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Basis for the Polish Financial Supervision Authority to issue permits to conduct business activity on the financial market as an element of the national security policy of Poland

*Podstawy udzielania przez Komisję Nadzoru Finansowego
zezwolenia na prowadzenie działalności na rynku finansowym
jako element polityki bezpieczeństwa Polski*

Summary:

The article analyzes the basis for issuing a permit to conduct business activity on the financial market in the context of the national security policy. In this paper the role of the administrative decision is explained and the mode of proceedings by the Polish Financial Supervision Authority is analysed. Additionally, the principles restricting the functioning of the Polish Financial Supervision Authority as well as the key aspects of licensing to conduct business activity on the financial market and prudence requirements are characterised.

Keywords: financial security, law, the Polish Financial Supervision Authority, administrative decision, licence to conduct activity

Streszczenie:

Artykuł dotyczy podstaw udzielania zezwolenia na prowadzenie działalności na rynku finansowym w kontekście polityki bezpieczeństwa państwa. Dokonano wyjaśnienia roli decyzji administracyjnej w procesie oraz analizie poddano tryb postępowania przed Komisją Nadzoru Finansowego. Dokonano także charakterystyki zasad ograniczających działalność Komisji Nadzoru Finansowego oraz kluczowych aspektów zezwolenia na prowadzenie działalności na rynku finansowym i wymogów ostrożnościowych.

Słowa kluczowe: bezpieczeństwo finansowe, prawo, Komisja Nadzoru Finansowego, decyzja administracyjna, zezwolenie na prowadzenie działalności

1. Introduction

The basis for the authority of the actions of the Polish Financial Supervision Authority is immensely significant, furnishing it with effectiveness and legal force, conferring an unquestionable authoritarian character to all Polish Financial Supervision Authority decisions. It is significant, that the provisions of law have to define both the basis for its applicability as well as its limits, whereas lack of legal regulations authorising given application should be taken as tantamount to a prohibition of such application¹. The Constitutional Tribunal, based on applications it received solely from authorised entities², confirmed this thesis within its body of rulings. It clearly indicates that national administration bodies, which the Polish Financial Supervision Authority is a part of, cannot presume their competencies, as all actions have to be taken on the basis of clearly defined competency standards³.

Also, literature points out that in order to consider given legal solutions as appropriate and fully reflect the needs of their applicability within the scope of supervision, it should be assumed, that these standards should include both definitions of institutions appointed therein, entities subject to supervision as well as the goals, criteria and situations opening the way for interference. Furthermore, they should include a list of all permissible means of supervision for protecting the rights of regulated entities facilitating the correction of erroneous decisions⁴. This strict reliance of the actions of national administration bodies and institutions, which the Polish Financial Supervision Authority is a part of, on the provisions of law, constitutes a safety guarantee for the entire financial systems and all of its entities.

Here, one should take into account the fact, that for detailed provisions of solutions within this scope, the prevailing standard, marking out the overall shape and character of established regulations, is the Constitution. It defines the legal basis for the functioning of the law within a state, including the activities of public administration bodies. Pursuant to the provisions of the RP Constitution: “The sources of universally binding law of the Republic of Poland shall be: the Constitution, statutes, ratified international agreements, and regulations” and within the jurisdiction of the bodies which issued the aforementioned also “acts of local law”⁵.

¹ W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Kraków 2000, s. 19.

² B. Szmulik, M. Żmigrodzki, *Trybunał Konstytucyjny – postępowanie (II)*, w: *Ustrój organów ochrony prawnej*, red. B. Szmulik, M. Żmigrodzki, Lublin 2005, s. 51.

³ Wyrok TK z dn. 14.06.2000 r., P 3/00, OTK 2000, Nr 5, poz. 138.

⁴ M. Szaraniec, *Organizacja nadzoru ubezpieczeniowego*, w: *Rynek usług ubezpieczeniowych*, red. J. Perenc, Szczecin 2004, s. 103.

⁵ Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., Dz. U. 1997, Nr 78, poz. 483, art. 87.

The Polish Financial Supervision Authority acts pursuant to the Financial Market Supervision Act⁶, which established it, and within which the scope of its operation is defined based on cited and aforementioned areas of operation of the Polish Financial Supervision Authority (banking, credit unions, pensions and insurance sectors, capital market, payment institutions and rating agencies as well as supplementary supervision over credit institutions, insurance and reinsurance companies and investment firms that form part of a financial conglomerate)⁷.

2. The administrative decision

A typical and most often used legal form for operation by the Polish Financial Supervision Authority in conjunction with the execution of all supervisory tasks over the financial market is the administrative decision, which also constitutes the fundamental form of administrative operation⁸. Here, Paweł Wajda points out a significant lack of a legal definition of an administrative decision within the abyss of the Administrative Procedure Code and cites two primary ways of understanding of this concept, shaped by the doctrine. This is both its presentation as a qualified form of an administrative act (earlier historic approach), or as a result of substantiation of administrative law (act of applying an administrative law standard)⁹. Currently the first approach finds a wider acceptance in the doctrine, where an administrative decision is most often depicted, as a form of an administrative act, which is defined as “legal action by national administration, intended to induce given, individually determined legal consequences, on the basis of regulations as in force at present”¹⁰.

In the second approach, an administrative decision was the result of application of the law and administrative law standards¹¹, and the issuing thereof resulted in a decision for the given case and legal situation, inducing certain legal consequences. Wajda rightly highlights, that both approaches are not mutually exclusive, but to the contrary – they have a series of common aspects within the scope of conclusions that they lead to, which means, that on the grounds of the Polish administrative law

⁶ Ustawa z dnia 21 lipca 2006 r. o nadzorze nad rynkiem finansowym, Dz. U. 2006, Nr 157, poz. 1119 z póź. zm.

⁷ Ustawa z dnia 21 lipca 2006 r. o nadzorze nad rynkiem finansowym, art. 2.

⁸ P. Wajda, *Rola decyzji administracyjnej w nadzorze nad polskim systemem finansowym*, Warszawa 2009, s. 201-212.

⁹ P. Wajda, *Rola decyzji administracyjnej...*, s. 203.

¹⁰ M. Jaroszyński, M. Zimmermann, W. Brzeziński, *Polskie prawo administracyjne. Część ogólna*, Warszawa 1956, s. 325.

¹¹ J. Zimmermann, *Motywy decyzji administracyjnej i jej uzasadnienie*, Kraków 1986, s. 3-6.

there is agreement pertaining to the principal identifiers of an administrative decision in the substantive sense (common reference to the external sphere of operation of administration, identification of the identical character of an administrative decision, authoritarian and unilateral, as well as individual ruling in a given case)¹². An administrative decision is also strongly formalised, and this also makes it possible to limit and eliminate potential abuses within this scope, which is associated with the protective function of every administrative proceeding. An administrative body, in the form of the Polish Financial Supervision Authority, within the course of considering given cases is obligated to protect the legal interests of the participants of the proceedings as well as the social interest (and also the prevailing legal order)¹³.

3. The Financial Supervision Authority Proceedings

The above comments on the essence of an administrative decision in its legal context, were significant in as much as for Polish Financial Supervision Authority proceedings and proceedings before the Polish Financial Supervision Authority, by virtue of the Act provisions of the Administrative Procedure Code are applicable, unless particular provisions dictate otherwise¹⁴. The Polish Financial Supervision Authority, as a public administration body, acts within a specific financial market area, which requires for decisions to be taken efficiently and quickly, to reflect the assessment of the situation at hand and as such to facilitate correction of phenomena which might raise concerns occurring on that market. All of that is necessary to ensure financial market stability, with that goal constituting the primary goal of the Polish Financial Supervision Authority operations.

In the context of assessing the legal basis for the operation of the Polish Financial Supervision Authority, the fact that all decisions of this body are subject to administrative court monitoring should be taken into account¹⁵. This confirms that the social interest and the principle of protection of subjective rights of the participants of a given proceeding assessed by the Polish Financial Supervision Authority are looked after. It is also a confirmation of the pan-European administrative procedure standard, where – in accordance with the Charter of Fundamental Rights of the European Union – everyone has the right to have their matters sorted out in an impartial man-

¹² P. Wajda, *Rola decyzji administracyjnej...*, s. 205–206.

¹³ A. Wiktorowska, *Zasady ogólne kodeksu postępowania administracyjnego*, Warszawa 1985, s. 21–22.

¹⁴ Ustawa z dnia 21 lipca 2006 r. o nadzorze nad rynkiem finansowym, art. 11.

¹⁵ Ustawa z dnia 30 sierpnia 2002 r. – Prawo o postępowaniu przed sądami administracyjnymi, Dz. U. 2002, Nr 153, poz. 1270 z póź. zm.

ner and within a reasonable time, without undue delay¹⁶. This standard enforces the requirement to justify decisions onto the body, and gives the assessed entity an opportunity to present its arguments, and also to appeal a decision it considers unjust¹⁷.

4. The principles limiting the operation of the Polish Financial Supervision Authority

As essential context to depict the operations of the Polish Financial Supervision Authority within supervision understood in a comprehensive way, entailing all actions (ex-ante supervision, current and posteriori supervision), one should also take into account the aspect the string impact of certain legal regulations, setting forth the possible actions by the Polish Financial Supervision Authority. In general one may make a preliminary assertion, that the model of financial market supervision in place in Poland is “compliant with the constitutional principle of social market economy and with the model of the liberal right to supervise the functioning of the economy”¹⁸. The supervisory operation of the Polish Financial Supervision Authority over the financial market is subject to restrictions determined by a series of principles, such as: the principle of the democratic state under the rule of law, the principle of economic freedom guarantee, proportionality and subsidiarity principles competitiveness and competition principles¹⁹. Here, the aforementioned principles also require at least a summary clarification in order to depict the associated interference and supervision boundaries faced by the Polish Financial Supervision Authority, as prescribed by the current state legal order.

4.1. The principle of the democratic state under the rule of law

The principle of the democratic state under the rule of law is a fundamental constitutional principle: “The Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice²⁰. It determines the functioning of all public authority institutions²¹. It results in the necessity to undertake only actions and decisions in accordance with the law, in the substantive sense it indicates a state pursuing the ideas of justice and in conjunction with this the postulate, for

¹⁶ J. Chlebny, *Sądowa kontrola administracji w świetle rekomendacji Rady Europy*, „Państwo i Prawo”, 2005 z. 12, s. 21–34.

¹⁷ P. Wajda, *Rola decyzji administracyjnej...*, s. 228–229.

¹⁸ Tamże, s. 242.

¹⁹ Tamże, s. 242–258.

²⁰ Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., art. 2.

²¹ K. Ziemiński, *Ogólne zasady postępowania administracyjnego*, Poznań 1989, s. 21–22.

all decisions taken in its name to be rightful. This principle gives rise to a superior postulate for all “rulings issued by public administration bodies to be legal, just and right”, which with reference to the specifics of the operation of the Polish Financial Supervision Authority and the areas of its supervision means “an obligation and authority to undertake actions aimed at creating the conditions for effective execution of rights and freedoms for financial institution, as well as the citizens making use of them”²². The legal requirements contained in Acts and detailed provisions defining the functioning of the Polish Financial Supervision Authority also have to reflect this.

4.2. The economic freedom principle

The second of the aforementioned legal principles determining the shape of the entire legal system in Poland, is the economic freedom principle also set forth in the Constitution of the Republic of Poland as a guarantor of the structure and functioning of the state: “A social market economy, based on the freedom of economic activity, private ownership, and solidarity, dialogue and cooperation between social partners, shall be the basis of the economic system of the Republic of Poland²³. The constitutional economic freedom principle as a key property of the state economic system (market economy) is also confirmed in detailed provisions²⁴. This principle was one of the first which was established in conjunction with the social and economic transformations and the system change in Poland, and it determined new rules for the functioning of the entire economy and the entities operating therein. The freedom for citizens and legal persons to conduct economic activity is associated with this principle, and for the state, it results in the requirement to establish conditions facilitating implementation of this principle. In particular, this meant a prohibition to act contrary to the constitutional freedom of economic activity right. The legislator reserved the right for the state to restrict the application of this principle, only by means of statute and only for “important public reasons”²⁵. This restriction confirmed the absolutely exceptional character as a factor for constricting provisions within this scope, despite the concept of public interest itself was not clearly defined and open to various interpretations²⁶. At the same time in the doctrine the dimension of transferring these restriction to statutory solution is seen as mostly positive, taking them outside of the

²² P. Wajda, *Rola decyzji administracyjnej...*, s. 243

²³ Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., art. 20.

²⁴ Ustawa z dnia 2 lipca 2004 r. o swobodzie działalności gospodarczej, Dz. U. 2007, Nr 155, poz. 1095 (z póź. zm.).

²⁵ Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., art. 22.

²⁶ W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Kraków 2007, s. 27.

scope of the Constitution of the Republic of Poland, which, as a matter of fact has to be quite general and not too elaborate, setting forth only the fundamental basis for the legal structure²⁷.

4.3. The proportionality principle

The next principle restricting the supervisory jurisdiction and authority of the Polish Financial Supervision Authority is the proportionality principle, considered in the doctrine as well as the body of rulings as a component of the democratic state under the rule of law and closely linked with it²⁸. The principle aims to restrict, in certain situations and in terms of the scope the interference of public administration in the area of economic freedom (only in justified cases motivated by public interest). This principle is also reflected in the canon of constitutional rights, amongst which the legislator included the following provision, containing an exhaustive list of permissible restrictions: “Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights”²⁹. The proportionality principle in a very significant way limits all actions undertaken by the law with the intention of restricting the functioning of economic entities. As Wajda points out “the fact that the Polish Financial Supervision Authority uses administrative decisions to supervise financial institutions, should, in light of the proportionality principle, be considered as most desirable and justified, but also – due to the flexibility of administrative decisions as a regulatory instrument – as absolutely indispensable”. The author is wondering, whether in conjunction with the above, the character of substantive law standards should not be considered, which constitutes the legal basis for the operation of this institution, in the context of their transgressing beyond the standard scope of the proportionality principle³⁰. However, the proportionality principle has to give

²⁷ S. Szer, *Prawo cywilne*, Warszawa 1967, s. 102; K. Sobczak, *Wolność gospodarcza w kręgu problemów konstytucyjnych*, „PUG”, 1996 nr 3, s. 4; A. Walaszek-Pyziół, *Zasada proporcjonalności w orzecznictwie Trybunału Konstytucyjnego*, „PUG” 1995, nr 1, s. 14.

²⁸ K. Strzyczkowski, *Prawo gospodarcze publiczne*, Warszawa 2005, s. 60–63; R. W. Kaszubski, A. Koniewicz, *Zasady działalności gospodarczej w świetle Konstytucji Rzeczypospolitej Polskiej*, „Głosa”, 2000 nr 7, s. 7; J. Oniszczyk, *Państwo prawne w orzecznictwie TK (zasady państwa prawnego)*, Helsińska Fundacja Praw Człowieka, Warszawa 1996, s. 48–50.

²⁹ Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., art. 31.

³⁰ P. Wajda, *Rola decyzji administracyjnej...*, s. 253.

rise a principal conclusion, for public administration institution interference, and also including that by the Polish Financial Supervision Authority as a supervisory body, not to be excessive.

4.4. The subsidiarity principle

The subsidiarity principle was also among the aforementioned legal principles required to assess the legal aspect of supervision performed by the Polish Financial Supervision Authority. It is not directly part of the Constitution, but it is expressed in the preamble of the Constitution of the Republic of Poland in the phrase: “We hereby establish this Constitution of the Republic of Poland as the basic law for the State, based on respect for freedom and justice, cooperation between the public powers, social dialogue as well as on the principle of subsidiarity in the strengthening the powers of citizens and their communities”³¹. Applying this principle directly to the financial market, but also to the entire economy, it should be highlighted that it takes into account certain restriction to the actions undertaken by public authorities, which are of a supportive character with respect to the undertaken initiatives. This means that within the sphere of the financial market, “the main responsibility for its stable and safe functioning should rest with exactly those financial institutions, and supervisory interference should be restricted only to situations, where these institutions are not able to perform the tasks entrusted to them within their won scope”³². Regulatory authority of the Polish Financial Supervision Authority may not deprive financial institutions of their competencies, have to guarantee the economic freedom as prescribed by the Constitution. Thus, the Polish Financial Supervision Authority interference has to be limited to the essential minimum, establishing the foundations for safety and stability of the financial system without restricting the rights and entitlements of the entities operating on the market.

4.5. The competitiveness and competition principle

The competitiveness and competition principle was yet another standard shaping the functioning abilities of the Polish Financial Supervision Authority on the financial market. Ensuring the possibility to compete freely within the free market to all entities is another key principle, associated with economic freedom and the market economy, and that’s where it finds its basis and justification, despite not being explicitly stated in the Constitution of the Republic of Poland. Competition is the basis

³¹ Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., preambuła.

³² P. Wajda, *Rola decyzji administracyjnej...*, s. 254.

for market ceremony growth, as well as a guarantor of market verification of certain mechanisms. At the same time it should also be added, that the legislator made sure, that citizens are appropriately protected against all practices stemming from the functioning of the said competition, which disrupt its healthy principles: "Public authorities shall protect consumers, customers, hirers or lessees against activities threatening their health, privacy and safety, as well as against dishonest market practices"³³. This provision points to the dual direction of legal solutions and actions, undertaken in conjunction with the competitiveness principle. As on the one hand it has to protect competitiveness as the guarantor of market economy and on the other also protection against aberrations of the said competitiveness and all unfair practices.

With reference to the financial market and the functional requirements, the Polish Financial Supervision Authority should stand guard over the safety of clients of financial market institutions, and also to safeguard the said market in accordance with the principles of competition, also protecting the weakest entities against excessive intensification of competition. The above means the requirement for a thorough analysis of the actions of given financial institutions in terms of their compliance with this principle and not disrupting the principles of fair market competition. However, operation within this area carries a particular threat to market stability. On the one hand, if they are too restrictive, this can lead to various sorts of crises, excessive restrictions of market growth and bankruptcy of many institutions, whereas too lax operations may be the cause of destabilisation and the introduction of biased principles of competition by some entities³⁴.

The principles discussed hereinabove constitute a limitation for the functioning of the Polish Financial Supervision Authority, setting out the shape and scope of the actions it undertakes in accordance thereto. Of course, here the changeability of boundaries determined by the level of financial market development in a given period as well as its properties should be taken into account, which means that the Polish Financial Supervision Authority is unable to adopt rigid supervisory rules over the financial market on the basis of the aforementioned principles. As these principles contain certain defined standards, which have to be respected and determine the scope of operation for the Polish Financial Supervision Authority within supervision over the financial market, however an assessment of individual solutions and actions is always associated with the given situational and economic context as well as the actual need, stemming from an analysis of the situation at hand. The constitutional principles of

³³ Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., art. 76.

³⁴ P. Wajda, *Rola decyzji administracyjnej...*, s. 255–256.

interference into the financial market by the Polish Financial Supervision Authority have been laid out, such that it satisfies the requirements of the democratic state under the rule of law as a superior condition.

5. A licence to conduct business activity on the financial market and the prudence requirements

The requirement to obtain a licence to conduct economic activity, regardless of the area it pertains to, is seen in two aspects in administrative law literature: as a consequence of the existence of provisions introducing a general preventative ban of conducting defined economic activity and as prevention means by national authorities with the intention of protecting the public interest³⁵. Apart from these differences the substantive legal consequences of this type of administrative decisions are identical: a consent for the performance of defined activity, or lack of, which will result in the inability to conduct it. A legal analysis of the premises justifying a limitation of this type, also points to a restriction of the freedom of economic activity principle, allows for properties to be identified, justifying their existence and application, also justifying the prevalence of the activity licensing model within the financial market. Here, primarily issues associated with certain professional and moral values of given persons should be addressed, who are intending to commence defined economic activity, as properties which act as a warranty for observing the applicable law, including observing the aforementioned principles (compliance with the law)³⁶.

The above is also justified by international regulations, which, as standards introduced for the Polish legal system are binding, in accordance with the principles as set forth in the Constitution³⁷. Conditions of this type, and as such the requirement to issue concessions and licences for activity within the scope of financial services, are part of European law with reference to the functioning of banks (credit institutions)³⁸,

³⁵ K. Strzyczkowski, *Prawo...*, s. 123; R. Kaszubski, M. Olszak, *Koncesje a zasada wolności gospodarczej*, „Głosa”, 1998 nr 7, s. 5; C. Kosikowski, *Koncesje i zezwolenia na działalność gospodarczą*, Warszawa 2002, s. 133; K. Marak, *Klasyfikacja środków nadzoru bankowego i ich charakter prawny*, „Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji”, 2004 nr XVIII, s. 174; A. Piotrowska, *Tzw. licencje bankowe i sukcesja publicznoprawna z art. 494&2 KSH w procesie łączenia banków*, „Prawo Bankowe”, 2003 nr 10, s. 74–75.

³⁶ M. Szydło, *Koncepcja koncesji w ujęciu klasycznym i jej recepcja w prawie polskim*, „Państwo i Prawo”, 2004 z 1, s. 50.

³⁷ Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., art. 87.

³⁸ Dyrektywa 2006/48/WE PE i Rady z dn. 14.06.2006 r. w sprawie podejmowania i prowadzenia działalności przez instytucje kredytowe, Dz. Urz. UE 2006, L 177; Dyrektywa PE i Rady 2013/36/UE z dn. 26.06.2013 r. w sprawie warunków dopuszczenia instytucji kredytowych do działalności

insurance companies³⁹ and brokerage houses⁴⁰. The essence of additional supervision over credit institutions, insurance companies and investment firms constituting a financial conglomerate have also been defined⁴¹.

From 1 January 2014 prudence requirements are applicable pertaining to the operations of credit institutions in the European Union, which aim to put in place certain criteria subject to continual verification by supervisory bodies. These pertain to equity, capital requirements, large exposures as well as exposures on account of assigned capital risk, liquidity, financial leverage⁴².

The implemented Regulation of the European Parliament and of the Council No 575/2013, as well as the Directive 2013/36/EU of the European Parliament and of the Council, referred to as the so called CRD IV/CRR⁴³, replaced in full the regulations as in force to date of directives on supervising and functioning of financial institutions⁴⁴. The CRR Regulation, pertaining to the prudence requirements for credit institutions

oraz nadzoru ostrożnościowego nad instytucjami kredytowymi i firmami inwestycyjnymi, zmieniająca dyrektywę 2002/87/WE i uchylająca dyrektywy 2006/48/WE oraz 2006/49/WE, Dz. Urz. UE 2013, L 176.

³⁹ Dyrektywa Rady 92/49/EWG z dn. 18.06.1992 r. w sprawie koordynacji przepisów ustawowych, wykonawczych i administracyjnych odnoszących się do ubezpieczeń bezpośrednich innych niż ubezpieczenia na życie oraz zmieniająca dyrektywy 73/239/EWG i 88/357/EWG, (Dz. Urz. WE 1992, L 228) i dyrektywę 2002/83/WE PE i Rady z dn. 5.11.2002 r. dotyczącą ubezpieczeń na życie, Dz. Urz. UE 2002, L 345; Dyrektywa PE i Rady 2009/138/WE z dn. 25.11.2009 r. w sprawie podejmowania i prowadzenia działalności ubezpieczeniowej i reasekuracyjnej, Dz. Urz. UE 2009, L 335.

⁴⁰ Dyrektywa 2004/39/WE PE i Rady z dn. 21.04.2004 r. w sprawie rynków instrumentów finansowych zmieniająca dyrektywę Rady 85/611/EWG i 93/6/EWG i dyrektywę 2000/12/WE PE i Rady oraz uchylająca dyrektywę Rady 93/22/EWG, Dz. Urz. UE 2004 L 145.

⁴¹ Dyrektywa 2002/87/WE z dn. 16.12.2002 r. w sprawie dodatkowego nadzoru nad instytucjami kredytowymi, zakładami ubezpieczeń oraz przedsiębiorstwami inwestycyjnymi tworzącymi konglomerat finansowy, Dz. Urz. UE 2003, L 35; Dz. Urz. UE 2013, L 176, uchylona dyrektywą 2013/36/UE.

⁴² Rozporządzenie PE i Rady nr 575/2013 z dn. 26.06.2013 r. w sprawie wymogów ostrożnościowych dla instytucji kredytowych i firm inwestycyjnych zmieniające rozporządzenie UE nr 648/2012, Dz. Urz. UE 2013, art. 25-91, 92-386, 387-403, 404-410, 411-428, 429-430.

⁴³ Rozporządzenie Parlamentu Europejskiego i Rady (UE) nr 575/2013 z dnia 26 czerwca 2013 r. w sprawie wymogów ostrożnościowych dla instytucji kredytowych i firm inwestycyjnych, zmieniające rozporządzenie (UE) nr 648/2012 (*Capital Requirements Regulation, CRR*) oraz Dyrektywa Parlamentu Europejskiego i Rady 2013/36/UE z dnia 26 czerwca 2013 r. w sprawie warunków dopuszczenia instytucji kredytowych do działalności oraz nadzoru ostrożnościowego nad instytucjami kredytowymi i firmami inwestycyjnymi, zmieniająca dyrektywę 2002/87/WE i uchylająca dyrektywy 2006/48/WE oraz 2006/49/WE (*Capital Requirements Directive IV, CRD IV*).

⁴⁴ Pakiet CRD IV/CRR, http://ww.knf.gov.pl/pakiet_crd4.html, [odczyt: 14.09.2014].

and investment firms, which includes provisions regulating requirements within the scope of equity, liquidity and reporting, is legally binding in its entirety and directly applied in all EU member states as of 1 January 2014 (with the exception of certain provisions), and as such is also applicable in Poland. The CRD IV Directive required transposition into the Polish legal order which took place on 1 November 2015 together with the Macro-prudential supervision over the financial system act becoming effective, which not only implements the CRD IV Directive, but also adjusts the law to the CRR Regulation). The Act in question applies changes in the aforementioned scope in the Banking Law Act and the Act on Trading in Financial Instruments⁴⁵.

Here, one should just add that the introduced provisions aim to strengthen regulation of the banking sector and investment firms and are to contribute to increased security of that sector, and Basel Committee recommendation into the Banking Supervision ((Basel III) are taken into account therein.

Bibliografia:

- *Administracja publiczna*, Tom I: *Ustrój administracji państwowej centralnej. Komentarz*, red. B. Szmulik, K. Miaskowska-Daszkiewicz, Warszawa 2012.
- Banaszak B., *Konstytucja Rzeczypospolitej Polskiej – komentarz*, Warszawa 2009.
- Banaszczak-Soroka U., *Instytucje i uczestnicy rynku kapitałowego*, Warszawa 2008.
- Bednarczyk T. H., *Wpływ działalności sektora ubezpieczeniowego na wzrost gospodarczy*, Lublin 2012.
- Bień W., *Rynek finansowy*, Warszawa 2001.
- Blicharz R., *Nadzór Komisji Nadzoru Finansowego nad rynkiem kapitałowym w Polsce*, Bydgoszcz–Katowice 2009.
- Chlebny J., *Sądowa kontrola administracji w świetle rekomendacji Rady Europy*, „Państwo i Prawo”, 2005 z. 12, ss. 21–34.
- Chłopecki A., Dyl M., *Prawo rynku kapitałowego*, Warszawa 2012.
- Courtis R., *How countries supervise their Banks, Insurers and Securities Markets 2005*, London 2005.
- Craig P., *EU Administrative Law*, Oxford 2006.
- Daniluk D., *Polski system bankowy a regulacje Unii Europejskiej, zakres, przedmiot i tempo procesów dostosowawczych w świetle postanowień Układu Europejskiego*, Stara Wieś 1996.

⁴⁵ Ustawa z dnia 29 lipca 2005 r. o obrocie instrumentami finansowymi, t.j. Dz. U. z 2014 r., poz. 94.

- Daniluk D., *Regulacje i nadzór bankowy w Polsce*, Warszawa 1996.
- Davies H., Green D., *Globalny nadzór i regulacja sektora finansowego*, Warszawa 2010
- Dębski W., *Instytucje rynku kapitałowego*, Łódź 1997
- Dębski W., *Rynek finansowy i jego mechanizmy. Podstawy teorii i praktyki*, Warszawa 2005.
- Dyl M., *Środki nadzoru na rynku kapitałowym*, Warszawa 2012.
- Górski M., *Rynkowy system finansowy*, Warszawa 2007.
- Gładysz P., Żmigrodzki R., *Komisja Nadzoru Finansowego jako organ nadzoru nad rynkiem kapitałowym*, „Zeszyty Naukowe WSIZiA w Warszawie”, 2014 nr 4, ss. 144 – 159.
- Gładysz P., Żmigrodzki R., *Security of the Polish Capital Market – Selected supervisory measures being applied by the Polish Financial Supervision Authority with respect to brokerage houses*, „Zeszyty Naukowe WSIZiA w Warszawie”, 2015 nr 2, ss. 72 – 83.
- Gładysz P., Żmigrodzki R., *Security of the Polish Capital Market – Selected aspects pertaining to the brokerage house licensing process in front of the Polish Financial Supervision Authority*, „Zeszyty Naukowe WSIZiA w Warszawie”, 2015 nr 4, ss. 81 – 89.
- *Jednolity rynek ubezpieczeń w Unii Europejskiej – Procesy rozwoju i integracji*, red. J. Monkiewicza, Bydgoszcz 2005.
- Kaszubski R., Tupaj-Cholewa A., *Prawo bankowe*, Warszawa 2010.
- Kawulski J., *Prawo bankowe. Komentarz*, Warszawa 2013.
- Kaźmierczak A., *Pieniądz i bank w kapitalizmie*, Warszawa 1993.
- Kremers J. M., Schoenmaker D., Wiertz P. J., *Financial supervision in Europe*, Cheltenham 2003.
- Kurzajewski M., *Usługi maklerskie*, Warszawa 2014.
- Mayes D. G., Halme L., Liuksila A., *Improving banking supervision*, Hampshire 2001.
- Marak K., *Klasyfikacja środków nadzoru bankowego i ich charakter prawny*, „Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji”, 2004 nr XVIII.
- Mojak J., *Prawo papierów wartościowych. Zarys wykładu*, Warszawa 2013.
- Mwenda K., *Legal aspects of financial regulation and the concept of unified regulator*, Washington D. C. 2006.
- *Nadzór nad rynkiem finansowym. Aktualne tendencje i problemy dyskusyjne*, red. E. Fojcik-Mastalska, E. Rutkowska-Tomaszewska, Wrocław 2011.

- Nieborak T, Sójka T., *Ustawa o nadzorze nad rynkiem kapitałowym. Komentarz*, Warszawa 2011.
- *Nowe koncepcje i regulacje nadzoru finansowego. Nadzór makroostabilnościowy. Nadzór bankowy SKOK. Instrumenty finansowe*, red. W. Rogowski, Kraków–Warszawa 2014.
- Piotrowska A., *Tzw. licencje bankowe i sukcesja publicznoprawna z art. 494&2 KSH w procesie łączenia banków*, „Prawo Bankowe”, 2003 nr 10, s. 74–75.
- *Prawo rynku kapitałowego. Komentarz*, red. M. Wierzbowski, L. Sobolewski, P. Wajda, Warszawa 2012.
- Wajda P., *Rola decyzji administracyjnej w nadzorze nad polskim systemem finansowym*, Warszawa 2009.
- *Źródła prawa z perspektywy piętnastu lat obowiązywania Konstytucji*, red. M. Zubik, R. Puchta, Warszawa 2013.