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Maciej BANASIK[*]

CHANGES IN MACRO AND MICRO-PRUDENTIAL SUPERVISION IN THE EUROPEAN UNION AND POLAND AFTER 2008

Summary
The financial crisis in the first decade of this century made economists, politicians and financial institutions realize the need for changes, especially in the area of supervision over markets. It should take place both at the micro and macro scale. Globalization processes force governments to cooperate on an international scale to avoid the so-called "domino effect". A lot of households, which should be protected at macro level, lost their confidence in the financial markets because of the crisis. The purpose of this paper is to analyze the most important changes, which have been introduced after the crisis, in the legal regulations concerning supervision and safety of financial markets, both in the legislation of the European Union and Poland.

Key words: *supervision, crisis, financial markets, risk.*

Introduction

A well-functioning financial system is the basis for economic development and growth of any country. Individual countries have worked out their own systems for providing supervision and security during development of financial systems. The shape of those systems is reflected in legal regulations. The above mentioned crisis turned out to be the type of a test to check how those systems and regulations work. In many countries the supervising systems failed, although, they had seemed to be well regulated. Many institutions collapsed, people lost their savings and pensions and governments spent hundreds of billions of dollars on emergency aid programmes for many companies and institutions.

Financial crisis, as an economic phenomenon, is nothing new. The

[*] Maciej Banasik PhD, assistant professor WSB University in Poznań.

solutions to end a crisis must be complex in the contemporary globalized world in which there are no banks or financial institutions of a given national origin, they are all international corporations. Imbalance on one financial market triggers the situation called "the domino effect" on other markets. It is necessary to perceive such a situation in terms of both micro and macro levels in order to prevent its symptoms. The crisis has exposed weaknesses in the regulations in both areas and showed the need for international cooperation of all market participants.

The aim of this publication is to present and analyze changes, in the supervisory regulations in both macro and micro approaches, resulting from the crisis of 2007-2008 and how those changes have affected the increase in safety and reliability of financial market institutions. The date included in the paper refer to the European Union and Poland.

The household sector, which plays a very important role in the formation of internal savings of any country, should be perceived as the main goal of the protection. The actions taken must be aimed at increasing the sense of security of those savings and investments in financial markets. Unfortunately, the crisis has weakened the feeling.

Janusz Szewczak is right, to a certain extent, when posing a fundamental question whether "we have already been deprived of chances for better, peaceful and sustainable future. Was the situation caused by big banks, credit institutions, toxic financial products and the money used for illegal purposes? [...] Banks in the contemporary globalized and demoralized world are apparently too big to fail, but not so powerful to pick up hope for a better tomorrow."[1] In the aftermath of the crisis, banks are not seen as trusted institutions but as mere players in the global casino (financial market) where their win is the highest possible gain. "Money and debts, like no other things in the world, create many excellent opportunities for variety of irregularities and fraud. They give the opportunity to influence human destinies, stimulate their hopes, change their perspective. [...] Nowadays, big banks, by transforming *homo sapiens* into *homo creditus,* have described the fate of millions of people around the world. Contemporary bankers tell us straightforwardly that they are doing the work of God on Earth.[2] Moreover, they claim that

[1] J. Szewczak, *Banksterzy. Kulisy globalnej zmowy*, Biały Kruk, Kraków 2016, p. 13.

[2] "I do the work of God". Lloyd Blankfein (President of Goldman Sachs) defended himself during the interview for the British newspaper The Times, arguing that he was providing life-saving money to businesses that helped companies produce and hire people. The interview triggered a scandal. Forbes named Blankfein "the most annoying

their task is to give the nations and generations not what they want and really need, but what the bankers decide that nations and generations want and need".[3] Therefore, the need for supervision of finance is vital to restore a sense of security and faith that the financial market is not only a place of gambling and speculation. Financial education of societies which allows to understand mechanisms governing financial markets, also seems to be a very important issue.

1. Financial crisis and risk

In literature there are many definitions describing financial crisis. When it occurs several elements of the financial system can be involved and it is generally associated with the collapse of the currency of a country concerned. The collapse of the currency means a loss of confidence of financial investors to the currency, causing its massive and rapid clearance sale and the escape of capital abroad. Such a situation induces a devaluation of the currency.[4]

The currency crisis may be accompanied by a crisis in other segments of the financial market such as Stock Market crisis, banking crisis or monetary crisis noticed as a significant increase in interest rates and a decrease of amount of money in circulation. In addition, the debt crisis may cause a situation when a government is not be able to service its foreign debt.

The most adequate definition of the current crisis says that a financial crisis is a disruption of functioning of financial markets. It can cause the lack of financial stability, and its manifestation is a significant decline in asset prices of a large group of financial institutions, debtors and intermediaries (the market value decreases and is less than their liabilities). These problems, then, grow and spread throughout the financial system, disrupt market abilities to an efficient allocation of capital and lead to bankruptcy of many operating entities and to a government intervention.[5]

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businessman of 2009". See: P. Rożyński, *Człowiek od boskiej roboty*, Przekrój, 2 January 2012, p. 20; M. Rabiej, *Bankier w roli pana Boga,* Newsweek from 2-8 January 2012, pp. 52-54.

[3] J. Szewczak: *Banksterzy. Kulisy globalnej…*, op. cit., pp. 16-17.

[4] J. Rymarczyk (ed.): *Międzynarodowe stosunki gospodarcze*, PWE, Warszawa 2010, p. 221.

[5] M. Banasik: *Decyzje polityczne w czasach kryzysu i ich skutki społeczno-ekonomiczne na przykładzie wybranych państw Unii Europejskiej*, Chorzowskie Studia Polityczne

According to Robert Skidelsky, last financial crisis resulted from three parallel defeats. Firstly, it is *an institutional failure*; banks were turned into casinos, and financial innovations got out of control because they were not under any control. At the beginning, the market of mortgages, the type of subprime, was infected by their negative effects and, then, they were transferred into the entire global banking system. When banks ceased to lend, negative effects of the situation influenced other sectors of the economy. People, responsible for the financial policy, assumed that the market is efficient in itself. Furthermore, market fundamentalists assumed that the financial market is capable of proper valuation of assets or securities, and mistakes are only temporary, so the market needs a very small amount of regulations. This approach resulted in the emergence of the second disaster called *intellectual*. According to R. Skidelsky, the faith in the idea of absolute market efficiency leads to the collapse of economic thinking in the mainstream. Therefore, economists were unable to predict or explain today's financial collapse. The third dimension of the current crisis is *a moral failure of a system based on debt*. While, once, a debt was a sin, today, it has become almost a duty, as a "lever" of rapid development. The problem does not concern the moral inadequacy of the virtues associated with capitalism, but their disappearance. Caution or the ability to self-limitation, once, appropriate for capitalism, are now in retreat – in the western world everyone borrowed as much as they could.[6]

The crisis of 2007 and 2008 was associated with the real estate market and based on the securitization of subprime mortgages. Securitization is the process of combining individual loans in packages with different levels of risk, which may be sold by the lending bank. The real boom for that kind of loans occurred after 2000 and was the result of three decisions:

- in 1999 the US Glass-Steagall Act of 1933 was repealed. It forbade the retail banks to engage in investment activities, such as sureties or sale of insurances,
- the US President Clinton`s decision, according to which a market of credit swaps was not under any control,

Nr 5, Chorzów 2012, p. 197, [after:] M. Kalinowski, M. Pronobis (ed.), *Gospodarka. Nowe perspektywy po kryzysie*, CeDeWu, Warszawa 2010, p. 19.

[6]*Nobody knows what will happen next* (Maciej Nowicki is talking with the British economist Robert Skidelsky) [interview] Dziennik 24–25 January 2009.

- in 2004 the American Commission of Securities and Exchange Commission issued a decision, which allowed banks to increase their leverage ratios. It changed the ratio of total liabilities to net worth from ten to one into thirty to one.7

The ongoing financial crisis can be divided into four consecutive, although incomplete phases, the consequence of which is economic downturn (slowdown or recession depending on the region), with some spells of recovery:

- private debt crisis - the crisis of subprime loans in US banks,
- banking crisis - the crisis in the global banking system after the proliferation of the US subprime crisis throughout the world. At the beginning, this phase appeared as the liquidity crisis resulting from the crisis of confidence and trust,
- public debt crisis - that is, on one hand, acute debt crisis in the peripheral countries of the Euro zone and, on the other, the medium-term problem caused by a huge debt accumulated in the largest developed countries,
- political crisis – how to work out and implement reforms leading to fiscal consolidation.[8]

Identification and estimation of risks in the financial system play an important role in preventing financial crises. It is essential to get to know how difficulties of a single institution can be transferred, in a way of domino effect, to other market participants and, finally, to the entire financial system. Recognition and assessment of risks is hampered by complicated structures and interactions among financial market participants. This kind of relationships have not been taken into account in research, yet. Therefore, the aim of research is to obtain a wider knowledge of the size and structure of risks in the financial sector and finding out connections that exist among companies.[9]

Systemic risk is mainly the risk which occurs during interdependent operations of financial institutions and markets. The theory of finance describes many types of risk such as: liquidity risk, credit risk, currency

[7]R. Skidelsky, *Keynes. Powrót mistrza*, Wydawnictwo Krytyki Politycznej, Warszawa 2012, p. 25.

[8] R. Płókarz, *Globalne rynki finansowe. Praktyka funkcjonowania*, PWN, Warszawa 2013, pp. 351-352.

[9] J. Żabińska, K. Mitręga-Niestrój, B. Puszer, *Zapobieganie i zarządzanie kryzysem finansowym*, CeDeWu.pl, Warszawa 2012, p. 52.

risk or operational risk. They are usually considered as distinct and separate. The interaction of these risks may lead to the outbreak of crisis. The new type of risk here is called "systemic risk".[10]

The definition, which also emphasizes the relationships and interdependencies that occur in the financial system, is described as: "Systemic risk is the risk caused by simultaneous occurrence and spread of different kinds of risk. The risk is also described as "an aggregated risk". The signs of the emergence of the systemic risk are: credit boom, high "financial leverage", correlated investment strategies, related and focused borrowers, appearance of misleading information and insufficiently developed infrastructure of the financial system. According to BIS (Bank for International Settlement) systemic risk is described as the risk that seriously impairs the functioning of the entire financial system and causes its total collapse. Systemic risk can also be defined as a sudden, unexpected event that can break down the financial system to such an extent that economic activities may be in jeopardy on a large scale.[11]

2. Macro and micro-prudential supervisions

Macro-prudential supervision *(macroprudential, macro prudential, macro-prudential supervision/oversight)* is defined as a supervisory approach (perspective) focusing on the condition of the entire financial system, contrary to micro-prudential supervision, which assesses the stability of individual entities. It is also possible to distinguish macro-prudential policy, the aim of which is to prevent the increase of excessive risk in the financial system (capital and liquidity buffers, which increase shock resistance, can be used by financial institutions). In other words, it is a narrow approach of macro stabilization policy which is responsible for preventing macro-financial imbalances in the entire economy. The basis of macro-prudential approach is the belief that the stability of each part of the system does not provide the stability of the system as a whole and is not a simple "sum". Links between entities (including feedback effects) and the channels, through which an infection can be carried,

[10] Ibidem, p. 53 [after:] J. K. Solarz: *Zarządzanie ryzykiem systemu finansowego*, PWN, Warszawa 2008, p. 12.
[11] Ibidem.

should always be taken into account.[12]

The micro-prudential supervision adopts the perspective of a bottom-up approach and treats threats as exogenous shocks, while the macro-prudential oversight applied a top-down approach and looks for sources of endogenous shocks. The micro-prudential approach is not sufficient to ensure the stability of the financial system, because the stability of each individual institution does not mean stability of the whole system. If a financial institution starts to perform rationally, according to its point of view, and when a significant group of entities begins to imitate it, the situation can lead to disorders affecting the entire system in a negative way (e.g. tightening of credit policy). The both approaches should not be treated as mutually exclusive, on the contrary, they are complementary. Conclusions of the two studies allow to achieve a full assessment of the stability of the financial system and its components.[13] The comparison of both supervisions is shown in the table below.

Table 1. Micro-prudential and macro-prudential supervisions

Type / feature	Micro-prudential supervision	Macro-prudential supervision
Direct target	risk limits to a single financial institution	reducing the threat to the stability of the entire financial system
Final target	protection of investors and depositors	reducing macroeconomic costs of the crisis (instability)
Approach	bottom-up	top-down
Analysis subject	single institution	the entire financial system
Type of basic actions	preventive /intervention	mainly preventive
Relationships and interlinkages among financial institutions	not very important	very important
The main source of shocks	exogenous	endogenous / exogenous
Responsible institution	separate supervisor or central bank	usually central bank or coordination body within the financial safety net

[12] P. Smaga, *Rola banku centralnego w zapewnianiu stabilności finansowej*, CeDeWu.pl, Warszawa 2014, p. 242.
[13] Ibidem.

Type / feature	Micro-prudential supervision	Macro-prudential supervision
The main areas of analysis	various risks (e.g. liquidity), capital adequacy, meet supervisory standards	systemic risk, infection effect, the risk of the "tail"
The method of supervision	small differences in the methods and the "intensity" of supervision to institutions, on-site inspections and "behind the desk"	scale of supervisory involvement dependent on the systemic importance of institutions, issuing warnings and recommendations (as well as monitoring their performance)

Source: P. Smaga, *Rola banku centralnego w zapewnianiu stabilności finansowej,* CeDeWu.pl, Warszawa 2014, p. 243.

There is no one model according to which the macro-prudential policy should be organized. Solutions depend on many factors, including historical experiences of a country, the organization of the financial safety net, development and structure of the financial system, as well as, legal determinants. However, it is important to mention that they should be suitable to form an accurate identification of the systemic risk and allow its rapid elimination or reduction. On the basis of the publication of the IMF (International Monetary Fund) and the recommendations of the European Systemic Risk Board, it is possible to formulate four key principles that should be treated as a guide for governments when creating an institutional framework for the macro-prudential policy. They are:

- clear assignment of responsibility,
- providing access to data and information,
- granting powers to use instruments,
- ensuring a significant role in shaping macro-prudential policy of the Central Bank.[14]

3. Financial supervision architecture in the European Union

The European System of Financial Supervision (ESFS) is a decentralized, multi-level system of micro- and macro-prudential

[14] W. Szpringer, *Prawo i ekonomia stabilności finansowej*, Oficyna Wydawnicza SGH, Warszawa 2015, p. 39.

instruments, which was created to ensure a consistent and coherent financial supervision in the EU. The surveillance system is being changed due to the creation of a banking union. The legal basis is provided by Articles 26 and 114 of the Treaty on the Functioning of the European Union (TFEU), Art. 290 TFEU (delegated acts), Art. 291 TFEU (implementing acts) and Art. 127 para. 6 TFUE. [15]

ESFS is composed of the competent supervisory authorities of the Member States and three supervisory authorities performing this function in three segments of the EU financial market. They are: the European Banking Authority (EBA), European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA). They form the Joint Committee of European Supervisory Authorities (ESAs). The European Council for Systemic Risk performs macro-prudential oversight within the competence of the European System of Financial Supervision.[16]

In the EU the micro-prudential supervision, which means the supervision of individual institutions, is performed by a multi-level bodies. Each level can be divided according to areas of supervision: banking, insurance and securities markets and the level of monitoring and regulation (European and national). Various bodies and instruments of coordination have been established in order to ensure cohesion and comparability among different levels. Moreover, it is important to coordinate actions of various institutions at international level.[17]Joint Committee of the European Supervisory Authorities and the competent national supervisory authorities are responsible for the micro-prudential supervision.The European Supervisory Authorities consist of:

- The European Banking Authority (EBA) which controls activities of credit institutions, financial conglomerates, investment firms and payment institutions. In accordance with the regulation, EBA is entrusted with the tasks which include: ensuring the stability, efficiency and consistency of regulations and supervision, contributing to the stability and efficiency of the financial system; preventing regulatory arbitrage, providing the same level of supervision, consumer protection, strengthening of international coordination of financial supervision and appropriate supervision of credit institutions.

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[15]http://www.europarl.europa.eu/atyourservice/pl/displayFtu.html?ftuId=FTU_ 3.2.5.html [10 May 2016].

[16] W. Szpringer: *Prawo i ekonomia…*, op. cit., p. 119.

[17] Ibidem.

EBA contributes to the creation of a unitary set of rules by developing regulatory projects and executive technical standards, which are, then, adopted by the Commission as delegated acts or implementing acts. EBA issues guidelines and recommendations and also has specific competence to act when the EU rules are violated by national supervisors.

- European Insurance and Occupational Pensions Authority (EIOPA): the office operates on similar principles as the EBA but its activities are mainly related to the insurance companies.
- European Securities and Markets Authority (ESMA) works similarly to other European Supervisory Authorities, however, its activities are mainly related to securities markets and participating institutions. In the European Union this office is only responsible for the registration of rating agencies and their supervision.

Joint Committee of European Supervisory Authorities is responsible for the overall and cross-sectoral coordination of activities aimed at ensuring cross-sectoral consistency of supervision. According to the regulation on the European Supervisory Authorities, Joint Committee activities include the following areas: financial conglomerates, accounting and auditing, micro-prudential analysis of a situation development, analysis of risks and weaknesses of financial stability on cross-sector level, retail investment products, prevention of money laundering; exchange of information between the ESRB and the ESAs and, finally, the development of relations between the two institutions. The Joint Committee is responsible for the settlement of cross-sector disputes among the ESFS authorities.

Joint Committee consists of the chairpersons of all the European Supervisory Authorities (and any sub-committees). It is chaired by a chairperson of one of the ESA elected for a 12 month rotational term. Currently, the chairperson of the Joint Committee is the vice-president of the ESRB. The Joint Committee must meet at least twice a year. The staff of the ESA perform secretarial functions. According to various legislative measures applied in the area of financial services, each Member State sets its own competent authority or authorities which are part of the ESFS.

European Systemic Risk Board (ESRB), headquartered in Frankfurt upon Main in Germany, is responsible for the macro-prudential oversight at the European level. The Board`s performances include limiting and

preventing systemic risks in the area of financial stability in the European Union due to macroeconomic changes. The founding regulation entrusts the ESRB with different tasks and proper instruments have been provided to perform these tasks, such as: collection and analysis of relevant information, identifying risks, ordering risks in terms of validity, issuing of warnings and recommendations, monitoring follow-up performances, issuing confidential warnings and providing the Council with assessments if the ESRB considers that the emergency situation may arise, cooperation with all other parties to the ESFS, coordinating its actions with the international financial institutions such as the International Monetary Fund and the Financial Stability Board and performing other tasks set out in EU legislation. The European Central Bank (ECB) provides the support for the Secretariat of the ESRB and the President of the ECB chairs the ESRB as well.

4. Changes in European regulations

The legal bases for creating the European System of Financial Supervision are:

- The regulation of the European Parliament and of the Council (EU) No 1093/2010 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,
- The regulation of the European Parliament and of the Council (EU) No 1094/2010 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,
- The regulation of the European Parliament and of the Council (EU) No 1095/2010 of 24 November 2010 establishing a European Supervisory Authority (the European Supervisory Authority Securities and Markets Authority) amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/IN,
- The regulation of the European Parliament and of the Council (EU) No 1092/2010 of 24 November 2010 on the union macro- prudential oversight of the financial system and establishing a European Council of Systemic Risk,

- Council Regulation (EU) No 1096/2010 of 17 November 2010 on entrusting the European Central Bank specific tasks concerning the functioning of the European Systemic Risk Board.

The last global financial crisis has shown that the mere coordination of financial supervision, conducted by the ESFS, is not efficient to prevent the fragmentation of the European financial market. To meet this challenge, in mid-2012, the Commission proposed creating a banking union, which would adopt a more integrated approach and which would complement the Euro zone and the single market. This framework included a single supervisory mechanism, a unified mechanism for restructuring and orderly liquidation and a common deposit guarantee system. It complemented both the unified set of rules and the unified book on supervision. In the meantime, a unified supervisory mechanism and a unified mechanism for the orderly restructuring and liquidation were created.[18]

EBA`s imperious interference into legal and actual situations of credit institutions may be implemented only in exceptional circumstances and application of appropriate procedures, in that case, can be extremely confusing. It was decided that an institution within EU must be to entrust with a genuine pan-European banking supervision (it means the one, which includes both the control and the possibility of issuing imperious decisions which interfere into the legal and actual situation of credit institutions throughout areas of their performances). The European Central Bank was chosen for such a purpose, although, its responsibility for supervision was limited only to credit institutions based in Member States of the European Economic and Monetary Union (EMU), it means, in the countries that have adopted the Euro currency. On 15 October 2013 the Council`s Regulation (EU) No 1024/2013 was accepted and came into force, according to it, the European Central Bank was entrusted with specific tasks regarding the prudential supervision policy of credit institutions (Acts. Office. EU L 287 of 29 October 2013., Regulation No. 1024/2013). ECB has been able to perform its supervisory powers since 4 November 2014. The new body called Board for Supervision, created within the organizational structure of the ECB, was entrusted with those powers. Although, the Regulation came into force, the relevant supervisory authorities operating in the countries, included in the Euro

[18] ttp://www.europarl.europa.eu/atyourservice/pl/displayFtu.html?ftuId=FTU_3.2.5.html [10 May 2016].

zone, were not liquidated. They and ECB form so-called the unified supervisory mechanism (Single Supervisory Mechanism – SSM) but the European Banking Authority still retains its powers.[19]

Union Bank is based on 3 pillars:

- single supervisory mechanism (SSM - Single Supervisory Mechanism),
- single mechanism restructuring and orderly liquidation (SRM - Single Resolution Mechanism),
- related financing mechanisms include the uniform restructuring fund and orderly liquidation of banks, deposit insurance systems and common mechanism of protection (credit line)[20].

The European Central Bank was entrusted, according to the Regulations No 1024/2013 and 1022/2013, with an authority to supervise banks in the Euro zone and other participating countries. Practical principles of democratic control over the actions of the ECB within the single supervisory mechanism are described in the European Parliament interinstitutional agreement - the ECB of 23 November 2013.

Unitary rules and unitary procedures for restructuring and orderly liquidation (SRM - Single Resolution Mechanism) should be used by the Council for Restructuring and Ordered Liquidation and national authorities for restructuring and orderly liquidation in accordance with the unitary mechanism established by Regulation No 806/2014. Restructuring costs and orderly liquidation of banks costs are borne mainly by shareholders and creditors. The Single Resolution Fund, financed by contributions paid by banks, is the last one on the list to bear those costs. The unitary mechanism for restructuring is valid in the countries covered by the single supervisory mechanism. Other Member States have to apply the rules described in the Directive 2014/59/EU of 15 May 2014, which includes actions taken by national bodies and restructuring mechanisms.

Moreover, a unified rulebook for financial services was developed. This is the basis for a banking union performances and it includes:

[19] W. Szpringer, *Prawo i ekonomia…*, op. cit., p. 119-120.
[20] M. Klamut, E. Szostak (ed.), *Polityka ekonomiczna we współczesnej gospodarce rynkowej*, Wrocław University Publishing Huse, Wrocław 2016, p. 235.

- Directive No. 2014/59/EU of 15 May 2014 for repairing, restructuring and orderly liquidation of banks - BRRD (Bank Recovery and Resolution Directive),
- Directive No. 2013/36/EC and Regulation No 575/2013 of 26 June 2013 on prudential requirements - package CRDIV/CRR (called IV Capital Requirements Directive and Capital Requirements Regulation),
- Directive (recasted) No 2014/49/EU of 16 April 2014. The European deposit guarantee scheme - DGS (Deposit Guarantee Scheme),
- Regulation 2015/2365 of the European Parliament and of the Council on reporting of securities financing transactions and the transparency of those transactions ("Regulation on reporting and transparency of securities financing transactions" (called *Regulation on reporting and transparency of securities financing transactions* -SFTR) - came into force on 12 January 2016,
- a project of a regulation on structural measures to increase the resilience of credit institutions, COM (2014) 43 of 29 January 2014.

The Council is examining a draft regulation on structural solutions to increase the resilience of credit institutions of the EU. The regulation is intended to protect the EU's financial system against systemic risk, which could cause the bankruptcy of large, highly complex, interrelated credit institutions. The new rules can limit such a risk, because they would order to separate highly risky bank activities (primarily, trading on their own account) from its main performances, such as taking deposits and retail payment services. The basic activity of banks is vital for the economy, therefore, requires special protection. Expected benefits from the implementation of the Regulation:

- better stability of financial markets,
- better protection of taxpayers' money, because smaller banks can be restructured and liquidated orderly without the use of public funds,
- less temptation to fraud because large banking groups could no longer rely on the public subsidies,
- better coherence of the rules on credit institutions in EU Member States, which should provide banks with the same financial conditions throughout the internal market and reduce possibilities of circumvent regulations (or "regulatory arbitrage"),

- reduce distortions of competition among banks.[21]

Establishing a banking union raises many reasonable doubts. The most important of them is the fear that the financial envelope will be too small in the event of an outbreak of a new financial crisis in the Euro zone. These arguments are, to some extent, weakened by the fact that expenditure on bank restructuring will come mainly from their shareholders and creditors, then, from the holders of deposits over 100 thousand Euros and, finally, from the SRP. Another controversial issue is connected with constitutional solutions adopted for the banking union because it provides the German and French governments with a significant impact on a banking union performances. The German government manages to secure the process of bank restructuring in the Euro zone with numerous safeguards which strengthen their position in the decision-making process (e.g. in the Unified Board for Ordered Restructuring and Liquidation), but also complicate the functioning of a banking union.[22]

5. Regulations and changes in safety and surveillance in Poland

The EU countries have developed various practical solutions concerning financial market supervision, which differ mainly in the scope of integration and degree of involvement of the Central Bank. Some models for the organization of financial market supervision system can be distinguished due to the criterion which describes integration range of supervision of individual financial market segments. They are:

- sector supervision means multi-institutional, diverse, consisting of functioning of some supervisory institutions, each of which supervises its respective segment of the financial market,
- integrated supervision, called one-institutional, performs supervisory functions over all segments of the financial market by a single supervisory authority often called the mega-supervisor,
- partially integrated supervision which assumes that there are two supervisor institutions, one of which is responsible for the prudential

[21] http://www.consilium.europa.eu/pl/policies/banking-structural-reform/[10 May 2016].
[22] W. Szpringer: *Prawo i ekonomia…*, op. cit., p. 121.

supervision of all financial institutions, and the other one for consumer protection.[23]

In Poland, the Financial Supervision Commission has supervised the financial market since 1 January 2008 under the Act of 21 July 2006.[24] It is called the integrated supervision including bank supervision, insurance supervision, pension supervision, capital market supervision, supervision of payment institutions and payment services offices, follow-up supervision and supervision of cooperative bank sector.

On 27 October 2012 a new law, established on 5 November 2009 on Cooperative Savings and Credit Unions (SKOK) came into force.[25] It replaced the Act of 14 December 1995 and includes the rules of establishing, organization and activities of SKOK and KSKOK (Kasa Krajowa SKOK - National Credit Union of SKOK). The most significant changes concern the rules about maintenance of 5% solvency ratio by Credit Unions (earlier, the National Credit Union had defined the rules of its calculation) and the changes concerning the supervision of Credit Unions by the Financial Supervision Authority which receives some of KSKOK`s competencies. FSA is equipped with the powers to supervise Credit Unions, the same ones concerning banks, and the status of the National Fund has been changed. FSA has not lost the status of institutions uniting cooperative banks and controlling their activities in compliance with provisions of the Act and oversight regulations but, now, its role is also to secure financial liquidity of cooperating banks and management of the stabilization fund. In January 2014 some changes in the Act on NBP (the National Bank of Poland) were introduced. According to them, Credit Unions and National Credit Union are obliged to maintain the capital reserve, which is required from other cooperative banks (Credit Unions discharges capital reserve to the National Credit Union and then to National Bank of Poland. National Credit Union is allowed to get a loan from NBP to fund the stabilization fund in the case of liquidity threat of cooperative banks.[26]

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[23]M. Capiga, *Finanse banków*, Oficyna a Wolters Kluwer business, Warszawa 2011, p. 50.

[24]Act of 21 July 2006 on Financial Market Supervision (Journal of Laws 2017, item 196).

[25]Act of 5 November 2009 on Cooperative Savings and Credit Unions (Journal of Laws No. 201 item 1910).

[26]E. Miklaszewska (ed.), *Małe banki i instytucje okołobankowe w świetle pokryzysowych regulacji*, Kraków University of Economics, Kraków 2015, p. 43.

The most important changes in the law on the Bank Guarantee Fund[27] were introduced in 2008, 2010 and 2013 after the crisis. In 2008 two amendments to the law on the Bank Guarantee Fund were made. The first one, of 3 October 2008, was associated with changes in the Banking Act of 2007 which influenced the principles of calculating obligatory annual fee paid by banks to the Bank Guarantee Fund. Under the power of the second one, of 23 October 2008, the level of deposit guarantee was raised from 22.5 thousand euro to 50 thousand euro (after the conversion into PLN taking into account the average exchange rate of the National Bank of Poland). All funds in bank accounts for this amount of money are covered by the guarantees due to the resignation from the principle of co-insurance. Another important amendment to the Act on the BGF was added in 2010. The aim of the introduced rule was to adjust Polish law to Directive 2009/14 / EC. The most important changes include:

- increasing the deposit guarantee from the equivalent of 50 thousand Euros into PLN into the equivalent of 100 thousand Euros into PLN,
- shortening the payment deadline of the guaranteed means within 20 days,
- impose the obligation on banks to create and keep up updated list of depositors,
- shortening of deadlines, within which the Financial Supervision Authority has to take a decision on suspending activities of a bank, if it does not regulate its obligations regarding the payment of guaranteed funds for reasons directly related to its financial situation.[28]

A very important decision was transforming the deposit guarantee system into the cash fund within the Bank Guarantee Fund (BGF) - since the introduction of the amendment, the rules concerning guarantee of deposits accumulated in cooperative banks have became similar to the obligatory system for banks (BGF`s guarantees to the equivalent of 100 thousand Euros).

Until 8 October 2016 the guarantee fund system functioned pursuant to the Act of 14 December 1994 on the bank guarantee fund. Since 9 October 2016 the regulations in force refer to the Act of 10 June 2016 on

[27] Act of 14 December 1994 on the Bank Guarantee Fund (Journal of Laws of 2014 No. 0, item 1866, repealed on 9 October 2016).
[28] Ibidem, p. 45.

the bank guarantee fund, deposit guarantee scheme and resolution[29], legal regulations adopted in this Act are in line with the Directive of the European Parliament and Council 2014/49/EC of 16 April 2014 on deposit guarantee schemes (text with EEA relevance).

Finally, it is necessary to mention the Act on the macro-prudential oversight of the financial market which came into force on 1 November 2015[30]. The regulations included in the Act strengthen the stability of the financial system and reduce the likelihood of a next financial crisis.

The Act adjusts the Polish law to the new European Union directives issued some time after the financial crisis. It assumes that the macro-prudential oversight of the financial system should include "an assessment, monitoring of the systemic risk arising in the financial system or its environment and undertaking actions to eliminate or reduce this risk with the use of macro-prudential instruments. The objective of the macro-prudential supervision is strengthening the resilience of the financial system in the case of appearance of systemic risk and supporting, in compliance with law, a long-term sustainable economic growth of the country". The entire financial system is under the macro-prudential supervision and the body responsible for that supervision, in Poland, is the Financial Stability Committee. FSC already exists, under the Act of 2008, but thanks to the new regulations its entitlements are strengthened.

If a direct threat to financial stability appears, the Financial Stability Committee is also responsible for performance relating to crisis management. The members of the Committee are: the President of Polish National Bank, the Minister of Finance, Chairman of the Financial Supervision Commission and the President of the Bank Guarantee Fund. The crisis management in the financial system includes actions to maintain or restore financial stability in case of a direct threat to this stability. When the sources of systemic risk in the financial system or its environment are identified FSC may inform on the type of sources, the extent of its impact and anticipated effects to the financial system. FSC may issue a recommendation to appropriate bodies, in which it indicates the need to take action by those entities to reduce the systemic risk and it

[29] Act of 10 June 2016 on the bank guarantee fund, deposit guarantee scheme and resolution, Journal of Laws 2016, item 996.

[30] Law of 5 August 2015 on macro-prudential oversight of the financial system and crisis management in the financial system (Journal of Laws, 2015, item 1513).

can also determine deadlines for those activities.

Conclusion

On the base of the review of legal and institutional changes, it is possible to notice that far-reaching changes in the structure of supervision have been made since 2008. The European architecture of financial supervision was created in the European Union, and in 2016 a banking union was established. In the future, it will be possible to analyze changes and how supervisory institutions work in times of crisis. Those rules are in force in the European Union and the Economic and Monetary Union (the countries where the Euro currency is obligatory). Solutions that go beyond the EU should be taken into consideration, because there is no limit to the capital in the globalized world. The USA, is one of the example, where absolute faith in a market and lack or limited oversight of it led to the crisis of the first decade of the 21st century.

Also, in Poland there have been many changes. The integrated surveillance was introduced, which also covers the Credit Unions. Many of the regulations had to be adapted in order to comply with the regulations of the EU, for example, deposit insurances.

The crisis, the largest that has ever happened, caused a state intervention to rescue banks and financial institutions. The amount of funds allocated for this purpose was a few trillion dollars. For the first time, central banks intervened on such a large scale. A false ideology and wrong assumptions led the world of finance to such a situation, furthermore, the absolute faith in the market and its participants, who seemed to take rational decisions, led the world almost on the verge of bankruptcy. It should also be noted that the rescue of banks with taxpayers' money is a violation of the principles of liberal economy.

All the conclusions resulting from the crisis should help to overcome the next one. It is necessary to remember that the financial market is in the process of constant change, evolves, there are new financial products and, thus, new threats. This means that further adjustments to rules on supervision are the need in the future. The best solution seems to be continuous monitoring of changes in the financial market and the implementation of new regulations in response to those changes.

Legal acts

[1.] Act of 21 July 2006 on Financial Market Supervision, Journal of Laws 2017, item 196.

[2.] Law of 5 August 2015 on macro-prudential oversight of the financial system and crisis management in the financial system, Journal of Laws 2015, item 1513.

[3.] Act of 5 November 2009 on Cooperative Savings and Credit Unions, Journal of Laws 2016, item 1910.

[4.] Act of 10 June 2016 on the bank guarantee fund, deposit guarantee scheme and resolution, Journal of Laws 2016, item 996.

[5.] Act of 14 December 1994 on the Bank Guarantee Fund, Journal of Laws 2014, item 1866, repealed.

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