

TOOLS OF THE GOVERNMENT BANKING LAW IN POLAND 1945-1989

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Abstract in original language

W okresie powojennym polski system bankowy dwukrotnie przeszedł radykalne zmiany: w 1946r., gdy ze stworzonego w warunkach gospodarki rynkowej sektora przekształcony został w scentralizowaną strukturę, całkowicie podporządkowaną kolejnym rządóm i wykorzystywaną do wprowadzania i umacniania nowego politycznego i społecznego-ekonomicznego ustroju; oraz ponownie w 1989r., gdy z upadkiem komunizmu uległ transformacji w dwupoziomowy, kierujący się zasadami rynkowymi niezależny system. Celem tego artykułu jest zbadanie wpływu prawa publicznego i prawa prywatnego na kształt i funkcjonowanie tego systemu w omawianym czasie

Key words in original language

System bankowy; nacjonalizacja; scentralizowana gospodarka; czynności bankowe

Abstract

The Polish banking system in its post-war history underwent two radical changes: in 1946 - when from a profit-orientated system it was turned into a monobank structure, which became a tool used for decades by governments to implement and strengthen the new political and economic regime; and in 1989 - when with the fall of communism once again it was reshaped into a two-tier, market-orientated, independent and efficient system. The aim of this article is to analyse the relation between the public law and the private law regulating the legal framework of the Polish banking system in that period.

Key words

banking sector; nationalisation; centralised economy; bank services

1. THE PERIOD OF RESTORATION: 1945

The end of the Second World War found the Polish banking system totally ruined, and there was no doubt that it had to be quickly rebuilt. But as with the liberation came with the change of the political regime, such alteration had had a direct impact on the new shape of legal and institutional framework of that system. Funds were needed to reconstruct the economy and to strengthen the new political powers, such funds could have been only generated and distributed by banks, therefore knowing that the new communist government instantly started the process of recreation of the banking system. That process had two stages: the reactivation of banks in the same legal and institutional form as they used to have before the war (but recreated were only those which used to belong to the state, those communal,

those which were organised as cooperatives and only two in a form of joint stock companies), while the second stage was their nationalisation.

As early as January 1945 with a promulgation of the Decree on the National Bank of Poland a new institution was created, which became an issuing bank and regulator of monetary and credit market.¹ Initially, the NBP adopted principles taken from the statute of the Bank of Poland. The assumption was that it would be a central bank, not involved in the direct funding of enterprises. At the same time the Treasury Ministry drafted a scheme for reorganisation of the Polish banking sector, a scheme where instead of the banks' management the ministry officials and the Polish United Workers' Party were setting banks' key policy directions. That rebuilt banking system was to be adjusted to match the new model of economy, a centralised one, where the market mechanism was replaced with the plan and banks were turned into tools of the state, used in the process of an implementation of that plan. Already at that stage of implementation of the new economic system banks no longer could exist as a system of market banking enterprises striving mainly for profits, they were reduced to the role of executors of the will of planners. Financial services became licensed, while the government had a right to revoke it, if the activity of the licensed institution was recognized as harmful to the public interest.

Absence of market infrastructure, direct management of physical resources based on bureaucratic regulations had limited activities of financial system to administrative agencies providing passive accountancy and provision of funds according to decision of the government, where no attention was being paid to the financial standing of the beneficiaries. Banks were simply obliged to grant credits to certain state owned enterprises (those of which current account they were managing) strictly according to decisions of planners, also to provide financial control of those entities, and to assist them in their financial matters.

There was very restricted variety of financial assets, essentially the only financial asset was money, in forms of cash and deposits. What is more, the financial system of that time was not designed to transform savings into investments, its only role was to pass funds according to decision of planning authorities. The banking system worked on a "one bank – one client" principle, the activities of every bank (and even its branches) were strictly assigned to specific spheres of economy, and therefore no competition existed. So limited activities had a strong impact on the shape of that system's institutional framework – what was functioning was a monobank – an institution combining the functions of both central and commercial banks. Even the National Bank of Poland was gradually becoming a monobank - a

¹ Decree from 15th of January 1945 on the National Bank Of Poland (Dz. U. Nr 4, poz.14)

monopoly not only with regard to the issue of currency but also with respect to extending loans and collecting savings.

Very quickly the communists decided that the National Bank of Poland, initially as an issuing bank which should not be involved in a direct funding of enterprises, in the command-and-control economy had to lose its independence and become dependent on external political and administrative decisions. The NBP became directly responsible to the Ministry of Finance, while the president of the NBP served as Undersecretary of the State at the ministry.² Already at the beginning of 1946 the NBP was entrusted with the financial supervision and direct funding of coal mining, metallurgy and the textile industry. Such bias to prioritise industry, especially heavy industry was a characteristic trait of centrally planned economy, another one was to disregard services. Communists used to view services as being non-productive, and as such not contributing to economic development. A list of such not adding value to the socialist definition of wealth services included insurance, real estate, stock-broking, some financial and legal services as well as marketing and advertising³.

The process of allocation of funds was based on credit plan developed by the Central Planning Board or the political bodies, the central bank used that plan to create a cash plan regarding the provision of funds, and on basis of that money was channelled to specialized banks representing various sectors of economy for lending to enterprises⁴.

2. THE DECREE OF 1948

Polish communists tolerated the banking system in such pre-war form till 1948. But in their opinion the activities of banks were affected by negative attitude originating from the old regime, and lack of understanding for socialist planning that led to not satisfying them level of involvement in the process of transition of the economy⁵.

² Mondschean T., Opiela T: *Banking reform in a transition economy: The case of Poland*, <http://tcnh.ntt.edu.vn/images/banking/25.pdf>

³ Stefaniak J.: *Service sector in transitional economies. Case of Poland*, <http://www.reser.net/file/75411/>

⁴ Palubinskas G., Stough R.: *Common causes of bank failures in post-communist countries*, <http://www.sba.muohio.edu/abas/1999/palubigi.pdf>

⁵ Gluck L.: *Ciągłość i zmiana (uwagi o rozwoju struktury aparatu bankowego w PRL)*, *Bank i Kredyt*, 1985, nr 9

This attitude triggered the reformatory steps, which brought the promulgation of the new banking reform decree⁶.

That act set a closed list of credit institutions and divided them into 3 types: state-owned banks, auxiliary banks and co-operatives, at the same time making them submissive to the Minister of Finance (art. 2 of the Decree). The NBP became directly responsible to the Ministry of Finance, while the president of the NBP served as Undersecretary of the State at the ministry. Each one of them was designated to perform their own list of strictly limited duties, and by such designation the legislator granted them the monopoly on offering bank services (art.1 of the Decree). But the term “bank services” did not have anymore the same meaning as in times of the pre-war banking, the new act simply replaced the definition of bank services with a list of tasks, no longer characteristic only to activities of credit institutions.

The aim of those reforms of banking system was to reshape financial sector in order to facilitate an implementation of the Six-Year Plan (1950-1955), viewed as a plan of establishing socialism in Poland. Consequently the planners supported a predominance of heavy industry, large enterprises, a top-down centralized bureaucracy controlling every aspect of production. Considerations such as consumer demand and worker job satisfaction, familiar in Western capitalist systems, were ignored.⁷ Isolated from the processes of the marketplace, pricing and production levels were set to advance the master plans of the ruling party. Such policy very quickly unsettled the balance between the demand and supply, what triggered an inflation and led to social unrest in 1956 year.

3. YEARS OF STRICT CENTRALIZATION

Even the planners realized that some changes in the model of economy were a must, therefore some first steps towards decentralization of the processes of planning and management were taken⁸. But the banking system was not included in those reforms, still strong was the opinion that banks should be nothing else but a tool in the hands of the Minister of Finance - a centralized and because of that a very powerful tool.⁹ The new Banking Act of 1960

⁶ Decree from 25th of October 1948 on the banking reform (Dz.U. Nr 52, poz 412 z późn.zm)

⁷ Gluck L.: *Ciągłość i zmiana (uwagi o rozwoju struktury aparatu bankowego w PRL)*, Bank i Kredyt, 1985, nr 9

⁸ Wolniak J., Denek E., Sobiech J.: *Finanse publiczne*, Warszawa, PWN, 2005

⁹ Olesiak K, Zawadzki A.: *Podstawy bankowości. Podręcznik dla studentów bankowości i ubezpieczeń*, Warszawa, 2000

year only strengthened its centralization¹⁰. It also brought a new catalogue of bank services, a very short one as consisting of only five tasks. That catalogue was matching the role of banks with the ruler's attitudes, therefore those tasks were not only limited in number but also restricted only to certain conditions, as for instance it did not include commercial loans, while non-cash settlements were listed but only if their beneficiaries were state entities, or if they were ordered by them. As bank services that regulation enumerated also some activities which were never regarded as typical of that sector, like financing investments, while in case of banks' dealings with individuals, the scope of their operations was restricted only to acceptance of savings deposits from the Poles and passing them on the state treasury, in the form of deposits.

The new Act on Banking once again confirmed the monopolistic structure of the banking system by providing a closed list of banks which were allowed to offer bank services. That list was short and consisted of: (1) state banks such as Bank Rolny, Bank Inwestycyjny, Powszechna Kasa Oszczędności and Bank Gospodarstwa Krajowego, (2) banks in a form of joint stock companies owned by state such as Bank Handlowy w Warszawie S.A. and Polska Kasa Opieki SA, (3) and small cooperative banks anchored locally, predominantly in rural areas.

As reforms of that time did not change the economic situation and Poland was suffering severe macroeconomic imbalances, leading to a crises, the ruling party decided to decentralize partly the process of planning and management and to introduce to it some elements of an economic calculation.¹¹ For a first time since the war companies were expected to generate profits.¹²

Unfortunately those changes did not include the banking system, here except for some structural adjustments (Bank Inwestycyjny became a part of the NBP) no reformatory steps were taken. Only in 1972 was PKO authorised to grant cash loans to individuals. In 1974 it serviced nearly 32 million savings books and expanded its product offer to include the savings and checking account (ROR) for individuals.¹³ In 1975 with an enactment of the new Act on Banking came the

¹⁰ Act on Banking from 13th of April 1960 (Dz. U. Nr 20, poz 121 z późn. zm)

¹¹ Uchwała nr 224 Rady Ministrów w sprawie postępu ekonomicznego w gospodarce uspołecznionej I organizacji służb ekonomicznych, 29.07.1964 (M.P. nr. 55, poz. 260)

¹² Jaworski W., Zawadzka Z.: *Bankowość. Podręcznik akademicki, Warszawa, 2005*

¹³ Bank PKO's website:
http://www.pkobp.pl/index.php?id=e_rys_01/section=ogol

structural change when PKO was merged with the structures of the National Bank of Poland (NBP)¹⁴. From that time the Polish banking sector consisted of the NBP, Bank Polska Kasa Opieki S.A., Bank Handlowy w Warszawie S.A. and a new bank called Bank Gospodarki Żywnościowej – a union bank for cooperative banks. They remained responsible to the Minister of Finance, and still as their main activities in that Act listed were such tasks as accumulation of funds and passing them on the state treasury to supply credit to key industries, in accordance with national social and economic plans. Modified again had been only the list of bank services as banks were allowed to grant loans (this time without restricting it only to state enterprises), also non-cash settlements, of which individuals were parts, became allowed.

4. YEARS OF UNREST

During the 1980s, due to a big economy crises the government began reforming the system, allowing some independence and self-governance to institutions, in order to create a hybrid of market economy with a planned one, in a hope it may stop an economic decline of Poland. Already in 1982 in Poland there were attempts to change the traditional bureaucratic economy and turn it into what was called reform socialism, but while there were modifications in corporate finance and price and tax system, only very small changes were introduced into the banking system. To adjust this sector to the new situation, the Act on Banking of 1982 separated not only the NBP from the Ministry of Finance but also other banks, stating that: “banks are independent entities” (art. 2 of that Act), although that independence did not include the right to decide about limits and kinds of their activities (art. 75 and 80 of that Act). That act brought also the end to the concept of monobank by legalization of the formation of private banks as joint stock companies.¹⁵ Banks still were obliged to cooperate with the ruling party as well as with the state enterprises in activities that contributed to the realization of the economy, and still they were not allowed to base their activities on self-financing. The biggest novelty in that act was that for a first in the post-war history of the Polish banking an open catalogue of bank services was introduced, leaving space for an implementation of some new services, should there be a demand for such. Loans were to be granted on basis of a civil contract, not any more because some plan obliged banks to do that. However, that act preserved some solutions existing in previous regulations, for instance the list of tasks of the NBP still included not only those typical of central bank activities but also those of commercial banks.

The government, trying to reduce the inflationary pressure tried to introduce tight monetary policy by placing ceilings on limits of

¹⁴ Act on Banking from 12th of June 1975 (Dz.U. Nr 20, poz. 108)

¹⁵ Act on Banking from 26th of February 1982 (Dz.U. Nr 7, poz 56)

working-capital which banks were allowed to grant to state-owned enterprises. Such policy was introduced twice: for a first time in years 1983-1985, for a second time in 1987. But then instead of rearranging their business in order to make it more cost-effective, those enterprises started to postpone the repayment of credits and tax, while in order to cover the insufficiency of working-capital they also created a kind of inter-firm trade credit.¹⁶ In autumn 1988 the last communist government started new reforms – the central planning and bureaucratic restraints were abolished, as well as control on credit-lending activities, but such partial changes led only to sharp rise in inflation rate. There were major shortages, the country was in external debt default, its international reserves were nearly spent and it had virtually no external or domestic credibility in economic policymaking¹⁷.

5. SYSTEMIC CHANGES OF 1989

Year 1989 brought a collapse of that regime, when the country was on a verge of a bankruptcy, troubled by hyperinflation. In an atmosphere of great social expectations, the new non-communist government decided to introduce a shock therapy by decontrolling prices, minimizing subsidies and reducing import barriers. A new rigorous monetary policy was adopted, systemic reforms of the financial system had been initiated, which implemented not only the development and reform of market systems but also a new legal framework, new legal institutions, and the development of market skills and institutions in the private sector. Three changes were considered to be of primary importance:

1. changes in the structure of ownership on a scale that would contribute in raising efficiency throughout the economy;
2. the full introduction of market mechanisms and institutions, making it possible to attain economic equilibrium, increase the supply of goods, and improve their quality;
3. reform of the financial and banking system, laying the basis for the convertibility of the zloty and thus for opening up the Polish economy to the rest of the world.¹⁸

¹⁶ Zbigniew Polański: The Financial System in Post-Communist Countries: the Polish Lesson, <http://ideas.repec.org/a/spr/intere/v27y1992i6p261-268.html>

¹⁷ Hanna Gronkiewicz-Waltz: *Poland and the IMF*, http://www.nikolaynenovsky.com/index.php?page=reading-list-2&hl=en_US

¹⁸ Hanna Gronkiewicz-Waltz: *Poland and the IMF*, http://www.nikolaynenovsky.com/index.php?page=reading-list-2&hl=en_US

That ultimate reform was started in 1989 by two new acts: the Banking Act and the Act on National Bank of Poland, when the commercial activities of the NBP were transferred to nine newly established banks that were created out of the NBP's local branches. With that step the two-tier banking system was set up as together with already existing banks those new credit institutions created the basis for building the system of commercial banking enterprises while the NBP became a real modern central bank. The Act on Banking granted banks a lot of freedom in shaping their services, allowing them to create their own regulations within the frames set by the Civil Code and banking supervision. Finally the banking sector regained almost complete independence, except for the minimal government intervention taking the form of risk-reducing regulation. Such liberalisation allowed the growth of the financial services market: new autonomous, profit-orientated, competitive commercial banks were created, new financial instruments were introduced, while individuals and households gained unrestricted access to banks' offer.

Banks in their activities are highly influenced by the social and political system, and as crucial parts of an apparatus of the financial system of the state, they are frequently obliged to fulfil numerous tasks set for them by the state. Those tasks affect their role and activities, in various models of economy, but nowadays they no longer remain just tools in hands of governments. They play a crucial role in market economy, serving as key elements of monetary payments mechanism, without which markets can function only at high cost, therefore the public law nowadays regulates usually only matters concerning the safety of that sector.

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