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NETWORK OF FINANCIAL SECURITY INSTITUTIONS IN POLAND

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ABSTRACT

Financial institutions play an important role in any developed economy. They provide loans to households and businesses. They allow individuals to collect savings and investing for the future. These savings in turn feed the economy. They help businesses and households in risk management and hedging of its various types, as well as facilitate payment transactions. By performing these important functions properly functioning financial system contributes to the stability and economic growth. As the recent crisis showed failure of the financial system may result in adverse consequences for the entire economy.

The world accepted that the most important institutions making financial safety net include: supervisors of the financial sector; institutions guaranteeing deposits; central banks; Government as the main regulator and the operator of public funds, although the Governments always in this area runs the finance minister.

Key words: Financial security; Safety net; National Bank of Poland; Financial Supervision Commission; Bank Guarantee Fund.

GENERAL REMARKS

Model of functioning of financial administration is always a derivative of civilizational changes and threats occurring in each historical period.

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Progress and crises in various social areas fundamentally determine the changes in the organizational structures of administration in such a way that they must be parallel to the emerging threats, creating entities and mechanisms that are part of the public administration system, providing legal security of citizens in every aspect of community life.

Therefore, against this background, various questions arise, e.g. whether the existing in Poland system of financial security is constitutionally supported and whether the network of institutions of financial security creates an effective mechanism to protect citizens, providing them with financial security.

THE ESSENCE OF FINANCIAL SECURITY

Financial security is part of a broader economic security structure and is one of those concepts that are difficult to define. Financial security is often equated with the security of the financial market, which can be viewed and analyzed on four levels: as the security of financial institutions, as the security of financial transactions, as the security of the segments of financial market, and finally as a final security of the participants of the financial market[1].

Undoubtedly, the development of free market economy brought new risks for the proper functioning of the state. One of these threats is the destabilization of the financial markets, which involves destabilization of the entire economy and a loss of confidence in financial markets. In such

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[1] M. Capiga, W. Gradoń, G. Szustak, *Sieć bezpieczeństwa finansowego*, Warszawa 2010, p. 12. Otherwise, Ż. Czarnowałow, writing about economic security, divides it into: raw materials, energy, food, social, financial, technological, etc. –see. Ż. Czarnowałow, *Bezpieczeństwo globalne i regionalne*, [in:] T. Bąk (ed.) *Wektory bezpieczeństwa*, Jarosław 2013, p. 96. According to A. Piotrowska, the development of a free market economy brought new threats for the proper functioning of the state. One of these threats is the destabilization on the financial markets, which involves destabilization of the entire economy and a loss of confidence in financial markets. In such circumstances, the state's financial stability has been recognized as one of the public interests subject to legal protection. This author compares the financial market with the nervous system in the body. Disturbances in its functioning cause negative consequences in all other areas of the economy of the country.

circumstances, the state's financial stability has been recognized as one of the public interests subject to legal protection[2].

The issue of safety of citizens or the financial security has to be perceived in the broad context of legal security, which is an axiological base for those values. The primary basis for legal security is the anthropological aspect associated with felt by the human need for security. Man as being focused on cognition, according to the structure of its being and its determinants, is called for self-realization, feels the need for security in order to be able to shape and guide their life according to the adopted plans. The fact that the order structures are resulting from natural and social conditions, is evident. However, they alone are not sufficient to guarantee the required safety of social life order[3].

The Constitution of the Republic of Poland in art. 5 states that "The Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of man and citizen and the security of the citizens (…)"[4] From this provision one can derive an obligation of the State to ensure the "security of citizens in the financial aspect," through the creation of institutions and rules of standing on its guard.

Perceived by the author in such way the obligation under the Constitution, is transformed into a public purpose, the implementation of which can be done in such a way that the state delegates specific tasks to specially established institutions that administer that security. Undoubtedly, in the current circumstances, after the experience of the recent economic crisis, the concept of "public safety" should be understood more broadly, including the sphere of financial security.

So far, the concept of security of the citizens traditionally been understood as an activity of public authorities to counteract threats to public order, life, health and property of citizens and restraining and opposing to any action detrimental to these goods, both from outside and from inside of the country. In the current realities this concept should be under-

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[2] A. Piotrowska, *Ochrona stabilności rynku finansowego jako splot funkcji administracji gospodarczej*, [in:] J. Niczyporuk (ed.) *Teoria instytucji prawa administracyjnego. Księga pamiątkowa Profesora Jerzego Stefana Langroda,* Paryż 2011, p. 166.

[3] See A. Kość, *Podstawy filozofii prawa*, Lublin 1998, p. 200–201.

[4] Journal of Laws of 1997, No. 78, item 483, as amended.

stood more broadly, including the sphere of environmental and energy security. Especially in the latter aspect it should be emphasized that in the European Union states one supported the active attitude of the state in terms of energy security and specific economic relations were subjected to legal regulation. Despite the fact that the Constitution of the Republic of Poland does not contain any provisions relating to energy, in today's world it is essential for each country. Therefore, according to B. Banaszak, one of the constitutional tasks of the state, resulting from the obligation to ensure the safety of citizens, is to provide the energy security[5]. According to the author of this study, similarly as in the case of energy security, also with respect to the obligation to provide financial security, currently it is the constitutional obligation of the state, many respects of which, until the emergence of the economic crisis in 2008, one had not talked about. The issue was considered narrowly and constitutionalists had not dealt with the security of citizens in terms of financial security[6].

ENTITIES ENSURING FINANCIAL SECURITY

The actions of the state in terms of legal regulations specifying the principles of functioning of the widely understood financial market are taken in the public interest. By contrast, the financial security system in Poland consists of regulations and public administration entities, between which there is a number of interconnections and dependencies, transforming into a string of institutionalized actions for the benefit of financial security.

In the literature of the subject, the English term was adopted for the definition of this group entities – *safety net*. The very concept of the financial safety net is not a term derived directly from the teachings on administration and is not uniformly understood, but it certainly is a response to

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[5] See B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warsaw 2012, p. 73.

[6] See E. Zwierzchowski, *Bezpieczeństwo obywateli*, [in:] W. Skrzydło, S. Grabowska, R. Grabowski (ed.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz encyklopedyczny*, Warsaw 2009, p. 108.

the expectations connected with new forms of intervention of public law bodies in the sphere of functioning of the widely understood financial system. The tendency to isolate such structures, created by the financial market protection entities from among the traditional structures of administration, occurs throughout Europe and the world as a natural consequence of decentralization of government, first of all. Secondly, it is a simple consequence of encroachment by the state into new areas of activity where the public interest, understood equally or similarly, is implemented by a set of institutions[7] associated with each other, at least in a functional way, based on which the previous official administration cannot currently meet the challenges stemming from the economy and technology[8]. The concept of "monopoly" of centralist administration, based on a bureaucratic factor and on hierarchical subordination, which for many decades, and in fact, as the only one, had managed the common issues of collective life, is a thing of the past – also in Poland. In its place, a new public administration, acting within the limits and under the law has appeared, and in the legal and organizational sense based on the plurality of independent, highly specialized institutions performing public tasks using properly selected instruments"[9].

It is widely accepted that the most important institutions that create a financial safety net are: institutions for supervision over the financial sector; institutions guaranteeing deposits; central banks; government, as the main regulator and operator of public funds (Minister of Finance always acts on behalf of the governments in this area).

[7] In the literature, there are no studies relating to the institution as a specific category of entities performing the functions of public administration. This is understandable, since the statutory term does not define the nature of a given entity. However, the different "institution" terms on the legal level make it difficult to identify common features of the institutions, except the fact that, with some exceptions, they fall under the term "public entity". – See M. Stahal, *Inne podmioty administrujące* [in:] R. Hauser Z. Niewiadomski, A. Wróbel (ed.), *System Prawa Administracyjnego*, vol. 6*, Podmioty administrujące,* Warsaw 2011, p. 526.

[8] See M. Kulesza, *Bankowy Fundusz Gwarancyjny jako podmiot prawa publicznego – recydywa zapomnianego pojęcia*, „Glosa' 2000, no. 10, p. 10.

[9] Ibid., p. 10.

From the point of view of the realization of objectives and fulfilled functions, financial stability institutions are similar in all countries. However, each country retains the specificity of the method of institutional organization of the safety net and in the scope of tasks performed and aid activities. It is difficult to identify two countries in the world with the same financial safety net organization. Differences are due to many reasons, among which the most important are: the historical conditions; the structure of the financial system (in terms of ownership and dominant entities, banks, insurance companies, investment funds); the level of development of the financial market in the country; position of the authorities of the country with regard to economic freedom and protection from the state[10].

Financial safety net is generally recognized as a set of institutional and legal solutions, aimed at protecting the financial system from destabilization[11]. Destabilization of the financial system is a disturbance in the functioning of the economy to such extent that economic security of the state is threatened. Economic security is a component of public security and in recent years it has become one of the main objectives of internal and external policy of the states due to the increased importance of economic security, which is a derivative of globalization and liberalization of financial markets. Generally, economic security is defined as the ability of the economic system of the country to the unthreatened development, which means a lack of internal and external economic risks. Thus the mainte-

[10] See O. Szczepańska, *Podstawowe przesłanki założenia i struktura sieci bezpieczeństwa finansowego w świetle teorii i doświadczeń międzynarodowych*, „Bezpieczny Bank" 2005, no. 1, p. 24.

[11] There are several other definitions relating to the essence of the concept of the financial safety net. According to M. Iwanicz-Drozdowska, financial safety net means all legal regulations and self-regulations, aiming to ensure financial stability and protect the interests of market participants using the services of financial intermediaries, as well as all the institutions responsible for monitoring the compliance with these regulations and self-regulations – see M. Iwanicz-Drozdowska, *Bezpieczeństwo rynku usług finansowych. Perspektywa Unii Europejskiej*, Warsaw 2008, p. 22. On the other hand, more synthetic approach assumes that the safety net means all of institutions and regulations aiming to protect the stability of the financial system against the results of insolvency of financial institutions, in particular banks as the main financial intermediaries – see A. Jurkowska-Zeidler, *Bezpieczeństwo rynku finansowego w świetle prawa Unii Europejskiej*, Warsaw 2008, p. 193.

nance of economic security means preventing the disturbances in the functioning of economy[12].

Financial stability is protected in a special way, because it is a *conditio sine qua non* for economic growth. It is considered a public good, and any actions aiming to maintain it are taken in the public interest. After all, the costs of economic crises rest ultimately on the whole society. [13]

In Poland, *safety net* is formed by: National Bank of Poland (hereinafter referred to as NBP), the Financial Supervision Commission (hereinafter referred to as KNF), Bank Guarantee Fund (hereinafter referred to as BFG) and the Minister of Finance (hereinafter referred to as MF).

The National Bank of Poland is the central bank of the Republic of Poland. It carries out the tasks set out in the Constitution of the Republic of Poland and acts on the Polish National Bank and the Banking Law of 29 August 1997. These acts provide a high level of independence of the National Bank of Poland from the other organs of the state. Independence understood, of course, in functional, institutional and financial aspect.

The NBP has three main functions: issuing bank, bank of banks and the central bank of the state. The bodies of the National Bank of Poland are: Chairman, the Monetary Policy Council and the NBP Management Board. The main task of the NBP is to maintain price stability. According to prepared by the Monetary Policy Council *Monetary Policy Strategy after 2003*, the NBP's objective is to stabilize inflation at the level of 2.5 percent, with admissible range of fluctuations +/-1 percentage point. The main areas of activity of the NBP are:

1) conducting monetary policy,
2) issuance activity,
3) development of the payment system,
4) management of foreign exchange reserves of Poland,
5) service of the State Treasury,
6) educational and informational activities.

The National Bank of Poland is responsible for the stability of the national currency. Through the management of foreign exchange reserves,

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[12] A. Jurkowska-Zeidler, *Bezpieczeństwo*…, p. 166 and n.

[13] See A. Jurkowska-Zeidler, *Światowe dobro publiczne*, Gazeta Bankowa 2005, p. 32 and n.

it provides an appropriate level of financial security of the state. Thanks to the issuance of currency, it protects the liquidity of cash transactions. Within the framework of its supervisory and regulatory functions, the NBP takes care of the liquidity, efficiency and security of the payment system. It also contributes to the development of a secure financial market infrastructure.

A large impact on the operations of the NBP had in recent years and still have the processes of European integration and membership in the European Union, and in particular the preparation of Poland for the participation in the euro area. In order to properly prepare for the introduction of the euro, the NBP will strive to meet the requirements imposed by the central banks of countries that have already adopted the single currency.

The National Bank of Poland, being a member of the *safety net*, acts as a lender of last resort. This function means the discretionary provisioning in liquidity of a single bank or the entire banking system in response to an adverse shock resulting in an extraordinary increase in the demand for reserve money that cannot be met from other sources. The main feature of this instrument is the speed at which the central bank can respond to the problem of commercial bank, resulting from the lack of liquidity. No other institution is able to immediately supply the bank account, because only the central bank can freely create reserve money.

It is also worth to show how important role, from the point of view of the financial security of the citizens, play the central banks. It is perfectly illustrated by an example that concerns our eastern neighbour, Ukraine. In October 2008, the National Bank of Ukraine issued an order prohibiting the owners of bank deposits from liquidating them before the deadline. The equivalent of $ 3 billion were withdrawn within a few days from the Ukrainian banks. Panic arose among the population. Banks then admitted that if the restrictions have not been introduced, some of the banks would have actually bankrupted.

Financial Supervision Commission acts on the basis of the Act of 26 July 2006 on the supervision of financial markets[14]. The KNF replaced the sectorial supervision with the integrated supervision.

[14] Journal of Laws of 2012, No. 1149, c.t.

According to the Constitutional Court's judgment of 15 June 2011[15] it is a collegial, special public administration authority – of the state, but located outside the structure of government administration, supervised by the Prime Minister. However, the Council of Ministers, the Prime Minister or minister managing a branch of government administration do not exercise leadership, coordination and control over the KNF. The supervision over the KNF's the activities exercised by the Prime Minister does not prejudge the competence of the Prime Minister, and only indicates the competence of the authority. In particular, from this fact one cannot assume the admissibility of influencing the Commission by any means, at the discretion of the Prime Minister.

The Commission consists of a chairman, two deputies and four members. The general objective of the Financial Supervision Commission activities is to ensure the proper functioning of the entire financial market.

In accordance with art. 2 of the Act on the Supervision of the financial market, the purpose of financial market supervision is to ensure the proper functioning of the market, its stability, security and transparency, confidence in the financial market and to ensure protection of the interests of market participants, also through reliable information concerning the functioning of the market based on regulations relating to particular market segments. The Commission's tasks include:

1) taking actions for the proper functioning of the financial market;
2) taking actions aimed at the development of the financial market and its competitiveness;
3) taking informational actions on the functioning of the financial market;
4) participation in the preparation of draft legislation in the field of financial market supervision;
5) providing opportunities for amicable and conciliatory settlement of disputes between financial market participants, in particular, disputes arising from the contractual relationship between the parties subject to supervision by the Commission and the recipients of the services provided by these entities.

[15] Constitutional Court's Judgment of 15 June 2011, *K 2/09*, www.trybunal.gov.pl

At this point, it is worth to refer to the Bank Union, which to some extent changes the philosophy of thinking about financial market supervision from the national/partial direction towards the EU/holistic dimension, as the revaluation of national financial supervision occurs, which, although still participates in the European supervisory authorities, institutionally is no longer the decision-making centre of the European financial safety net.

The Bank Guarantee Fund is a public legal person appointed by the Act of 14 December 1994 on the Bank Guarantee Fund (hereinafter referred to as: Uobfg)[16]. As an administering entity, it is also one of the key entities in the financial administration of the state. The Fund is an institution managing the deposit guarantee system in Poland. By appointing the Bank Guarantee Fund, the legislature established rules for guaranteeing deposits by this institution and inserted it into the system of institutions ensuring the security of the financial sector. The basic tasks of the Fund are:

1) refund, to the amount specified in Uobfg, of financial resources held in bank accounts in the case of fulfilling the condition of guarantee to the bank which is participating in the deposit guarantee system,
2) since 29 November 2013, refund, to the amount specified in Uobfg, of financial resources held on accounts in savings and credit cooperative union, in the case of fulfilling the condition of guarantee to the union,
3) providing financial assistance to banks in the state of danger of insolvency, or for purchase of shares or stocks in banks,
4) providing assistance to savings and credit cooperative unions in case of danger of their insolvency and support of restructuring processes concerning these unions,
5) providing domestic banks realizing the program of recovery proceedings with the guarantee of increase of own funds of the bank, and in case of execution of this guarantee – acquiring or taking stocks, bonds or bank securities,

[16] Journal of Laws of 2014, No. 1866 c.t.

6) collection and analysis of information about the entities covered by the guarantee system, including the elaboration of analyses and forecasts concerning the banking sector and unions sector.

The last organ of the *safety net* is the Minister of Finance. As a single-person principal organ of government administration it is a part of a collegial body (Council of Ministers), it also has an intrinsic scope of competences, being a constitutional body and managing the government department called "financial institutions". The Minister manages the Ministry of Finance, which was established by the regulation of the Council of Ministers of 3rd November 1999 on the establishment of the Ministry of Finance. The Minister of Finance, representing the Government of the Republic of Poland in the financial safety net, only fulfils regulatory and assistance function. As a regulator, it is to develop drafts of relevant acts on behalf of the government and actively participate in the entire legislative process.

On the other hand, the assistance function of the Minister of Finance manifests itself in the fact that in case of risk of crisis, s/he may allocate specific funds for the rescue of the appropriate banks in order to prevent the spread of the crisis. In addition, within the assistance function, it may provide government guarantees on behalf of the government.

It is worth noting that there is a view saying that the Minister of Finance does not belong to the financial safety net, whose actions do not take the formal form, and their meaning is reduced to bearing fiscal cost of restoration of financial stability[17]. However, it does not seem that this line of thought is entirely right, because of the fact that it draws attention only to one aspect of the assistance function of government, related to the provision of public assistance, not seeing the other possibility, namely the provision of a guarantee, which does not always involve the spending of public funds. An example may be the Regulation of the Minister of Finance in respect to the rules of formation of reserves for the risk related to the bank's activity.

Within the such constructed financial safety net, one determined the activities concerning the elimination of crisis situations in the banking sector, taken at successive stages by all entities in the network, i.e. the Minister of Finance, the KNF, the NBP and the BFG. These include:

1) the identification and monitoring of risks in the banking sector (KNF: recommendations and supervisory regulations, assessment of economic and financial situation, inspections in banks, NBP: analysis of the stability of the financial system; BFG: an early warning system, analysis of threatened banks);

2) prevention of crises in banks (Minister of Finance: legislative initiatives and general legal regulations; the KNF: supervisory decisions, post-inspection recommendations, supervisory sanctions, receiverships, recovery programs, appointment of a guardian; the BFG: financial support of recovery programs, financial support for acquisitions of banks with threatened solvency, monitoring of implementation of recovery programs, acting as a guardian in the banks using aid);

3) management of the crisis in the banking sector (Minister of Finance: the management of public funds in the event of a systemic crisis threat, special legal regulations; KNF: decisions on liquidation of the bank, decision to suspend the activities of the bank, decision to take over the bank, application for announcement of bankruptcy of the bank by the court; NBP: regulation of liquidity in the banking system, taking actions as a "lender of last resort" in the event of a systemic crisis threat; BFG: payment of guaranteed deposits, cooperation with the trustee in the process of bankruptcy of banks, financing projects and acquisitions of banks[17].

Each of the entities that form the financial safety net has certain powers and specializes in carrying out different public tasks at different stages of activity for the benefit of the stability of the financial system, and therefore in the public interest. The effectiveness of the financial safety net requires efficient cooperation between its various elements, in order to ensure the continuity of operations.

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[17] M. Pyła, *Współpraca Systemu Gwarantowania Depozytów z innymi ogniwami Sieci Bezpieczeństwa Finansowego,* „Bezpieczny Bank" 2007, no. 2/3, p. 80-82.

CONCLUSION

In conclusion it should be noted that the institutions that are pillars of financial administration are complementary to each other and the legislature designed their system in such way so that they complement each other. Apart from the usual division of competences resulting from the statutory roles of different institutions, their cooperation often takes the formal form on the basis of bilateral and multilateral agreements.

Within the statutorily defined competencies, they pursue the public interest and in an exemplary way protect citizens, acting for the benefit of the financial security and raising the level of confidence in the financial market.

The reservation must be made in relation to the NBP, because according to art. 3 par. 1 of the Act on the National Bank of Poland, its primary objective is to maintain price stability, with simultaneous support of the government's economic policy. Therefore, security and financial stability from the point of view of the NBP are of secondary character in relation to the basic – the original purpose. The situation is similar in the case of the Minister of Finance, for whom the financial stability is a condition facilitating the conduct of economic and social policy.

The relationship between the position of an individual and the very activity of institutions ensuring the financial security are beneficial for the development of society in the financial aspect, which is socially important and is ultimately in the interest of the state. First of all, it results from the art. 5 of the Constitution of the Republic of Poland, where the obligation to ensure the security of citizens by the state has been defined.

Similarly as in the case of energy security, also in relation to financial security, it is a constitutional obligation of the state, the many aspects of which, until the emergence of the economic crisis in 2008, were not discussed. The issue was considered narrowly and the researchers did not deal with the security of citizens in the financial aspect.

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