Authorities – Selected Issues

The purpose of this article is to indicate some of the tasks of microprudential supervision authorities (EIOPA and KNF) in the field of out-of-court dispute resolution on the insurance distribution market, which may directly concern customers of insurance distributors. The second part of the study will present the tasks of microprudential supervision authorities that solve problems on the insurance distribution market by indirectly influencing the customer and by ensuring customer security – for example EIOPA cross-border dispute resolution.

Keywords: insurance distributor; customer; Financial Ombudsman; Financial Supervision Commission; cross-border disputes; supervision.

Streszczenie

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Rozwiązywanie sporów na rynku dystrybucji ubezpieczeń jako zadanie organów nadzoru – wybrane problemy

Celem niniejszego opracowania jest wskazanie niektórych zadań organów nadzoru mikroostrożnościowego (EIOPA i KNF) w zakresie pozasądowego rozwiązywania sporów na rynku dystrybucji ubezpieczeń, które mogą bezpośrednio dotyczyć klientów dystrybutorów ubezpieczeń. W drugiej części artykułu zostały przedstawione zadania organów nadzoru mikroostroż-

nościowego, które rozwiązują problemy na rynku dystrybucji ubezpieczeń poprzez pośrednie oddziaływanie na klienta oraz poprzez zapewnienie bezpieczeństwa klientowi – przykładowo omówione zostało rozwiązywanie sporów transgranicznych przez EIOPA.

Słowa kluczowe: dystrybutor ubezpieczeń; klient; Rzecznik Finansowy; Komisja Nadzoru Finansowego; spory transgraniczne; nadzór.