Dogmatyka Prawa • 2024, t. 1, nr 2, s. 27–37
Legal Dogmatics • 2024, vol. 1, no. 2, pp. 27–37
ISSN 2956-9885
DOI.10.34767/DP.2024.02.02

Tomasz Knepka
Uniwersytet Kazimierza Wielkiego w Bydgoszczy
ORCID: 0000-0002-6848-8239

The polish financial supervision authority in the european union's financial supervision architecture

SUMMARY **The purpose of the article/hypothesis:** The aim of the study is to present the relations between the PFSA and the European supervisory authorities within the European System of Financial Supervision. Using the above methods the following research thesis was formulated: The PFSA as a supervisor of the Polish financial market functions in a complex regulatory environment in the European Union, which poses a great challenge in achieving the objectives for which it was established.

Methodology: The basic research method used in the paper is the dogmatic-legal method, the application of which allowed to formulate the research thesis. Moreover, the analysis of the preambles to the acts of the European Union law and the literature on the subject, especially of the representatives of the doctrine of the financial market law, were helpful.

Results of the research: The shape of financial supervision architecture is changing as a result of financial market disturbances. The European Union financial market, as a part of the global financial market, is particularly susceptible to such changes. The Polish Financial Supervision Authority is a part of the integrating financial market within the Economic and Monetary Union and has to face modern challenges resulting from globalization.

KEYWORDS: Polish Financial Supervision Authority, European System of Financial Supervision, Financial Architecture

JEL Class: G15, G32, H12, K23

Introduction

With Poland's accession to the European Union (EU), the public administration started to function on the basis of the EU legal order. The Polish Financial Supervision Authority (PFSA) as a public administration body is a special entity in this area. This uniqueness lies in the specific conditions in which the Polish financial market supervisor must operate.

Supervision over the single EU financial market includes EU regulations (treaties, directives and regulations) and normative acts of individual EU member states. In the case of Poland, these are: Constitution, laws, regulations and the so-called soft law, which has been gaining importance in recent years[1]. In the context of the EU acquis communautaire, each EU country applies EU law on the principle of supremacy over domestic law[2].

The paper contains two parts. The first presents general issues concerning the European System of Financial Supervision. The second one presents the PFSA in the supervisory system of the European Union financial market.

The aim of the study is to present the relations between the PFSA and the European supervisory authorities within the European System of Financial Supervision.

The basic research method used in the paper is the dogmatic-legal method, the application of which allowed to formulate the research thesis. Moreover, the analysis of the preambles to the acts of the European Union law and the literature on the subject, especially of the representatives of the doctrine of the financial market law, were helpful. Using the above methods the following research thesis was formulated: *The PFSA as a supervisor of the Polish financial market functions in a complex regulatory environment in the European Union, which poses a great challenge in achieving the objectives for which it was established.*

---

1 See. A. Nadolska, *Soft law w regulacji rynku finansowego w Polsce: rekomendacje, wytyczne i lista ostrzeżeń publicznych KNF*, Warszawa 2021 and M. Fedorowicz, *Nadzór nad rynkiem finansowym Unii Europejskiej,* Warszawa 2013.

2 See. E. Całka, *Zasada pierwszeństwa w prawie Unii Europejskiej. Wybrane problemy,* „Studia Iuridica Lublinensia" 2016, Vol. 25, No. 1.

The Architecture of European Union Financial Supervision – General Remarks

The current shape of supervision of the European Union's financial market is the result of legislative actions at the EU level in the wake of the financial crisis that started in 2007– 2008. This supervision comprises two levels: macroprudential and microprudential, creating the European System of Financial Supervision (ESFS). The main objective of the ESFS is to ensure that the rules applicable to the financial sector are adequately implemented to preserve financial stability and to ensure confidence in the financial system as a whole and adequate protection for the consumers of financial services.

Macroprudential supervision in the EU is carried out by the European Systemic Risk Board (ESRB), established in 2011[3]. Under European law, the ESRB is responsible for the macroprudential oversight of the financial system within the Union in order to contribute to the prevention or mitigation of systemic risks to financial stability in the Union that arise from events within the financial system, or mitigation of these risks, taking into account macroeconomic developments, so as to prevent periods of widespread financial distress. The ESRB shall contribute to the smooth functioning of the internal market and thereby ensure a sustainable contribution of the financial sector to economic growth[4]. Central to the essence of the objective behind the ESRB's activities is the definition of „*systemic risk*" as amended in 2019. This concept in the revised Union Regulation means that it is a risk of disruption in the financial system that has the potential to have serious negative consequences for the real economy of the Union or one or more of its Member States, as well as for the functioning of the internal market. All types of financial intermediaries, markets and infrastructure can be potentially systemically important to some extent.[5] At this point in the study, it is worth noting that the ESRB issued a recommendation to the Member States

[3] Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (15.12.2010), Official Journal of the European Union, L 331/1, and Regulation (EU) 2019/2176 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1092/2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (27.12.2019), *Official Journal of the European Union*, L 334/146.

[4] Article 3, Regulation 1092/2010.

[5] Article 1, Regulation 2019/2176.

in 2011 relating to the establishment of a similar macroprudential authority in each country.[6]

On the other hand, microprudential supervision is carried out by three supervisory agencies: the European Insurance and Occupational Pensions Authority (EIOPA) based in Frankfurt[7], the European Banking Authority (EBA) based in Paris[8], the European Securities and Markets Authority (ESMA) based in Paris[9], the Joint Committee of the European Supervisory Authorities and competent authorities or supervisory authorities of Member States. The Joint Committee shall serve as a forum in which the authorities shall cooperate regularly and closely to ensure cross-sectoral consistency – taking into account the specificities of the different sectors, in particular, with regard to[10]:

- financial conglomerates and prudential consolidation,
- accounting and auditing, microprudential analysis of developments,
- risks and vulnerabilities related to financial stability,
- retail investment products,
- cyber-security, information sharing and best practices with the ESRB,
- retail financial services and depositor, consumer and investor protection issues.

In the case of Poland, the role of a Member State's supervisory authority under the EFSF is played by the Polish Financial Supervision Authority (PFSA), which exercises supervision over all market segments. The main objective of the PFSA's activity – similarly to the European supervisory agencies – is to ensure the proper functioning of the market, its stability, security and transparency, trust in the financial market, as well as to ensure the protection of interests of the market

[6] Recommendation of the European Systemic Risk Board of 22 December 2011 on the macro-prudential mandate of national authorities (14.2.2012), Official Journal of the European Union, C 41/1.

[7] Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC, Official Journal of the European Union (15.12.2010), L 331/48.

[8] Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, Official Journal of the European Union, (15.12.2010), L 331/12.

[9] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, Official Journal of the European Union (15.12.2010), L 331/84.

[10] Article 54 point 2. Regulation 1093/2010.

participants also through reliable information on the functioning of the market.[11] The tasks of the PFSC include: exercising supervision over the financial market, taking actions aimed at the proper functioning of the financial market, taking actions aimed at the development of the financial market and its competitiveness, taking actions aimed at supporting the development of innovation in the financial market, taking educational and informational actions on the functioning of the financial market, its risks and the entities operating in it in order to protect the legitimate interests of the financial market participants, in particular, by publishing – in a form and time determined by it – free of charge warnings and announcements on public radio and television, participation in the preparation of draft legislation on financial market supervision, creating opportunities for amicable and conciliatory settlement of disputes between financial market participants, in particular disputes arising from contractual relations between entities subject to the supervision of the PFSA and recipients of services provided by these entities.[12]

Moreover, in the light of Polish regulations, the PFSA cooperates with the European Commission, the European Central Bank, the European Banking Authority, the European Insurance and Occupational Pensions Authority, the European Securities and Markets Authority, the European Systemic Risk Board and the European System of Central Banks, and provides those bodies with all information necessary for the performance of their duties.[13]

The regulations establishing these autonomous regulatory agencies are based on Article 114 of the Treaty on the Functioning of the European Union[14], which allows for the adoption of harmonization measures where these are necessary for the establishment and functioning of the internal market. The European financial supervision authorities have been given legal personality and the status of EU regulatory agencies as independent entities under European public law.[15]

---

[11] Article 2 Act of 21 July 2006 on financial market supervision (consolidated text: Journal of Laws 2006 No. 157 item 1119, as amended).

[12] Article 4.1 Act of 21 July 2006 on financial market supervision (consolidated text: Journal of Laws 2006 No. 157 item 1119, as amended).

[13] Article. 17d. (consolidated text: Journal of Laws 2006, No. 157, item 1119, as amended).

[14] Consolidated version of the Treaty on the Functioning of the European Union, Official Journal of the European Union (26.10.2012), C 326/47.

[15] A. Jurkowska-Zeidler, *Rynek bankowy Unii Europejskiej,* [in:] *System prawnofinansowy Unii Europejskiej*, Eds. A. Drwiłło, A. Jurkowska-Zeidler, Warszawa 2010, p. 235.

The Polish Financial Supervision Authority in the European Union's Financial Supervision Architecture

In order to guarantee financial security in the future, the ESRB issued recommendations on 22 December 2011 recommending that the EU Member States establish similar macroprudential authorities within their jurisdictions and that these authorities are equipped with appropriate macroprudential policy instruments.[16] In the aftermath of the crisis and as a result of the recommendations issued, the fundamental regulatory weakness of the financial market became clear – systemic supervision was lacking. It turned out that something more than just supervision of individual institutions, i.e. microprudential supervision, was needed. What is needed is systemic supervision, i.e. macroprudential supervision, that not only identifies and analyzes, but also actively mitigates the risks that threaten the stability of the financial system as a whole.[17] Macroprudential supervision is now an important, if not the most important, component of the financial safety net.[18]

As indicated earlier, the impetus for the current establishment of a national macroprudential authority was the recommendation issued in 2011 by the ESRB on the macroprudential mandate of national authorities.[19] In that document, the Board identified five groups of recommendations for the establishment of a macroprudential authority in European Union Member States, these were[20]:

– definition of the objective,
– indication of institutional solutions,
– defining tasks, competences, instruments

[16] Recommendation of the European Systemic Risk Board of 22 December 2011 on the macro-prudential mandate of national authorities, (14.2.2012), Official Journal of the European Union, C 41/1. Recommendation of the European Systemic Risk Board of 4 April 2013 on intermediate objectives and instruments of macro-prudential policy, (15.6.2013), Official Journal of the European Union, C 170/1.

[17] P. J. Szpunar, *Rola polityki makroostrożnościowej w zapobieganiu kryzysom finansowym*, "Materiały i Studia, Zeszyt" 2012, No. 278, p. 5.

[18] A. Dobrzańska, *Polityka makroostrożnościowa – zagadnienia instytucjonalne, Teoria i dotychczasowe doświadczenia w Unii Europejskiej*, "Materiały i Studia" 2014, Vol. 307, p. 9.

[19] The current list of national macroprudential authorities in the European Union is available on the ESRB website: https://www.esrb.europa.eu/about/orga/list/html/index.en.html [accessed: 20.01.25].

[20] Section 1 Recommendations of the European Systemic Risk Board of 22 December 2011 on the macro-prudential mandate of national authorities, (14.2.2012), Official Journal of the European Union, C 41/1.

– ensuring transparency and accountability
– ensuring independence.

As a result of the emergence of this ESRB document, the Act on macroprudential supervision over the financial system and crisis management was passed in Poland and implemented in 2015, under which the currently functioning Financial Stability Committee (FSC), which is also the Polish financial safety net, started its activities.[21] Thus, Article 95 of this Act derogates from the previous Act on the Financial Stability Committee.[22]

As the title of the „Macroprudential Act" indicates, its norms regulate the functioning of macroprudential supervision and possible crisis management in the financial system.[23] Such an approach indicates that the entities comprising the Financial Stability Committee are active both at the stage of preventing the occurrence of financial crises (*crisis prevention*) and at the stage of managing disturbances in the Polish financial system (*crisis management*). Moreover, the above follows directly from Article 3.1 of the „Macroprudential Act", which states that the Committee is the competent authority in the area of macroprudential supervision and crisis management. The members of the Committee are: Minister of Finance, President of the National Bank of Poland, *Chairman of the Polish Financial Supervision Authority*, President of the Management Board of the Bank Guarantee Fund.[24]

The tasks of the Committee in the area of macroprudential supervision include[25]:

- application of macroprudential instruments, including presentation of positions and issuance of recommendations,
- identifying financial institutions posing a significant risk to the financial system, cooperation with the European Systemic Risk Board, other European Union authorities, macroprudential supervisory authorities from the Member States or third countries, as well as international institutions,

[21] Act of 5 August 2015 on macroprudential supervision of the financial system and crisis management in the financial system (consolidated text: Journal of Laws of 2015, item 1513, as amended).

[22] Article. 95. The Act of 7 November 2008 on the Financial Stability Committee (consolidated text: Journal of Laws, item 1317, and of 2013, item 1012, as amended) shall cease to apply. Art. 95.

[23] The first monographic study that comprehensively addresses the subject of macroprudential supervision is the book by Magdalena Fedorowicz entitled „*Nadzór makroostrożnościowy w Polsce*", Poznań 2019.

[24] Article 7 (consolidated text: Journal of Laws of 2015, item 1513, as amended).

[25] Article 5 (consolidated text: Journal of Laws of 2015, item 1513, as amended).

- ensuring the proper flow of information between the Committee members in order to accomplish its tasks.

Whereas the tasks in the area of crisis management include[26]:

- developing and adopting procedures of cooperation in the event of a direct threat to the stability of the financial system; the procedures are passed on to the Minister of Finance, the National Bank of Poland, the Polish Financial Supervision Authority and the Bank Guarantee Fund,
- coordination of actions of the Committee members in the event of an imminent threat to the stability of the financial system or identification of a financial institution whose current or projected financial situation may pose a threat to further functioning of this institution, the chairman provides the Committee with an opinion on the solvency of the financial institution,
- ensuring proper flow of information between the Committee members in order to accomplish its tasks.

In order to strengthen international cooperation in the area of crisis management tasks, the members of the PFSA may conclude agreements with the institutions performing tasks in this scope in the Member States, with the central banks of the European System of Central Banks,[27] including the European Central Bank, as well as with the ministers of finance and the financial market supervision authorities in the Member States.[28]

The functioning of the PFSA in macroprudential supervision is closely related to EU microprudential supervision. As regards microprudential supervision, as was mentioned earlier, the PFSA cooperates with the European Commission, the European Banking Authority, the European Insurance and Occupational Pensions Authority, the European Securities and Markets Authority and the European System of Central Banks in the light of Polish regulations and provides them with all information necessary for performing their duties. This cooperation also results from the acts of European law regulating the functioning of particular supervisory agencies over particular market segments – EBA, ESMA and EIOPA.

---

[26] Article 6 (consolidated text: Journal of Laws of 2015, item 1513, as amended).

[27] The European System of Central Banks is a system consisting of the central banks of the Member States of the European Union, both those that have adopted the single currency and those that do not have the euro. According to Article 282 TFEU, the European Central Bank and the national central banks of the Member States whose currency is the euro, which form the Eurosystem, conduct the monetary policy of the Union.

[28] Article 16 (consolidated text: Journal of Laws of 2015, item 1513, as amended).

Conclusion

Within the systemic approach to regulation of the European financial market, the essence of which is to increase its security, ensure a high level of protection for its participants and prevent financial crises, the legal framework for the functioning of the internal financial market was established.[29] The Polish Financial Supervision Authority is an important element of this multi-level supervisory structure. The Polish financial market supervisory authority is one of the links designed to ensure financial security. Such integrated financial supervision stems from the globalization of financial markets, of which the Polish Financial Supervision Authority is an inseparable part, and the current shape of the supervisory architecture indicates that the supervisory approach is crucial to ensure financial stability. There are also challenges arising from the fact that not all Member States have centralised supervision along the lines of the the Polish Financial Supervision Authority. For example – as indicated by Michał Mariański – the separation of an auxiliary pillar of financial market supervision in France in the form of the Autorité de contrôle prudentiel et de résolution is a solution very similar to the model that functioned in Poland in 2006–2008. Like the then Banking Supervision Commission, the ACPR is closely linked to the central bank, which is intended to contribute to a coordinated yet more specialized supervision of the sector.[30]

The special legal regime of the financial market and its separate nature from other market segments means that it is subject to special organization and supervision by the state.[31] As Anna Jurkowska-Zeidler points out, the systemic approach to the European banking market implies that it is impossible to build a uniform financial market that would be regulated and supervised by all national regulatory and supervisory institutions located in different member states.[32]

---

[29] A. Jurkowska-Zeidler, *Zmiany w otoczeniu regulacyjnym Unii Europejskiej,* [in:] *XXV lat przeobrażeń w prawie finansowym i prawie podatkowym – ocena dokonań i wnioski na przyszłość*, Ed. Z. Ofiarski, Szczecin 2014, pp. 712–713.

[30] M. Mariański, *Uprawnienia i kompetencje francuskiego pomocniczego organu nadzoru nad rynkiem finansowym Autorité de contrôle prudentiel et de résolution*, „Przegląd Prawa Handlowego" 2023, No. 4, pp. 38–44.

[31] A. Jurkowska-Zeidler, *Publicznoprawne formy oddziaływania państwa i Unii Europejskiej na instytucje kredytowe i finansowe* [in:] *System prawa finansowego,* Vol. 4, Ed. J. Głuchowski, Warszawa 2010, p. 251.

[32] A. Jurkowska-Zeidler, *Rynek bankowy…*, p. 220.

Therefore, the creation of pan-European supervision of the financial market with close cooperation of national supervisors – in the case of Poland, the Polish Financial Supervision Authority – is an important step in managing future financial crises.

As a collegiate body in the area of banking supervision, the Polish Financial Supervision Authority performs typical functions of a modern regulator and supervisor, i.e. licensing, supervision and regulation.[33] The above functions are conducive to the PFSA's preventive role, i.e. the prevention of the aforementioned financial crises.

The shape of financial supervision architecture is changing as a result of financial market disturbances. The European Union financial market, as a part of the global financial market, is particularly susceptible to such changes. The Polish Financial Supervision Authority is a part of the integrating financial market within the Economic and Monetary Union and has to face modern challenges resulting from globalization.

Bibliography

Literature

Całka E., *Zasada pierwszeństwa w prawie Unii Europejskiej. Wybrane problemy,* „Studia Iuridica Lublinensia" 2016, Vol. 25, No. 1.

Dobrzańska A., *Polityka makroostrożnościowa – zagadnienia instytucjonalne, Teoria i dotychczasowe doświadczenia w Unii Europejskiej*, „Materiały i Studia" 2014, No. 307.

Fedorowicz M., *Nadzór makroostrożnościowy w Polsce*, Poznań 2019.

Fedorowicz M., *Nadzór nad rynkiem finansowym Unii Europejskiej*, Warszawa 2013.

Głuchowski J., *Komisja Nadzoru Finansowego oraz Urząd Komisji Nadzoru Finansowego* [in:] System prawa finansowego, Vol. 4, Ed. J. Głuchowski, Warszawa 2010.

Jurkowska-Zeidler A., *Rynek bankowy Unii Europejskiej* [in:] *System prawnofinansowy Unii Europejskiej*, Eds. A. Drwiłło, A. Jurkowska-Zeidler.

Jurkowska-Zeidler A., *Publicznoprawne formy oddziaływania państwa i Unii Europejskiej na instytucje kredytowe i finansowe* [in:] System prawa finansowego, Vol. 4, Ed. J. Głuchowski, Warszawa 2010.

Jurkowska-Zeidler A., *Zmiany w otoczeniu regulacyjnym Unii Europejskiej* [in:] *XXV lat przeobrażeń w prawie finansowym i prawie podatkowym – ocena dokonań i wnioski na przyszłość*, Ed. Z. Ofiarski, Szczecin 2014.

Mariański M., *Uprawnienia i kompetencje francuskiego pomocniczego organu nadzoru nad rynkiem finansowym Autorité de contrôle prudentiel et de résolution*, „Przegląd Prawa Handlowego" 2023, No. 4.

[33] J. Głuchowski, *Komisja Nadzoru Finansowego oraz Urząd Komisji Nadzoru Finansowego* [in:] *System prawa finansowego,* Vol. 4, Ed. J. Głuchowski, Warszawa 2010, p. 145.

Nadolska A., *Soft law w regulacji rynku finansowego w Polsce: rekomendacje, wytyczne i lista ostrzeżeń publicznych KNF*, Warszawa 2021.

Szpunar P.J., *Rola polityki makroostrożnościowej w zapobieganiu kryzysom finansowym*, „Materiały i Studia" 2012, No. 278.

Acts of Polish law and European Union law

The Act of 21 July 2006 on financial market supervision (consolidated text: Journal of Laws 2006 No. 157 item 1119, as amended).

The Act of 5 August 2015 on macroprudential supervision of the financial system and crisis management in the financial system (consolidated text: Journal of Laws of 2015, item 1513, as amended).

The Act of 7 November 2008 on the Financial Stability Committee (consolidated text: Journal of Laws, item 1317, and of 2013, item 1012, as amended).

Consolidated version of the Treaty on the Functioning of the European Union, Official Journal of the European Union, 26.10.2012, C 326/47.

Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board, 15.12.2010, Official Journal of the European Union, L 331/1.

Regulation (EU) 2019/2176 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1092/2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board, 27.12.2019, Official Journal of the European Union, L 334/146.

Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC, Official Journal of the European Union, 15.12.2010, L 331/48.

Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, Official Journal of the European Union, 15.12.2010, L 331/12.

Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, Official Journal of the European Union, 15.12.2010, L 331/84.

Recommendation of the European Systemic Risk Board of 22 December 2011 on the macro-prudential mandate of national authorities, 14.2.2012, Official Journal of the European Union, C 41/1.

Recommendation of the European Systemic Risk Board of 4 April 2013 on intermediate objectives and instruments of macro-prudential policy, 15.6.2013, Official Journal of the European Union, C 170/1.