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Design and Factors Affecting State Supervision of the Financial Market

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Abstract

Purpose: The purpose of the paper is to identify the factors that affect the development of the models of financial market state supervision and to identify the factors that have influenced the evolution of the supervision model in Poland.

Methodology: critical analysis of literature, legal provisions and documents.

Findings: The completely integrated and the fully dispersed model of supervision are located at the opposite ends of the spectrum. A variety of the hybrid models can be identified between them. Factors that affect supervision organization are both economic and non-economic. Factors that have influenced the Polish model of supervision include political aspects, administration costs and, in due course, also the development of the financial market.

Research implications: The variety of state supervision structures, combined with the ambiguity and multiplicity of factors that affect their evolution create a new research challenge. Significant problems in accessing documents have been identified.

Originality: The author presents an overview of models of state supervision of financial markets and factors affecting the evolution and structure of supervision. Conclusions drawn from the analysis were used to identify factors that influence the evolution and supervision of the Polish financial market.

Keywords: state supervision, financial supervision, financial market

JEL: G28, H83, K23

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Introduction

In recent years, intensification of regulatory and supervisory trends with respect to financial markets has been observed, evidenced by the adoption of numerous acts of legislation at the EU level. By virtue of these acts, supervisory bodies have been established and supervision of the financial sector has been enhanced.[2] The introduction of new legal and administrative solutions is to allow monitoring of the emergence and build-up of systemic risk, also across borders, to the largest possible extent.[3] The above--mentioned trends in the European Union have been reflected by the establishment – on 1 January 2011 – of three independent agencies responsible for specific segments of financial markets, namely European Securities and Markets Authority (ESMA), European Insurance and Occupational Pensions Authority (EIOPA) and European Banking Authority (EBA); they operate jointly as European Supervisory Authorities (ESA).

This network of agencies forms the core of the European Union's micro-prudential supervision, defined as supervision targeted at reducing the risks of individual institutions (Szpunar, 2012). It should be emphasized that, given the need for a proper management of systemic risk, a separate authority in the area of macro-prudential supervision – defined as supervision oriented towards the identification, analysis and reduction of risks to the stability of the financial system as a whole (Szpunar, 2012) – has also been established: it is the European Systemic Risk Board (ESRB).[4] The ESA system[5], together with the ESRB, reflects a decentralized model of supervision, in which separate supervisory authorities are responsible for regulatory and supervisory activities, separately in relation to micro- and macro-prudential supervision, with respect to arbitrarily delineated sectors of the financial market.

[2] The following acts in particular: Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority); Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC; Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC; Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC; Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010.

[3] Comparison between the preamble and the regulations establishing the abovementioned supervisory authorities.

[4] Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board

[5] It should be emphasized that due to the on-going work within the framework of the so-called "banking union", the European Central Bank shall become a pan-European supervisory institution.

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Supervision does not, however, need to be designed in this manner, as evidenced *i.a.* by Poland. Indeed, various models of supervision of the financial market exist; their establishment and evolution are determined by a number of diverse factors. The purpose of this paper is to identify and list these factors, to provide examples of solutions adopted in this field in the European Union, to indicate factors that have shaped the model of state supervision of the Polish financial market and to identify potential research challenges.

The concept of financial market supervision

In order to analyse the factors affecting models of financial market supervision, we should begin by defining the concept of state supervision itself. In semantic terms, according to the definition provided by the Polish Language Dictionary, supervision means "controlling or overseeing someone or something." It should be emphasized that the definition of control provided by the Dictionary is similar: "verifying, comparing facts with the expected situation" and "supervision over someone or something".

On the basis of an analysis of the available literature pertaining to this subject matter, we can conclude that supervision is a concept that encompasses control and – additionally – tools allowing one to exert an imperious influence on the actual situation with the view to rectifying a situation recognized as undesirable (Boc, 2003; Mroczkowski, 2011). In this respect, supervision is not limited to observation, but also encompasses managing the situation via a number of formulated directives (Kałużny, 2008). When defined in this manner, it can be concluded that supervision means custody, surveillance over a defined area, entity or group of entities (Kałużny, 2008). Authors list three basic forms of supervision:

- preventive – involving the supervisor's approval of an action or *ex ante* arrangements;
- surveillance – involving the possibility of changing decisions taken by the supervised *ex post* by the supervisor;
- repressive – involving repercussions for the supervised for any inaccuracies identified by the supervisor (Kałużny, 2008).

According to the authors cited above, supervision is a concept based on the existence of a hierarchical relationship between two entities:

- the supervisor or, in other words, the supervising entity, holding tools that allow it to exert an influence on the supervised entity;

- the supervised entity, obligated by law or other regulations to comply with the requirements imposed by the supervisory body.

The relationship between these two entities (or groups of entities) can be referred to as supervision. In this approach, the concept of state supervision implies that the supervising entity is a state authority holding appropriate impact tools, vested in it by virtue of legal regulations in force and allowing it to exert influence over supervised entities specified in these regulations. The impact can take the form of preventive (e.g. licensing), follow-up (on-going supervisory and corrective measures) and repressive measures (e.g. imposition of a fine or revocation of a prior authorization).

This approach seems to be supported by literature pertaining to supervision exercised by state bodies, or state supervision. It is pointed out, among others, that supervision is inherently based on the acceptability, purposefulness and extent of state interference in economic processes (Mroczkowski, 2011). It is emphasized that the aim of this form of intervention is to remove the identified irregularities and to prevent them in the future (Bigo, 1964).

State supervision of financial markets is primarily related to the establishment – by the state – of a specific institutional framework for the exercise of supervisory measures in relation to these markets or entities operating within them. It should be emphasized that systemic and institutional solutions in the area of state supervision are essentially determined by the objectives of state supervision (Mroczkowski, 2011). These objectives, in turn, determine the directions of supervisors' activity (Sylwestrzak, 2004). On this basis, it can be concluded that institutional supervision in the above-mentioned forms is, by definition, determined by the objectives that supervision is expected to pursue.

Models of state supervision of the financial market

We should furthermore point to the widespread tendency of describing state supervision over financial markets in institutional terms (Goodhart, 2000; Cihak and Podpiera, 2006; Carmichael, Fleming and Llewellyn, 2004; Halme, Hawkesby, Healer, Saprat and Soussa, 2000). On the basis of its analysis, two basic organisation models of state supervision can be identified and described:

1) **dispersed supervision –** assuming the existence of separate institutions supervising individual segments of the financial market,

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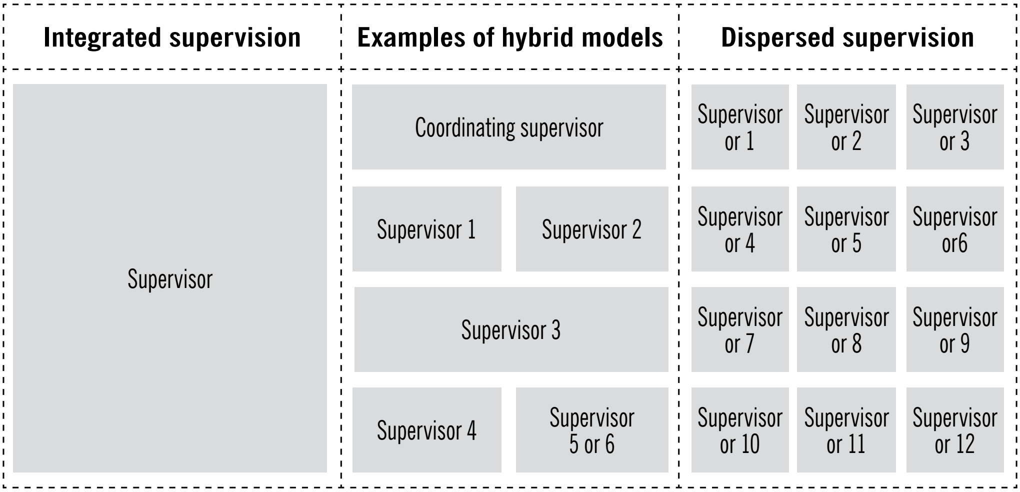
2) **integrated supervision** – assuming that a single supervisory authority is to perform supervisory functions over the entire financial market.

The above concept is presented in Figure 1 below.

Figure 1. Institutional models of state supervision over financial markets



Source: own elaboration.

As indicated in the above figure, a number of hybrid models, with different degrees of supervision dispersion, can be identified between the two ends of the spectrum – the integrated model and the dispersed model. One of them is the so-called **coordinated supervision model**, in which individual supervisory bodies are controlled by one or several institutions that coordinate supervision over more complex entities, operating in more than one segment of the financial market.[6]

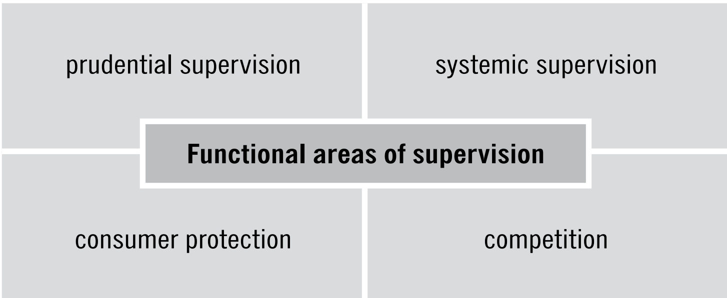
Authors do not evaluate these models in terms of their efficiency, but enumerate a number of factors influencing the choice of specific models of supervision in different countries (Halme, Hawkesby, Healer, Saprat and Soussa, 2000). It should be noted that in the European Union, supervisory models established in different Member States have been evolving over the years. For example, the United Kingdom – a country often referred to as representing the integrated supervision model – has recently moved

6 More information on this subject is provided in the explanatory memorandum to the draft act on financial market supervision, Druk sejmowy nr 654 (Parliamentary document No. 654) of 7 June 2006.

away from this model. The exercise of prudential supervision in the UK has been entrusted to the central bank.

Regardless of the nature of institutional supervision, authors often refer to the so-called supervisory matrix, illustrating various areas of financial market supervision exerted by supervisory institutions. These areas are reflected in different aspects of organization or institutions, depending on whether a dispersed or an integrated supervision model has been adopted (Llewelyn, 2006). The matrix has two basic dimensions: functional and domain-specific. Matrix systems are illustrated in figures below.

Figure 2. Functional areas of supervision



Source: Llewelyn (2006, p. 14–15).

Functional areas of supervision listed in the figure above tend to have a direct impact on its institutional structure; all or selected areas can be combined within a single supervisory institution. These areas encompass different supervisory functions. In this context, prudential supervision should be understood as an area comprising issues related to the security and stability of specific financial institutions, considered also from the point of view of financial conglomerates (Llewelyn, 2006). In the context of a theoretical debate about the definition of supervision, it is therefore the micro-prudential area described above (Szpunar, 2012). In this approach, the financial market sector to which an institution can be classified is irrelevant – what matters is financial security. System supervision undoubtedly is closely linked to prudential supervision; it has been referred to above as macro-prudential supervision and is supposed to ensure the stability of the entire financial system (Llewelyn, 2006; Szpunar, 2012).

Consumer protection and competition are two areas that should be considered separately from the above, both in terms of methodology and their specific nature. The first focuses on issues related to the appropriate functioning of the process of concluding

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contracts and transactions in the financial market, so as to ensure that consumers are protected against misleading information, for example due to an inadequate access to information, or the use of undesirable practices by financial institutions (Llewelyn, 2006). The second – competition – means warranting fair competition in the financial system and mitigating non-competitive practices (Llewelyn, 2006).

Another dimension of the supervisory matrix has been based on the domain-specific structure of the financial market and is based on an arbitrary division of this market into individual sectors.

Figure 3. Domain-specific areas of supervision

Domain-specific areas of supervision		
bank supervision	insurance supervision	capita market supervision

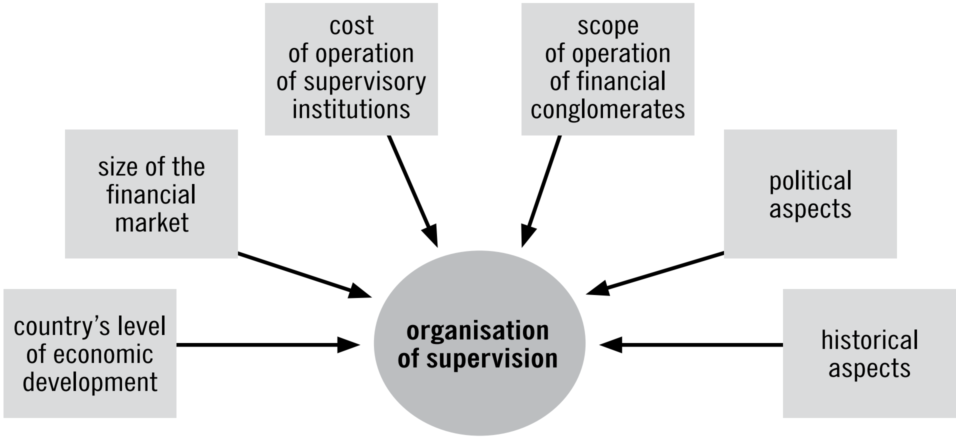
Source: Llewelyn (2006, p. 15).

As stated in the introduction, this division has been reflected, *inter alia*, in the supervisory architecture of the European Union, in the framework of the ESA. It should be noted that the matrix is extremely simplified. Within this division, there are several interpenetrating areas, which could be singled out and further delineated. Thus, for example, in relation to the capital market, there are a number of domain-specific areas, such as asset management, trading on a regulated market or investment advisory services (Llewelyn, 2006). The establishment of appropriate institutions seems to be – in this approach – an issue of particular importance. Two extreme models, specified earlier, can be pointed out here: the integrated model, with only one supervising institution, and the maximally dispersed model, where a separate institution would be established for each domain subject to supervision.

Factors affecting models of financial market supervision

Authors list several factors that may have an impact on the structure of financial market supervision. On the one hand, there are objectified factors, mainly economic, and on the other hand, there are factors that could hardly be recognised as fully objective, related to politics or tradition. Figure 4 below presents a list of factors identified by authors as affecting the organization of financial market supervision.

Figure 4. Factors affecting the organization of supervision



Source: own study based on: Gromek et al. (2009); Hawkesby (2000).

Referring to the country's level of economic development, it is argued that in developing countries the central bank could take on the role of the supervisory institution, in particular in order to exert supervision over the banking system. It is justified by its political independence, particularly important in countries with unstable political situation (Tuya and Zamalloa, 1994; Lastra, 1996; Hawkesby, 2000). When it comes to the size of the financial market and the cost of supervision, an integrated supervisor over an underdeveloped financial sector seems to act more effectively (economy of scale) than several dispersed and, inevitably, small institutions (Llewellyn, 1999; Hawkesby, 2000). However, the economy of scale argument is also brought up with respect to large financial markets – its advocates refer to the example of integrated supervision in the United Kingdom (Briault, 1999; Hawkesby, 2000). The scope of activities of financial conglomerates is cited as the main argument in favour of integrated supervision, not necessarily within the framework of the central bank (Goodhart and Shoenmaker, 1995; Hawkesby, 2000). An aspect that needs to be considered by individual states is the scope of activities of financial conglomerates or the existence of any "Chinese walls" within them.

Political and historical circumstances play a major role for the selection of a supervisory model. It is pointed out that the existence of such problems, for instance in the banking sector, may in the near future bring about changes to the supervisory model, determined in particular by issues related to the information and promotion policy in the area of the government's effectiveness (Goodhart and Shoenmaker, 1995; Hawkesby, 2000). Symmetrically, if a financial system has not been affected by a crisis, the supervisory model is likely to be left unchanged (Hawkesby, 2000).

Authors point out that the institutional organization of financial market supervision has both a formal and a practical dimension. The organization of supervision has a direct impact on a number of issues, including the following (Carmichael, Fleming, Llewellyn and Aligning, 2004):

- the overall effectiveness of regulations and supervision, which is affected by the experience and organizational culture developed in specific supervisory authorities in the framework of their approach to supervision;
- clear definition of the scope of responsibility for specific aspects or purposes of supervision. In this regard, authors emphasize the weaknesses of the dispersed model, as well as potential competition between institutions and the likely differences of opinion;
- given the variety of purposes that supervision is expected to serve, conflicts between them may arise. The effectiveness of different organizational solutions in the process of conflict resolution is emphasized, without providing a clear solution or specifying whether the costs of such conflicts are lower when they are dealt with by a single integrated institution or externally, by many supervisors;
- the risk of duplication and overlapping of supervisory measures in the case of a dispersed surveillance;
- the risk of regulatory arbitrage in the case of dispersed surveillance, when supervised entities consciously choose a specific, purposely created business profile so as to be supervised by a particular institution;
- public opinion, in a situation in which it may not be entirely clear to the investor which supervisory institution is in charge of a specific issue or regulation, or where to address complaints.

Authors clearly enumerate both advantages and disadvantages of each model of supervision; their feasibility may, however, be conditional on particular organisational circumstances and on competences, which are difficult to quantify objectively. Another factor influencing the institutional conditions of supervision is the issue of financial conglomerates and the increasing internationalization of supervised entities. The situation naturally imposes supervisory solutions resulting from the objectives and goals set for supervisory institutions. At the European Union level, this has been one of the reasons for strengthening cooperation between supervisors (Gruson, 2004).

International situation and monetary aspects, such as the existence of a common European currency, have also been identified as key factors for shifting the burden of banking supervision to the supranational level (European Commission, 2012). In this context, efforts have been undertaken in the European Union in order to establish the so-called banking union for the introduction of a single supervisory mechanism for banks in the euro area. This means the creation of a regulatory and policy framework establishing banking supervisory policy instruments at the EU level (Véron, 2012). This is, essentially, a new factor, which can be included in the list represented in Figure 4. In this area, a number of supervisory powers over the euro zone banks have been granted to the European Central Bank (ECB). Furthermore, the ECB has supervisory prerogatives in terms of micro-prudential (licensing of banks in the euro zone) and macro-prudential supervision, while assuming the role of both a supervisor and the central bank.

Considering the above-mentioned conditions, including general EU issues, it should be noted that EU Member States have developed and implemented various models of supervision. Importantly, these models are not stable: not only may they change unexpectedly, but they can also evolve over time. It is not always possible to clearly identify the factors that have influenced a decision to changes the supervision model. The table below presents institutional models of financial market supervision in selected EU countries.

The above table clearly indicates that a number of EU Member States have a fully integrated supervision system, with a single large supervisory institution (Germany, Austria, Hungary, Ireland, Latvia, Lithuania, Malta, Poland, Slovakia, Sweden). Other supervision systems analysed should be classified as hybrid models, with different structures of institutional supervision. In this area, we observe a division between the macro- and micro-prudential supervision, a domain-specific division, and indirect or mixed models. A detailed analysis of factors influencing supervisory models, in particular in the above-mentioned countries and taking into account the country's level of economic development, could be subject of further research.

Table 1. Supervisory institutions in selected EU Member States

Member State	Supervisory institution	Supervised areas of the financial market
Austria	Finanzmarktaufsicht	integrated supervision
Belgium	Financial Services and Markets Authority	micro prudential supervision
	National Bank of Belgium	macro prudential supervision

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Table 1 (Continued)

Member State	Supervisory institution	Supervised areas of the financial market
Bulgaria	Bulgarian National Bank	bank supervision
	Financial Supervision Commission	supervision over other sectors
France	Autorité des Marchés Financiers	capital supervision
	Autorité de Contrôle Prudentiel	bank and insurance supervision
Germany	Bundesanstalt für Finanzdienstleistungsaufsicht	integrated supervision
Hungary	Hungarian Financial Supervisory Authority	integrated supervision
Ireland	Central Bank of Ireland	integrated supervision
Italy	Banca d'Italia	supervision over banks and financial intermediaries
	Commissione Nazionale per le Società e la Borsa	capital market supervision
	Instituto per la Vigilanza sulle Assicurazioni Private e di Interesse Collettivo	insurance supervision
Latvia	Finansu un Kapitala Tirgus Komisija	integrated supervision
Lithuania	Lietuvos Bankas	integrated supervision
Luxembourg	Commisariat aux Assurances	insurance supervision
	Commission de Surveillance du Secteur Financier	bank, financial market and prudential supervision
Malta	Malta Financial Services Authority	integrated supervision
Netherlands	Autoriteit Financiele Markten	prudential supervision
	Pensioen- & Verzekeringskamer	supervision over operations conducted by financial institutions
Poland	Komisja Nadzoru Finansowego	integrated supervision
Portugal	Banco de Portugal	bank supervision
	Comissao do Mercado de Valores Mobiliarios	capital market supervision
	Instituto de Seguros de Portugal	insurance supervision
Slovakia	Narodna Banka Slovenska	integrated supervision

Slovenia	Banka Slovenije	bank supervision
	Agencija za trg Vrednostnih Papirjev	capital market supervision
	Agencija za zavarovalni nadzor	insurance supervision
Spain	Banco de Espana	bank supervision
	Comisión Nacional del Mercado de Valores	financial market supervision
	Dirección General de Seguros y Fondos de Pensiones	insurance supervision
Sweden	Finansinspektionen	integrated supervision
United Kingdom	Financial Services Authority	consumer protection
	Bank of England – Prudential regulation Authority	micro and macro prudential supervision

Source: own study on the basis of: http://www.bafin.de, http://www.fsma.be, http://www.nbb.be, http://www.bnb.bg, http://www.fsc.bg, http://felugyelet.mnb.hu, http://www.fktk.lv, http://www.bancaditalia.it, http://www.lb.lt, http://www.cssf.lu, http://www.commassu.lu, http://www.nbs.sk, http://www.mfsa.com.mt, http://www.dnb.nl, http://www.afm.nl, http://www.cmvm.pt, http://www.a-tvp.si, http://www.a-zn.si, http://www.dgsfp.mineco.es, http://www.cnmv.es, http://www.bde.es, http://www.fi.se, http://www.fca.org.uk, http://bankofengland.co.uk/pra/Pages/default.aspx, http://www.amf-france.org, http://www.knf.gov.pl.

Structure and evolution of state supervision over the financial market in Poland

The supervision model currently in place in Poland is an example of fully integrated supervision. The authority in charge of supervising the financial market, namely the Financial Supervision Commission (Komisja Nadzoru Finansowego), covers all functional and domain-specific areas indicated in Figures 3 and 4. It should be emphasized that this situation is relatively new and results from on-going evolution that started in 1989.

The original structure of supervision over the financial market in Poland, formed after 1989, is a classic example of dispersed supervision. Domain-specific division between supervisory institutions was based on separate supervisory bodies: insurance companies, banks, the capital market and private pension funds. The evolution of this system is presented in Figure 5.

It should be stressed that the figure does not take into account the chronology of individual events (they have been considered irrelevant and omitted), depicting only the

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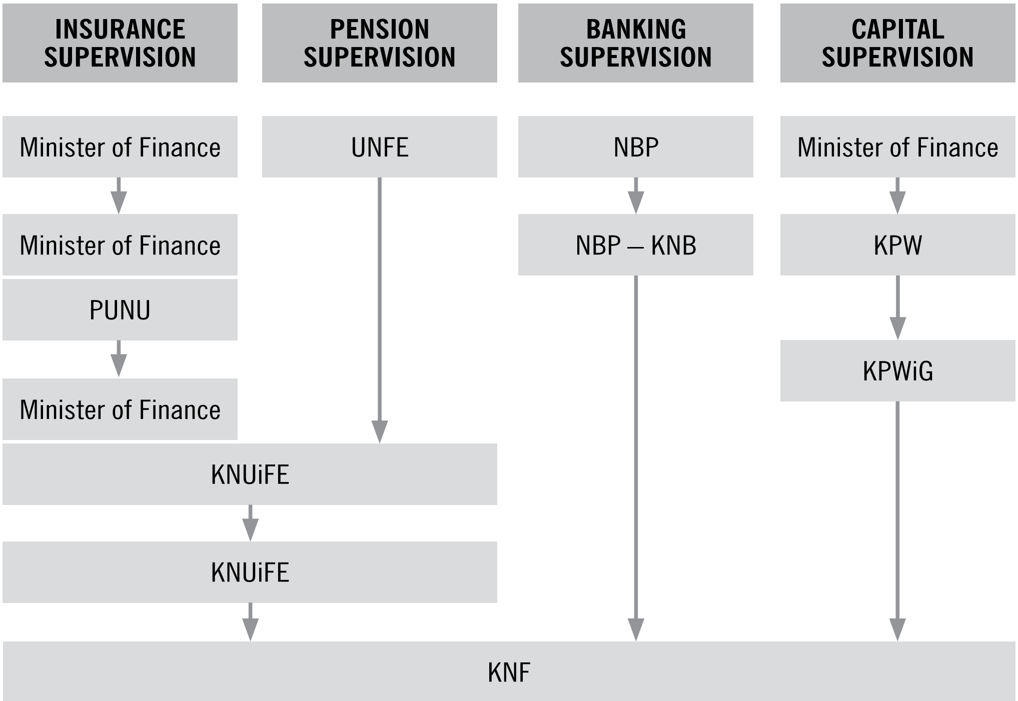
process of institutional change. For reasons of clarity, acronyms of individual supervisory institutions are used: UNFE for Urząd Nadzoru nad Funduszami Emerytalnymi (Pension Fund Supervisory Authority), PUNU for Państwowy Urząd Nadzoru Ubezpieczeń (State Insurance Supervision Authority), NBP for Narodowy Bank Polski (National Bank of Poland), KNB for Komisja Nadzoru Bankowego (Banking Supervision Commission), KNUiFE for Komisja Nadzoru Ubezpieczeń i Funduszy Emerytalnych (Insurance and Pension Fund Supervision Commission), KPW for Komisja Papierów Wartościowych (Securities Commission) and KPWiG for Komisja Papierów Wartościowych i Giełd (Securities and Exchange Commission). In addition, given the specific nature of the Polish financial market, a particular domain-specific area of supervision has been singled out, namely the retirement pension supervision, which is not outlined in Figure 3.

Figure 5. Evolution of financial market supervision in Poland



Source: own elaboration.

The gradual evolution of the state supervision over the financial market in Poland took the form of a consistent transition from the dispersed model to the fully integrated model. It should be noted that this process unfolded along with the development of the financial market. Two breakthrough points should be mentioned: the establishment of the Insurance and Pension Funds Supervisory Commission and of the Financial Supervision Authority. Given the above, it was possible to analyse factors that had influenced changes in the structure of supervision. Access to all documents needed for the study was hindered, which might have distorted its results. The study was based on publicly available documents and it may be presumed that some of them contained a synthesis of earlier analyses and studies unavailable to the general public. A critical analysis of the available materials, in relation to factors affecting the establishment of the two institutions, has brought the following results.

According to the explanatory memorandum of the bill establishing KNUiFE (Parliamentary document No. 83 of 23 November 2001), UNFE and PUNU were integrated primarily due to the following:

- political decision concerning their consolidation,
- improved effectiveness of supervision,
- reduced administration costs.

The above were the consequence of the implementation of the political programme of parties that formed the Polish government in 2001. They pledged that government administration should be cheaper, efficient, modern and friendly to citizens. It can therefore be assumed that the integration of insurance and pension supervision was due, in a large part, to attempts at reducing operating costs of supervising institutions and to the political situation.

An analysis of the reasons set out in the bill establishing the Financial Supervision Authority (Parliamentary document No. 654 of 7 June 2006) and the published letter of the President of the National Bank to the Speaker of the Senate dated 24 July 2006 indicates different reasons for the consolidation of supervision. The tendency of replacing decentralized with integrated supervision, observed in many countries, was highlighted in the justification. Processes of globalization, internationalization of financial markets, technological progress and surging competition were all listed as factors blurring the boundaries between different sectors of the financial market. The formation of financial conglomerates was also stressed. In this context, it was argued that the most effective and efficient model of financial market supervision is the fully integrated model, as it could also bring the advantages of economies of scale and optimize human resources.

In the letter of the President of the National Bank of Poland, a number of arguments against the consolidation of supervision were listed, namely:

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- absence of substantial justification of consolidation,
- departure from the leading role of the central bank in banking supervision,
- minimal impact of financial conglomerates on the Polish financial market indicated in the final declaration of the Consultative Mission of the IMF and the risk of political influence on consolidated supervision, also highlighted in the document.

A comparative analysis of both the explanatory memorandum and the letter of the President of the National Bank of Poland reveals a number of conflicting opinions; it should be stressed that those views are expressed by entities directly affected by the changes in the structure of supervision. With this in mind, it must be concluded that factors that have a decisive impact on the full integration of financial market supervision in Poland were, according to the scheme presented in Figure 4: the size of the financial market, the scope of activities of financial conglomerates, operating costs of supervising institutions and political conditions.

The analysis revealed difficulties in access to certain information that may affect research findings. In this context, a qualitative survey, or possibly interviews with persons directly or indirectly responsible for the decision making process regarding changes in the organization of financial market supervision in Poland, should be considered in the future. This approach may, however, fail to solve the problem of access to data: if certain documents or decisions are not publicly available, it is difficult to assume that the information contained in them would be revealed through other channels. This may prove all the more difficult given that some relevant information may be classified and protected by law. An unambiguous solution to this dilemma cannot be presented in this paper.

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