



EIOPA-BoS-14/067  
25 June, 2014

## **Report**

### **On feedback from National Competent Authorities**

### **Regarding EIOPA's opinion on Payment Protection Insurance**

#### ***Executive summary***

EIOPA published an Opinion on Payment Protection Insurance (PPI) in June 2013 and requested feedback from National Competent Authorities (NCAs) on any market investigations, regulatory and/or supervisory actions.

Over half of the responding NCAs indicated that they are taking (or have taken /are planning to take) regulatory/supervisory action in their respective national markets. These include starting new investigations and adopting or consulting on regulatory measures.

Some NCAs have chosen not to take any specific action on the grounds that they see no consumer protection issues in this market or would like to address potential problems in a more general framework examining sales practices.

To discuss recent developments in and promote information exchange regarding PPI markets EIOPA has organised a workshop in April 2014 that featured country case studies and presentations by numerous NCAs and industry experts.

Based on the report, we conclude that the EIOPA opinion certainly triggered significant developments in a number of national markets while in others new actions follow previous initiatives. Although many of these developments are at their early stages, most of the recent developments can be said to focus on information provision, cross-selling/commission issues and selling practices in general. At the current stage, it seems advisable that EIOPA continues to monitor national developments, and decides on any potential follow-up action at a later stage.

## **Background**

EIOPA published an Opinion<sup>1</sup> on Payment Protection Insurance (PPI) on 28 June 2013. The opinion was aimed at drawing attention to consumer protection issues regarding PPI products, analysing detailed information on existing national practises. The detailed findings were made available in the form of a Background Note,<sup>2</sup> summarizing experience from 8 Member States.<sup>3</sup>

The EIOPA Opinion identified numerous areas where consumer detriment could potentially be observed in PPI markets. The five areas that were considered most relevant for consumer protection were mis-selling issues and market imperfections, namely cross-selling issues, the potentially unfavourable effects of group insurance contracts, information asymmetry, and failings in product design.

The Opinion was addressed to National Competent Authorities (NCAs), recommending NCAs to explore their national markets. NCAs were requested to provide feedback on previous actions in this field, if not yet covered in the background note, and on their decision whether to undertake any action on the basis of the Opinion, including the details of any market investigations, regulatory and/or supervisory actions regarding PPI. The deadline for doing so was six months from publication of the Opinion, i.e. by end December 2013.

## **Overview of feedback received**

EIOPA has received **feedback** from *27 NCAs out of the potential 30 responses*<sup>4</sup>.

The replies indicate that there has been some kind of regulatory or supervisory development in this field in 10 Member States during the six months period following the adoption of the Opinion; further 3 NCAs have reported that they are considering to take action, and 2 NCAs have reported that there had been relevant actions previously and that no additional steps are envisaged. 12 NCAs have reported that they consider no action necessary in their PPI markets.

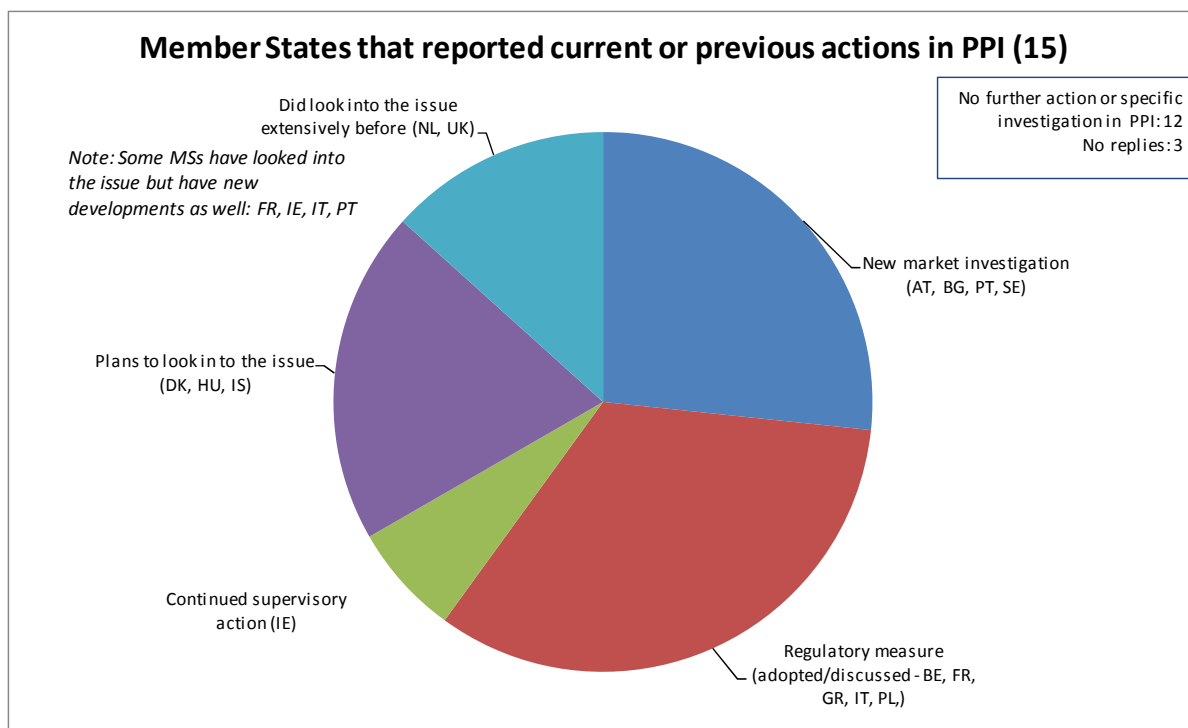
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<sup>1</sup> [https://eiopa.europa.eu/fileadmin/tx\\_dam/files/publications/opinions/EIOPA\\_PPI\\_opinion\\_2013-06-28.pdf](https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/opinions/EIOPA_PPI_opinion_2013-06-28.pdf)

<sup>2</sup> [https://eiopa.europa.eu/fileadmin/tx\\_dam/files/publications/opinions/EIOPA\\_PPI\\_Background\\_Note\\_2013-06-28.pdf](https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/opinions/EIOPA_PPI_Background_Note_2013-06-28.pdf)

<sup>3</sup> France, Hungary, Ireland, Italy, Netherlands, Portugal, Spain, United Kingdom.

<sup>4</sup> The 27 Member States of the European Union at the time of the adoption of the Opinion plus Iceland, Norway, Liechtenstein. Croatia, having joined the EU later, has provided feedback indicating that they were not EIOPA Members at the point in time of adoption of the Opinion.



The actions reported can be classified into three groups:

- Market investigations (4),
- Regulatory actions (either completed or in consultation) (5); or
- Supervisory actions (1)<sup>5</sup>.

Further, there are 3 Member States that consider future actions, while 2 have reported that they have taken extensive action before.<sup>6</sup> Most cases are continuations or new developments in projects started earlier, frequently reflecting on the findings of the EIOPA opinion.

### **Market Investigations**

Four Member States have reported that they started investigations or surveys regarding PPI in 2013. Of these investigations, there are two Member States (Austria and Sweden), where no previous supervisory/regulatory actions or market reviews regarding PPI have been undertaken. In two other Member States, Bulgaria and Portugal, the surveys or investigations followed earlier actions of the supervisory authorities (PT) or legislature (BG). The Swedish survey was closed in December; the other projects are still on-going.

<sup>5</sup> The number might not always add up as some countries have started undertaken various measures. For a detailed description, see below.

<sup>6</sup> These countries indicated that their previous actions in this field were quite extensive; some of the MSs who have taken new actions have also been active previously (See Background Note attached to the PPI Opinion for more details). There are further Member States that have taken (sometimes extensive) action in this field, however, they were still active regarding PPI in this period.

In **Austria**, the Financial Market Authority (FMA) has sent a questionnaire to market participants in October 2013; the FMA is currently analysing the results from the questionnaire. Furthermore, the FMA also contacted the Austrian Association of Consumer Protection and asked for their experience with any relevant complaints and/or court proceedings with regard to PPI. FMA's first very general impressions suggest that PPI is not yet a big issue in the Austrian market.

In **Sweden**, the Finansinspektionen has launched an investigation on PPI covering 16 insurance groups in May 2013. The investigation was completed in December 2013. The main findings of the investigations included:

- The Swedish PPI market is homogeneous and the products look relatively similar, regardless of undertaking and/or intermediary.
- Commissions constitute (on average) a significant share of the total premium.
- Pre-purchase information and insurance statements is of varying quality. In some cases, data on commission is hard to find or non-existing.
- Not all policyholders are aware that they have a policy and/or how the product works.

With a high commission percentage for intermediaries and inadequate disclosure of information there is a risk that consumers get an insurance policy that they do not really need or want. The companies offering PPI should therefore work to increase transparency towards customers. Insurance companies and insurance intermediaries are requested that consumers are particularly aware of the following (at the point of sale):

- Information that the insurance is taken out and on its compensation terms.
- Details of how the premium and the commission are determined and how much the commission is relative to the premium.

It is expected that better/clearer information to customers at point of sale will, through consumer action, push the market to lower commission levels and better products. Future actions depend on the outcome of the requested improvements.

In **Portugal**, the Insurance and Pension Funds Supervisory Authority (ISP) has been carrying out new actions in this field following previous initiatives. In particular, a *new and targeted questionnaire*<sup>7</sup> was prepared in order to collect both quantitative and qualitative information concerning the marketing of PPI in Portugal. Insurance undertakings were also requested to submit, on an ad hoc basis, *pre-contractual information* and policy (contractual terms) elements as well as materials used for advertising and marketing purposes. The scope of this

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<sup>7</sup> This questionnaire is annexed to ISP Circular no. 7/2013, of 24 October 2013.

survey included all supervised entities (among which, those operating in Portugal under the principles of freedom of services or freedom of establishment). The brief introductory statement of the questionnaire makes a reference, in an express manner, to the EIOPA Opinion and Background Note on PPI.

Currently, the ISP is drafting a specific study in light of the results of the questionnaire. The insurance undertakings' responses and the conclusions of the study will be taken into account by the ISP in the future. In fact, the ISP is planning to analyse whether additional regulatory policy measures and/or supervisory interventions are needed. The ISP will be publishing this study soon in the 2014 edition of the Market Conduct Regulation and Supervision Report (referring to 2013).

In **Bulgaria**, the Financial Services Commission (FSC) has carried out an initial survey to investigate consumer protection issues in connection with PPI. Findings of the survey are still being processed; however, initial impressions show that:

- Some credit providers sell insurance from companies that belong to the same group.
- Insurers often lack procedures for mitigating conflicts of interest where the consumer does not reveal any material circumstances under which the insurer would not have concluded the contract.
- Commission amounts are higher in some cases.

The information received from the FSC also revealed that there have been several previous actions concerning these products (the product is called "insurance in favour of a creditor" in Bulgaria). In 2007, problems arising from group insurance contracts have been addressed by extensive information remedies. In 2011, a practice where the creditor required that the client signs the contract with a given insurance undertaking was addressed by a legislative proposal, but the legislative package containing this proposal was not approved.

### ***Regulatory developments***

In **Belgium**, several initiatives have been initiated recently to address the issues of mis-selling and information provision to consumers that may affect PPI markets as well. A scheduled new legislative act is planned to provide that the so-called "MiFID" rules for investment services will apply also to the insurance sector and the distribution of insurance products and services.<sup>8</sup> Furthermore, the Belgian authorities (the FSMA) are currently organizing a consultation on a draft

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<sup>8</sup> Including rules for conduct, the management of conflicts of interest, remuneration/inducements, product information, reporting, etc.

Royal Decree on certain information obligations associated with the distribution of financial (including insurance) products to non-professional clients.<sup>9</sup>

There are special rules related to *cross-selling* in Belgium, where there is a ban on cross-selling regarding financial services, with exceptions for cases where the products/services offered constitute a whole, or the cross-selling is a well-established commercial practice. Specific legislation may prevail over these rules; such specific legislation exists for consumer credit and mortgage credit, with the important examples are the laws on consumer credit and on mortgage loans with the latter legislation permitting, under certain clearly defined conditions, the cross-selling of consumer or mortgage loans together with an insurance contract. There is an *on-going legislative process* on consumer loans, mortgage loans and commercial practices currently pending in the Belgian Parliament.

In **France**, earlier legislative measures described in EIOPA's PPI Background Note (Lagarde law) are now considered to be further improved for the benefit of consumers. The new "Hamon law" is expected to improve consumer choice and strengthen competition, as it foresees that policyholders and members of a group contract may substitute their PPI contract by other guarantees considered as equivalent to those in the former contract. Substitution may take place during a period of 12 months after the loan was granted; this law will only apply to loan contracts signed after 26 July 2014.

Following this time period, the proposal recalls that policyholders and members may terminate their PPI contract at the annual renewal date or substitute their PPI contract by another substitutable contract, pending the approval of the creditor (as the new insurance contract has to provide equivalent coverage as the previous one).

In **Greece**, the Bank of Greece has issued an Administrative Circular (No 462/14-05-2013) to "remind" banks of their obligations, already arising from the existing legislation, regarding the distribution of PPI products. The Circular was published on the BoG website and there was positive feedback from the consumers as they used it as a source of information and also as a negotiation tool. Since publication of the Circular, the BoG has received a small number of (less than 10) written complaints.

In **Italy**, IVASS intensified its PPI supervision activity mainly through on-site inspections at some undertakings and intermediaries (banks) in the second half of 2013. Further, on 17 December 2013 IVASS took out a *letter to the market* asking all undertakings to monitor the selling practices carried on by their

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<sup>9</sup> The planned Royal Decree would require, among others, the establishment of a "key information document" for the given financial product.

intermediaries in selling PPI products, in order to achieve a better result in the verification of the adequacy of the contract proposed to the prospective clients.<sup>10</sup>

In **Poland**, based on market signals, the Polish Financial Supervision Authority (PFSA) has contacted banks distributing PPI with a questionnaire in 2012, and based on the replies, *recommendations* according to the Polish banking law were drafted at market participants. The recommendations are expected to be adopted after the finalisation of the consultation process.

The recommendations were necessitated by structural links between the banks and the insurance undertakings, as well as certain sales practices in the distribution of insurance. Regarding the links between banks and insurance undertakings, banks were often found distributors and beneficiaries of the same policy, working with disproportionate commissions and limiting the freedom of choice of insurance by the consumer. Further, insured consumers (or their heirs) were not able to make claims to the insurance undertaking directly. For sales practices offerings to unsuitable clients (mis-selling) and incomplete information provision have been reported.<sup>11</sup> The recommendation does not only cover credit protection products, as it is addressed as "bancassurance", understood as encompassing a wider range of products.

Addressing the potential conflict of interests in distribution, the recommendations state that the banks should avoid conflict of interest (in particular being the beneficiary and the insurance agent at the same time). In particular, the PFSA expects that a bank being a party to an insurance contract will not receive the commission as an insurance intermediary. Furthermore, banks may not receive direct compensation from the insurance undertaking. The recommendations indicate also that commissions for the distribution should be properly reflected in the accounting of the undertaking.<sup>12</sup>

The recommendations foresee that banks shall provide the consumer with a freedom of choice regarding the insurance product. Banks should accept any alternative insurance coverage as long as it provides the same coverage as it is required by the bank.<sup>13</sup>

On direct claims, banks should not oblige consumers to join a group insurance contract – the consumers should have a choice between individual insurance or joining a group insurance. In cases when the consumer joins the group insurance and the bank resigns to pursue a claim, the consumers should have

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<sup>10</sup> [http://www.ivass.it/ivass\\_cms/docs/F15103/Lettera%20al%20Mercato%20-%20Collocamento%20di%20prodotti%20assicurativi%20PPI.%20Valutazione%20di%20adeguatezza.pdf](http://www.ivass.it/ivass_cms/docs/F15103/Lettera%20al%20Mercato%20-%20Collocamento%20di%20prodotti%20assicurativi%20PPI.%20Valutazione%20di%20adeguatezza.pdf)

<sup>11</sup> The list is illustrative; for a more detailed overview about market problems please see the recommendation p. 2-3.

<sup>12</sup> Recommendations 7 & 8, p. 7.

<sup>13</sup> Recommendations 12 & 13, p. 9.

direct access to pay-outs even in cases where the bank is the beneficiary.<sup>14</sup> The recommendations also foresee adequate information provision.<sup>15</sup>

### ***Continued supervisory review of PPI policies***

As mentioned already in the PPI Background Note, Ireland had been carrying out a review of PPI sold by credit institutions. This review has now been completed. In March 2014, the Central Bank issued a summary report<sup>16</sup> on the review explaining both the scope and results of the review. €67.4 million (including interest of €4.9 million) was calculated for refund to circa 77,000 policyholders who were sold PPI since 1 July 2007. This represents 22% of the PPI sales included in the review. Refunds were paid in cases where credit institutions did not comply with the Consumer Protection Code (“the Code”) when selling PPI or could not demonstrate compliance with the Code.

The aim of the review was to provide a straight-forward mechanism for consumers to be redressed where credit institutions could not demonstrate that policies were sold in compliance with the Code, without any cost to consumers or requirement on consumers to make a complaint. The review of each credit institution was overseen by independent third parties and monitored by the Central Bank.

The Central Bank is now considering the sale of PPI by other sellers and to that end, has commenced gathering information on the sale of PPI type products by credit unions.

### ***Target areas of follow-up actions***

The regulatory/supervisory developments described above target several areas of consumer detriment identified in the EIOPA Opinion. Given that some of these actions are ongoing projects, it is not always straightforward to classify these developments, and some projects may be subject to change. However, based on a preliminary analysis, most of these developments target cross-selling issues (6), information provision (5) or selling practices in general (4).

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<sup>14</sup> Recommendations 10 & 14, 17 p. 9-10.

<sup>15</sup> Recommendations 15, p. 10.

<sup>16</sup> <http://www.centralbank.ie/regulation/processes/consumer-protection-code/compliance-monitoring/Documents/Summary%20Report%20of%20the%20Payment%20Protection%20Insurance%20Review%207%20March%202014.pdf>



Target areas of recent developments after the adoption of the EIOPA opinion

	Commissions / Cross-selling	Information provision	Product design	Suitability	Selling practices
AT					
SE	1	1		1	
PT	1	1	1	1	1
BG	1				
BE	1	1			
FR	1				
GR					1
IT					1
PL	1	1			1
IE		1		1	

### **Member States considering follow-up actions**

In **Denmark**, as a follow up to the EIOPA Opinion, the DFSA has been in contact with the Association of lending and leasing institutes (Finans & Leasing) in order to find out if PPI is used in connection with consumer loans provided by their members. The Association has informed the DFSA that some of their members offer PPI - provided by insurance undertakings from other EU countries or via Danish insurance intermediaries. According to the Association, PPI is not used as a requirement to obtain loans, but is offered in connection with the loan.

In 2014 the DFSA will look into the market of “unemployment insurance” – policies that ensures a supplement to the income of the insured in case of unemployment and other forms of PPI, in order to see the extend of the market, the distribution of the insurances and the contractual terms.

The **Hungarian** National Bank has indicated that it plans to conduct consumer protection inspections regarding PPI. Most PPI contracts were concluded in the form of group insurance contracts in Hungary, where the insurance contract is established between the insurance company that assumes the risk and the financial institution that grants the loan. As a legal arrangement, the group insurance contract is not mentioned explicitly in the Insurance Act, and this is a source of several consumer protection problems.

In **Iceland**, according to the Financial Supervisory Authority’s (FME) information on the selling of PPI is very limited. The FME has, at this time, not detected problems arising from the selling of such insurance and has therefore not needed to take action on the matter. The FME is however considering whether further investigation on the Icelandic market is necessary.

### ***Member States planning reporting' no further action' in view of previous extensive action***

Two Member States, the Netherlands and the United Kingdom, have reported that due to their recent and extensive activity in the PPI market, they do not intend any further actions or investigations regarding these products.

### ***Other Member States planning 'no further action'***

A number of Member States (Czech Republic, Germany, Spain, Finland, Liechtenstein, Luxemburg, Latvia, Lithuania, Norway and Slovenia) have indicated, that they have not taken any action and that they do not plan to launch any investigations or actions at the moment.

The most frequently cited reason for this is that these countries do not see signals indicating market problems (mis-selling issues or market imperfections) in their markets. Further to this, there are additional comments from some Member States, some of which are presented below.

From **Germany**, in its letter to EIOPA, the German Supervisory Authority (BaFin) stresses that any conclusions about PPI heavily depend on the structure of the given national market and the use of product. BaFin is of the view that the *optional nature of PPI products* in Germany, together with the existing consumer protection framework, does not necessitate any further action in this field. Still BaFin acknowledges that given the relatively high provisions, it is aware of potential mis-selling risks, but supports a more general work on incentives instead of focusing on PPI.

Three countries **Lithuania**, **Slovakia** and **Spain** have indicated that a review of PPI may be part of more general investigations. Lithuania is planning to adopt a position explaining duties of a bank towards its clients in situations where the bank sells banking and insurance products packages, including PPI products, operates as the policyholder and its clients are insured persons covered by the insurance policy. In Spain there are on-site inspections on selling practices of banks that act as insurance intermediaries and it is possible that some of the findings relate to PPI.

## ***Conclusions***

In response to the EIOPA opinion, 15 out of the 27 responding Member States indicated that they have taken new or previous actions in their respective national markets. Though not always triggered by the opinion, these Member State actions generally benefited from the opinion issued by EIOPA.

The replies indicated new developments in 13 Member States; these included starting new investigations to the PPI market in 4 cases, adopting or consulting on regulatory measures in 5 cases, continued supervisory actions in 1 case and declaration of planned actions in 3 cases.<sup>17</sup>

In the 12 Member States who decided to take no action, the primary reason for that was that they see no consumer protection issues in this market, or that they would like to address potential problems in a more general framework examining sales practices.

Based on the report, we conclude that the EIOPA opinion certainly triggered significant developments in a number of national markets. Many of these developments, however, are at their early stages, and in many cases the effect of the given Member State action cannot be judged based on the information that was made available. At the current stage, it seems advisable that EIOPA does not take any immediate follow-up action apart from publishing the current report, and continues to monitor national developments with deciding on any potential follow-up action at a later stage.

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<sup>17</sup> One MS has launched an investigation and adopted a regulatory measure in the same period.