The EU Bank Resolution Framework: Institutional Changes of the Financial Safety Net in Poland and the Czech Republic

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Abstract

In response to the global financial crisis, fundamental changes have been made at the European level to the legal framework of single financial market regulation and supervision. One of the significant legal steps was the establishment of a common system of recovery and resolution of failing banks. Within the framework of a systemic approach to the EU financial market, the article illustrates the steps taken towards the implementation of the resolution framework into domestic financial markets of Poland and the Czech Republic. The core content of the article is comparison of the role and location of the Polish and Czech resolution authorities in the architecture of the national safety net. The main aim of the contribution is to confirm or disprove a hypothesis that the legal framework of the resolution is a complementary element of financial safety net at

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the financial market, making it necessary to redefine the role of individual institutions that form the current system of ensuring financial stability in Poland and the Czech Republic. The scientific methods of analysis, synthesis, and comparison have been employed.

Keywords
financial crisis; financial market regulation; financial market law; financial safety net; bank recovery and resolution

1 Introduction

During the recent financial crisis, a number of banks were bailed out with public funds because they were considered “too big to fail”. The level of state support was unprecedented[3] (European Commission, 2013). The crisis also highlighted the lack of arrangements to deal effectively with failing banks that operated in more than one Member State. Therefore, there was a need for fundamental changes in the financial safety net, aimed at creating efficient legal instruments enabling the restructuring and liquidation of banks with no need to involve public funds, while taking into account the cross-border activity of large banks.

The financial stability and safety of the financial market are currently acknowledged as the core aims of financial market regulation and supervision (Jurkowska-Zeidler, 2017: 379–393). The security of the financial market is subject to normative protection within the framework of the financial safety net[4] (Jurkowska-Zeidler, 2016: 39–45). Undoubtedly, the establishment of regulations aimed at preventing a shift of the risks of banking activity onto the shoulders of taxpayers and public finance is a necessary complement to the existing mechanisms for the prevention and management of financial crises, allowing a better control of systemic risks. The legitimacy of legislative changes enabling the liquidation of an entity, while maintaining the continuity of its critical functions, results primarily from the specificity of financial services. The operation of financial entities is based on trust, the loss of which may lead to panic and so-called bank run, with loss of bank liquidity and unavailability of depositor funds as the immediate consequence.

It should not be neglected, either, that the scope of mutual dependencies between entities providing financial services, the banking sector entities in particular, generates the risk of a systemic crisis, as problems of one entity may be transferred onto other institutions (the “contagion effect”).

The implementation of the European legal framework for bank recovery and resolution in the legal systems of Member States resulted in changes within the national

[3] Between October 2008 and 31 December 2012 Member States provided €591.9 billion (4.6% of EU 2012 GDP) in capital support (recapitalisation and asset relief measures) to the financial sector.

[4] The financial safety net is meant to serve to limit the occurrence and scale of financial crises (crises prevention) and to mitigate their results and effects if they should happen (crises resolution).

structure of financial safety nets, since each country was obliged to indicate the authority entrusted with the execution of tasks related to the forced restructuring of banks. Coherence of the changes is particularly important, especially from the point of view of micro- and macro-prudential supervision, mandatory deposit guarantee system and central bank's role in ensuring financial stability on the financial market, for the financial stability and protection of depositors are values that should be protected in the interest of the public.

The core content of the article is comparison of the role and location of the Polish and Czech resolution authorities in the architecture of the respective domestic safety nets. The main aim of the contribution is to confirm or disprove the hypothesis that the legal framework of the resolution is a complementary element of a financial safety net at the financial market, making it necessary to redefine the role of individual institutions that form the current system of ensuring financial stability in Poland and the Czech Republic. The scientific methods of analysis, synthesis, and comparison are employed.

2 The EU Legal Framework for Bank Resolution

Directive 2014/59/EU,[5] (hereinafter: BRRD) established a harmonised legal framework for resolution in the Member States of the EU[6] (Jurkowska-Zeidler, 2015: 130–147). The framework will enable Member States to protect taxpayers by taking actions in the event of banking crises more timely and in a more structured manner. The institutional scope of forced restructuring includes institutions understood as credit institutions and investment companies.

The process of resolution[7] is a comprehensive legal and operational mechanism consisting in restructuring or liquidation of the bank, while maintaining the latter's critical functions and protecting the guaranteed deposits (European Commission, 2014). The EU Bank Recovery and Resolution Directive provides authorities with more

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5 The BRRD implementation deadline expired on 31 December 2014, with the exception of certain provisions, including *inter alia* bail-in entries, that became effective as of 1 January 2016.

6 The Bank Recovery and Resolution Directive was adopted at EU level together with Regulation (EU) No. 806/2014 on Single Resolution Mechanism (SRM) and the new Directive 2014/49/EU on Deposit Guarantee Schemes (DGSD) to complete the legislative work underpinning the European Banking Union. Those three new regulations are interconnected. The BRRD provides a complete framework for the crisis management of banks, while the DGSD strengthens the protection of citizens' deposits in case of bank failures. The adoption of those directives contributes to making the Single Rulebook for the banks of the 28 Member States a reality and paves the way to its centralised implementation. The Single Resolution Mechanism, on the other hand, is directly responsible for the resolution of all banks in Member States participating in the European Banking Union. Its structure reflects the division of tasks under the Single Supervisory Mechanism.

7 "Resolution" means the restructuring of a bank by a resolution authority, through the use of resolution tools, to ensure the continuity of its critical functions, preservation of financial stability and restoration of the viability of all or part of that institution, while the remaining parts are put into normal insolvency proceedings.

comprehensive and effective arrangements to deal with failing banks at the national level, as well as cooperation arrangements to tackle cross-border banking failures.

The resolution procedure should be launched when the bank is either on the verge of bankruptcy or is realistically in danger of a failure. Therefore, if the financial situation of an institution deteriorates, the adoption of early intervention measures is considered. If no supervisory measures or actions financed from private funds lead to an improvement, a decision may be taken to declare the institution "failing or likely to fail".[8]

The EU Bank Recovery and Resolution Directive provides for four main instruments that can be applied under the scheme of resolution, the respective tools being:

- asset separation;
- sale of business;
- bridge bank; and
- the bail-in tool.

The last option, i.e. bail-in (the recapitalisation of a falling bank through a write-down and conversion to equity of some of its liability), is the most controversial of all, as it deeply interferes with the proprietary rights (Schillig, 2016: 279–310).

In accordance with the BRRD, the restructuring and orderly liquidation of banks is to be financed from the private sector funds.[9] If the financial situation of a bank were to deteriorate beyond repair, the new EU crisis management framework ensures that banks' shareholders and creditors would have to pay their share of the costs through a "bail-in" mechanism. Thus, the bail-out principle, transferring the costs of bank bankruptcy to the taxpayers, was replaced by the bail-in principle, shifting a relevant part of losses and costs resulting from the restructuring or bankruptcy to the shareholders and creditors of the institution on the verge of bankruptcy. This means a transfer of risk between the taxpayer based public finances sector and the private sector, especially bondholders and depositors (Mroczkowski, 2015: 86–97).

The Directive also lays down a requirement for the establishment of resolution financing mechanisms, according to which scheme each Member State sets up a fund at the national level to finance this process. Contributions to the fund are differentiated considering the bank's risk and are collected on an *ex-ante* basis.[10]

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8 The guidelines on the circumstances under which an institution shall be considered "failing or likely to fail" were published by the European Banking Authority, EBA, in 2015.

9 Nevertheless, the BRRD allows government involvement and budgetary means as the last resort only in extraordinary situations, when the stability of the entire financial system is at stake (Art. 56 BRRD). The aid may take the shape of recapitalisation (public equity support tool, Art. 57 BBRD) or temporary nationalisation (temporary public ownership tool, Art. 58).

10 The target level of the fund, set as a minimum, was defined at 1% of the guaranteed deposits, which the Member States should reach by 2024 (in 2012, the amount was close to €65 billion). Should the resources accumulated in the fund prove, in practice, insufficient, the resolution authority may impose additional *ex-post* contribution on credit institutions.

Under the BRRD, each Member State is required to designate one or, exceptionally, a greater number of resolution authorities empowered to apply resolution instruments and exercise powers in this field. The Directive leaves with Member States the choice of the authority entrusted with the execution of the forced restructuring tasks (recital 15): "Member States should therefore be free to choose which authorities should be responsible for applying the resolution tools and exercising the powers laid down in this Directive." The provision of Art. 3 para. 3 of the BRRD clarifies that the resolution authorities may be national central banks, competent ministries or other public administrative authorities or authorities entrusted with public administrative powers.[11] Simultaneously, in the same provision, due to the aforementioned requirement that a conflict of interest should be avoided, the BRRD allows to entrust the role of a forced restructuring body to the supervisory authorities only in emergency, and the supervisors and resolution bodies should be required to cooperate closely in the preparation, planning and implementation of resolution-related decisions. The supervisory process may seamlessly proceed to crisis management and resolution (Schillig, 2016: 137).

3 Bank Guarantee Fund: The Polish Resolution Authority

On June 10, 2016, a new Act on the Bank Guarantee Fund, Deposit Guarantee System and Forced Restructuring (hereinafter: BFG Act) was passed in Poland. Under the law, the role of a forced restructuring authority was entrusted to the Bank Guarantee Fund, which, until that time, within the financial safety network had been responsible for guaranteeing bank deposits.[12] The Fund is a separate, independent body governed by public law, performing public tasks and vested in a legal personality. We have to mention, that it is not a (so-called) state legal person, nor an entity of the public finance sector.

[11] In 2009 the International Monetary Fund and the World Bank prepared An Overview of the Legal, Institutional, and Regulatory Framework for Bank Insolvency. The study discusses the principal features of the legal, institutional, and regulatory framework that a country may put in place in order to deal effectively with cases of bank insolvency in its own jurisdiction (IMF and the World Bank, 2009).

[12] The Bank Guarantee Fund was designated as a recommended body of forced restructuring as early as at the stage of preparing the concept of a legal framework for the forced restructuring in Poland, even before the publication of the BRRD at the European level. In addition to the Bank Guarantee Fund, among potential entities analysed for their capacity to play the function of a forced restructuring body, the following institutions were identified: the Polish Financial Supervision Authority, the National Bank of Poland and a new entity to be set up at the Ministry of Finance. According to the explanatory notes to the draft BFG Act, one of the key issues in the selection of the resolution authority was to ensure coherence between the possibility of using the funds accumulated in the BFG to finance forced restructuring and the payment of guaranteed deposits. Splitting the functions of the deposit guarantor and the forced restructuring authority between different institutions would lead to a situation where decisions and their financial consequences would be assigned to different institutions, which would weaken the role of the economic efficiency criterion in the decision-making process. And thus, finally, a combination of the deposit guarantee function and the conduct of forced restructuring in one entity

The Bank Guarantee Fund, as the entity responsible for payment of the protected financial resources, has particular predispositions to play the role of a resolution authority, as the explanatory notes to the drafted Act indicated. As a guarantor of deposits, it should naturally take part in the process of making decisions to initiate forced restructuring proceedings and authorise the use of funds from the deposit guarantee system. Proceedings of forced restructuring, one of the basic aims of which is to maintain the performance of critical functions, including access to funds accumulated in the accounts, and to protect the guaranteed deposits, provide an alternative to the payment of guaranteed funds, and the entrusting of the role to the Bank Guarantee Fund allows to avoid the risk of forbearance, which could occur in the case of the right to conduct forced restructuring proceedings being assigned to the supervisory body.

On the Polish financial market, the implementation of the BRRD has fundamentally changed the role of the BFG in the financial security network. The Fund got significantly involved in macroprudential supervision and ensuring financial stability in the financial market (Fedorowicz, 2017: 405–416). The new objective of the BFG, indicated in Art. 4 of the BFG Act, is to take actions for the stability of the national financial system, in particular by ensuring the functioning of the deposit guarantee scheme, but also by conducting the forced restructuring. It should be also stressed that the BFG is, at the same time, one of the links of the national macroprudential supervision framework, creating (together with the Polish Financial Supervision Authority, or PFSA, the National Bank of Poland and the Minister of Finance), the Financial Stability Committee – a macroprudential oversight authority in Poland; a major objective of the Committee's operation is to strengthen the resilience of the financial system in the event of systemic risk materialisation and thus to support long-term, sustainable economic growth.

The BFG implements the new restructuring goals through the development of forced restructuring plans and group plans of forced restructuring (including the determination of the minimum level of own funds and liabilities subject to redemption or conversion); through redemption or conversion of equity instruments; and through conducting forced restructuring and granting loans from the forced restructuring fund (the BFG also determines the amount of mandatory and extra contributions to it). It is well-worth pointing out that covered by the BFG restructuring powers are not only banks and investment companies, but also credit unions.

As regards the BRRD implementation, the Fund, as a resolution authority, was granted a competence to issue administrative decisions regarding the effective implementation and use of forced restructuring tools, the solution being a fulfilment of the Financial Stability Board recommendation *Key Attributes of Effective Resolution*

was considered to be the most efficient solution. The synergy between resolution activities and deposit guarantee with the existing infrastructure base also meant that entrusting the functions of a forced restructuring authority to the BFG was considered a cost-effective arrangement, taking into account the outlays necessary to establish and finance the operation of a forced restructuring body.

Regimes;[13] the latter points out that the body of enforced restructuring should be an authority vested in administrative powers (Financial Stability Board, 2014). The purpose of the implemented solution is to meet the requirement that prompt action should be taken towards the entity at risk of insolvency. The Fund's decisions in the area of forced restructuring proceedings are final and are immediately enforceable, which does ensure the efficiency and speed of action.

When analysing new tasks and competences in the field of resolution, granted to the Bank Guarantee Fund, it should be noted that the Fund was strengthened both as regards its role in protection of financial institutions threatened with insolvency, and as a body providing guarantee payments to depositors. The most important challenge, however, is to ensure consistency and proportionality of the BFG operation as a resolution body with the activity of other national safety net institutions. Undoubtedly, it is the BFG that has gained the widest access to data on the financial situation of banks, investment companies and credit unions. The challenge lies in the correct identification of risks by the BFG and PFSA and the use of restructuring instruments in time to achieve the objectives of the Act and to protect financial stability and the public finance.

4 The Czech National Bank: Resolution Authority

The Czech Republic, like other EU Member States, was obliged to transpose the BRRD. Implemented late, the Directive was transposed by Act No. 374/2015 Coll. on recovery and resolution in the financial market (hereinafter: ARRFM). This act, together with amendments to other acts adopted in connection with this legislation and in connection with new regulations brought by the BRRD and the resolution mechanism in general introduces into the Czech law a completely new concept and new institutes related to the resolution of the financial institutions.[14]

Given that the BRRD does not specify exactly who is to be entrusted with the competences under the national regulation, it is up to each State to implement the resolution authority and its powers in an existing institution and/or establish a specialised body as the resolution authority. The Czech Republic has chosen the first option, and implemented the competences of the resolution authority into a specialised unit (an independent Restructuring Department) within the Czech National Bank. The institution is therefore the Czech National Bank (hereinafter: CNB). The fact that the CNB was selected as the resolution authority is not surprising, given that it is an institution that has been entrusted with the supervision of the entire financial

[13] The FSB adopted the *Key Attributes of Effective Resolution Regimes* at its Plenary meeting in October 2011. The G20 Heads of States and Government subsequently endorsed this Guidelines at the Cannes Summit in November 2011 as "a new international standard for resolution regimes".

[14] The financial institutions subject to BRRD/ARRFM include all banks in the Czech Republic, as well as credit unions and some securities traders. Their list is kept updated by the resolution authority to make it clear who is subject to this legislation.

market since 2006.[15] On the other hand, its position is quite unique (the supervisory power is fully concentrated in the hands of the central bank), as compared e.g. with the central bank of Poland or most other EU Member States, where the central bank is not the financial supervisor.

The main function of supervision, the same as the resolution, is to use its public law bodies to intervene in case there are some imperfections – it can impose receivership or revoke the licence. Above all, it offers protection of the system of financial institutions and the financial market in its entirety, as well as prevention of future failures or illegal conduct (Janovec, 2017: 144).

4.1 Resolution authority

The organisational classification and arrangement of the resolution authority is governed by Act No. 6/1993 Coll., on the CNB, (the CNB Act), Act No. 21/1992 Coll., on banks (the Banks Act) and ARRFM. All of these laws include the transposition of the BRRD and DGSD. Internally, the organisational structure of the CNB is laid down by its Organisational Rules, whose relevant part relating to the resolution authority and the resolution mechanism is published, in accordance with the ARRFM.

The Restructuring Department constitutes the third branch of the CNB's core functions and powers, the other two being the care of monetary stability and the supervision of financial markets. In its essence, it is an administrative authority, which will decide in the first instance; the second-instance authority is the CNB Bank Board.

Given that the organisational structure of the CNB is quite broad, the only option was to establish a separate department with its own independent organisational structure and management. Regardless of a certain autonomy of the Department within the CNB, one must not disregard the overall internal and external policies of the CNB and all its departments, which means that the Restructuring Department is not unrelated to the CNB and must respect, for example, media compliance, ways of conduct and everything that follows from the Organisational Rules of the CNB.

This includes the decision-making in administrative proceedings with financial market entities in connection with resolution and issuing measures of a general nature. Other functions include the performance of resolution-related activities in the relevant financial market entities separately from the supervision carried out in other CNB departments. This also involves the preparation of and regular updates to individual or group resolution plans and their involvement in the preparation of group resolution plans, cooperation with the European supervisory authorities and resolution authorities abroad. This Department also determines the use of appropriate resolution tools and procedures. If the Czech Republic joins the Banking Union, the vast majority of

[15] The model of the central bank as the resolution authority was chosen in another 14 EU countries. See Resolution Authorities, s. a.

the critical resolution powers will be transferred to a central authority, i.e. the Single Resolution Board (SRB).

In general, the tasks for each resolution authority fall within four groups, and the same applies to the Czech Republic:

a) the creation of resolution and recovery plans – as a preventive tool in the financial market crisis;
b) early intervention and achievement of recovery in the case of a troubled bank;
c) crisis resolution – a resolution when a bank is already insolvent; and
d) determining the contribution to the resolution financing arrangement.

Any method of resolution using specific tools must always aim at minimising the use of public funds while ensuring that the resolution objectives are achieved.

The CNB states that in case of a failing institution, institutes such as liquidation or insolvency should always be chosen first before potentially using resolution tools. Resolution measures are therefore limited only to cases of public interest, a very broad term that can be applied and interpreted practically always as needed (CNB, 2017: 118). In other words, if the resolution authority does not want to, the resolution will never happen and vice versa.

Public interest should be specified, for example, by market share, i.e. the size of the financial institution. When a given financial institution has a certain market share and it is "big", it is always in the public interest to take resolution measures. I am convinced that the determination of an institution's size is the fundamental prerequisite and the reason why such a regulation was created through the BRRD. The CNB has also issued a table setting the thresholds for determining the basic approach and resolution strategy. This table divides financial institutions into 3 categories, where liquidation approach is assigned to the smallest, systemically insignificant ones. Resolution mechanism is assigned to significant institutions, either using the transfer of part of the activities to a private acquirer, while the bail-in tool is preferred in big and critical financial institutions (depreciation or conversion of depreciable liabilities) (CNB, 2017: 119).

If there is even the slightest chance, the resolution mechanism should have priority over liquidation/insolvency for one single reason. The regulation in this area is unified, while the same does not apply to liquidation and insolvency law.

The resolution authority cooperates with foreign resolution authorities within resolution colleges, in particular with the Single Resolution Board, given that systemically important financial institutions come from countries belonging to the banking union (according to the place where the licence/authorisation was granted). Here we can see a certain advantage of conferring the resolution powers on the supervisory authority, because the supervisory authority also cooperates with other supervisory authorities in other countries within the supervisory colleges, and therefore the representative of the resolution authority can also cooperate fully with these supervisory colleges as it is still part of the CNB.

Under the law, the resolution authority uses some regulatory tools to achieve the objectives entrusted to it.

- Methodological and interpretative materials
  - official communication
  - guidelines of the European Supervisory Authorities
  - answers to questions
  - other materials
- Consultation materials and proposals

The set of tools above is from the "soft law" category, but the question is how much such soft law tools are really real soft law, and to what extent some of them are practically mandatory for all obliged entities. In the financial market, more than elsewhere, the softest law tools must be respected, although they are not legally enforceable, they specify and supplement grey areas in hard law. Their violation or non-compliance may constitute a breach of obligations within the limits of administrative law with potential sanctions.

For example, the CNB's Restructuring Department is responsible for the following (CNB, 2018: 4–5):

- preparation of and regular updates to resolution plans;
- minimum requirement for own funds and eligible liabilities ("MREL");
- prescription and collection of contributions to the Resolution Fund;
- cooperation with European resolution authorities, or other relevant resolution actors;
- deciding on the use of appropriate resolution tools and procedures;
- decision-making in administrative proceedings with financial market entities in connection with resolution and issuing measures of a general nature.

4.2 National Resolution Fund

The Resolution Authority, i.e. the Restructuring Department of the CNB, is also in charge of the National Resolution Fund, which receives the contributions of individual credit institutions from 1 January 2016, i.e. from the effectiveness of the ARRFM which transposed the BRRD. The amount of the institution's individual contribution to the NRF depends on its size and risk profile.[16] The calculation, prescription and possible recovery of these contributions falls within the competence of the CNB.[17]

[16] This is further specified in the Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to ex ante contributions to resolution financing arrangements.

[17] In 2016, the total amount of the contribution was CZK 3,024,946,568; in 2017, it was CZK 2,958,854,930. Source: www.cnb.cz.

Funds in the National Resolution Fund are administered by the Financial Market Guarantee System (it is an independent body, which also manages deposit insurance contributions of banks), and these funds can be used to finance resolution of a failing financial institution (infusion of capital in the financial institution, purchase of its assets, provision of credit). These funds can also be used to match financial income for financial institution owners if resolution tools are used, but income for the owner would be lower compared to liquidation or insolvency. Any use of these funds, given that they are public funds, is subject to the approval by the European Commission under the State Aid Rules (CNB, 2017).

NRF funds should be at least 1% of the covered deposits until 2024 (approx. CZK 27 billion). This level is to be achieved through regular contributions from the institutions. The amount of an institution's individual contribution to the NRF is dependent on its size and risk profile and is further specified in the Commission Delegated Regulation (EU) 2015/63. The calculation, prescription and possible recovery of these contributions falls within the competence of the CNB, namely the Restructuring Department (CNB, 2018).

5 Conclusion

There is no doubt that a comprehensive analysis of the new objectives, tasks and competences of the national resolution bodies has to be made against the European regulatory background, duly taken into account in that respect. As part of the transfer of crisis management to the level of the EU, national resolution authorities are strengthened or created. Strong in terms of regulatory powers and capital, they are capable of rapid intervention and their position necessitates redefinition of the role of individual public institutions forming the financial safety net in each of the Member States. Thus, the research hypothesis formulated by the Authors has been positively verified.

The analysis of new goals, tasks and competences of BFG as a body of forced restructuring on the Polish financial market reveals a fundamental strengthening of the protective and stability role of the Fund in the financial safety net. The functions of resolution entrusted to the BFG subscribe to a group of macro-prudential tasks, functionally related to one another, that serve the purpose of counteracting the systemic risk and destabilisation of the national financial system.

When we compare the resolution authorities in Poland and the Czech Republic, we are convinced, that both authorities will perform more or less in the same way as expected by the BRRD. The Czech National Bank is the standard resolution authority and there should not be any doubts or problems with it. The Polish resolution authority is very unique and might be quite questioned regarding conflicts of interest for the mission of the Bank Guarantee Fund. On the other hand, when there is the strict border between different quests, goals and human resources of one authority, there should not be any real problem for all the different activities performed by the same body.

In a way, every financial crisis (or even an unpleasant situation) purifies the system from undesirable features. How negative the impact of a crisis seems to be a question of legislation, preventive measures and public attitude towards it. What it surely brings about is a reaction in the form of new instruments and measures that aim to cushion the damage that has been already caused and to prevent such a crisis in the future. This chapter on the European integration of regulation and supervision leading to the foundation of the banking union with resolution mechanism describes processes that clearly exemplify it. The banking union especially with resolution mechanism is by far the deepest and most comprehensive legal framework of the entire financial market, not only in terms of regulation and supervision (Janovec, 2018: 14).

The problem of the resolution mechanism is currently not so much its regulation (if we disregard the ambiguity of some terms such as public interest), but paradoxically insolvency law, which is yet to be harmonised. Generally, resolution should be the exception to the rule of national insolvency and the question of whether there is a public interest in applying that exception.

Liquidation is the default solution to the problem of any financial institution, which is due, to a certain extent, to the generality and vagueness of the two important terms (conditions) that must be met in order to implement resolution – the financial institution provides for critical functions and there is public interest. However, neither of the terms is precisely defined and there is a lot of scope for their interpretation. Two crucial questions arise – it is necessary to clarify the meaning of the critical functions of the financial institution and the public interest. The second question is whether the same conditions and course are ensured for the same banks within the entire banking union, or whether there is a need for statutory or harmonisation clarification (Magnus, 2017: 6).

The reason is quite simple and can be shown on the example of liquidation with bail-out of two Italian banks, Veneto Banca and Banca Popolare di Vicenza.

The resolution mechanism and the functioning of the resolution authorities across the EU needs two crucial things. First, it is necessary to clarify the interpretation of public interest and provision for critical functions, because until they are clarified, their interpretation is always in the hands of the interpreter at his discretion, i.e. there are and will be striking differences between the interpretation of the BRRD provisions and the subsequent application of the resolution mechanism in individual Member States.[18] Second, there is no harmonisation of insolvency law, which leads to differences in the individual EU countries when choosing between resolution and liquidation/insolvency. Irrespective of the resolution mechanism, the harmonisation of insolvency law is necessary, even inevitable, but in successive steps.

[18] Cf. e.g. the resolution of the Danish Andelskassen J.A.K. as a very small financial institution, and the liquidation of much larger Italian banks.

References

BRRD: Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, OJ L 173, 12.06.2014, p. 190–348.

CNB (The Czech National Bank). *Determining the contribution to the resolution arrangement* [online]. 2017. Available at: www.cnb.cz/cs/reseni_krize_FT/reseni_krize_FT_stanoveni_prispevku/ [Accessed 13 Sept. 2019].

CNB (The Czech National Bank). *Financial Stability Report 2017/2018* [online]. 2018. Available at: www.cnb.cz/en/financial-stability/fs-reports/financial-stability-report-2017-2018/ [Accessed 13 Sept. 2019].

CNB (The Czech National Bank). Provision of the CNB's Organisational Rules which meets the statutory requirements of Arts. 5 and 6 of the Act on recovery and resolution in the financial market (ARRFM) and Section 44aa of the CNB Act.

European Banking Authority. *Guidelines on the interpretation of the different circumstances when an institution shall be considered as failing or likely to fail under Article 32(6) of Directive 2014/59/EU.* EBA/GL/2015/07 [online]. 26 May 2015. Available at: www.eba.europa.eu/documents/10180/1085517/EBA-GL-2015-07+GL+on+failing+or+likely+to+fail.pdf [Accessed 13 Sept. 2019].

European Commission. *State aid: Commission's new on-line state aid benchmarking tool shows less aid to banks* [online]. Brussels, 20 December 2013. Available at: http://europa.eu/rapid/press-release_IP-13-1301_en.htm [Accessed 13 Sept. 2019].

European Commission. *EU Bank Recovery and Resolution Directive (BRRD): Frequently Asked Questions* [online]. Brussels, 15 April 2014. Available at: http://europa.eu/rapid/press-release_MEMO-14-297_en.htm [Accessed 13 Sept. 2019].

Fedorowicz M. Bankowy Fundusz Gwarancyjny jako organ przymusowej restrukturyzacji [Bank Guarantee Fund as a Forced Restructuring Body]. In: Gliniecka, J., Drywa, A., Juchniewicz, E. and Sowiński, T. eds., *Praktyczne i teoretyczne problemy prawa finansowego wobec wyzwań XXI wieku* [Practical and Theoretical Problems of Financial Law against Challenges of the 21st Century]. Warszawa: CeDeWu, 2017. ISBN: 978-83-7556-960-5.

Financial Stability Board. *Key Attributes of Effective Resolution Regimes for Financial Institutions* [online]. 15 October 2014. Available at: www.fsb.org/wp-content/uploads/r_141015.pdf [Accessed 13 Sept. 2019].

International Monetary Fund and World Bank. *An Overview of the Legal, Institutional, and Regulatory Framework for Bank Insolvency* [online]. 17 April 2009. Available at: www.imf.org/en/Publications/Policy-Papers/Issues/2016/12/31/An-Overview-of-the-Legal-Institutional-and-Regulatory-Framework-for-Bank-Insolvency-PP4327 [Accessed 13 Sept. 2019].

Janovec, M. Position of Financial Market Supervision in the System of Law. In: Radvan, M., Gliniecka, J., Sowiński, T. and Mrkývka, P. eds., *The Financial Law towards Challenges of the XXI Century.* Brno:

Masaryk University, 2017, pp. 134–146. ISBN 978-80-210-8516-9. DOI: https://doi.org/10.5817/CZ.MUNI.P210-8516-2017

Janovec, M. Integrated Supervision of the Financial Market without the UK? *International Journal of Financial Studies,* 6(1) 2018. ISSN 2227-7072. DOI: https://doi.org/10.3390/ijfs6010020

Jurkowska-Zeidler, A. Banking union: European Union's impact on system of financial law. In: Blažek, J. ed., *System of Financial Law: Financial Markets.* Conference proceedings. Brno: Masaryk University, 2015. Publications of the Masaryk University, theoretical series, edition Scientia, file no. 516. ISBN 9788021078284. Available at: www.law.muni.cz/sborniky/system-of-financial-law/financial-markets.pdf [Accessed 13 Sept. 2019].

Jurkowska-Zeidler, A. *The Architecture of the European Financial Market: Legal Foundations.* Gdańsk–Warsaw: Gdańsk University Press – Wolters Kluwer, 2016. ISBN: 978-83-7865-508-4.

Jurkowska-Zeidler, A. EU Financial Market Law: From Minimal Harmonization to Federalization. In: Radvan, M., Gliniecka, J., Sowiński, T. and Mrkývka, P. eds., *The Financial Law towards Challenges of the XXI Century.* Conference proceedings. Brno: Masaryk University, 2017. Publications of the Masaryk University, theoretical series, edition Scientia, file no. 580. ISBN 978-80-210-8516-9. DOI: https://doi.org/10.5817/CZ.MUNI.P210-8516-2017

Magnus, M. *Exchange of views with Mrs Elke König, Chair of the Single Resolution Board* 12/04/2017 [online]. Available at: www.europarl.europa.eu/RegData/etudes/BRIE/2017/614482/IPOL_BRI(2017)614482_EN.pdf [Accessed 13 Sept. 2019].

Mroczkowski, R. Bail-in Principle as the Basic of the Bank Recovery and Resolution Mechanism in European Union. In: Blažek, J. ed., *System of Financial Law: Financial Markets.* Conference proceedings. Brno: Masaryk University, 2015. Publications of the Masaryk University, theoretical series, edition Scientia, file no. 516. ISBN 978 802178284. Available at: www.law.muni.cz/sborniky/system-of-financial-law/financial-markets.pdf [Accessed 13 Sept. 2019].

Resolution Authorities [online]. s. a. Available at: www.eba.europa.eu/about-us/organisation/resolution-committee/resolution-authorities [Accessed 13 Sept. 2019].

Schillig, M. *Resolution and Insolvency of Banks and Financial Institutions.* Oxford: Oxford University Press, 2016. ISBN: 9780198703587.