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**HAVE ANTI-CRISIS LEGAL REGULATIONS INHIBITED THE
EXPANSION OF THE POLISH BANKING SECTOR?**

**CZY ANTYKRYZYSOWE REGULACJE PRAWNE
ZAHAMOWAŁY EKSPANSJĘ POLSKIEGO
SEKTORA BANKOWEGO?**

Abstract

The article concerns the issue of assessing the effectiveness of anti-crisis legal regulations in the context of the functioning and development (including expansion) of the Polish banking sector. The analyzes carried out in the article are the result of many years of the author's own analyses and research and have practical and application value.

Keywords: *banking system, legal regulations, countercyclical regulations, banking law*

Streszczenie

Artykuł dotyczy kwestii oceny efektywności antykryzysowych regulacji prawnych w kontekście funkcjonowania i rozwoju (w tym ekspansji) polskiego sektora bankowego. Przeprowadzone w artykule analizy są efektem wieloletnich analiz i badań własnych Autora i mają walor praktyczny i aplikacyjny.

Słowa kluczowe: *system bankowy, regulacje prawne, regulacje antycykliczne, prawo bankowe*

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Statement of the problem in general outlook and its connection with important scientific and practical tasks.

"Dura lex sed lex" as the ancient Romans used to say, knowing that any law (in this case even severe) is better than the freedom of anarchic chaos. Lawyers gained momentum reaching in the late empire a legal order to inherit professions. They also invented

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and implemented price regulation by introducing maximum prices. The migration of peoples shattered it to dust, and there are also views that the Romans eagerly passed from the Emperor's power to the invaders' power, having enough of legal rigidity. Feudalism introduced rigid rules of the game, broken by capitalism. In the eighteenth century, the main slogan (proclaimed, though not yet practiced or practiced to a small extent) was "laissez faire" introduced by Adam Smith into scientific literature with the invisible hand of the market. The basic rule was not to include the government in the economy. With all sorts of exceptions, this slogan formed the basis of 19th-century economic policy. In the last century, a new regulatory approach was developed - as little as possible but as much as needed. And here came the basic dilemma - what does it mean - as much as needed? To this day, it is not decided and it should be thought that it cannot be decided in advance. There remains a practical solution, i.e. a trial and error method. This applies to issues of the state - whether the existing situation is satisfactory or not - here the proposals will result from the adopted theory (classical and neoclassical economics - always too much, Keynesian economics - always too little) or the ideology of the ruling and opposition parties. The real force for change is crisis or stagnation. The crisis

will result from a shortage of regulations (vide 2008), while stagnation from an excess of regulations that bind entrepreneurship. Therefore, the direction of changes will result from the reason generating the need to make the modification. Secondly, it is not known in advance how much it needs to be changed, both in the case of reduction and increase of regulations. This is especially difficult in the case of a revolutionary approach, we halve it or double it. In the case of an evolutionary approach, we can delete or add it piece by piece until we achieve the assumed effect, i.e. we will overcome the crisis or give expansion to the stagnant economy. And here we can overdo it. There is always a timelag between a legislative move and an economic effect. So when we achieve the economic goal, the legislation will be a step further and push us further than we wanted. With a dogmatic approach, we can reform so far as to achieve the opposite effect. By controlling the crisis, we pass further laws leading to stagnation, and by overcoming stagnation, we eliminate regulations, which in the final results in a crisis.

In the context of anti-crisis measures of state interventionism, a particularly important issue is the activation of entrepreneurship and innovation in the sector of economic entities included in the SME sector.

Analysis of latest research where the solution of the problem was initiated.

The above explanations, perhaps excessively long, are necessary to explain the purpose of the article. It has an interdisciplinary legal and economic character. The reasons for the crisis of 2008 (and 2007 in the US), the greatest crisis since the Great Depression (1929-1932) were seen in the excessive liberalization of regulations, es-

pecially in the banking sector. Hence, overcoming the crisis was associated with the growing wave of regulation in the banking sector that continues to this day. "Profligacy" in this regard (colloquial expression was used here to emphasize the drastic nature of protests) was criticized almost from the beginning and continues to this day. This is favored by the following situation -

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while the diagnosis was uniform (excessive liberalization), therapy went in two directions related to the different conditions of the banking sector in the USA and Europe. In the US, the pressure was moving towards limiting or even cassation of separate investment banking in favor of "forced" universal banking (the crisis was caused by investment banks), in Europe, towards the secession of investment banking and deposit-

credit banking (the plague was coming after investment banking, so we have to cut off healthy core of classic banking). Now let's break away from the general assessments and look at the reality, how the depth of regulation looks in selected sectors and selected countries based on the PWC report (PWC and DNB Bank's own analysis - Directions 2018 report State interference in selected sectors of the economy).

Table 1. Assessment of regulation depth in% (the higher the index, the more restrictive the regulation).

	Poland	Germany	France	Norway	UK	USA
Pharmacy	36	44	36	50	33	17
Retail sales	8	8	8	8	3	3
Energetics	36	36	39	22	28	19
Telecommunication	25	25	31	17	28	14
Automotive	11	19	19	19	19	22
Banking	47	53	53	36	47	47

Source: Analiza PWC <https://www.dnb.pl/pl/komentarze-ekspertow/art78,polska-krajem-z-wysokim-wskaznikiem-ingerencji-panstwa-w-gospodarke-ale-bardziej-liberalna-niz-niemcy-i-francja.html>

Two general conclusions can be drawn from the data contained in the table above: - first of all, there is a significant differentiation between individual countries in the depth of state interference. For example, in the field of pharmacy, this level is in Norway - 50% and in the USA - 17%, which is three times lower in the latter;

- secondly, there is far-reaching diversity between sectors. They are far larger than the differences between countries. For example, in the US, the scale of interference in retail sales is - 3% and in banking - 47%, which is almost seventeen times more.

In addition, it can be stated that banking is one of the most regulated sectors of the economy in all of the countries listed except Norway, where the deepest interference concerns pharmacy. Pharmacy comes second, followed by energy. Retail sales are the least affected by the country's "visible


hand" in all countries. In the case of banking, the scale of interference is the largest in Germany and France - in both, it is - 53%, then we have Poland, UK (the United Kingdom or Great Britain) and the USA - 47% each and finally Norway - 36%. Poland's position is symptomatic. State interference is at the level of Anglo-Saxon banking (where investment banking dominates) while lower than in Germany and France (with the dominance of deposit and credit banking, which also dominates in Poland). There can be two explanations about the nature of hypotheses:

- first of all - the crisis of 2008 did not affect the Polish banking sector, so the pressure on changes is weaker;

- secondly - we are not a country of developed financial civilization and therefore the demand for protective legislative solutions is weaker than in these two countries.

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Aims of paper. Methods

Research in social sciences is inspired by numerous and diverse needs. For this reason, we will reduce existing needs to two basic types to which specific types of research correspond. The first of them is connected with theoretical or cognitive needs, i.e. it covers all those needs that are associated with the development of a given science. The second is combined with the various needs of the practice. Focusing on these types of needs, we can indicate the corresponding types of research. Based on this principle, we distinguish research: cognitive, sometimes called basic research, covering methodological problems, problems related to further generalizations of existing cognitive achievements, etc. Issues important for the development of each science and for the needs of the practice, related to the existing applications of the achievements of a given science, checking fragmentary veracity of its findings and showing new research problems. The result of cognitive research is new claims or theories. On the other hand, the results of research for the needs of practice determine whether and if existing claims and theories are useful for solving specific problems that arise in the functioning of the banking system in Poland. In other words, they serve to clarify and fragmentary verify existing theorems and theories. Of course, both types of research co-define the development of each science, thus confirming the validity of the methodological post-year, proclaiming the unity of theory and practice in the research process despite the differences between them. By entering into the construction of such a research plan, it is important to realize that research in social sciences should not be undertaken only if there is a specific

social problem that must be dealt with. In other words: these studies should not be based solely on utilitarian or pragmatic motivation. It is very often the case that in order for a given social problem to mature, it is necessary to obtain knowledge about specific social phenomena beforehand on the basis of research just carried out. Therefore, research-based on purely cognitive motifs is also useful for the development of science, as we pointed out earlier. Therefore, both cognitive and practical motivation is sufficient to undertake research. Narrowing research to the sphere of problems important only for practice, as a consequence, limits the development of a given scientific discipline. Therefore, in addition to research into problems used in practice, there is also necessary research into basic problems in a given science. In addition, two general research methods, i.e. analytical and synthetic methods, characterized by a particular approach to the study of reality, were used in the work. The analysis treats reality as a collection of individual, special features and events. Proceeding according to this research method consists of disassembling the subject of research into parts and examining each of them separately or detecting components of this subject. A negative feature of the analytical method is excessive exposure of details, sometimes causing the field of study to be lost from view. This makes it difficult to fully and objectively know the reality, which is a collection of independent partial elements, but at the same time a set of parts closely related to each other in a limited whole. Research methods used in the work are comparative analysis, functional analysis and dynamic research method.

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Exposition of main material of research with complete substantiation of obtained scientific results. Discussion.

The starting point of this article is the very interesting work of three authors: Stanisław Kasiewicz, Lech Kurkliński and Monika Marcinkowska entitled "Sektor bankowy – motor czy hamulec wzrostu gospodarczego?" ("The banking sector - a motor or a brake on economic growth?") (Kasiewicz, Kurkliński, Marcinkowska, 2013, pp. 5-6). The authors put forward three research hypotheses:

"Hypothesis 1: There are serious gaps, weaknesses and adverse provisions in current European and national post-crisis regulations that have serious consequences for Poland's economic development.

Hypothesis 2: The implementation of Polish economic policy in the coming years requires support by eliminating many barriers, using new mechanisms and methods to stimulate the development of banks and cooperation with them from the public sector.

Hypothesis 3: Closer adjustment of the financial sector development to the implementation of economic policy objectives will lead to greater stability and efficiency of banking institutions, and thus to stimulation the country's economic growth." (Kasiewicz, Kurkliński, Marcinkowska, 2013, p. 8).

The thesis or rather the hypothesis of the book has been formulated in an elaborate way and it can be said that it is cautious, even neutral. Its content, in turn, concerns the proposed regulatory solutions proposed

by the EU, their careful analysis and alternative proprietary proposals. Without going into these numerous and interesting detailed solutions, it can be concluded that the thesis, hidden much more drastically formulated, is hidden that, after their implementation in Poland, they will contribute to stunting the development of both the banking sector and the country. Undoubtedly, this approach is a certain imputation in relation to the book and its authors and an obvious simplification, but it is needed as a starting point for further considerations. The above thesis was made 6-7 years ago. How is today Let's quote the statement of the President of the Polish Bank Association at the Economic Forum in Krynica. The interview has a significant title - Banks are overloaded with regulations, this must be changed. Question - "The Polish banking sector is one of the less profitable in the European Union, taking into account return on capital (ROE). Why? Answer - Not only in the EU, but also among OECD countries. This is mainly due to very high fiscal and parafiscal burdens, which are almost twice as high as in EU countries. Therefore, from the investors' point of view, this is an unattractive sector. This should change because it means that we are developing at a slower pace." (Rzeczpospolita 4.IX.2019 - Banks are overloaded with regulations, this must be changed). Let's look at what are the legal solutions regarding bank tax.

Table 2. Bank tax in selected countries.

Państwo	Year of introduction	Rate	The tax base	Exclusions
Austria	2011	0,09%-0,11% (do 20 mld €)	Liabilities	Capital, insured deposits, other
Finland	2013	0,125%	Risk weighted assets	
France	2011	0,539% (gradual reduction to 0.141% in 2019)	Minimum Capital Requirement	€ 500 million free amount
Spain	2001	0,3%-0,57%	Liabilities	Only deposits taxed
Germany	2011	0,02% - 0,06%/0,0003%	Liabilities / derivatives	Capital, insured deposits, free amount € 200 million
Poland	2016	0,0366%(month), 0,44% year	Assets	Capital, treasury securities, free amount PLN 4 billion
Slovakia	2012	0,02%(in years 2012-2014 -0,4%	Liabilities	Capital, subordinated debt, long-term intra-group liabilities
Hungary	2010	0,53% to 50 mld HUF(0,31% to 2016) 0,15% above 50 mld HUF	Assets	Inter-bank loans, loans for financial enterprises
UK	2011	0,21%/0,105%(for long-term liabilities - from IV 2015)	Liabilities	Kapitał, depozyty ubezpieczone, kwota wolna 20 mld GBP

Source: Rzeczpospolita 22.IV.2016

The basic conclusion is the full variety of solutions in all the categories listed. There are no reasons to draw specific conclusions. One can only say that apart from Spain, which introduced this tax in 2001, all others are post-crisis and last only a few years. One can only expect that as time goes on and experience accumulates, there will be a process of harmonization, although experience with the process of tax harmonization in the EU is not encouraging. As a tax base,

among the listed countries, five adopted liabilities and three assets (between them Poland) and one minimum capital requirement. Exclusions are abundant and numerous, most often capital and insured deposits (among those who chose liabilities). A number of countries use a free amount of between € 200 million and GBP 20 billion. The rate is a fraction of a percentage from 0.02% to 0.57%. On the other hand, the data regarding CIT payments are more explicit.

Table 3. CIT tax payable in PLN billion in 2018 by sector.

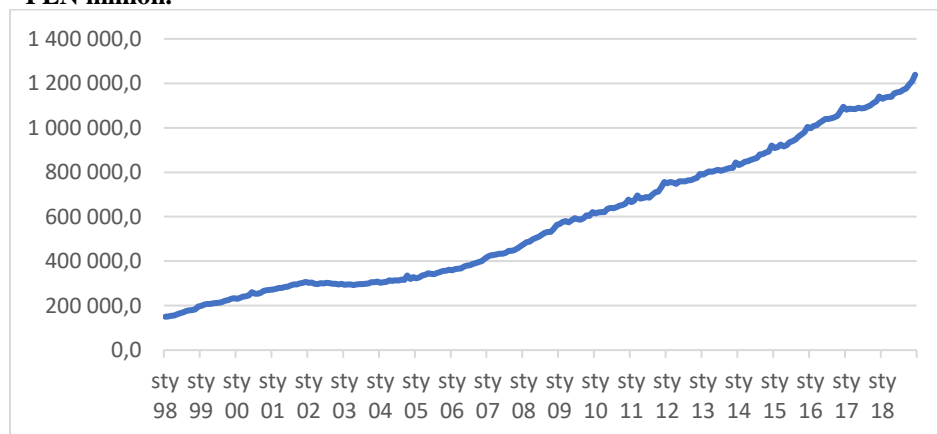
Sector	CIT tax
Finances	10,30
Production of semi-finished products	3,97
fuels	2,43
Retail chains	2,0
Automotive	1,63
Food	1,37
Energetics	1,24
Mining	0,92
Transport and logistics	0,87
Construction	0,76
Production of excise goods	0,76

Source: Rzeczpospolita 23.X.2019

The data from the table above clearly shows that finance (i.e. in addition to the banking sector, insurance, leasing and others) is the main CIT payer to the budget. They pay almost three times more than the next sector - the production of semi-finished products. The complaints of the President of the Polish Bank Association at the Krynicki Forum are therefore largely justified. The impact of regulations on the development of the banking sector can be proven only indirectly, mainly due to the combination of

factors, e.g. economic recovery or crisis. In addition, account must be taken of the fact that banks are playing a specific anti-regulatory game. Therefore, the simplest tool will be used, which is to compare the dynamics of various banking categories before and after the crisis, i.e. in the years 1998-2008 and 2008-2018. First, however, we will make a general review of the trend in the analyzed period.

Chart 1. Assets of the consolidated balance sheet of monetary financial institutions - PLN million.



Source: dane NBP https://www.nbp.pl/home.aspx?f=/statystyka/pieniezna_i_bankowa/skonsolidowany.html

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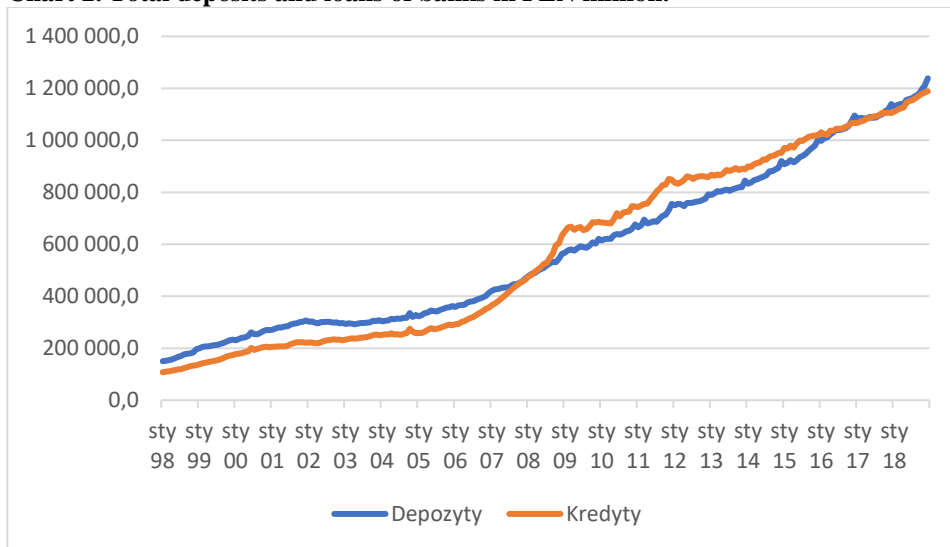
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The trend line clearly indicates that its course until 2009 was fairly harmonious and upward with a large recovery in the run-up to the crisis. In the second half of the analyzed period, at least two large breaks in growth are observed, the first in 2009 and the second in 2016. In addition, at least one small breakdown in 2011/12 can be pointed out. In addition, there is one period of evident stagnation of assets in 2013 / 14 The second review trend will concern total deposits and loans - see Chart 2. Trends in deposits and loans differ fundamentally and the crisis is clearly the crisis, while in Poland it applies to 2009. In the first half of

the analyzed period, the level of deposits is higher on loans the other way round - loans outweigh deposits. At the end of both sub-periods, the dynamic category is accelerating, in the first half, they are loans in the second deposits. The collapse of loans falls in the period of crisis 2008 and deposits in 2002-04. Data on the dynamics of selected economic categories of the banking sector are provided in Table 4. The data of Table 4 clearly show that the post-crisis decade is characterized by lower dynamics than the pre-crisis decade. Only the dynamics of household deposits are slightly higher in 2008-2018 than in 1998-2008.

Chart 2. Total deposits and loans of banks in PLN million.



Source: dane NBP https://www.nbp.pl/home.aspx?f=/statystyka/pieniezna_i_bankowa/nal_zobow.html

Table 4. Dynamics of selected categories of the banking sector in Poland (in PLN million and%).

	1998	2008	2018	2008/1998	2018/2008
Assets	372,819	1,170,365	2,234,549	314%	191%
Total deposits	196,314	563,400	1,238,785	287%	220%
corporate deposits	38,455	150,915	288,070	392%	191%
household deposits	141,247	328,363	818,907	232%	249%
other deposits	16,612	84,121	131,809	506%	157%
Total loans	134,694.2	632,926.9	1,189,055.4	470%	188%
corporate loans	88,006.9	223,856.5	358,561.3	254%	160%
household loans	40,221.9	369,173.1	716,494.6	918%	194%
other loans	6,465.3	39,897.3	113,999.5	617%	286%
real estate loans	3,004.8	197,780.9	432,235.3	6582%	219%

Source: own calculations based on NB data: https://www.nbp.pl/home.aspx?f=/statystyka/pieniezna_i_bankowa/nal_zobow.html & https://www.nbp.pl/home.aspx?f=/statystyka/pieniezna_i_bankowa/skonsolidowane.html

Conclusions.

The analysis clearly shows that the dynamics of the main categories of the banking sector in Poland was definitely lower in 2008-2018 than in 1998-2008. Thus, it can be concluded that the thesis of S. Kasiewicz, L. Kurkliński and M. Marcinkowska proved to be true, i.e. the anti-crisis regulations introduced had a negative impact on the expansion of the banking sector in Poland. It cannot be said that they slowed down its development but contributed to the weakening of the dynamics of its expansion. At the same time, there are no grounds

to state that this was the main causative factor, as other factors should be taken into account. Poland as the only country in Europe was not affected by the economic recession in 2009, and as a result of counteracting measures, it felt the burden of the excessive budget deficit and the need to minimize it. This weakened the country's growth rate. The second factor is technical - the dynamics of the pre-crisis decade were characterized by starting from a low level of all analyzed categories, which eo ipso generated lower dynamics than a decade later.

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