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The Financial Stability Mandate of the Narodowy Bank Polski: A Constitutional Perspective

Keywords: central bank, Narodowy Bank Polski, Polish Constitution, financial safety net, financial stability, financial crisis

Słowa kluczowe: bank centralny, polska konstytucja, sieć bezpieczeństwa finansowego, stabilność finansowa, kryzys finansowy

Abstract

Experiences related to the global financial crisis of 2008 and to subsequent turbulence in the financial market, and also to threats connected with the COVID-19 pandemic, demonstrate the evolution of the aims of the functioning of central banks. The goal of monetary stability, which means attempting to ensure low inflation, has proved insufficient. As a part of building a new architecture of financial regulation and supervision (at international, European, and national level), the mandate of central banks has been strengthened and supplemented with activities aimed at ensuring the stability of the financial system, understood as a state of affairs in which systemic risk does not accumulate. The aim of this article is to analyze the systemic role of the NBP (Polish Central Bank) from the point of view of the contemporary evolution of the role of central banks within the financial safety net.

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Streszczenie**Mandat Stabilności Finansowej Narodowego Banku
Polskiego: Perspektywa konstytucyjna**

Doświadczenia globalnego kryzysu finansowego z 2008 r. i kolejnych turbulencji na rynku finansowym, w tym także i zagrożeń związanych z rozprzestrzeniającą się epidemią Covid-19, dowodzą ewolucji celów funkcjonowania banków centralnych. Cel stabilności monetarnej, co oznacza dbałość niski poziom inflacji okazał się celem niewystarczającym. W ramach budowania nowej architektury regulacji i nadzoru rynku finansowego (na poziomie międzynarodowym, europejskim i krajowym) mandat banków centralnych został wzmocniony i uzupełniony o działania na rzecz stabilności systemu finansowego rozumianej jako stan, w którym nie dochodzi do kumulacji ryzyka systemowego. Celem artykułu jest analiza ustrojowej roli NBP z punktu widzenia współczesnej ewolucji roli banków centralnych w sieci bezpieczeństwa finansowego.

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I.

In Polish law up to the financial crisis of 2008, there was a lack of any explicit mention of a financial safety net, and the central bank's attempt to maintain the stability of the financial system (financial stability) could only be derived from the provisions of the Law on the National Bank of Poland by way of a somewhat complicated, general interpretation. This absence could be explained by the lack of a uniform approach, mainly on a theoretical level, to the concept of financial stability. Financial stability has not always been treated, legally speaking, in a sufficiently prominent fashion – as a protected public good². The institutional solutions that exist in the world to protect

² A. Jurkowska-Zeidler, *Stabilność fiskalna i stabilność monetarna jako wartości konstytucyjne*, [in:] *Konstytucjonalizm polski, Refleksje z okazji Jubileuszu 70-lecia urodzin i 45-lecia pracy naukowej Profesora Andrzeja Szmyta*, eds. A. Gajda, K. Grajewski, A. Rytel-Warzocho, P. Uziębło, M.M. Wiszowaty, Gdańsk 2020, pp. 173–181.

the financial system against destabilization have also been very diverse in individual countries³.

It is important that in financial-market law the concept of financial stability is subject to constant legislation and very frequently is manifested in legal doctrinal discussions, in the EU and national process of passing EU law and national legislation implementing EU acts, and in legal rulings relating to the financial market⁴. Only the amendment of the Law on the NBP via the Law of November 7, 2008, on the Committee for Financial Stability⁵ introduced formulations referring explicitly to the issue of financial stability to the provisions of the Law on the NBP. This law itself lapsed on November 1, 2015. In creating this Committee, the act set out the Committee's aims – ensuring effective cooperation in supporting and maintaining the stability of the national financial system through the exchange of information, views, and evaluations of the situation in the financial system within Poland and abroad, and through the organization of activities in this area (Art. 1, para. 2 of the Law on the Committee for Financial Stability [KSF]). Currently, according with the Law on the Polish National Bank (NBP)⁶, the responsibilities of the NBP include: activities with a view to stabilizing the financial system in respect of financial institutions under the supervision of the Commission for Financial Supervision (KNF) (Art. 3, para. 2, point 6a), and activities with a view to eliminating or limiting systemic risk, which is mentioned in the Law on macro-prudential supervision of the financial system and on crisis management in the financial system⁷ (Art. 3, para. 2, point 6a)⁸.

³ Traditionally, the financial safety net is taken to include supervision (prudential regulations), the central bank in the role of lender of last resort, and deposit guarantee. O. Szczepańska, P. Sotomska-Krzysztofik, M. Pawliszyn, A. Pawlikowski, *Instytucjonalne uwarunkowania stabilności finansowej na przykładzie wybranych krajów*, “NBP. Materiały i Studia” 2004, No. 173, https://www.nbp.pl/publikacje/materiały_i_studia/ms173.pdf (30.04.2020).

⁴ M. Fedorowicz, *O normatywnym pojęciu stabilności finansowej na rynku finansowym Unii Europejskiej w nowej architekturze nadzorczej*, “Studia Europejskie” 2017, No. 4, pp. 73–94.

⁵ Dz.U. No. 209, item 1317.

⁶ Law of August 29, 1997, on the National Bank of Poland (NBP) (Dz.U. 2019, item 1810 as amended).

⁷ Law of August 5, 2015, on macro-prudential supervision of the financial system and crisis management in the financial system (Dz.U. 2019, item 483 as amended).

⁸ The law on macro-prudential supervision directly links the concept of financial stability with a lack of systemic risk, which is understood in the legislation as “the risk of disruption in

II.

In order to understand the current functions and aims of the NBP, it is essential to understand the evolving nature of world-wide central banking⁹. In the traditional role of lender of last resort, a central bank by providing financial support to banks ensures that a crisis of liquidity does not become a solvency crisis. Here, it usually is not so much a question of avoiding destabilization but of “crisis management”. Either general open market regulations or individual standing facilities are employed. The evolution of the role of central banks after the financial crisis has consisted, above all, in the closer integration of the functions of ensuring monetary stability and financial stability, in a deeper awareness of the global dimension of the tasks of central banks, and in stronger safeguards for the increasingly fragile independence of a central bank¹⁰. Central banks often act as the “last resort”: lenders of last resort, liquidity of last resort, investors of last resort. It is, indeed, for exceptional times that these last resort considerations have been established. At the same time, the aim of ensuring financial stability, especially neglected during the construction of the European Central Bank has taken on a much greater role¹¹.

In the process of constructing a new, post-crisis architecture of regulation and supervision of the financial market (on an international, European, and national level), the mandate of central banks has been strengthened and supplemented by adding a duty to act in support of the stability of the financial system¹². That is why the process has been observed for more than a decade

the functioning of the financial system, which on its occurrence interferes with the operation of the financial system and the national economy as a whole, the source of which may be, in particular, trends connected with an excessive dynamic of credit or debt and related imbalances in asset prices, unstable financing models, risk distribution in the financial system, links between financial institutions, or macroeconomic and sectoral imbalances”.

⁹ For an analysis of central banking functions see: R.M. Lastra, *Central Banking and Banking Regulation*, London 1996, pp. 249–286.

¹⁰ C.E.V. Borio, *Central Banking Post-Crisis: What Compass for Uncharted Waters?* “BIS Working Paper” 2011, No. 353, <https://ssrn.com/abstract=1946177> (30.04.2020).

¹¹ R.M. Lastra, *The Evolution of the European Central Bank*, “Fordham International Law Journal” 2012; “Queen Mary School of Law Legal Studies Research Paper” 2012, No. 99, <https://ssrn.com/abstract=2020545> (30.04.2020).

¹² O. Szczepańska, *Stabilność finansowa jako cel banku centralnego. Studium teoretyczno-porównawcze*, Warsaw 2008, pp. 67–72; P. Smaga, *Assessing Involvement of Central Banks in*

of giving central banks new functions in the area of supervision of the financial market and of adding that supervision to structures of macro-prudential supervision and of resolution procedure¹³. This supervision is concentrated on ensuring the stability of the entire financial system; its fundamental task is to identify and analyze systemic risk. The existing distinction between the aims of prudential supervision and risk management serves the achievement of financial stability, and can probably be ascribed to the functional distinction between a crisis prevention stage and a crisis management one, when a direct threat to financial stability occurs. The model of Polish macro-prudential supervision is based on the dual structure of the new Committee for Financial Stability (KSF: Komitet Stabilności Finansowej), which is the entity responsible for macro-prudential supervision and crisis management in the national financial system¹⁴. It is interesting to note that the four institutions involved in the financial safety net – the President of the NBP, the Chair of the Commission for Financial Supervision, the President of the Board of the Bank Guarantee Fund, and the Minister of Finance – belong to the Committee for Financial Stability. Work of the Committee in the area of macro-prudential supervision is overseen by the President of the NBP (and the NBP ensures the servicing of the Committee); in the field of crisis management it is supervised by the Minister of Finance (and the Ministry of Finance ensures the servicing of the Committee).

The basic task of the Committee for Financial Stability is to identify, evaluate, and monitor systemic risk within the financial system or its environment. The second key task of the Committee for Financial Stability is crisis management, which includes action to maintain or restore the stability of the financial system in case of a direct threat to that stability. The aim of crisis management is, in particular, to ensure the effective cooperation of members of

Financial Stability, Center for Financial Stability, Policy Paper, May 2013, p. 13; A. Dobrzańska, *Polityka makroostrożnościowa banku centralnego*, Warsaw 2016, p. 43; T. Knepka, *Rola Europejskiego Banku Centralnego w zapewnieniu stabilności rynku finansowego Unii Europejskiej*, Warsaw 2017, p. 99.

¹³ D. Calvo, J.C. Crisanto, S. Hohl, O.P. Gutiérrez, *Financial supervisory architecture: what has changed after the crisis?*, “FSI Insights on policy implementation” 2018, No. 8, <https://www.bis.org/fsi/publ/insights8.htm> (30.04.2020).

¹⁴ For more on the Polish model of macro-prudential supervision, see: M. Fedorowicz, *Nadzór makroostrożnościowy w Polsce*, Poznań 2019, p. 203.

the Committee for Financial Stability, including coordination of the actions of the entities represented by these members, in order to maintain or restore the stability of the financial system and to exchange information, views, and evaluations. In case of establishing the source of systemic risk within the financial system or its environment and of the necessity of undertaking actions with the aim of limiting systemic risk, the Committee may present its positions to the generality of entities that constitute the financial system or parts of it, and also to the institutions that make up the Committee, and it may issue recommendations to the institutions that make up the Committee. These are soft law instruments.

III.

There is no doubt that ensuring monetary stability is currently the most important aim of the activities of central banks. However, the experiences drawn from the global financial crisis of 2008 clearly show that this aim is insufficient. Every time there is a financial crisis, interest grows in the role of a central bank in stabilizing the financial system. In response to a worsening economic and financial situation, banks are compelled to employ non-standard instruments of monetary policy, sometimes exceeding the mandate that gives priority to the monetary aim. Financial stability, and particularly the proper functioning of the financial system, is essential for the implementation of monetary policy¹⁵. In this context, however, we should mention quantitative easing (QE), the aim of which is a long-term lowering of interest rates and an increase in fluidity within the banking system¹⁶. This means that the central bank buys market assets, in particu-

¹⁵ G. Psaroudakis, *The Scope for Financial Stability Considerations in the Fulfilment of the Mandate of the ECB/Eurosystem*, "Journal of Financial Regulation" 2018, vol. 4, pp. 119–144.

¹⁶ In order to avoid financial crisis, in response to threats associated with the COVID-19 pandemic, both the NBP and the European Central Bank initiated quantitative easing. The ECB announced the introduction of the Pandemic Emergency Purchase Programme, focussed on the purchase of assets. The initial value of the Programme was set at 750 billion euros. See the announcement of the NBP Board of 16 March 2020, https://www.nbp.pl/home.aspx?f=/aktualnosci/wiadomosci_2020/zarząd-16032020.html (30.4.2020) and *ECB announces €750*

lar long-term sovereign and corporate debt securities¹⁷. At the time of the global financial crisis, the crisis loop between the banking system and the state of public finances escalated in intensity, which resulted in a significant increase in budget deficits and the level of public debt, threatening financial stability on an unprecedented scale. The anti-crisis activities of central banks, justified by the need to protect financial stability, are referred to as a “return to the roots” of central banking, because it was the need to stabilize the banking system and provide liquidity that constituted the main principles underlying the creation of central banks.

References to the broad meaning of financial stability can be found in the jurisdiction of the European Court of Justice, in particular in the following cases: C-270/12¹⁸ (*The United Kingdom v. Parliament and Council*); *Pringle*¹⁹ (case C-370/12 *Pringle v. Ireland*); and *Gauweiler*²⁰ (case C-62/14 *Gauweiler and others v. the German Bundestag*, in which the Court had examined for the first time in its history the legality of stabilizing actions, including the use by the European Central Bank of non-standard instruments of monetary policy, such as those adopted within the European Union as a result of the global financial crisis with the aim of restoring and maintaining stability and financial security²¹).

billion Pandemic Emergency Purchase Programme (PEPP), https://www.ecb.europa.eu/press/pr/date/2020/html/ecb.pr200318_1~3949d6f266.en.html (30.04.2020).

¹⁷ Customarily, such operations are conducted when rates of interest are very low and conventional monetary policy cannot stimulate economic activity and thus economic growth.

¹⁸ Finding of the European Court of Justice of 22 January 2014 in Case C-270/12, *United Kingdom of Great Britain and Northern Ireland v. the European Parliament and the Council of the European Union*, *Journal of Laws* C 273 of 8.9.2012.

¹⁹ Finding of the European Court of Justice of 27 November 2012 Case C-370/12 (an application for a preliminary verdict made by the Supreme Court of Ireland, *Thomas Pringle v. Ireland*, Dz.U. C 26 of 26.01.2013).

²⁰ Finding of the European Court of Justice of 16 June 2015 in Case C-62/14 *Peter Gauweiler and others v. the Deutscher Bundestag*, ECLI:EU:C:2015:400. In the *Gauweiler* case, the Court accepted that measures to preserve the monetary transmission mechanism can be considered as related to the objective of maintaining price stability and, thus, as falling within the scope of the ECB’s mandate [para 50].

²¹ A. Jurkowska-Zeidler, *Stabilność finansowa i integracja prawna rynku finansowego UE jako przedmiot rozstrzygnięć Trybunału Sprawiedliwości*, [in:] *Prawo finansowe wobec wyzwań XXI wieku*, eds. J. Gliniecka, A. Drywa, E. Juchniewicz, T. Sowiński, Warsaw 2015, pp. 511–521.

IV.

The designation of the stability of the financial system as the most general aim of the Polish Central Bank must be sought, above all, in the context of the constitutional regulation of the constitutional status of the NBP and its tasks that derive from legislation. The Constitution of the Republic of Poland²², in chapter X relating to public finances, regulates, *inter alia*, the central issues relating to the monetary system of the state and issues connected with the legal status of the NBP as the state central bank (Art. 227, para. 1). The necessity of the Constitution's dealing with issues related to the central bank was caused, above all, by a need to confirm the NBP in its role as central bank with an exclusive right of issue and in the area of monetary policy²³. Raising the fundamental regulations relating to the NBP to a constitutional level constitutes a profound change in its constitutional position as the state central bank²⁴. The importance of the Constitution in organizing and creating banking law is, however, much greater than would emerge only from the fact of the appearance in the Constitution of provisions referring directly to banking. Indeed, the Constitution formulates general principles underlying the national political, economic, financial, and legal system, principles that, after all, apply to the operation of the banking system²⁵.

According with the Polish Constitution, the NBP possesses an exclusive right to issue currency, and also to establish and implement monetary policy²⁶. This is why it is made responsible for the value of the Polish currency. In the

²² The Constitution of the Republic of Poland of 2 April 1997 (Dz.U. No. 78, item 483 as amended).

²³ E. Fojcik-Mastalska, *Ustrój pieniężny i bank centralny w Konstytucji RP*, [in:] *Konstytucyjne uwarunkowania tworzenia i stosowania prawa finansowego i podatkowego*, eds. P.J. Lewkowicz, J. Stankiewicz, Białystok 2010, p. 573.

²⁴ A. Jurkowska-Zeidler, *Wybrane aspekty konstytucyjnej regulacji problematyki Narodowego Banku Polskiego*, "Gdańskie Studia Prawnicze" 2014, No. 1, pp. 811–826.

²⁵ C. Kosikowski, *Ustrój pieniężny państwa oraz Narodowy Bank Polski w Konstytucji RP*, [in:] *Finanse publiczne w świetle Konstytucji RP oraz orzecznictwa Trybunału Konstytucyjnego*, ed. C. Kosikowski, Warsaw 2004, p. 236.

²⁶ E. Fojcik-Mastalska, *Ustrój pieniężny i bank centralny...*, p. 571; M. Zubik, *Narodowy Bank Polski (Analiza konstytucyjno-ustrojowa)*, "Państwo i Prawo" 2001, No. 6, p. 35; E. Knosala, R. Stasikowski, *Status Narodowego Banku Polskiego w systemie organów państwa*, "Przegląd Sejmowy" 2010, No. 1, p. 63.

literature on the topic, this is not seen as identical with an injunction to aim for an increase in this value but only to maintain it at a steady level. However, the Bank's position has been understood as ascribing to the NBP the obligation and the possibility of conducting monetary policy in a manner that favors comprehensive economic development and raising the standard of living of Polish citizens²⁷. However, it also a matter of exploiting the very privilege of issue to control currency in circulation and, at the same time, a matter of care for the quality (stability) of the currency by means of an appropriate monetary policy. Monetary stability as a fundamental aim of the NBP is also linked with the responsibility of the central bank before parliament for actions to maintain a state of monetary equilibrium within Poland, an equilibrium that is of great importance for the general state of public finances.

V.

The basis for such a novel approach to financial stability, or what is fundamentally a broader understanding of fiscal and monetary stability, is the fundamentally altered approach of legislators on an international regional (EU) and national level to regulation and supervision of the financial market. This particular change is particularly visible on a European level, on which the construction of a financial safety net was accompanied by very important changes²⁸. If a risk of a systemic nature occurs in the financial system, macro-prudential policy measures are applied. The overriding aim of such a policy is to protect financial stability, which is understood as a state in which there is no accumulation of systemic risk. Lack of coordination of monetary and fiscal policy has become one of the more important macro-economic causes of financial instability²⁹. At the end of the 1980s and 1990s, the orientation of monetary policy toward currency stability led to a departure from super-

²⁷ P. Winczorek, *Komentarz do Konstytucji Rzeczypospolitej Polskiej z 2 kwietnia 1997 r.*, Warsaw 2000, p. 284.

²⁸ For more on changes in the EU architecture of the financial safety net in the direction of macro-prudential oversight see: P. Smaga, *Rola banku centralnego w zapewnianiu stabilności finansowej*, Warsaw 2014, p. 225.

²⁹ M. Kiedrowska, P. Marszałek, *Stabilność finansowa – pojęcie, cechy i sposoby jej zapewnienia*, "Bank i Kredyt" 2002, No. 4, p. 30.

visory tasks, which are, in fact, an integral instrument for achieving a stable banking system. Indeed, some countries (such as the United Kingdom and Australia) relieved the central bank of prudential supervision. However, the key feature of changes in financial architecture in response to the financial crisis of 2008 was a closer involvement of monetary authorities in financial supervision and a return to the mandate of financial stability. In its current formulation, the mandate of central banks is monetary stability and financial stability.

VI.

Currently, financial stability is seen as the most general aim of central banks. This suggests the priority of this formulation over price stability, which usually is seen as being the primary aim. Before the crisis, central banks saw these two aims of monetary stability and financial stability as largely complementary and mutually supplementary. However, one of the lessons of the crisis was the realization that achieving price stability does not guarantee the maintenance of financial stability and without further measures may even endanger it³⁰. One must, nonetheless, remember that the concept of financial stability is changeable and much harder to grasp than price stability³¹. Financial stability and monetary policy are also different from each other in terms of the instruments that they use to achieve their aims. As opposed to price stability, financial stability does not belong to the exclusive sphere of competence of one institution. Furthermore, a mandate in the sphere of financial stability goes beyond the borders of state jurisdictions: systemic crises have a supranational dimension, one that demands supranational solutions. All this means that financial stability is still not as established field of monetary policy as price stability is. This is of fundamental importance when answering the question as to who should be ultimately responsible for ensuring financial stability. Nevertheless, financial stability should be the ultimate aim of

³⁰ Ch. Bean, *Central banking then and now*, BIS review, 12 July 2011, <https://www.bis.org/review/r110720b.pdf> (30.04.2020).

³¹ Y. Mersch, *Financial stability and the ECB*, 6 September 2018, <https://www.ecb.europa.eu/press/key/date/2018/html/ecb.sp180906.en.html>.

supervision, regulation, and crisis management. And it is a national, European, and international aim.

VII.

What role do the Constitution and law set out for the NBP in the area of financial stability? The Constitution does not clearly set out any clear, unambiguous role for the NBP in the area of financial stability. Financial stability is not among the aims of the NBP set out in the Art. 227, para. 1 of the Constitution. There the main aim is defined as caring for the value of the Polish currency. According to the law on the NBP, the fundamental aim of the NBP is to maintain a stable level of prices. And without prejudice to this aim, the NBP has a mandate to support the general monetary policy of the Polish government. The only clear reference to financial stability is in Art. 3, para. 2, point 6a of the law on the NBP. This point indicates that the tasks of the NBP include “actions in favor of stability of the financial system”. As a result – formally – the NBP plays an auxiliary role in the area of financial stability. However, this role is connected with key tasks in the area of monetary policy and with the growing position of the central bank in the financial safety net – in the exercise of macro-prudential supervision. That is why financial stability should be treated as an aim that is just as important as price stability; they are inseparably linked and mutually bound to each other; neither can be considered attainable without achieving the other.

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