Chapter 4

The Future of the European Single Market for Financial Services from a Polish Perspective*

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Abstract

The single financial market is still *in statu nascendi*, i.e. in the process of being established. Like a litmus test, it reacts to the crises regularly faced by the European Union. There are two main types of turbulence; those taking place within global financial markets (e.g. the 2008–2010 credit crunch), and those generating systemic risks from outside of the financial structures (e.g. the refugee migration crisis of 2015, which was connected to Russia's aggression against Ukraine of 2022, or the pandemic crisis of 2020). Both directly affect the financial sector which is deeply integrated in the EU Member States after 50 years of harmonisation efforts (first banking directive 1977). Although financial integration is generally regarded positively as the main driver of economic development in Member States, it should be borne in mind that the agenda for change is far from complete and that the single financial market will be increasingly challenged by technological revolutions in the sector, in particular the emergence of FinTechs. Member States can find they are a part of the structures of the European executive order (institutional and normative mechanisms) in the financial sector in different ways. This article attempts to provide a brief overview of the single financial market from the perspective of Poland, a Member State which, having joined the European Union in 2004, entered the already relatively well developed institutional structures of the EU financial sector, and had to learn to function effectively from within them.

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1. Introduction

In 2023, The European Union celebrated the 30th anniversary of the entry into force of the Maastricht Treaty and the formation of the single internal market. The single market marked a revolution in the European Union's integration process. It became its fundamental engine and, to this day, within the framework of sectoral integration, is the core of most regulatory processes. By guaranteeing the so-called four freedoms of movement, namely goods, persons, services and capital, the internal market stimulates the economic development of the Member States, promotes intensive trade and, through its accessibility, guarantees the competitiveness of goods and services, including financial services. The importance of the single market in proliferating the integration of Member States has been recognised in the context of the crises of recent years. In the face of the Covid-19 pandemic, the European Commission adopted the Single Market Programme in 2021, which represents a fund of EUR 4.2 billion for the period 2021–2027. This funding is intended, amongst other things, to increase the efficiency of the internal market, backing for consumers and businesses, as well as support for the development of common standards and governance mechanisms within individual market sectors (including the financial services sector).[1]

From almost the beginning of economic integration, it was perceived that its intrinsic element should be the assimilation of financial services. The Treaty of Rome establishing the European Economic Community (EEC) in 1957 already contained a provision stating the need for the free movement of capital between the Member States. This need was subsequently confirmed in the Maastricht Treaty in 1992. The single financial market was to become a permanent part of the single internal market. It was understood as a market with free movement of capital and freedom to provide financial services within the Member States. It was assumed that two basic conditions had to be met to bring about such a market. Firstly, that consumers should have free access to products offered by all financial institutions operating within the EU. Secondly, that financial institutions should be free to operate in any EU Member State of their choice on the same basis as national players, i.e. they would not be obliged to have any additional authorisation.[2]

1 See the information of the European Commission, available at: https://commission.europa.eu/funding-tenders/find-funding/eu-funding-programmes/single-market-programme/overview_en (Accessed: 25 January 2024).

2 Mikita, 2010, p. 31.

With the successive stages of economic and monetary union, the pursuit of a harmonised economic policy, the introduction of the common euro, and the implementation of a common monetary policy by the European System of Central Banks, it has become clear that the single financial market is an indispensable link in the construction of the Community system both at institutional and legal level. However, this initially provoked strong resistance from the majority of Member States, arising from their conviction that the financial sector is closely linked to the preservation of national sovereignty, which is one of the key elements required to maintain a nation's stability and security. Indeed, economic security is often equated with financial market security, i.e. the stability of the financial market. Financial stability is defined positively as a situation in which the financial system performs its functions properly, or negatively as a situation in which there are no crises and no threats in the form of systemic risk to a particular financial market.[3]

A typical mechanism for ensuring financial stability is the creation of a so-called financial safety net.[4] Its main objective is to protect the financial system from destabilisation. It is a structure comprised of institutional elements (a finance ministry, a central bank, a deposit guarantee scheme, financial supervisors) and regulatory elements (legislation, secondary regulations) intended to prevent financial crises (*ex ante* actions) and, when they do occur, actions to overcome the crisis (*ex post* actions). Each country has developed such mechanisms individually.[5] In the 1980s and 1990s, it was difficult to imagine that economic integration would implicitly force greater financial assimilation to such an extent that structures similar to national financial safety nets would become necessary within the single financial market.[6]

The end of the Cold War and the intensification of integration processes in Europe in the 1990s were part of the broader phenomenon of the transformation of the contemporary international system observed in studies of international law and international relations. This system is multipolar in nature, while retaining certain characteristics from the period of the bi-polar division.[7] Such features include the tripartism of the system, observed as early as the 1950s by the French demographer Alfred Sauvy. In the trammels of this tripartism, there would be a "First" World of the rich West, a "Second" World of the Eastern Bloc and a so-called "Third" World of the poorest, developing countries.[8]

The dissolution of the Eastern Bloc following the collapse of the USSR did not fully erase the differences between the countries of Western Europe and those of Central and Eastern Europe. Although both are part of the so-called rich "Global

3 Cf. Jurkowska-Zeidler, 2008, p. 166.

4 'Safety nets area central pillar of modern financial architectures. By granting liquidity support to a collection of institutions, a safety net can relieve the strains of eligible members in financial distress.' See Bengui, Bianchi and Coulibaly, 2019, pp. 105–132.

5 Polish example: Stępień, 2017, p. 47.

6 Jurkowska-Zeidler, 2008, p. 217; Rhee, Sumulong and Vallée, 2013, p. 2.

7 Cooper, 2004, p. 20.

8 Sauvy, 1986, pp. 81–83. Also Palieraki, 2023.

North",[9] which "absorbed" the communist states of Central and Eastern Europe, old habits, the burden of the still ongoing systemic transformation, as well as separate traditions and experiences are often clearly visible in the processes of European integration. In recent years, various factors have become the subject of numerous tensions and often open disputes, including differences in the understanding of integration processes, differences in the shaping of mechanisms characteristic of a democratic state governed by the rule of law, or finally, the shaping of a state's position on the international arena within the dynamically evolving complex interdependencies between participants in international relations. Poland and Hungary have often illustrated the example of such a split between the "old" and "new" Member States of the European Union.[10]

Despite having a different view of the integration process with respect to financial market integration than that of the so-called "old" Union countries, in the first years after accession, Poland proceeded with great diligence and commitment to the processes of implementing EU directives. This is reflected in its willingness to observe so-called soft law, i.e. various types of recommendations, opinions and guidelines enabling the common and consistent application of the law governing the single financial market. The Polish Financial Supervision Authority (*Komisja Nadzoru Finansowego*, KNF), rarely expresses dissenting opinions, instead adopting soft law instruments that were formulated within the framework of the European System of Financial Supervision.[11]

Anniversaries, such as the 30th anniversary of the single market, or the soon-to-be 15th anniversary of the creation of the European System of Financial Supervision,[12] encourage us to reflect on the state of financial integration and the place of the "new" Member States, Poland being an example, in the complex processes of institutionalising cooperation in the financial market sector. There is no doubt that the future of the European Union will be closely linked to the phenomenon of strengthening cooperation between the Member States in specific segments of the internal market, and the financial services market, due to its key role in the development processes of national economies.[13]

Such strengthening of cooperation in selected areas, e.g. in the financial sector, means an increasing transfer of powers to the common level, including powers that go beyond the area of coordination or exchange of information, and involve the

9 Cf. Trefzer et al., 2014, pp. 1–15.

10 Mulder, 2021; Ágh, 2016, p. 34.

11 See the information of the KNF, available at: https://www.knf.gov.pl/o_nas/wspolpraca_miedzynarodowa/unia/ESNF/wytyczne_europejskich_urzedow_nadzoru (Accessed: 25 January 2024).

12 See the information of the European Parliament, available at: https://www.europarl.europa.eu/factsheets/en/sheet/84/european-system-of-financial-supervision-esfs- (Accessed: 25 January 2024).

13 Weismann, 2016, p. 199; Cf. The information of the CEPS, available at: https://www.ceps.eu/ceps-task-forces/eu-financial-markets-in-2030/ (Accessed: 25 January 2024).

establishment of institutions at the level of the EU administration with the capacity of intervention, regulation, mediation or control over national administrations. Today's EU administration no longer resembles the one envisaged in the Maastricht Treaty. The initial Treaty model, which assumed that the administration was to have a non-executive character, has changed.[14]

With the increase in tasks and expectations of greater efficiency, effectiveness and thus administrative capacity of the institutions active at EU level, it has become apparent that the European integrated administration, anchored after the changes introduced by the Lisbon Treaty explicitly in Article 298 TFEU, has a multi-faceted, complex character.[15] Thus, it can also perform executive functions. This is particularly evident in the financial sector, where the European financial supervisory authorities (ESAs) are actively involved not only in coordinating the development of European law for the three financial market sectors (banking, capital and insurance), but are also an important link in supervising the consistent implementation of that law.

2. Evolution of the European financial market

2.1. The single financial market as a type of international regime in the making

Recalling Robert Cooper's vision, it can be said that mutual openness in integrated structures, the possibility of common institutions applying intervention powers (for example, interference in a crisis situation by European financial supervisory authorities), or the creation of complex information systems are the only ways out for states he describes as post-modern. He sees the multipolar world as one of growing threats, chaos and cyclical crises, which can be averted not by individual states, but by so-called zones of order. By this he means the major powers, which include the United States and China, as well as the European Union. The author recalls Thomas Hobbes's axiom on the consequences of the non-existence of a Leviathan, i.e. an omnipotent, controlling state. Post-modern states lose their full sovereignty, which creates imbalances in the international system and leads to rivalry between various players including non-state players operating across borders (such as large financial institutions, for example). As a consequence, such processes can lead to the emergence of systemic shocks, which individual states, weakened by liberalisation and deregulation processes, are unable to counter on their own.[16]

The importance of international norms and institutions has also been pointed out by another American international relations theorist, Stephen Krasner. According to

14 Kowalczyk, 2018, p. 8.
15 Michel, 2015, p. 55.
16 Cooper, 2000, pp. 24–33.

Krasner, a trend characteristic of the Western world is the construction of international regimes, i.e. systems of principles, norms, rules and decision-making procedures around which the expectations of the participants in cooperation are focused. Regimes are thus built by states on a functional basis. They arise from the specific interests of the players involved, and the goals and values they share.[17]

International regimes most often operate on the basis of normative legitimacy.[18] That is, their action is legitimised by collectively constructed norms. Such legitimacy, based primarily on legally binding normative acts, can be called hard legitimacy. It is complemented by soft legitimacy, which also involves other non-state players in international relations (so-called stakeholders, such as financial institutions) on a broadly cooperative basis. Their participation justifies the existence of these structures both at the level of axiological legitimacy (shared values) and at the level of technocratic legitimacy, arising from the expertise of representatives of NGOs and non-state entities. This second type of legitimacy is called soft legitimacy, which can be identified with out-put legitimacy.[19] This concept was introduced into academic discussion by the German theorist of international governance and administration systems, Fritz Scharpf. He correctly assumed that within integrated structures it is impossible to seek legitimacy for decision-making processes in a traditional way, i.e. on the basis of democratic elections.[20] The rationale for such structures must be their effectiveness expressed in concrete results, for example in providing security in the single financial market.[21]

The single financial market is still in the process of being created (*in statu nascendi*). It is one of the most unique achievements of the integration process initiated by the Franco-German idea of strategically linking European economies in the 1950s. Financial integration in Europe has a special dimension, primarily because of the complexity of cooperation in both regulatory and institutional spheres. A complex institutional architecture has emerged in the last decade or so, following the 2008–2011 financial crisis, coordinating the activities of national financial supervisory institutions and monitoring the activities of financial institutions that are active in all three financial market segments: banking, capital and insurance.[22] The institutional architecture has been accompanied by an intensification of regulatory activity by the European Commission, which is making efforts to harmonise financial law in an increasingly substantive manner.

Harmonisation in the case of ongoing efforts since the 1980s is referred to in the literature as synchronisation *sensu largo*. This is a process that includes not only regulatory harmonisation (in the first stage, mainly directives for an increasingly longer time, as well as regulations), which refers to the formation of uniform rules for the

17 Krasner, 1982, p. 187.
18 Faude and Große-Kreul, 2020, pp. 431–439.
19 Parzymies and Symonides, 2012, pp. 69–72.
20 Scharpf, 1997, p. 20.
21 More at Kohtamäki, 2019, p. 152.
22 More at Kohtamäki, 2012, pp. 115–153; Weismann, 2016, pp. 106.

creation of credit institutions and prudential regulations, but also institutional harmonisation, concerning the unification of the institutional form of supervision, analytical harmonisation, related to the unification of the methods of assessing banks, and information harmonisation, regarding the creation of a uniform system of information on the situation of individual financial institutions and selected market segments in the Member States.[23]

However, the complexity of the EU financial market is not only expressed by the normative/institutional framework, but also the subjective dimension (the multiplicity and diversity of participants in the single financial market) and the objective dimension (highly developed financial products).[24]

Economic sciences indicate the high level of volatility of the financial market, which is subject to internationalisation processes more intensively than other sectors of the economy in neo-liberal economies. In practice, this grants the rapid transformation of financial products and services, which is a derivative of trans-sectoral integration and dynamic cross-border integration. Hence, for many years, it has been considered that, especially in the case of the harmonisation of regulations in the integrated structures of the European Union, the law-making bodies regulating the financial market have not kept up with its rapid transformation.[25] The breakthrough was the introduction at EU level of a fast-track law-making procedure for financial sector regulation under the so-called Lamfalussy process. It was applied to securities legislation in 2002 and two years later to the banking legislation.[26]

This is a four-stage law-making process, which assumes that at the initial level, the legislative process for framework directives and regulations follows the procedures set out in the Treaties (the traditional co-decision procedure, triggered by the European Commission's initiative). At the secondary level, directives and regulations of a technical nature (so-called regulatory and implementing technical standards) are drafted. Special expert committees and, since 2011, decentralised agencies (ESAs) that coordinate the supervision of individual segments of the single financial market, are involved in the preparation of such draft legislation. The tertiary level allows the involvement of the supervisory authorities of the Member States within the framework of intergovernmental cooperation (administrative network within the European System of Financial Supervision, at the level of the three supervisory authorities – ESAs). The ESAs, together with the European Commission, jointly coordinate the consistent implementation of financial law and the development of uniform supervisory practices to avoid regulatory and supervisory arbitrage.

23 Nieborak, 2010, p. 53.

24 Cf. Amtenbrink, 2014.

25 Kruszka, 2012, p. 49. The author points out that, especially in the eurozone countries, there has been a growing trend of cross-border integration in the area of interbank operations for many years.

26 Alford, 2006, p. 390.

The quaternary level involves the European Commission's supervision of the correct enforcement of EU law.[27]

It is worth noting that the financial market is one of the most important sectors of national economies. Turbulence in financial markets has a direct impact on economic stability and therefore on state stability.[28] Therefore, it is considered that financial stability is a public good that should be especially protected. As mentioned above, the mechanisms of the so-called financial safety net serve this purpose. Financial markets play a so-called systemic role with regard to the possible transmission of disturbances.[29] Their increased integration, especially in such a special case as the European single market, necessitates the creation of a number of normative and institutional supervisory safeguards. Financial markets, including the integrated European market, exhibit some specific features, such as the administrative and legal framework regulating access to that market. In the case of the single financial market, access to the single market is linked to access to the internal market, which is of particular importance to third countries, which thus gain access to the markets of all EU Member States.[30]

Integrated financial markets bring a number of specific benefits to Member States and third countries which are active in those markets. In this context economists mention, among other things, risk diversification, smooth cross-border capital flows, foreign participation in domestic financial markets, and information flows. Financial integration is linked to deregulation, i.e. the removal of administrative and legal barriers. All participants in an integrated market should have the same rights, i.e. be subject to the same rules.[31]

2.2. Regulatory dimension of financial integration in the EU

The role of integrated financial markets can be seen from the point of view of the so-called "financialisaton" of social life, i.e. the penetration of the economic sphere into the real sphere. In neo-liberal economies today, the activities of individuals are focused on getting rich and managing their resources. Thus, the role of the financial sector, which adapts to social changes and technological challenges, is growing.[32] Access to financial services is currently expected to be easy, remote and secure. The needs of customers, who primarily expect convenience in accessing financial

27 See Okoń, 2022, pp. 78–80. More also at the European Commission's website, available at: https://finance.ec.europa.eu/regulation-and-supervision/regulatory-process-financial-services_en (Accessed: 25 January 2024).

28 On the role of financial market for economic growth and economic stability see the information of the ECB, available at: https://www.ecb.europa.eu/press/key/date/2001/html/sp010531.en.html (Accessed: 25 January 2024).

29 Cf. Remsperger, 2008, pp. 1–7.

30 Cf. Danisman and Tarazi, 2020, p. 1842.

31 Barata et al., 2023, p. 6.

32 Cf. Nieborak, 2017, p. 161.

services, are forcing certain actions on the part of existing financial institutions, but are also changing the financial market in terms of players, as financial services are starting to be offered by entities that did not previously conduct such activity.[33] The European Union has been trying to respond to these challenges for more than thirty years by consistently reshaping its integrated financial market (the second banking directive of 1989[34] is conventionally taken as the starting point).[35]

The turning point was the Financial Services Action Plan, a sort of programme for making the single financial market a reality, announced by the European Commission in 1999.[36] It was a policy strategy document that assumed the implementation of individual goals that were to become the next stages of financial market integration. The general objective included four tasks and envisaged the creation of better conditions for the smooth functioning of the single financial market. The three strategic objectives, which included 42 legislative tasks, were (1) the creation of a single wholesale financial market, (2) the creation of an open and secure retail financial services market and (3) the preparation of supervisory regulations and a supervisory system for an integrated European Union financial market. The implementation of the FSAP involved the implementing of a series of directives to homogenise the financial market. This was a crucial stage in the harmonisation of the single financial market, which was completed in the legislative phase in 2004.[37]

Today's financial markets face various complex challenges, which are associated with the emergence of new financial products and the evolution of entities that are active on the financial market (FinTech). Therefore, while defining the rights and obligations of these entities, the legislator is also setting the framework for its interference. In the case of financial markets, the normative framework is largely harmonised. Micro prudential directives are increasingly detailed in nature and, with minor modifications, are implemented directly into the legal orders of the Member States.[38]

Until just over twenty years ago, when implementing its provisions on the conduct of business by credit institutions, Directive 2000/12/EC[39] allowed Member States to introduce stricter regulations than those that had been directly provided for in the directive itself. In the case of the transposition of this directive into its national legal

33 See EU Digital Finance Platform, available at: https://digital-finance-platform.ec.europa.eu/eu-fintech-map (Accessed: 25 January 2024).

34 Second Council Directive 89/646/EEC of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780/EEC, OJ 1989 L 386/1.

35 Gruson and Nikowitz, 1988, p. 209.

36 European Commission Communication of 11 May 1999 entitled 'Implementing the framework for financial markets: action plan', COM(1999) 232 final.

37 Pilecka, 2005, p. 25.

38 See the EBA information 'The Basel Framework', available at: https://www.eba.europa.eu/activities/basel-framework-global-regulatory-standards-banks (Accessed: 25 January 2024).

39 Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions, OJ 2000 L 126/1.

order, Poland followed the then popular practice of so-called gold plating. This means that, during the transposition phase, a Member State "gold-plates" the directive, i.e. introduces "harsher" solutions than provided for by the directive, for example, by imposing additional burdens on the addressees of the standards. Initially, within the framework of minimum harmonisation, it was assumed that such a phenomenon was an expression of the freedom of the Member States in the processes of creating a single financial market. It had been intended to ensure the preservation of the peculiarities of individual markets, arising from their separate traditions and their diverse development, derived from the dissimilar potentials of these markets.[40]

Over time, the dangers of gold-plated regulation began to be recognised. The 2006 CRD directives (2006/48/EC and 2006/49/EC)[41] already provided for the principle of maximum harmonisation for the single financial market. It implies the need to implement the provisions strictly, namely, without adding more stringent regulations, but also without skirting over the directive's objectives. In the case of the CRD, however, it was possible to retain the so-called national options, which gave the financial supervisory authorities the ability to choose one of the solutions provided for in the directive and allowed them to tighten national regulations.[42] Consequently, this led to supervisory and regulatory arbitrage. The CRD Directive was replaced in 2014 by the CRD IV/CRR (Directive 2013/36/EU and Regulation EU 575/2013)[43] regulatory package. The package significantly reduced freedom of implementation within the context of prudential regulation. The very choice of the regulation format (CRR) showed a trend towards eliminating national differences in this regard.[44]

The experience of the global financial crisis of 2008–2011 resulted in the formation of a legal and institutional framework related to the establishment of an EU financial market supervisory architecture (ESFS), the adoption of crisis management mechanisms in the financial sector, the inclusion of strengthened supervision of credit rating agencies, the development of specific solutions for investment services and supervision of trading in financial instruments, the introduction of modifications regarding capital adequacy, the application of special solutions for the operation of

40 Kaczor, 2022, p. 83.

41 Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions, OJ 2006 L 177/1; Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions, OJ 2006 L 177/201.

42 See the information of the Polish supervisory authority KNF, available at: https://www.knf.gov.pl/dla_rynku/pakiet_crd4/maksymalna_harmonizacja (Accessed: 25 January 2024).

43 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ 2013 L 176/338; Regulation (EU) 575/2013 of the European Parliament and of the Council of 26 June 2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ 2013 L 176/1.

44 Deslandes, Dias and Magnus, 2019, p. 2.

collective investment institutions, the development of new mechanisms regarding payment services (in particular, in the area of so-called "open banking"), as well as the introduction of a new order for information obligations and market abuse.[45]

2.3. Institutional dimension of financial integration in the EU

An in-depth historical analysis of the complex process of financial integration cannot be presented in this brief article. The following sub-section only presents selected milestones in the creation of an integrated financial market, which will allow reference to be made in the third section to Poland's position in the process of forming this market. The so-called new Member States (from the 2004 accession) should be seen through the perspective of their inclusion in processes that have already been in progress for several decades.[46] That is, the so-called late-comers had to insert themselves into the existing structures and fit into procedures which, in the context of the financial market, are not always nominal, and can often be informal. At issue in this context is the construction of a so-called system of deliberative institutionalism, which is particularly strong within the European System of Financial Supervision (ESFS) and is based on informal consultations between representatives of national supervisors, representatives of the three European financial supervisory authorities (ESAs), representatives of the European Commission and in many cases, representatives of the private sector.[47]

The ESFS, which became operational in 2011, is complex and can be seen as a type of administrative network. At the macroprudential level, there is the European Systemic Risk Board (ESRB).[48] Although an independent body, it is organisationally integrated with the European Central Bank (ECB). This body is responsible for identifying systemic risks and addressing the risks associated with them. This is expressed in the development of macroprudential policy guidelines together with the Member States. The ESRB is responsible for the strategic framework for macroprudential policy, implemented, among other things, through warnings and recommendations designed on the basis of observations of systemic risks in the single financial market. The members of the Board's executive bodies perform their duties impartially and in the interests of the Union as a whole. In principle, therefore, in accordance with EU rules, they do not represent individual Member States, but work for the stability of the entire system.

Three decentralised supervisory agencies coordinate microprudential supervision activities at EU level: the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities

45 Barata et al., 2023, p. 15; Okoń, 2022, p. 77.
46 Wallas, 2023, p. 150.
47 Weismann, 2016, p. 106.
48 Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board, OJ 2010 L 331/1.

and Markets Authority (ESMA).[49] All three cooperate closely within the aforementioned intergovernmental cooperation with the financial supervisors of the Member States. The cooperation includes both the drafting of European legislation of a binding nature (mainly in the technical area related to the operation of individual market segments), but also the preparation of guidelines, recommendations and opinions, i.e. acts of soft law. The ESAs also develop common supervisory standards and uniform practices together with the national supervisors.[50]

The so-called new Member States, including Poland, show less independence in this regard than Western European countries.[51] This is due to concerns regarding the possible undermining of financial stability if recommendations are not followed. Among other arguments, the literature points to the need to gain more experience in the deliberative structures of the European Union, which, as mentioned earlier, is a unique international regime. The ability to adjust to negotiating mechanisms is crucial in pushing one's agenda in structures of an intergovernmental nature.[52]

The next step to create structures resembling national networks is to build a so-called banking union. The European Commission intended the banking union to give the banking sector "a more solid foundation" and restore confidence in the single currency.[53] The European Central Bank (ECB) formally assumed supervisory responsibilities in November 2014 under the so-called Single Supervisory Mechanism (SSM) for the largest, "significant" financial institutions (the so-called first pillar of the banking union). This group includes 116 banks, the assets of which account for more than 80% of the eurozone banking sector's assets. With respect to these institutions, the ECB has exclusive powers to grant and revoke banking licences, conduct supervisory reviews and on-site inspections, assess the purchase and sale of significant shareholdings in banks, and ensure compliance with EU regulations regarding prudential supervision.[54]

The second pillar of the banking union is the Single Resolution Mechanism (SRM), with the Single Resolution Board (SRB) as its main resolution authority. The mechanism was launched in 2015 to conduct resolution processes with respect to banks facing insolvency (i.e. non-viable credit institutions) so as to preserve financial stability within the EU banking market.[55]

49 See the regulations: for the EBA: No. 1093/2010, OJ 2010 L 331/12; for the EIOPA: No. 1094/2010, OJ 2010 L 331/48; for the ESMA: No. 1095/2010, OJ 2010 L 331/84.

50 Wörner, 2017, p. 138.

51 Busuioc, 2013, p. 87.

52 Saurer, 2011, p. 51.

53 Kohtamäki, 2016, p. 99.

54 Dobrzańska, 2019.

55 See the information of the Council, available at: https://www.consilium.europa.eu/en/policies/banking-union/ (Accessed: 25 January 2024).

3. The Polish Perspective

Putting the final remarks on the banking sector, which plays a key role in financial integration, into focus, it should be noted that two areas are important with respect to the Polish perspective. Firstly, EU directives must be effectively implemented into national legal order. The future of financial integration should be seen through the lens of further harmonisation of the law. As referred to above, it is currently of an intensified nature, while the proper (namely, also in accordance with the timing requirements) implementation of European law into the national order is crucial for active participation in the single financial market. Secondly, the main focus of financial integration processes will come from cooperation in institutionalised structures, including ESFS primarily. A permanent element of the financial architecture will also be the banking union, which should undergo further modifications in the coming years, including the development of the European deposit insurance scheme (EDIS) (the so-called third pillar).

Polish experts refer to two basic trends in the development of the financial market, focusing on the banking sector. The first is the move to create legal safeguards to ensure support from home countries for subsidiary banks in host countries during a crisis situation. This would allow the host countries to agree to exempt local subsidiary banks from maintaining full capital and liquidity requirements. The second is to complete the banking union precisely in terms of the establishment of the EDIS. Perhaps Poland will become a member of the banking union, becoming subject to its mechanisms in the future.[56]

There have been some delays in Poland's implementation of the financial market directives. Currently the most urgent directive is the one amending the EU rules on administrative cooperation regarding taxation, referred to as Directive DAC7.[57] The deadline for its implementation passed at the end of 2022. As a result of the delay, there have even been fears that the European Commission will file a complaint with the CJEU over Poland's failure to implement this directive. Additionally, credit, insurance and equalisation tax regulations have not been implemented on time. According to the Polish Ministry of Finance, most of the delays, primarily arising from negligence, should be fixed in 2024.[58]

The status of the Polish banking sector in 2023 and 2024 has been positively assessed by economists, mainly because of the increase in profits compared to 2022. Based on capital adequacy and liquidity ratios, its high stability is noticeable despite the difficult international situation. The banking sector's aggregate net profit at the end of 2023 was PLN 24.3 billion, an increase of PLN 14.4 billion over 2022.

56 Bednarski and Polk, 2019, p. 39.

57 Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation, OJ 2021 L 104/1.

58 See PAP information, available at: https://biznes.pap.pl/pl/news/pap/info/3564638,polska-jest-opozniona-we-wdrazaniu-6-dyrektyw-finansowych-i-podatkowych--jaka-pierwsza-mf-bierze-dac-7 (Accessed: 22 March 2024).

Additionally, the level of its own funds increased from PLN 214 billion in 2022 to PLN 245 billion in 2023. It was also noted that the level of excess capital in the banking sector over the required supervisory standards increased in 2023. At the same time it should be remembered that the Polish banking sector is one of the smallest in Europe in terms of the ratio of assets to GDP, and therefore holds one of the latter places in the European Union in these indicators.[59]

As for the earlier reflections, it should be said that Poland needs to cooperate more actively within the framework of decentralised agencies coordinating European financial supervision initiatives. This requires good substantive preparation, but also the ability to develop a clear agenda in the implementation of long-term goals. The experience of countries with smaller financial markets shows that they often implement an agenda built *ad hoc*, depending on the changing situation, succumbing to the interests of countries with the largest financial markets.

The process of building a single financial market will continue in the coming years. Financial integration will play a key role in shaping the internal market, especially if Member States face further crises. Therefore, it can be anticipated that further regulatory measures will be taken to increase the efficiency of the single market, including the removal of restrictions on the use of the Treaty freedoms – mainly in the flow of capital and services. The European Union's efforts to increase its competitiveness on global financial markets, which have been operating for many years, only have a chance of being realised if all Member States participate in these processes with equal commitment, regardless of the potential of the individual financial markets.

59 Lusztyn, 2024.

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