



EIOPA- BoS-12/074

14 June 2012

**EIOPA's updated Survey of
the competences of national
competent authorities in the field
of Consumer Protection**

Table of Contents

1.	Introduction	3
	1.1. Sectoral coverage	4
	1.2. Coverage of competences	4
2.	Executive Summary	6
3.	Internal Structure	7
4.	Market Conduct of insurance undertakings and intermediaries towards potential or existing policyholders	8
	4.1. Authorities competent to supervise market conduct of insurance undertakings	8
	4.2. Authorities competent to supervise market conduct of insurance intermediaries	9
	4.3. Rules/Codes of Conduct for insurance undertakings.....	10
	4.4. Rules/Codes of Conduct for insurance intermediaries.....	12
5.	Information Requirements	15
6.	Advertising	17
	6.1. Content of regulations and competences of national supervision authorities with regard to advertisement activities of the supervised undertakings... 17	
	6.2. The number of cases of exercising such competences by national supervision authorities, for insurance and intermediaries only	18
	6.3. Current legislative work going on to amend the regulations on advertisement activities of the supervised undertakings, for insurance and intermediaries only	19
	6.4. Existing problems concerning the advertisement policy of supervised undertakings and the steps for resolving these problems required by insurance undertakings and intermediaries	20
7.	General Good Provisions	22

1.Introduction

Article 9(4) of Regulation 1094/2010 establishing EIOPA (“the EIOPA Regulation”) requires EIOPA to establish *“as an integral part of the Authority, a Committee on financial innovation, which brings together all relevant competent national supervisory authorities with a view to achieving a co-ordinated approach to the regulatory and supervisory treatment of new or innovative financial activities and providing advice for the Authority to present to the European Parliament, the Council and the Commission”*.

In order to implement the requirement for this Committee to be an integral part of the Authority and to bring together all relevant competent national supervisory authorities, CEIOPS Managing Board proposed on 15 December 2010 that the CCP be renamed the “Committee on Consumer Protection and Financial Innovation” (or CCPFI). The re-naming of this Committee was approved by EIOPA’s Board of Supervisors by written procedure on 21 January 2011. Since then CCPFI has worked on a number of deliverables in the area of consumer protection and financial innovation such as Good Practices Report on the disclosure and sale of variable annuities and Guidelines on complaints-handling by insurance undertakings.

The main purpose of this survey is to define and delineate the competences of national competent authorities¹ with regard to the area of consumer protection. This has been achieved essentially by updating a previous internal survey carried out by CEIOPS². **It is noted that this survey is limited to considering national competences in the area of consumer protection only and therefore, does not consider competences at a national level with regard to financial innovation.**

In the case of Institutions for Occupational Retirement Provision (IORPs) not all the issues of consumer protection identified in this report for insurance and intermediaries can be easily transferred to IORPs. This is because of their occupational nature, the fact that membership is part of an employment arrangement and because some definitions set in the report for consumer issues (e.g. general good provisions and market conduct) may not fit well for all IORPs. So, at this stage, the survey on the competences with regard to consumer protection issues for IORPs covers information requirements and advertising to a limited extent.

¹ **N.B. Wherever „national competent authorities” are referred to in this Report, this means „competent authorities” within the meaning of Article 4(2) of the EIOPA Regulation.**

² CEIOPS-CCP-05/09 Survey on CEIOPS Members and Observers’ competences in consumer protection. N.B. The sections in the original CEIOPS Report on Guarantee Schemes, Financial Education and Complaints-Handling have been removed from this updated survey due to the fact that they have been covered at length in other EIOPA Reports.

The **37 participating National Competent Authorities** consist of national competent authorities that have adhered to the principles of the Luxembourg Protocol and Budapest Protocol, i.e. the German Ministry of Economy and Industry³ and the Dutch Authority for the Financial Markets⁴.

1.1. Sectoral coverage

- (1) **22** Authorities are competent in three sectors: Insurance Undertakings, Insurance Intermediaries (even partially) and IORPs. They are further referred in this report as “**fully sectoral integrated authorities**” (although this Report does not distinguish between sectorally integrated authorities which operate on the basis of a classical “**twin-peaks**” model of supervision)⁵: BE, BG, CZ, DK, EE, ES, FI, FR, HU, IS, LI, LT⁶, LU-Commassu, LV, MT, NL, NO, PL, PT, SE, SI and SK.
- (2) 4 Authorities cover only IORPs (the Romanian Private Pensions System, the Italian Authority on pension funds, the Irish Pensions Board and The Pensions Regulator in the UK). 1 covers only intermediaries (the German BMWi). These **5** authorities are further referred to as “**uni-sectoral authorities**”.
- (3) The remaining **10** Authorities are “**partially sectoral integrated authorities**”. Their competences cover either only insurance undertakings and intermediaries (no IORPs) or insurance undertakings and IORPs (no intermediaries).

1.2. Coverage of competences

- (1) From the **competences’ point of view**, “**fully**” competent is considered, in this survey, as any authority dealing with market conduct⁷, information requirements, advertising and General Good provisions.

According to this definition, **19** authorities are **fully competent**: AT, BE⁸, BG, DE (BaFin), DK, ES, FI, HU, IE (CBI), IT (ISVAP), LI, LU (CAA) LT, MT, PL, PT, RO (CSA), RO (CSSPP), UK (FSA).

³ Bundesministerium fuer Wirtschaft und Industrie (DE-BMWi)

⁴ Autoriteit Financiële Markten (NL-AFM)

⁵ N.B. In BE and NL, the authorities in question are *sectorally* integrated, but operate on the basis of a twin peaks model whereby one authority is competent for *prudential issues* (BE – NBB; NL – DNB) and another authority is competent for *conduct of business issues* (BE – FSMA; NL – AFM), although, in BE, the FSMA is also competent for the prudential supervision of IORPs and insurance intermediaries. This is also a model which will apply in the UK from 2013 whereby competence for Insurance Undertakings and Insurance Intermediaries will be split between the PRA (prudential issues for IUs) and FCA (conduct of business and prudential issues for IMs).

⁶ From the beginning of 2012 the Central Bank of Lithuania has become responsible for supervision of all financial market (including insurance, intermediaries and occupational pensions sectors).

⁷ In relation to „market conduct”, see also Footnote 4 above re classical twin peaks model of supervision.

⁸ Some competences are shared with other authorities (cf infra)

From these 18 fully competent authorities, 11 are fully sectoral integrated authorities, covering the 3 sectors: BE, BG, DK, ES, FI, HU, LI, LT, MT, PL, PT). 6 {AT, DE-BaFin, IE (CBI: IU/IM), IT (ISVAP: IU-IM), (RO (CSA: IU⁹-IM¹⁰) and UK (FSA)} are partially sectoral integrated ones.

- (2) The group of the **partially competent authorities** includes fully sectoral and partially sectoral integrated authorities, and the 5 aforementioned “uni-sectoral authorities”.

Annex I: Structure and Competences of of national competent authorities in the field of Consumer Protection

⁹ IU: Insurance Undertakings

¹⁰ IM: Insurance intermediaries

2. Executive Summary

The following general conclusions can be drawn from this updated survey:

Internal Structure

As a result of the transition of CEIOPS to EIOPA, there has not been a significant change in the number of national authorities, which are competent to supervise the market conduct of insurance undertakings and intermediaries.

Market Conduct of insurance undertakings and intermediaries towards potential or existing policyholders

There has been a gradual increase over the past few years in the elaboration of additional market conduct principles and issuance of national codes of conduct with respect to both insurance undertakings and intermediaries.

Information Requirements

There has not been a significant change in recent years with regards to competences for disclosure requirements towards potential/existing policyholders, insured persons, pension members and beneficiaries.

Advertising

There has not been a significant change in recent years with regards to competences in the area of advertising. However, new regulatory frameworks have been introduced or are in preparation in a number of Member States and the number of cases of supervisory intervention has increased materially in several Member States.

General Good Provisions

The number of authorities exhibiting competence or enhanced involvement with regard to general good rules has increased and in some jurisdictions, Member States have sought to enhance the public awareness and prominence of general good rules.

3. Internal Structure

4 categories of internal structures can be identified:

CAT 1: no separate unit; no exclusive competence (n/0)

In 14 authorities, consumer issues are **not** exclusively dealt with by a **separate unit**, division or department (further referred to as "unit"). These authorities are mostly (10) fully sectoral integrated authorities from which only 1 fully competent.

CAT 2: several units, with 1 or more units with an exclusive competence (n/1+)

9 other authorities reported to have in general no special units, except with regard to one or **various specific topic(s)** falling under the exclusive competence of one or various units. The majority (6) of these authorities are fully sectoral integrated. Only 3 of the 9 authorities have full competence.

CAT 3: several units, each with a different exclusive competence (n/n)

6 Authorities reported the establishment of **several departments**, having each a different exclusive competence. 5 of them are fully sectoral integrated authorities and 1 is a partially sectoral competent authority. 5 of the 6 are fully competent.

CAT 4: 1 separate unit with multiple competences (1/all)

Only 6 authorities reported the establishment of **1 separate** unit responsible for all consumer protection issues. The majority (4) is fully sectoral integrated. 5 authorities are fully competent (3 integrated and 2 partially integrated).

From the 5 fully competent and sectoral integrated authorities, 3 established a separate overall unit. From the 6 authorities with a separate overall unit, 4 are sectoral integrated, but only 3 are fully competent. The 7 "uni-sectoral authorities" did not establish a separate unit.

Annex I: Structure and Competences of national competent authorities in the field of Consumer Protection

Internal Structure

As a result of the transition of CEIOPS to EIOPA, there has not been a significant change in the number of national authorities, which are competent to supervise the market conduct of insurance undertakings and intermediaries.

4. Market Conduct of insurance undertakings and intermediaries towards potential or existing policyholders

For the purpose of this part of the survey that is currently focused only on insurance undertakings and intermediaries, "Market Conduct" is defined as follows for the purposes of this survey¹¹:

Market conduct of IU/IIM is defined as the general business practice they adopt in their dealings with potential and existing policyholders before and after the conclusion of the insurance policy. General business practice covers areas such as:

- advertising,
- marketing,
- suitability of any insurance products for the individual policyholder,
- maintaining adequate customer records,
- disclosure of any relevant policy information, including claims practices, handling and settlement of complaints, charges and remuneration.

4.1. Authorities competent to supervise market conduct of insurance undertakings

(1) **28** authorities declare being competent to supervise market conduct of IUs: AT, BE, BG, CZ, DE (BaFin), DK, EE, ES, FI, FR, GR, HU, IE (CBI), IS, IT (ISVAP), LI, LT, LU (CAA), MT, NL (AFM), NO, PL, PT, RO (CSA), SE, SK, SI, UK (FSA)

In BE, this competence is shared between the FSMA and the Federal Ministry of Economic Affairs (the latter for issues primarily dealt with by the Unfair Commercial Practices Directive).

IS has a split competence between the FME and the Consumer Agency, the FME having the possibility to issue instructions to remedy whatever is deficient and to impose an administrative fine.

In LI, this competence is shared between the "Amt für Handel und Transport" and the FMA.

¹¹ Other definitions are in force in the domestic legal framework of national competent authorities.

In LT, the authority is also competent for hearing complaints and settling disputes relating to market conduct of IU.

In PT, as far as insurance contracts related to investment funds (unit-linked), capital redemption operations related to investment funds and individual adhesions to open pension funds are concerned and apart from ISP, CMVM ("*Comissão do Mercado de Valores Mobiliários*", which is the Portuguese Supervision Authority in the field of Securities and other Financial Instruments markets) also has partial supervisory and regulatory competences regarding these products, exclusively for some market conduct issues.

In PL, the Office of Competition and Consumer Protection may take appropriate action but only in case of infringement of collective consumer interests.

- (2) **4** authorities are not competent to supervise market conduct of IU [DE (BMWⁱ), LU (CSSF), LV (CRPC, CC), NL (DNB)]

4.2. Authorities competent to supervise market conduct of insurance intermediaries

- (1) **28** authorities declare being competent to supervise market conduct of IMs: AT, BE, BG, CZ, DE (BMWⁱ¹²), DK, EE, ES, FI, FR, GR, HU, IE (CBI), IS, IT (ISVAP), LI, LT, LU (CAA), MT, NL (AFM), NO, PL, PT, RO (CSA), SE, SK, SI, UK (FSA).

In AT, the FMA is only competent to supervise IM that are banks.

In BE, this competence is shared between the FSMA and the Federal Ministry of Economic Affairs (the latter for issues primarily dealt with by the Unfair Commercial Practices Directive).

DE (BaFin) is only indirectly competent to supervise market conduct.

In LI, this competence is shared between the "Amt für Handel und Transport" and the FMA.

The LT authority is also competent for hearing complaints relating to market conduct of IIM.

¹² BMWⁱ is not fully competent to matters defined as market conduct. For instance, issues like remuneration, settlement of complaints or information are in the competence of the Ministry of Justice since these concerns contract law.

In PT, as far as insurance contracts related to investment funds (unit-linked), capital redemption operations related to investment funds and individual adhesions to open pension funds are concerned and apart from ISP, CMVM ("*Comissão do Mercado de Valores Mobiliários*", which is the Portuguese Supervision Authority in the field of Securities and other Financial Instruments markets) also has partial supervisory and regulatory competences regarding these products, exclusively for some include market conduct issues.

- (2) **2** authorities are not competent to supervise market conduct of IM [LU (CSSF), NL (DNB)]

4.3. Rules/Codes of Conduct for insurance undertakings

In numerous Member States, the supervisory authority and/or the insurance industry have elaborated additional "market conduct" principles to supplement (provisions set out in) binding acts/ regulations.

For the purpose of this survey, this set of principles is referred to as a "**code of conduct**" if established by the insurance industry and "**rules**" if established by the authority (or by the insurance industry and/or the authority AND enforceable by the authority)."

- (1) In **19** Member States, insurance associations issued a code of conduct: BE, CZ, DE, ES, FI, FR, GR, HU, IT, LI, LT¹³, LU, MT, NL, PL, SE, SI, SK and UK.

In BE, the supervisory authority was consulted and supported the initiative, but no formal approval was provided.

In CZ, the Code of Conduct is not published and supervised by CNB as the regulator in the Czech Republic. It is written and published by Czech insurance association. The Code lays down ethical standards and principles of conduct and manners in insurance industry to be observed by insurance companies and their employees, and by insurance intermediaries carrying on intermediary activities for these insurance companies.

In FR, a regulation provides that professional organisations can adopt rules and have them ratified by the Minister of Economy (so-called "homologated codes of conduct"). These homologated rules become legally binding for all insurance undertakings operating in France.

¹³ N.B. Only the Association of Lithuanian life insurers has adopted the Code of professional ethics (see Annex II).

Homologated rules have to be distinguished from approved rules, also issued by professional organisations but that have undergone an approval by the ACP. These “approved codes of conduct” are part of the soft law, legally binding for the all members of the association. Professional organisations can also issue codes of conduct which are neither approved by the ACP, nor legally binding.

In IT, insurance companies are requested by ISVAP (Regulation 20/2008) to comply with a code of ethics which includes general conduct of business rules, rules on the management of the conflict of interest and corrective actions in case of infringements. In addition, the listed companies are requested to adopt a code of conduct for corporate governance.

In MT, the Handbook of Best Practice for Third Party Motor Liability Claims applies only to insurance undertakings carrying on business of motor insurance.

In PT, further to the issuing of new amendments to the insurance legislation (January 2009), it was introduced a provision that foresees the adoption of codes of conduct by insurance undertakings. In addition, APFIPP (the Portuguese professional association for investment funds, pension funds and asset management) has issued a Code of Practice that is applicable to its members, which include insurance undertakings managing pension funds. This Code covers relevant provisions from the perspective of market conduct, such as conflicts of interest, advisory services, disclosure, complaints, etc.

- (2) In **13** Member States, there are “rules” established by the competent authority: AT, BE, BG, CZ, DK, FI, HU, IE (CBI), NL¹⁴, PL, PT, SK and SE.

In BE, in July 2011, a Moratorium on the distribution of particularly complex structured products was agreed with the financial sector¹⁵.

IE has a Consumer Protection Code and PL has “rules” for all actors of the financial market covering also IU. The main means of the HU authority regarding market conduct issues are recommendations¹⁶ and Dear CEO letters.

Apart from primary and secondary legislation, the ISP (PT) has issued a Circular in 2010 making public and recommending a set of principles and standards which correspond to best practices in the context of the

¹⁴ N.B. Rules means „guidance” in NL

¹⁵ http://www.fsma.be/en/Supervision/finprod/Article/press/div/2011-07-29_prod.aspx

¹⁶ HU issued a general consumer protection recommendation in April 2011 stipulating consumer protection principles and best practices on market conduct. The recommendation covers all sectors (including insurance sector) and all participants of the financial markets.

business relationship between insurance undertakings and insurance intermediaries, with impact on consumers.

- (3) **5** Member States do not have rules or codes of conduct for IUs: CY, IS, LV, MT and NO.

Annex II: List of rules and codes of conduct

4.4. Rules/Codes of Conduct for insurance intermediaries

Definition of rules and code of conduct: see point II. 3.

- (1) **18** Member States have a code of conduct for IIM established by the industry: BE, CZ, DE, ES, FR, HU, LT, LI, LU, LV, NL, NO, PL, PT, RO, SE, SK, UK.

In 2 Member States, the competent authority was involved [LV and PL]. In BE, the supervisory authority was consulted and supported the initiative, but no formal approval was provided.

In LU, the code of professional ethics referred to under section 4.3 applies indirectly to insurance intermediaries. As for the code of conduct regarding advertising for individual life insurance, both insurance undertakings and insurance intermediaries fall explicitly under its scope.

In CZ, the Code of conduct is not published and supervised by CNB as the regulator in the Czech Republic. It is written and published by Czech insurance intermediaries associations. The Code lays down ethical standards and principles of conduct and manners in insurance industry to be observed by insurance companies and their employees, and by insurance intermediaries carrying on intermediary activities for these insurance companies.

In HU, the Ethical code of conduct on IU issued by the Insurance Association covers also IM.

PL has "rules" for all actors of the financial market covering also IM.

- (2) In **12** Member States, there are "rules"¹⁷ established by the competent authority: BE, CZ, DK, FI, GR, HU¹⁸, IE (CBI), IT, MT, NL¹⁹, PT and SE.

¹⁷ There are rules (primary legislation) of conduct in Iceland that apply to all businesses including IIM. This is the Act on the Surveillance of Market Conduct and Marketing. The competent authority to enforce the Act is the Consumer Agency. Not sure if this should be included in the survey as the rules are not established or enforceable by the FME.

¹⁸ The form of rules are recommendations or so called Dear CEO letters. HU issued a general consumer protection recommendation in April 2011 stipulating consumer protection principles and best practices on

In BE, the Moratorium on the distribution of particularly complex structured products (referred to above) also applies to insurance intermediaries.

In Greece, the Presidential Decree 298/86 “regarding the rights and liabilities of insurance consultants and insurance agents and code of conduct applicable to their professional activities” lays down the rules and principles governing the business conduct of insurance agents and insurance consultants. This act is legally binding to insurance intermediaries concerned; the former competent authority (Ministry of Commerce) was involved in drafting these “rules” and the current competent authority (Bank of Greece) supervises the enforcement thereof and also has concluded the public consultation regarding the adoption of a more detailed code of conduct for IIMs.

The main means of the HU authority regarding market conduct issues are recommendations and Dear CEO letters.

IE has a Consumer Protection Code.

In IT, ISVAP Regulation n0.5/2006 foresees general market conduct rules to be applied to the activity of insurance mediation.

Apart from primary and secondary legislation, the ISP (PT) has issued a Circular in 2010 making public and recommending a set of principles and standards which correspond to best practices in the context of the business relationship between insurance undertakings and insurance intermediaries, with impact on consumers.

(3) **5** Member States do not have rules or codes of conduct for IM: AT, BG, CY, IS, and SI.

In LT and LV, the law foresees the setting up of a code of conduct for IM.

Annex II: List of rules and codes of conduct

market conduct. The recommendation covers all sectors (including insurance sector) and all participants of the financial markets.

¹⁹ N.B. Rules means „guidance” in NL

Market Conduct of insurance undertakings and intermediaries towards potential or existing policyholders

There has been a gradual increase over the past few years in the elaboration of additional market conduct principles and issuance of national codes of conduct with respect to both insurance undertakings and intermediaries.

5. Information Requirements

All Directives regarding insurance and IORPs products comprise disclosure requirements towards potential/existing policyholders, insured persons and members and beneficiaries respectively.

Authorities were asked if their organisation is competent with regard to and responsible for information requirements within their Member State.

- (1) **24** Authorities reported being the **sole organisation competent with regard to and responsible for the supervision of information requirements within their sector**: BE²⁰, BG, DE (BaFin²¹), CZ, DK, ES, FI, GR, HU, IE (CBI/PB), IT (COVIP), IS, LI, LT, LU (CAA), LV, MT, NL (AFM), NO, PL, RO (CSA, CSSPP), SI, SK, UK (FSA/TPR).
- (2) In **AT**, the Authority is in addition competent for issuing Minimum Standards.
- (3) In **FR**, the **ACP** is responsible for the supervision of information disclosure and has the power to issue soft law recommendations for business practices and in the field of consumer protection. The Treasury is responsible for issuing legal information requirements.
- (4) The **German BMWi** is the regulatory authority concerning intermediaries²². However, due to the federal structure the Länder are responsible for the supervision of the information requirements. The Länder are the supervisory authority to the Industrie- und Handelskammern which execute the law.
- (5) In **IT**, **ISVAP** is not the *sole* organization competent with regard to and responsible for the regulation and supervision of unit- and index-linked products: indeed CONSOB (the Supervisory Authority for the Italian Securities Market) is competent for the provisions concerning the *pre-contractual* information.
- (6) In **SE**, both the Financial Supervisory Authority and the Consumer Agency (Konsumentverket) have the competence for information requirements and their supervision.
- (7) In **PT**, the **ISP** is not the sole authority responsible for insurance contracts related to investment funds (unit-linked) and capital

²⁰ The Federal Ministry of Economic Affairs is however competent for issues dealt with by the Unfair Commercial Practices Directive.

²¹ BMWi – competent only for IM, see introductory remarks

²² The Ministry of Justice is the regulatory authority concerning „contractual“ information requirements.

redemption operations related to investment funds. CMVM (*“Comissão do Mercado de Valores Mobiliários”*, which is the Portuguese Supervision Authority in the field of Securities and other Financial Instruments markets) has partial supervisory and regulatory competences regarding these products, exclusively for some market conduct issues, which include some information requirements. In the field of IORPs, ISP is the sole authority responsible and competent for the supervision of the information requirements established by the Directive 2003/41/EC (IORP Directive). Some additional national requirements laid down by a CMVM regulation covering individual adhesions to open pension funds are also applicable.

- (8) In **HU**, the **HFSA** was entitled from 1st January 2012 to issue a Decree on information requirements. The Decree is legally binding on the service providers under the scope of the Decree²³.

Information Requirements

There has not been a significant change in recent years with regards to competences for disclosure requirements towards potential/existing policyholders, insured persons, pension members and beneficiaries.

²³ Until 1st January 2012 the HFSA could only issue legally binding decrees on e.g. compulsory data supplying, reporting or on supervision fees.

6. Advertising

For the purpose of this exercise, advertising means the making of a representation in any form in connection with supervised undertakings in order to promote itself (insurance undertaking, insurance intermediary or IORP) and/or insurance/IORPs services and products.

6.1. Content of regulations and competences of national supervision authorities with regard to advertisement activities of the supervised undertakings.

- (1) The majority of the authorities participating in this survey (**27**) are competent to some extent in the field of the advertisement. Those are: AT²⁴, BE²⁵, BG, CZ, DE (BaFin), DK, GR²⁶, ES, FI, FR, HU, IE (CBI), IS, IT (ISVAP/COVIP), LI, LT, LU (CAA/CSSF), LV, MT, NL (AFM), PL, PT, RO (CSA, CSSPP), SK, UK (FSA).
- (2) **8** authorities are not competent at all {DE (BMW), IE (PB), NL(DNB), NO, SE²⁷, SI, UK (TPR)}, or not directly competent (EE).
- (3) Within the authorities which are competent, the extent of the powers is similar: most supervisors can ask to withdraw or to amend advertisement and impose fines.
- (4) In **8** Member States (AT, ES, FR, IT (ISVAP), LV, MT, PT and RO), there are regulations connected to the issue of advertisement policies within their national insurance law. Other MS have to use general provisions concerning advertising, which are concluded in commercial regulations or customer regulations (CZ, DE, SK, PL) or they have to exercise their general competence as a financial supervision authority (AT, LI).
- (5) In IT, ISVAP Regulation n.35/2010 has provided new rules in the field of advertisement concerning, in particular, the general characteristics of advertisements, the advertising elements, the advertising of the return of

²⁴ Competence not extended to IORPs.

²⁵ Competence not extended to IORPs. In addition, the Federal Ministry of Economic Affairs is competent for issues under the Unfair Commercial Practices Directive.

²⁶ In Greece there has been a recent amendment to law decree 400/1970 "regarding insurance undertakings" according to which the Private Insurance Supervisory Committee (PISC) is competent to supervise the advertising activities and commercial/business practices of IU and IIM. In particular art. 112 par. 3 of said LD stipulates the following: "The Private Insurance Supervisory Committee, can, within the framework of its competence for the supervision of the transparency of the procedures and the terms of the transactions of the supervised persons, require the conformity of the content of their advertisements, as well as of their business practices".

²⁷ All issues concerning advertising and marketing are handled by the Swedish Consumer Agency (Konsumentverket/KO) in accordance with the Swedish Marketing Act (2008:486). The reported information has been forwarded by the Agency.

life assurance products and the advertising of insurance products by intermediaries.

6.2. The number of cases of exercising such competences by national supervision authorities, for insurance and intermediaries only

- (1) From the **26** aforementioned competent authorities, 2 did not execute their competence at all (LI, RO).
- (2) From the other authorities the number of cases reported is generally very low (CZ, DE, IT (ISVAP)).

In LT in 2012, there were 3 cases where the Central Bank of Lithuania sent written comments regarding information presented in advertisements.

IS reported only 1 case; ES, FI, PL and SE reported 4 cases in 2007.

In 2011, SE reported 32 cases of health and personal accident insurance and 39 cases of non-life insurance. One case was handled by the Swedish Market Court.

In PL - 2009 – 3 cases, 2010 – 3 cases, 2011 – 2 cases – in most of them PFSA send to Insurance Undertakings a written call for explanations connected with misleading information contained in the advertising messages and requested Insurance Undertakings to stop transmitting this information.

In HU, the number of cases regarding advertisements are very low; only in very few cases, the IUs breached the specific legal regulation on advertising (e.g. direct marketing). The cases are rather in connection with misleading information activities (unfair commercial practices). In 2011, many IUs and IIMs failed to comply with the legal regulation on publishing MTPL fees and costs which cases were also regarded as unfair commercial practices.

In PT, under the “new” regulatory framework (2010) and further to the revision of the internal resources, mechanisms and procedures allocated to the ongoing monitoring of advertisement materials (tv, radio, press, outdoors, etc.), including the fine tuning of statistical tools and methods (allowing the possibility to gather detailed information, which is also an important source of information used within the scope of the harmonization of the analysis criterion), the ISP has intensified its

activities in the field of advertisement ongoing monitoring (e.g., in the evolution of the number of advertisement materials from 2010 to 1S2011²⁸) and supervision (after an initial stage of adaptation to the new regulatory requirements by the supervised undertakings, experience has proved their awareness when planning campaigns and level of commitment by amending and taking other necessary actions when approaching non-compliant situations identified by the supervisory authority). Two of the most relevant principles followed by the ISP are: prompt and timely action (in order to ensure an effective intervention) and risk-based approach (focused on the analysis of the potential of negative impact for consumers).

From 2004 to date, MT has exercised its competence twice in case of insurance companies and 19 times in case of insurance intermediaries.

The UK (FSA) actively monitors advertisements as well as receiving advertising complaints from both firms and consumers using its Hotline.

In 2011, the FSA asked insurance companies and intermediaries to amend or withdraw 288 financial promotions.

In DK in 2011, 3 advertising cases were handled by the Danish FSA.

IE actively monitors advertisements across all sectors of regulated firms. During 2011, 43 advertisements by IUs and IIMs were examined with the result that 38 were withdrawn or amended.

6.3. Current legislative work going on to amend the regulations on advertisement activities of the supervised undertakings, for insurance and intermediaries only

- (1) With regard to the 26 competent authorities, 3 reported legislative work concerning the regulations on advertisement activities (HU, LV), UK (FSA)). From 1st January 2012, HU is entitled to issue decrees in connection with information requirements, which may cover pre-contractual information, this advertisement activities as well. LT is preparing Guidelines on financial products and services advertising, which will include insurance products.
- (2) 8 others (BE, DK, ES, FI, IS, LI, LU, RO) confirmed no changes at the moment. In BE, recent legislation states that technical regulation on

²⁸ Statistical data are available up to the end of the 1S2011.

advertisements can be issued on the initiative of the FSMA in order to provide for a fair and professional treatment of insurance clients.

6.4. Existing problems concerning the advertisement policy of supervised undertakings and the steps for resolving these problems required by insurance undertakings and intermediaries

Existing problems and possible solutions were given by the following 7 Members (FI, FR, IE, NO, SE, PL, UK (FSA)):

The UK (FSA) would like to publish the names of firms committing compliance breaches, but it encounters a firm disagreement from stakeholders.

IE and FI noticed that it is a challenge for a supervisory authority to intervene as fast as possible, in order not to lose the regulatory impact.

FI has also noticed that companies operating in FI in a cross-border basis need more attention and guidance than the Finnish insurance companies.

In FR, ACP has the responsibility of supervising advertisements on life insurance policies. French law provides that advertisements for life insurance products should be clear, fair and not misleading. Moreover, the ACP has issued over the last 2 years various recommendations regarding life insurance contracts directly applicable to advertising. Based upon these recommendations, the ACP conducts on-site supervisions focused on advertising. The main problems identified are related to an insufficient presentation of risks associated with complex underlyings and/or a lack of clarity on units of accounts.

NO has noticed that some insurance agencies do not provide information about which insurance company they are selling on behalf of.

In PL, the main problem is often the information about the possible rate of return of the investment (it is incorrect or it is related to rates of the return from the distant past). A lot of insurance companies do not provide correct information about the risk connected with concluding the contract. Some advertisements involve incorrect information about the cost of insurance. In 2010-2011, most insurance advertisements did not raise objections from the supervisory authority's perspective. In that period, more insurance undertaking's advertising messages contained insurance undertakings' image as opposed to previous advertisements which pointed out information connected with particular products. These advertisements, which were the

reason for supervisory activity, included unreliable information related to the cost of insurance.

Advertising

There has not been a significant change in recent years with regards to competences in the area of advertising. However, new regulatory frameworks have been introduced or are in preparation in a number of Member States and the number of cases of supervisory intervention has increased materially in several Member States.

7. General Good Provisions

The information on competences for General Good has only been collected with regard to insurance undertakings and intermediaries.

In its Interpretative Communication on the freedom to provide services and the general good in the insurance sector (OJ C 43, 16/02/2000 p.0005-0027), the EC reported on the conditions laid down by the Court of Justice which must be met if a national provision is to validly obstruct or limit exercise of the right of establishment and the freedom to provide the services. The conditions for each provision are as follows:

- “ – it must come within a field which has not been harmonized,
- it must pursue an objective of the general good,
- it must be non-discriminatory,
- it must be objectively necessary,
- it must be proportionate to the objective pursued,
- it is also necessary for the general-good objective not to be safeguarded by rules to which the provider of services is already subject in the Member State where it is established”.

These conditions are cumulative.

The list of the General Good Provisions of EIOPA Members and Observers is available on EIOPA’s website²⁹. EIOPA (CCPFI) is due to work on this area in order to increase transparency and facilitate access to the applicable General Good provisions regarding insurance undertakings and insurance intermediaries.

Regarding competences:

- (1) 2 authorities do not have competence for General Good (FR, NL-AFM). In France, the courts and the Treasury are competent to define which legal requirements are general good provisions. The ACP may issue an opinion.
- (2) **26** authorities declare being competent with regard to General Good for both insurance undertakings and intermediaries (BE, BG, DK, EE, ES, FI, FR, GR, HU, IE (CBI), IS, IT(ISVAP), LI, LT, LU (CAA), LV, MT, NL (DNB), NO, PL, PT, RO, SE, SK, SI, UK (FSA)).
- (3) In AT and DE, there are 2 different authorities competent for General Good Provisions. The other competent Austrian institution is the Federal Ministry of Economy, Family and Youth (competent for supervision of intermediaries). In BE, the competent authority is the BNB/NBB for

²⁹ <https://eiopa.europa.eu/disclosure/committee-on-consumer-protection/general-good-provisions/index.html>

insurance undertakings (with the FSMA providing advice) and the FSMA for insurance intermediaries. In DE, the competent authority is BaFin for insurance undertakings and the BMWi for intermediaries.

The authorities reported several ways of involvement in setting-up the General Good Provisions in the Member States:

- (4) 9 authorities are involved in legislation process either by initiating the process for new provisions of law or, by assisting otherwise or being consulted by the competent legislator (AT, BG, FI, FR, GR, IS, DE, LU, SK).
- (5) 3 authorities reported a large involvement; DK is responsible for General Good, NL (DNB) for writing the General Good Rules and IE has issued a statutory Consumer Protection Code covering General Good issues.
- (6) 4 authorities issue own recommendations or secondary regulations (CZ, HU, IT, FI) which form part of their General Good Rules.
- (7) 8 authorities describe their involvement as identifying to its best knowledge, gathering up and publishing General Good provisions (BE, ES, LT, FI, MT, PL, PT, SE).

General Good Provisions

The number of authorities exhibiting competence or enhanced involvement with regard to general good rules has increased and in some jurisdictions, Member States have sought to enhance the public awareness and prominence of general good rules.