MICHAŁ P. ZIEMIAK
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The right to withdraw from an insurance contract in Poland and Switzerland. Some comparative remarks in the light of the recent reform of the Swiss Insurance Contract Act (VVG)

This article offers a comparative analysis of the right to withdraw from an insurance contract in Polish law (Article 812 § 4 of the Civil Code and Article 40 of the Consumer Rights Act) and in Swiss law following the reform of the Insurance Contract Act (Versicherungsvertragsgesetz, VVG) of 19 June 2020, in force since 1 January 2022 (Articles 2a and 2b VVG). The aim is to identify the similarities and differences between the two models and to assess them against the background of European Union (EU) law (the Solvency II Directive, Court of Justice of the European Union [CJEU] case law, Directive 2023/2673). The legal-dogmatic and comparative methods are applied. The analysis reveals a fundamental divergence in effect: in Polish law, withdrawal under Article 812 § 4 CC produces an ex nunc effect (the premium for the period of cover is due), whereas in Swiss law it produces an ex tunc effect (full restitution, with no remuneration for the insurer). The protective function (period for reflection) and the linkage of the period with the information duty remain common to both.

Keywords: right of withdrawal; insurance contract; consumer protection; VVG reform; comparative law

Introduction

The right to withdraw from an insurance contract is one of the basic instruments protecting consumers of financial services. It allows the policyholder to withdraw from an already concluded contract within a defined period, without having to state any reason and – as a rule – without bearing adverse financial consequences. This institution serves the function of the period for reflection (*tempus ad deliberandum*), enabling the weaker party to reassess, free from pressure, the content of an obligation whose specific features – its long-term nature, the complexity of the product and the informational advantage of the insurer – justify special protection.[1]

The purpose of this article is a comparative analysis of the right to withdraw from an insurance contract in Polish and Swiss law, with particular regard to the recent reform of the Swiss Insurance Contract Act of 19 June 2020, in force since 1 January 2022. That reform introduced into Swiss law a general right of withdrawal (*Widerrufsrecht*), previously unknown in the Swiss system, which makes the juxtaposition of the two legal orders particularly topical. The analysis is set within the broader context of EU law, the standards of which bind the Polish legislator and indirectly influence Swiss solutions as well.[2]

The article seeks to establish the similarities and differences between the two models and to assess them critically. The thesis is advanced that – despite their common protective function – the Polish and Swiss models differ fundamentally as to the legal effect of withdrawal: Polish law attaches an ex nunc effect to withdrawal from an insurance contract concluded for a period exceeding six months, whereas Swiss law, following the reform, adopts an ex tunc effect combined with full restitution of benefits and no remuneration for the insurer.

The study employs the legal-dogmatic and comparative methods, drawing on normative texts, scholarship, case law, as well as reports of supervisory institutions.

1. The right of withdrawal under Polish law

Withdrawal under Article 812 § 4 of the Civil Code

The basic regulation of the right to withdraw from an insurance contract is contained in Article 812 § 4 of the Polish Civil Code of 23 April 1964 (*kodeks cywilny*[3], hereinafter: CC). Under that provision, where an insurance contract is concluded for a period exceeding six months, the policyholder has the right to withdraw from the contract within 30 days and, where the policyholder is an entrepreneur, within seven days of the conclusion of the contract.[4] If the insurer fails, at the latest at the moment of conclusion, to inform the policyholder who is a consumer of the right of withdrawal, the 30-day period runs from the day on which the policyholder learned of that right. Withdrawal does not release the policyholder from the obligation to pay the premium for the period during which the insurer provided cover.[5] If a contract includes a prolongation clause that extends the duration of the legal relationship under the existing contract, Article 812, § 4 CC will not apply. Extending

The views and opinions expressed in this article are solely those of the author and do not necessarily reflect the views of the institutions in which the author holds specific positions.

1. On the protective function of the right of withdrawal, see M. Krajewski, *Umowa ubezpieczenia. Art. 805–834 KC. Komentarz,* 2nd edn, Warsaw 2016, commentary on Art. 812 (Legalis).
2. The reform was promulgated in AS 2020 4969; see also BBl 2017 5089.
3. Ustawa z dnia 23 kwietnia 1964 r., Kodeks cywilny, tekst jednolity, Dziennik Ustaw [consolidated text, Journal of Laws, Dz. U.] 2026, item 795.
4. Article 812 § 4 CC.
5. Article 812 § 4, third sentence, CC.

the duration of a contract based on a provision contained therein cannot be equated to concluding a new contract if no provisions have been amended.[6]

The withdrawal period is a preclusive (forfeiture) time limit, meaning that its expiry extinguishes the formative right.[7] The declaration of withdrawal is a unilateral declaration of will of a formative character: its effectiveness does not require the insurer's consent. Case law has accepted that a court may, by way of interpretation, establish the actual content of the policyholder's declaration even when the latter did not expressly use the term "withdrawal".[8]

Of crucial importance for the comparative assessment is the legal effect of withdrawal. Although the legislator used the term "withdrawal" (*odstąpienie*), traditionally associated with an ex tunc effect (the contract being deemed never concluded), the prevailing scholarly view is that, in the case of Article 812 § 4 CC, withdrawal in fact produces an ex nunc effect.[9] This is evidenced directly by the obligation to pay the premium for the period of cover actually provided – the insurer retains the right to the portion of the premium corresponding to the period during which it bore the risk. For this reason, some authors describe this right as "withdrawal with the effect of termination", or point out that the construction functionally approximates the termination of the contract.[10]

It remains disputed in the literature whether an entrepreneur not acting within the scope of their professional activity (and thus in a position close to that of a consumer) benefits from the 7-day or the 30-day period. Some authors favour the literal wording of the provision (7 days for every entrepreneur), while others, on teleological grounds, advocate applying the longer period to entrepreneurs concluding the contract outside the scope of their professional activity.[11]

In the case of group insurance contracts concluded on behalf of another party, the right of withdrawal applies to the policyholder (e.g., a bank insuring its customers or an employer insuring its employees), while the policyholder is deprived of such a right altogether. However, the legal literature rightly emphasises that the policyholder has the right to waive insurance coverage[12] (by submitting an appropriate declaration to the insurer).

6. See judgment of the Provincial Administrative Court in Warsaw of 22 May 2007, ref. I ACa 264/07.
7. See, inter alia, the judgment of the Regional Court in Świdnica of 24 October 2013, ref. II Ca 422/13, accepting the preclusive character of the 30-day period.
8. Cf. the judgment of the Supreme Court of 12 February 2015, ref. I CSK 288/14, concerning the interpretation of the policyholder's declaration.
9. See, inter alia, M. Krajewski, op. cit., commentary on Art. 812 (Legalis); D. Fuchs, in: *Kodeks cywilny. Komentarz*, ed. M. Załucki, 2nd edn,, Warsaw 2024, commentary on Art. 812 (Legalis) Ł. Kondek, in: *Kodeks cywilny. Komentarz*, ed. K. Osajda, commentary on Art. 812 (Legalis).
10. B. Kucharski, in: *Kodeks cywilny. Tom III. Komentarz*, ed. M. Gutowski, 3rd edn,, Warsaw 2022, commentary on Art. 812 (Legalis; noting that withdrawal under Art. 812 § 4 CC, despite its name, produces in substance an ex nunc effect, approximating termination).
11. This divergence is noted, inter alia, by M. Krajewski, op. cit., and by the commentators in: *Kodeks cywilny. Komentarz*, eds E. Gniewek, P. Machnikowski, Warsaw 2025, commentary on Art. 812 (Legalis).
12. See B. Mrozowska, *Bancassurance – regulacje prawne i samoregulacja rynku*, Prawo Asekuracyjne 2012, vol. 3, p. 30–47 (Lex).

Withdrawal from distance contracts

The second legal regime of withdrawal is the regulation of distance contracts for financial services, provided for in Article 40 of the Act of 30 May 2014 on Consumer Rights[13] (hereinafter: CRA). A consumer who has concluded a distance contract for a financial service may withdraw from it without stating reasons therefor within 14 days. However, in the case of insurance contracts, that period is 30 days from the conclusion of the contract or from the delivery of the information required by the Act, whichever is later.[14] Where the trader has breached its information duties (Article 39 CRA), the right of withdrawal does not lapse upon expiry of the period.

Importantly for the comparative analysis, the effect of withdrawal under the CRA differs from that under Article 812 § 4 CC: the contract is deemed to never have been concluded, and the parties are obliged to return mutual benefits within 30 days – this is, therefore, an ex tunc effect with full restitution.[15] The Act excludes the right of withdrawal, inter alia, with regard to travel and baggage insurance contracts or other short-term insurance contracts with a period of cover shorter than 30 days, as well as contracts fully performed at the consumer's request before the expiry of the withdrawal period.

The special right of withdrawal in unit-linked life insurance

Of particular practical significance is the right of withdrawal in unit-linked life insurance (with an insurance capital fund, *Ubezpieczeniowy Fundusz Kapitałowy,* UFK). Under Article 26 of the Act of 11 September 2015 on Insurance and Reinsurance Activity[16], the policyholder is entitled to an additional right of withdrawal within 60 days of first receiving the annual information on the amount of benefits.[17] This regulation is the legislator's response to widespread irregularities on the market of investment-based insurance products, in particular, the problem of high surrender (liquidation) fees charged upon early termination of the contract.[18]

The scale of the problem is reflected in the data of public institutions. According to findings of the Supreme Audit Office (*Najwyższa Izba Kontroli,* NIK), in the period 2014–2018, more than 62,000 insurance-related complaints were submitted to insurance market entities, of which several thousand concerned life insurance, including a significant share of unit-linked products.[19] The Financial Ombudsman (*Rzecznik Finansowy*) remains active in matters concerning surrender fees and makes use of the instrument of the extraordinary complaint in such disputes.

13. Ustawa z dnia 30 maja 2014 r. o prawach konsumenta (consolidated text, Dz. U. 2024, item 1796 as amended).
14. Article 40(1)-(2) CRA.
15. Article 40(3) CRA in conjunction with Article 35 CRA.
16. Ustawa z dnia 11 września 2015 r. o działalności ubezpieczeniowej i reasekuracyjnej (consolidated text, Dz. U. 2025, item 1526).
17. Article 26 of the Act of 11 September 2015 on Insurance and Reinsurance Activity (consolidated text, Journal of Laws of 2024, item 838, as amended).
18. See the activity of the Financial Ombudsman in matters concerning surrender fees in unit-linked life insurance contracts.
19. Supreme Audit Office (NIK), findings of the audit concerning consumer protection on the insurance market, https://www.nik.gov.pl/kontrole/wyniki-kontroli-nik/ (accessed 8 June 2026).

2. The right of withdrawal under Swiss law following the VVG reform

Origins and scope of the 2020 reform

The Swiss Insurance Contract Act of 1908 did not, for decades, provide for a general right to withdraw from an insurance contract. This situation was changed by the amendment of 19 June 2020, which entered into force on 1 January 2022.[20] The reform – the result of many years of legislative work and a compromise following the rejection of an earlier, broader draft – introduced into the VVG a number of consumer-friendly solutions, including, for the first time, a general right of withdrawal (*Widerrufsrecht*) governed by Articles 2a and 2b VVG.

The transitional provisions (Articles 103a and 104 VVG) provide that most of the new rules – including the right of withdrawal – do not apply retroactively to contracts concluded before 1 January 2022, which significantly limits the circle of entitled persons in the period immediately following the reform.[21]

Conditions and time limit for withdrawal (Article 2a VVG)

Under Article 2a VVG, a person who has submitted an application to conclude a contract, or has accepted an offer to conclude one, may withdraw from the contract within 14 days. The declaration must be made in writing or in another form allowing documentation by text (*Textform*). The period runs from the moment of submitting the application or accepting the offer: it is deemed observed if the declaration of withdrawal was sent to the insurer no later than on the last day of the period.[22]

The right of withdrawal is excluded with regard to collective personal insurance, to provisional cover commitments (*vorläufige Deckungszusagen*) and to contracts concluded for a period shorter than one month.[23] This construction is functionally close to the Polish Article 812 § 4 CC in terms of its purpose (period for reflection) and its linkage with the information duty, while differing in the length of the period (14 days as the standard, compared with the Polish 30 days for consumers).

Effect of withdrawal (Article 2b VVG)

The most significant feature of the Swiss solution, from a comparative perspective, is the effect of withdrawal set out in Article 2b VVG. Withdrawal renders the contract invalid from the very outset (*von Anfang an unwirksam*) and thus produces an ex tunc effect. The parties are obliged to return to each other the benefits received. In the case of unit-linked life insurance, the current value of the units is subject to return.[24]

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20. *Bundesgesetz über den Versicherungsvertrag* (*Versicherungsvertragsgesetz*, VVG) of 2 April 1908, as amended on 19 June 2020; https://www.fedlex.admin.ch/eli/cc/24/719_735_717/de (accessed 8 June 2026).
21. Articles 103a and 104 VVG (transitional provisions).
22. Article 2a VVG. See also Pestalozzi, Partial revision of the Insurance Contract Act – selected features, https://pestalozzilaw.com/en/insights/news/legal-insights/partial-revision-insurance-contract-act-selected-features/ (accessed 8 June 2026).
23. Article 2a(4) VVG.
24. Article 2b VVG.

Crucially, the insurer may not claim from the withdrawing party any remuneration or premium for the period of cover actually provided; it may only claim equitable reimbursement of the costs of special operations carried out in connection with the conclusion of the contract, such as medical examinations.[25] Withdrawal is therefore, as a rule, free of charge (*entschädigungsfrei*). It is emphasised that this is a solution more favourable to the consumer than in many other legal orders, in which the withdrawing party bears the cost of the premium for the period of cover.[26]

Information duties and their breach (Articles 3 and 3a VVG)

The reform has also strengthened the insurer's information duties. Under Article 3 VVG, before the contract is concluded, the insurer must inform the policyholder, inter alia, of the right of withdrawal (Article 3(1)(h) VVG). A breach of the information duty results, under Article 3a VVG, in a right to terminate the contract within four weeks of learning of the breach and its content, but no later than within two years of the breach.[27] The construction linking the right of withdrawal with the information duty bears significant resemblance to the mechanism known to Polish law and to EU law.

3. The EU law context

Polish law, as the law of a Member State of the EU, remains bound by the standards of EU law, whereas Swiss law – as the law of a third State – is not directly subject to such harmonisation, although in practice it takes account of comparable protective patterns.[28]

As regards life insurance, the right of withdrawal (cancellation period) is provided for by the Solvency II Directive (Directive 2009/138/EC), in particular Article 185 (information duties) and Article 186, under which an individual policyholder is granted a period of between 14 and 30 days to withdraw from the contract. The Polish legislator, by adopting in Article 812 § 4 CC a 7-day period for entrepreneurs (and historically a shorter period for certain contracts), has, at times, been criticised for incomplete compliance with the minimum EU standard.[29]

The case law of the Court of Justice of the European Union is of considerable importance. In its judgment in Case C-209/12 *Endress v Allianz Lebensversicherungs AG* of 19 December 2013, the Court held that national law provisions may not limit in time the right of withdrawal (e.g. to one year) where the policyholder was not duly informed of that right; the opposite interpretation would

25. Article 2b(4) VVG.
26. See The Broker, Versicherungsvertragsabschluss – oder doch nicht?, https://www.thebrokernews.ch/versicherungsvertragsabschluss-oder-doch-nicht/ (accessed 8 June 2026).
27. Articles 3 and 3a VVG. See also Thouvenin, Newsletter on the revision of the Federal Insurance Contract Act, https://thouvenin.com/en/publication/newsletter-on-the-revision-of-the-federal-insurance-contract-act/ (accessed 8 June 2026).
28. Switzerland, as a State that is neither a member of the EU nor of the EEA, is not bound by the insurance Directives; the solutions adopted nonetheless display an axiological convergence with EU law.
29. Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), Articles 185–186.

undermine the effectiveness (effet utile) of the insurance Directives.[30] This position is reflected both in the Polish Article 812 § 4 CC (the period running from the day of learning of the right) and in the Swiss Article 3a VVG.

As regards distance contracts, the standard had hitherto been set by Directive 2002/65/EC concerning the distance marketing of consumer financial services (14 days, and 30 days for life and pension insurance). It has been replaced by Directive (EU) 2023/2673 of the European Parliament and of the Council of 22 November 2023, amending Directive 2011/83/EU; the transposition deadline was 19 December 2025, and the provisions apply from 19 June 2026. The Directive introduces, inter alia, a "withdrawal button" (withdrawal in one click) and maintains the 14 – and 30-day periods, subject to the precedence of sector-specific rules.[31] In Poland, implementing work is being carried out, inter alia, within the framework of a draft amendment prepared with the participation of the Office of Competition and Consumer Protection (*Urząd Ochrony Konkurencji i Konsumentów,* UOKiK).

4. Comparative remarks

A juxtaposition of the two legal orders permits several conclusions. First, both systems pursue a common protective function – ensuring the policyholder a period for reflection and linking the running of the period to proper performance of the information duties. This is an expression of the same paradigm of protecting the weaker party to the insurance contract, irrespective of membership of the EU.[32]

Secondly, the fundamental difference concerns the legal effect of withdrawal. In Polish law, withdrawal under Article 812 § 4 CC produces, in substance, an ex nunc effect – the insurer retains the right to receive the premium for the period of cover provided. By contrast, in Swiss law following the reform, withdrawal (Article 2b VVG) produces an ex tunc effect, combined with full restitution of benefits and, as a rule, no remuneration for the insurer. The Swiss model is, therefore, more favourable to the consumer, although it raises questions as to the allocation of risk in the period between conclusion of the contract and withdrawal.[33]

Thirdly, the Polish legal order is internally inconsistent: the ex nunc effect of Article 812 § 4 CC coexists with the ex tunc effect of withdrawal from a distance contract (Article 40 CRA). Paradoxically, therefore, a Polish consumer concluding a contract at a distance finds themselves – as regards the effect of withdrawal – in a position close to that of a Swiss consumer, while a consumer concluding a contract in the traditional way is subject to the less favourable ex nunc regime.[34]

30. Judgment of the CJEU of 19 December 2013 in Case C-209/12 *Walter Endress v Allianz Lebensversicherungs AG*, ECLI:EU:C:2013:864.
31. Directive (EU) 2023/2673 of the European Parliament and of the Council of 22 November 2023 amending Directive 2011/83/EU as regards financial services contracts concluded at a distance; see UOKiK information, https://uokik.gov.pl/bip/implementacja-dyrektywy-parlamentu-europejskiego-i-rady-ue-2023-2673 (accessed 8 June 2026).
32. Cf. the common mechanism linking the period with the information duty in Article 812 § 4 CC and Article 3a VVG.
33. See the observations in Swiss scholarship on the cost-free character of withdrawal (*entschädigungsfrei*).
34. This internal inconsistency of the Polish regime is noted in scholarship when comparing Article 812 § 4 CC and Article 40 CRA.

Fourthly, the differences concern the length of the period (30 days for consumers in Poland versus 14 days in Switzerland) and the scope of exclusions. In terms of the length of the period, the Swiss standard is close to the lower limit of the EU standard, whereas the Polish solution – as regards distance contracts and life insurance – approaches the upper limit of that standard.

Conclusions

The analysis carried out confirms the thesis advanced. Polish and Swiss law, despite a common axiology of consumer protection and a similar linkage of the right of withdrawal with information duties (reinforced by the CJEU's case law in *Endress*), differ fundamentally as to the legal effect of withdrawal. The Polish model, based on Article 812 § 4 CC, adopts an ex nunc effect, whereas the Swiss model, following the VVG reform, adopts an ex tunc effect with full, cost-free restitution.

The Swiss reform, by introducing a general and consumer-friendly right of withdrawal where none existed before, constitutes an interesting point of reference for assessing Polish law. In particular, it appears justified to postulate a harmonisation of the effect of withdrawal in Polish law and to consider whether maintaining the ex nunc effect in Article 812 § 4 CC – while at the same time adopting an ex tunc effect in distance contracts – meets the requirements of systemic coherence and progressive EU harmonisation, including in the light of Directive 2023/2673.

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Prawo odstąpienia od umowy ubezpieczenia w prawie polskim i prawie szwajcarskim. Kilka uwag prawnoporównawczych na tle szwajcarskiej reformy ustawy o umowie ubezpieczenia (VVG)

Przedmiotem artykułu jest prawnoporównawcza analiza prawa odstąpienia od umowy ubezpieczenia w prawie polskim (art. 812 § 4 KC oraz art. 40 ustawy o prawach konsumenta) i prawie szwajcarskim po reformie ustawy o umowie ubezpieczenia (VVG) z 19 czerwca 2020 r., obowiązującej od 1 stycznia 2022 r. (art. 2a i 2b VVG). Celem opracowania jest ustalenie podobieństw i różnic obu modeli oraz ich ocena na tle prawa Unii Europejskiej (dyrektywa Wypłacalność II, orzecznictwo TSUE, dyrektywa 2023/2673). Zastosowano metodę dogmatyczno-prawną i prawnoporównawczą. Z analizy wynika zasadnicza rozbieżność skutku: w prawie polskim odstąpienie z art. 812 § 4 KC wywiera skutek ex nunc (składka za okres ochrony jest należna), w prawie szwajcarskim – skutek ex tunc (pełna restytucja, bez wynagrodzenia dla ubezpieczyciela). Wspólne pozostają funkcja ochronna (czas do namysłu) oraz powiązanie terminu z obowiązkiem informacyjnym.

Słowa kluczowe: prawo odstąpienia od umowy; umowa ubezpieczenia; ochrona konsumenta; reforma VVG; prawo komparatystyczne

DR MICHAŁ P. ZIEMIAK – assistant professor, Department of Civil, Insurance and Medical law, Nicolaus Copernicus University in Torun, Polish Financial Ombudsman, attorney at law
e-mail: mpz@umk.pl
ORCID: 0000-0001-8543-9458