

## REMARKS ON THE TRANSFORMATION OF THE POLISH BANKING SYSTEM BY THE REFORMS AFTER 1989

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*Summary* This work concentrates on the main direction of changes in the field of the Polish Banking Law after 1989. All the changes observed at that time were directly or indirectly related to the adjustment of the Polish legislation to the regulation of the European Union. They concerned the following areas: building a new legal system regulating bank operations; transforming the National Bank of Poland into a modern central bank which does not run a commercial activity; establishing private commercial banks, including foreign capital banks; privatizing commercial banks.

*Keywords:* Polish Banking Law, European Union, National Bank of Poland, commercial banks.

The transformation of the Polish banking system launched after 1989 was implemented in the following four fields:<sup>1</sup> the construction of a new legal system regulating the activity of banks;<sup>2</sup> the transformation of the National Bank of Poland into a modern central bank which does not run a commercial activity; the creation of private commercial banks including foreign capital banks, as well as the privatization of commercial banks.<sup>3</sup> However, it seems that there was another field on which the banking system was being created after 1989. That is the adjustment of the Polish Banking Law to the EU regulations.<sup>4</sup>

The reform of the banking system was one of the crucial elements of the transformation of the Polish economy.<sup>5</sup> On the 31<sup>st</sup> of January 1989, the Sejm of the

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<sup>1</sup> Z. Dobosiewicz, *Podstawy bankowości*, Warsaw 2001, p. 20.

<sup>2</sup> See.: W. Baka, *Stabilność sektora bankowego – czynniki i tendencje*, Banking Law 2002, no. 12, s. 41 – 44; W. Baka, *Zarys rozwoju i aktualne problemy funkcjonowania sektora bankowego w Polsce*, Banking Law 2000, no. 1.

<sup>3</sup> The objectives of the privatization of the banking sector were described in the Resolution of the Sejm of the Republic of Poland of the 5<sup>th</sup> of June 1992 and they were formulated in the following way: strengthening the capital and facilitating the access to the capital, identifying the owner who would be capitally responsible for a bank's, the dependence of banking operations on current needs, the increase of a bank's efficiency, retaining the majority of shares nationally owned. For further reading on the subject see R. Dankiewicz, W. Kąkol, *Organizacyjno – finansowe aspekty przekształceń sektora bankowego w Polsce w latach 90 – tych – wybrane zagadnienia*, [w:] *System bankowy w Polsce. Dekada przemian*, ed. J. Sikorski, Białystok 2001, s. 7.

<sup>4</sup> See.: E. Fojcik – Mastalska, *Zmiany prawa i systemu bankowego w Polsce z perspektywy standardów Unii Europejskiej*, Państwo i Prawo 1996, z. 4 – 5; *Raport z działań dostosowujących polską gospodarkę i system prawny do wymagań Układu Europejskiego oraz przyszłego członkostwa RP w Unii Europejskiej według stanu na koniec 1997 roku*, Komitet Integracji Europejskiej, Warsaw 1998, p. 212 – 222.

<sup>5</sup> See. C. Kosikowski, *Publiczne prawo bankowe*, Warsaw 1999, s. 38 – 41 including bibliography.

Republic of Poland passed two acts.<sup>6</sup> That was the Banking Law<sup>7</sup> and the Act on the National Bank of Poland.<sup>8</sup>

The essence of those acts was the complete reconstruction of the banking system (the act admitted the functioning of national banks, banks as public companies and cooperative banks), the abolition of the government's legislative authority, the organization of the relations between banks and the State Treasury via the liquidation of the mechanism of automatic credit grants for governmental purposes and the extension of the banking activities catalogue.

The following principles of banking became the fundamentals of the regulations of 1989 constituting the banking system in Poland:

- **Universalism** – banks were provided relatively equal conditions for providing banking services regarding their type and territorial expansion.
- **Independence** – every kind of independence has its limits, the limits for banks are specified by the regulations of statutes and acts.
- **Competitiveness** – it is the driving force of the development of every bank and the whole banking system. This happens when competitiveness is used to extend and improve banking services, gain shareholders, depositors and other clients.
- **Self-financing** – bank operations should be covered with the financial means generated by the bank. They may be extended by a re-financed credit granted by the National Bank of Poland or another bank.
- **Commercialism** – although each banking activity should be profitable, the price of bank services ensuring costs return and providing profits cannot be too high.<sup>9</sup>

The Banking Act of the 31<sup>st</sup> January 1989 came into force on the 10<sup>th</sup> of February 1989. It contained the elements characteristic of planned economy with the regulations based on the European standards.

The statutory guarantee of bank's independence and self-financing was reflected in the very definition of a bank in the article 2 of the Act constituting that banks are independent and self-financing organizational units with legal personality working pursuant to acts and statutes.

According to the Act, the activity of banks consisted in the performance of banking acts and other forms of economic operations. Banking operations were defined in an open catalogue, which allowed to extend the scope of banking acts to those not listed in the Act. Importantly, the banking operations specified in the Act were covered with the monopoly of banks to act within the scope specified in the statutes and the Act.<sup>10</sup> The article 11 of the Act particularly defined the following banking acts:

- Managing bank accounts
- Receiving saving accounts balances

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<sup>6</sup> According to new regulations, banks were no longer „the financial arm of the state” becoming businesses working in competitive conditions and their objective was to gain profits. The functions characteristic of modern central banks were separated from commercial banking, which generally the status and function of the National Bank of Poland. For further reading on the subject see: Góral L., M. Karlikowska, K. Koperkiewicz – Mordel, *Polskie prawo bankowe*, Warszawa 2006, p. 19; Z. Polański, *Pieniądz i system finansowy w Polsce. Lata 1982 – 1993. Przemiana ustrojowa*, Warsaw 1994.

<sup>7</sup> The Journal of Laws of 1989, No. 4 item 21.

<sup>8</sup> The Journal of Laws of 1989, No. 4 item 22.

<sup>9</sup> Gliniecka J., Harasimowicz J., Krasnodębski R., *Polskie prawo bankowe (1918 – 1996)*, Warsaw 1996, p. 50.

<sup>10</sup> Compare J. Gliniecka ..., *op. cit.*, p. 50 – 51.

- Granting and taking credits and pecuniary loans
- Performing check and promissory operations
- Receiving and performing deposits in national and foreign banks.
- Giving and receiving bank warranties and guarantees.
- Performing foreign exchange transactions and foreign exchange financial services.
- Servicing state loans.
- Issuing and trading securities, as well as managing deposit accounts of securities.
- Performing commissioned activities related to the issue of securities.
- Storing items and securities and providing bank safes.

The following banking duties and rights were related to the performance of banking activities: the right to issue agreement patterns, the duty to keep banking secrets, State Treasury guarantees, the right to issue documents having the power of official documents and giving the writ of execution.

In relation to their operations, banks were obliged to maintain cash liquidity and act in the way that ensures the fulfillment of all the duties within payment deadlines. Banks could act as state banks, cooperative banks, banks in the form of a public company and state-cooperative banks. Foreign banks' branches and representatives were also allowed to act in Poland. State banks were founded and dissolved via the ordinance of the Cabinet having counseled the Chairman of the National Bank of Poland. A state-cooperative bank could be founded by the Cabinet by means of an ordinance in concert with the Supreme Cooperative Council having counseled the Chairman of the National Bank of Poland. Cooperative banks and public company banks could be established having received the consent of the National Bank of Poland. The foundation of a foreign banks branch or a representative was allowed if it received a consent issued by the Minister of Finances in concert with the Chairman of the National Bank of Poland.<sup>11</sup> The Act on Banking Law established the council of banks as the coordinating and consulting and advisory authority.

The Banking Act and the Act on the National Bank of Poland conferred the supervision over the banking activity to the National Bank of Poland. The aim of banking supervision was to ensure: the security of saving accounts balances and bank deposits, banks' conformity with the regulations of the Banking Act, particularly about the relations with legal and natural persons. The authorities of the National Bank of Poland within the supervision had the following functions: licensing, regulating, controlling and administration.

The Act of the 31<sup>st</sup> of January 1989 on the National Bank of Poland constituted that the National Bank of Poland was the central state bank, the issuing bank, the central credit and settlement institution and the central bank institution of foreign exchange. There were appropriate conditions to establish new institutions. Except for state and cooperative banks, there were also private banks that had the form of public companies working according to the Banking Act and the Commercial Code.<sup>12</sup> Within the monetary policy, the administration method (applied before 1989) was replaced with the economic tools (the interest rate, exchange rate, obligatory reserves, open market operations, discounting promissory).

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<sup>11</sup> See *System bankowy w Polsce w latach dziewięćdziesiątych*, Analyses and reasearch of the National Bank of Poland, Warsaw 2001, p.13.

<sup>12</sup> The Journal of Laws of 1933 r., No. 82, item 600 with amendments.

The National Bank of Poland was assigned the supervisory function over the activity of commercial banks.<sup>13</sup>

Based on the local structure of the National Bank of Poland, nine big regional commercial banks were created<sup>14</sup> and transformed into state companies in 1991. Those were the following banks: Bank Gdański in Gdańsk, Bank Śląski in Katowice, Bank Przemysłowo – Handlowy in Cracow, Bank Depozytowo – Kredytowy in Lublin, Powszechny Bank Gospodarczy in Łódź, Wielkopolski Bank Kredytowy in Poznań, Pomorski Bank Kredytowy in Szczecin, Powszechny Bank Kredytowy in Warsaw, Bank Zachodni in Wrocław.

In November 1993, the last stage of the separation of the commercial activity from the National Bank of Poland was completed. The operations of that kind were assigned to the new Polish Investment Bank which took over the employees, premises and resources of the National Bank of Poland. Owing to the foundation of those banks, the structure of the Polish banking system became more clear.<sup>15</sup>

The amendment to the Act on the National Bank of Poland of the 14<sup>th</sup> February 1992 was an important stage of the process of strengthening the independence of the National Bank of Poland.<sup>16</sup> On the 14<sup>th</sup> February 1992 also the Banking Act was amended. The monopoly of banks to perform banking activities and use the words “bank” and “bank counter” was strengthened by the regulations on the criminal liability for the violation of the monopoly. Banks were not obliged to abide by the provisions of the monetary policy resolved by the Sejm. Also such terms as a “national bank” and a “foreign bank” were defined.

The banks that had the right to trade in foreign currency gained the right to purchase the securities issued abroad. The creation of their definition was assigned to the Chairman of the National Bank of Poland acting in concert with the Minister of Finances. Banks were obliged to announce (in the place where the bank activities were performed a in a generally accessible way) the interest rates that they use and the funds on bank accounts, credits and loans, as well as the provisions of banking operations and banking services. There was also the prohibition against favoring the employees, stakeholders and members of bank authorities by using the interest rates of saving accounts balances, deposits and funds on fixed term deposit accounts and the credits that were explicitly more profitable than those commonly applied. The privilege of issuing documents with the power of official documents was extended to all banks. The regulations on state-cooperative banks and the Banking Council were established.<sup>17</sup>

The period of the reforms in the Banking Act was completed with the Act of the 19<sup>th</sup> of December 1992 on the Amendment of the Banking Act and some other acts.<sup>18</sup> That regulation introduced amendments to the regulations specifying the limit of credit participation, equity participation and the control of the flow of the bank shares of banks in the form of a public company. By virtue of the changes, credits with warranties, official guarantees or guarantees of international financial institution defined by the Chairman of the National Bank of Poland were removed from the limit of credit participation.

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<sup>13</sup> See *System bankowy w Polsce...*, p. 3.

<sup>14</sup> W. Baka, *Zarys rozwoju i aktualne problemy funkcjonowania sektora bankowego w Polsce*, Banking Law 2000, no. 1, p. 66.

<sup>15</sup> Z. Dobosiewicz, *op. cit.*, p. 21.

<sup>16</sup> The Journal of Laws of 1992, No. 20, item 78.

<sup>17</sup> See *System bankowy w Polsce...*, p. 16.

<sup>18</sup> The Journal of Laws of 1992, No. 6, item 29.

Furthermore, the bonds issued by the State Treasury and the National Bank of Poland were removed from the rules of equity participation.<sup>19</sup>

In the following years further changes in the Banking Law were introduced and they had two reasons. First, Poland aspired to become a member of the European Union. The Europe Agreement of December 1991 established the association between Poland, the European Communities and their member states.<sup>20</sup> The Agreement came into force on the 1<sup>st</sup> of February 1994 and it defined the prerequisite for the economic integration as the adjustment of the existing and future legislation, including the Banking Law. The introduction of the changes into the Banking Act was aimed at the gradual adjustment of conditions regulating the banking operations in Poland to the regulations of the European Union. Second, the economic situation of banks was the element which regularly and directly influenced the shape of the changes in the regulations specifying the functions of the banking system at the initial stages of the transformation. Quite early, it turned out that the problems of the Polish banking system require the creation of legal acts exceeding the framework specified in the Banking Act and the Act on the National Bank of Poland. Therefore, regardless of the further amendments of the above-mentioned acts, the activity of the legislator within the Banking Law had its reflection in numerous legal acts of a specific character.

Those shortly described acts on the National Bank of Poland and the Banking Law of 1989 became invalid after the “new” Acts on the National Bank of Poland<sup>21</sup> and the Banking Law<sup>22</sup> of the 29<sup>th</sup> of August 1997 came into force.

The basic term which the legislator uses in the Banking Law of 1997 is a “bank” – defined in the article 2 as a legal person created pursuant to the regulations of acts performing its operations subject to the licenses granting the right to perform risky banking operations on any kind of repayable means. The acts retained the legal and criminal security of banking operations by granting banks the exclusive right to use the term “bank” and “bank counter” and perform the banking operations consisting in generating financial means of other natural persons, legal persons and the organization entities which did not have a legal personality. The forms of active banking operations were divided into three categories:

- Banking operations that may be performed only by banks.
- Banking operations that may be performed also by other entities that are not banks. They have the nature of banking operations only if they are performed by banks.
- Other forms of activity not specified by the act as banking operations.

Generally the regulations concerning particular operations was extended with regard to the previous legal status stemming from the regulations of the Banking Law of 1989. There were also significant changes in the regulations on specific duties and rights of banks. The right to issue the enforcement title was replaced by the privilege to issue bank execution titles.

The construction of a bank secret was also substantially changed because its scope was extended to all the messages concerning banking operations and the people related to the performance of those operations. The access of other entities to those messages was

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<sup>19</sup> See *System bankowy w Polsce...*, p. 16.

<sup>20</sup> The ratification of the Agreement by virtue of the Act of the 4<sup>th</sup> of July 1992, The Journal of Laws of 1992, No. 60, item 320.

<sup>21</sup> The Journal of Laws of 1997, No. 140, item 938.

<sup>22</sup> The Journal of Laws of 1997, No. 140, item 939.

controlled by enumerating the entities that were authorized to have the access to the information regarded as confidential. The Act also specified the situations in which other entities were granted the information. The regulation of a bank secret was complemented by provisions constituting that banks have the duties to counteract the use of their activity for money laundering and to indemnify others against the liability for the damages that may stem from the fulfillment of the duty and from the disclosure of a bank secret pursuant to the regulations specifying the access of authorized entities to it.<sup>23</sup> The licensing system developed earlier on the basis of applicable regulations was retained. Thus, the establishment of a cooperative bank or a bank in their form a public company required the license of the Banking Supervision Authority issued in concert with the Minister of Finances. A state bank could be founded by the Minister of Finances via an ordinance of the Minister of Treasury with the opinion of the Banking Supervision Authority<sup>24</sup>

The system position of the National Bank of Poland was specified in the above-mentioned Act of 1997, and, importantly, in the Constitution of the Republic of Poland of the 2<sup>nd</sup> of April 1997.<sup>25</sup> Pursuant to the article 227 of the Constitution of the Republic of Poland, the National Bank of Poland as the central bank of the Republic of Poland has the exclusive right to issue money, establish and perform the money policy. It is also responsible for the value of Polish money. The Act constitutes that the basic objective of the central bank is keeping a stable level of prices and, simultaneously, support the economic policy of the government if it does not limit the basic objective of the National Bank of Poland. The acts and ordinances of the Sejm were left out as the criteria which the central bank should observe during a cooperation. Except for the realization of the basic objective, the tasks of the National Bank of Poland is the exclusive right to issue monetary tokens of the Republic of Poland, and:

- Organize pecuniary settlements
- Manage economy with foreign currency reserves.
- Perform the foreign currency activity within the borders specified by acts.
- Provide the banking services of the state budget.
- Regulate the liquidity of banks and their refinancing.
- Develop the condition necessary for the development of the banking system.
- Prepare reporting balance of payments and a balance of foreign debts and liabilities of the state.
- Perform other tasks specified by acts.

The Act extends the provisions of the Constitution and specifies to the procedure of establishing the following bodies of the National Bank of Poland: the Chairman, the Council of the Monetary Policy and the Managing Board. The Chairman of the National Bank of Poland is appointed by the Sejm on the request of the President of the Republic of Poland for the term of 6 years. The same person can be the chairman of the National Bank of Poland not longer than two consecutive terms. The Chairman of the National Bank of Poland presides the Council of the monetary Policy, the Managing Board and represents the National Bank of Poland. He may participate in sittings of the Sejm and the Cabinet.

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<sup>23</sup> See *System bankowy w Polsce...*, pp. 27-28.

<sup>24</sup> In the legal status after the 1<sup>st</sup> of January 2008 specified by virtue of the Act of the 21<sup>st</sup> of June 2006 on the supervision over the financial market (the Journal of Laws of 2006, No. 157, item 1119 with further amendments), the right Banking Supervision Authority were taken over by the Financial Supervision Authority.

<sup>25</sup> The Journal of Laws of 1997, No. 78, item 483 with further amendments.

The Monetary Policy Council comprises the Chairman and members equally appointed by President of the Republic of Poland, the Sejm and the Senate from specialists in finances for the term of six years. Following the decisions of the Monetary Policy Council, its particular tasks are: specifying the interest rates of the central bank, establishing the principles and the obligatory reserve rate for banks, determining the upper limits of liabilities from loans and credits taken in foreign banking and financial institution; approving of the financial plan and the business report; approving of the annual report and specifies the principles of market operations.

The Managing Board performs the operations of the National Bank of Poland and it consists of the Chairman (the Head) and 6 to 8 members, including to two Deputy Presidents.

The Managing Board is appointed and dissolved by the Monetary Policy Council and valid resolutions in the cases not stipulated in the Act to be the exclusive authority of other bodies of the central bank.

Another important step towards the adjustment of the Banking Law to the European Union requirements is the amendment of the Banking Law by the Act of the 23<sup>rd</sup> of August 2001 on the change of the Banking Act and amendments to other acts.<sup>26</sup> That Act adjusted the Polish Law to the requirements of the Directive 2000/12/EC of the European Parliament and the Council of the 20<sup>th</sup> of March 2000 on establishing and managing businesses by credit institutions,<sup>27</sup> as well as other directives.<sup>28</sup>

The amendment regulated the following fields of the community law:

- Filing the declaration of will on electronic data media.
- Introducing the definition of the electronic money.
- Introducing the consolidated supervision
- Modifying the regulations concerning the cooperation and data exchange with the national financial supervision authorities and the foreign banking supervision authorities.
- Modifying the regulations concerning the coefficient of solvency and introducing the basis on which the supervisory authorities establish the principles specifying how banks should observe capital requirements on account of particular types of risk including the market risk.
- Eliminating problems related to the use of the mutual balancing of debts in case of insolvency.
- Introducing the regulations concerning trans-boarder transfers.
- Introducing the following definitions for the supervisory purposes: a financial institution, financial holding, mixed holding, dominant entity, significant influence, close relations.
- The extension of sanctions applied by the supervisory authorities.
- The modification of the regulations concerning the control of the flow of shares in public company banks.

Moreover, the amendment included the elements necessary for the full introduction of the freedom of banking services provision. For those purposes the principles for

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<sup>26</sup> The journal of Laws of 2001, No. 111 item 1195.

<sup>27</sup> See the Journal of Laws of EU of 2000, L 126 item 1 with amendments.

<sup>28</sup> See the Directive of the European Parliament and Council 97/5/EC of the 27<sup>th</sup> of January 1997 on trans-border bank transfers. The Journal of laws of EU of 1997, L 43 item 25 with amendments; the Directive of the European Parliament and Council 98/26/EC of the 19<sup>th</sup> of May 1998 on the closing of settlements in the system of payment and the settling of securities, the Journal of Laws of 1998, L 166 item 45 with amendments.

establishing and managing businesses by a credit institution in Poland and the national banks of the European Union.<sup>29</sup>

The process of deep reforms in the Polish banking system launched in 1989 was aimed at the adjustment of the needs and requirements of market economy simultaneously turned into the process of adjusting the banking Law to the European Union standards. Although the process of the harmonization of the Banking Law with the EU regulations since the very beginning was regarded as one of the most important tasks, however, in some aspects the standardization was introduced on the 1<sup>st</sup> of May 2004, e.i. on the day of the formal accession of Poland to the European Union. At the time when the Banking Act and the Act on the National Bank of Poland were passed on the 29<sup>th</sup> of August 1997, the high level of conformity with the EU Law was characteristic of them.

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<sup>29</sup> E. Fojcik – Mastalska, *Ocena aktualnego stanu prawa bankowego i rysujące się kierunki jego zmian*, Banking Law of 2006, no. 3, pp. 37 – 38.