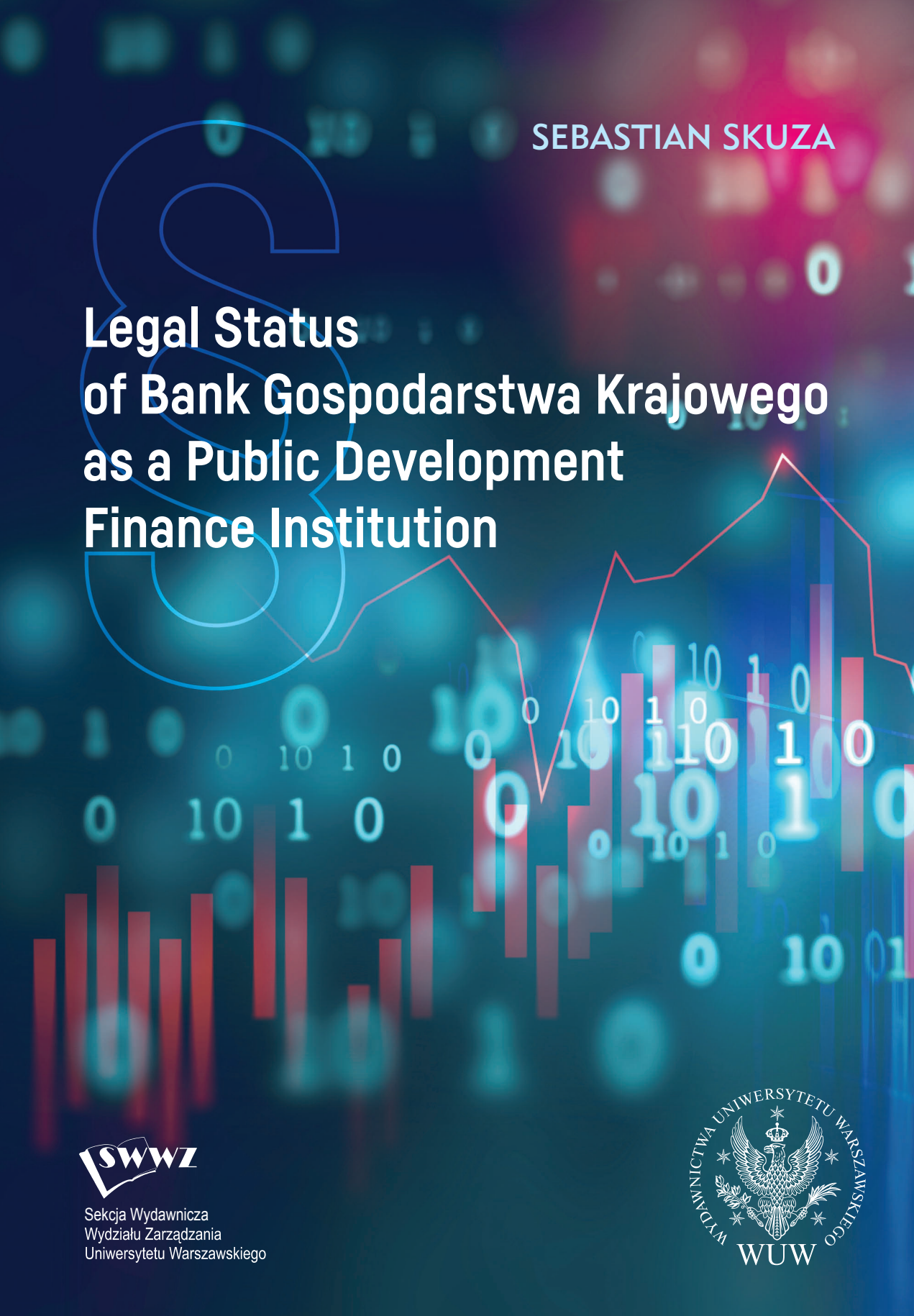
SEBASTIAN SKUZA

Legal Status of Bank Gospodarstwa Krajowego as a Public Development Finance Institution



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WUW

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Table of Contents

Introduction

Bank Gospodarstwa Krajowego is a particularly important institution in the domestic financial system as regards state economic policy, as it was established with this intention in 1924. In the period of the Polish People's Republic, the importance of Bank Gospodarstwa Krajowego was marginal, its role being confined solely to activities in the area of continuing the proceedings of some of the financial institutions abolished during that period.[1] After 1989, the institution once again began to take on a more systemic relevance. The scope of tasks entrusted to Bank Gospodarstwa Krajowego, including by way of a legislative instrument, as well as in the process of Poland's integration with the European Union, resulted in the legislator's decision to regulate certain matters relating to its functioning by way of a separate act, introducing solutions of a *lex specialis* nature in relation to banks operating on commercial terms.

The Author's research to date has focused significantly on the functioning of Bank Gospodarstwa Krajowego. The Author's works dealing with this issue include a monograph and seventeen chapters in monographs and scientific articles (listed in the bibliography).[2] The research was carried out mostly in the scientific field of economics and finance, with a particular emphasis on issues related to the economic analysis of the law (*Law & Economics*). The Author's research shows that there is a research gap with regard to the legal system of Bank Gospodarstwa Krajowego. A review of the literature reveals monographs and articles dealing exclusively with economic or general history issues (e.g. by Zbigniew Landau (1998) or Bronisław Hynowski and Mateusz Wierzbicki

[1] E.g. in connection with the regulations of the Decree of 25 October 1948 on the Principles and Procedure of Liquidation of Certain Long-Term Credit Institutions (Journal of Laws No. 52, item 411, as amended).

[2] The Author cites in the bibliography a body of work in the area of research into the institutions of Bank Gospodarstwa Krajowego, but nevertheless its use in this work is negligible.

(2014)), as well as publications of a review nature, which present programmes or undertakings implemented by Bank Gospodarstwa Krajowego. The Author's review of the database of topics of scientific papers at https://nauka-polska.pl also confirms the lack of interest of researchers in the issues concerning the legal status of Bank Gospodarstwa Krajowego. On the other hand, an analysis of the content of databases related to legal regulations (LEX, Legalis) revealed the absence of publications being a standalone commentary on the Act of 14 March 2003 on Bank Gospodarstwa Krajowego. It can be observed that the topic of Bank Gospodarstwa Krajowego is raised only occasionally in the passages of commentaries relating to the functioning of state-owned banks under the provisions of the Banking Act of 29 August 1997[3] (hereinafter the Banking Act). According to the author, such a situation is due to the fact that, since 2000, Bank Gospodarstwa Krajowego has been the only entity conducting banking activities as a state-owned bank.

The issues indicated above justify, in the Author's opinion, the advisability of attempting to fill the identified research gap. To quote Szymon Nowak (2011), "As prof. dr hab. Tadeusz Rawski used to say: *when you can't find a book that interests you, there is a remedy for that – write it yourself*". This publication aims to present the domestic legal solutions outlined in the Act on Bank Gospodarstwa Krajowego, analyse them, and assess their legitimacy in the context of *lex specialis*, as well as in the aspect of foreign solutions.

The reference literature and legal acts provide various definitions of institutions carrying out activities similar to those of Bank Gospodarstwa Krajowego. Given the above, in the publication, the Author proposed to use the broadest possible definition, i.e. a public development finance institution, regardless of the business profile on which its activity is focused (e.g. granting credits, supporting export) or the legal form under which it is operated. Public development finance institutions are directly or indirectly affected by certain regulations of European Union law. For example, a package of EU measures in the area of capital requirements, i.e. Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC[4] (hereinafter the CRD IV) and Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012[5] (hereinafter

[3] Journal of Laws of 2021, item 2439, as amended.
[4] OJ EU L 176 of 27 June 2013, p. 338, as amended.
[5] OJ EU L 176 of 26 June 2013, p. 1, as amended.

the CRR), or the Communication from the Commission to the European Parliament and the Council Working together for jobs and growth: The role of National Promotional Banks (NPBs) in supporting the Investment Plan for Europe[6] (hereinafter the European Commission Communication). It is important to note that the functioning of public development finance institutions in EU states is a common phenomenon. For example, the most recognisable institutions of this type are the German Kreditanstalt für Wiederaufbau, the French Caisse des Dépôts et Consignations, the Italian Cassa Depositi e Prestiti or the Spanish Instituto de Crédito Oficial.

The aforementioned *lex specialis* rule results from a comparison of the scopes of the regulations, which leads to a conclusion whether the scope of the regulation or the application of one of the regulations is narrower, and thus more precisely defined, or whether one regulation is an exception compared to another. This rule may change the meaning of the *lex posterior* rule and determine exceptions to the use of the *lex superior* rule. The rule *lex specialis derogat legi generali* provides that a more specific norm will prevail over a more general norm, provided that it is not a norm of a lower order. In such a case, the principle of hierarchy is decisive. This rule is also sometimes referred to as the horizontal subordination rule, as it regulates the force of a legal norm within the same level of normative acts (Leszczyński, 2004; Kaleta & Kotowski, 2019).

The Author intends to analyse the legal regulations of the Act of 14 March 2003 on Bank Gospodarstwa Krajowego[7] (hereinafter: the BGK Act) of *lex specialis* nature from the point of view of the grounds of their functioning. The Author intends to carry out the analysis with reference to other generally applicable provisions of domestic law, in particular the Banking Act, as well as legal solutions functioning at the level of the European Union and the domestic law of selected member states of the European Union.

The Author intends to analyse *lex specialis* solutions in the following areas:

1) those existing in the BGK Act – justified from the point of view of the functioning of a public development finance institution (in the current wording or requiring amendment);
2) those existing in the BGK Act – not justified from the point of view of the functioning of a public development finance institution;
3) those not present in the BGK Act – justified from the point of view of the functioning of a public development finance institution.

[6] COM/2015/0361 of 22 July 2015.

[7] Journal of Laws of 2003, No. 65, item 594; i.e. Journal of Laws of 2022, item 2153.

A *lex specialis* provision may be included both in a single piece of legislation of a *lex generalis* nature or be included in a separate normative act (Kaleta & Kotowski, 2019). As regards Bank Gospodarstwa Krajowego, the most important is the regulation of the inclusion of certain areas of its activities in a separate legal act (i.e. the BGK Act). The Author's considerations as to solutions of such *lex specialis* nature will mainly refer to regulations of *lex generalis* nature included in domestic, foreign and European laws on banking. It should be noted that *lex specialis* provisions concerning Bank Gospodarstwa Krajowego can also be found outside the BGK Act. For example, a direct reference to Bank Gospodarstwa Krajowego can be found in the Act of 5 August 2015 on Macro-Prudential Oversight of the Financial System and Crisis Management in the Financial System[8] and the Act of 10 June 2016 on the Bank Guarantee Fund, Deposit Guarantee Scheme and Forced Restructuring.[9] The solutions pertaining to the activities of Bank Gospodarstwa Krajowego contained therein, are of an exclusionary nature as regards the application of certain regulations, which, in the Author's opinion, is substantively justified. In this publication, the Author intends to focus exclusively on issues relating to the BGK Act. The starting point for the research conducted are the regulations of the BGK Act as at 1 October 2022.[10]

The scope of the subject matter of the publication in the context of the area of the included research, as well as the methodology of conducting it, justifies, in the Author's opinion, posing research questions rather than formulating a thesis or hypotheses. Therefore, in this publication the Author attempts to answer the following research question:

What *lex specialis* solutions should be included in the BGK Act in the context of ensuring that Bank Gospodarstwa Krajowego can function as a public development finance institution, with minimum derogations from *lex generalis* solutions?

This publication primarily uses the legal-dogmatic method and comparative legal research. The research process consisted mainly of an analysis of legal acts in force in Poland and in other legal systems, as well as historical legal sources.

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[8] Journal of Laws of 2022, item 963, 1488.

[9] Journal of Laws of 2022, item 793, 872, 1692.

[10] Text of the announcement of the Marshal of the Sejm of the Republic of Poland of 21 December 2021 on the announcement of the consolidated text of the Act on Bank Gospodarstwa Krajowego (Journal of Laws of 2022, item 100), and of 7 April 2022 on amending the Act on Mortgage Bonds and Mortgage Banks and Certain Other Acts (Journal of Laws of 2022, item 872).

The Author also intends that the publication has an application quality. The Author's efforts will focus on the ground of normative legal analysis. The Author aims to create law, not just to apply and interpret the law already in force. A review of the current legal regulations as a comparative analysis of the provisions originally establishing Bank Gospodarstwa Krajowego, as well as other examples of the functioning of public development finance institutions in selected countries and with legal solutions in force at the European Union level, should make it possible to prepare the Author's draft act on Bank Gospodarstwa Krajowego.

As already outlined in the research question posed above, the Author intends to conduct research on the solutions of *lex specialis* nature, assuming the necessity to provide only minimal solutions of this nature in the Banking Act, enabling Bank Gospodarstwa Krajowego to perform the function of a public development finance institution. The Author assumes that it is unjustified to have in place and propose *lex specialis* solutions favouring the expansion of Bank Gospodarstwa Krajowego activities by limiting the application of supervisory standards or even not applying them as part of domestic law.

The publication consists of an introduction, five chapters and a conclusion. The chapters are divided into two parts. The first is devoted to the regulations of European Union law and the domestic law of selected Member States, while the second relates to the area of the legal status of Bank Gospodarstwa Krajowego.

In the first chapter, the Author intends to introduce the issue of the essence of the functioning of public development finance institutions. The Author reviews the European Union legislation in this area, seeking legal solutions that define and characterise public development finance institutions. In the second chapter, the Author provides examples of the functioning of public development finance institutions in the European Union member states from Central and Eastern Europe. The Author decided to base his research on a research sample of such institutions operating in the post-communist bloc countries, which were forced to move from a command economy to a market economy, i.e. Bulgaria, Croatia, the Czech Republic, Lithuania, Latvia, Slovakia, Slovenia and Hungary. The sample selection is therefore deliberate. In the Author's opinion, the research sample, both in terms of the number of solutions studied and the fact of a similar starting point and economic development, is suitable for conducting comparative analysis and formulating *de lege ferenda* conclusions for Bank Gospodarstwa Krajowego. The third chapter is an analysis of the current provisions of the Banking Act, together with their interpretation in relation to the operation of state-owned banks. In the Author's opinion, it is justified to present the specificity of legal solutions

concerning the state-owned bank in the context of adopting such a legal form for the activities of Bank Gospodarstwa Krajowego. The fourth chapter presents the legal regulations under which Bank Gospodarstwa Krajowego was established and operated before the Second World War. The fifth chapter is an attempt to find a constitutional basis for the functioning of public development finance institutions in Poland. The Author focuses in particular on analysing the meaning of the term "social market economy". The chapter also contains the Author's analysis of the existing provisions of the BGK Act in the context of the legitimacy of *lex specialis* regulations, both positive (confirming legitimacy) and negative (unjustified to be maintained), and also requiring, in the Author's opinion, amendment or even introduction. Each chapter of the publication contains a brief section with a summary and conclusions. The conclusions of the research will be presented in a summary conclusion. As already indicated, the Author intends that the publication has an application quality. Therefore, in Appendix 1, the Author presents a draft act on Bank Gospodarstwa Krajowego, prepared on the basis of own research carried out using the method of observation, analysis of legal solutions in the context of Bank Gospodarstwa Krajowego (current and no longer in force), as well as those in force in selected European Union states and at the level of the European Union (both generally applicable law and soft law).

As mentioned, the Author notes that in the commentaries of the Banking Act, one can find references to Bank Gospodarstwa Krajowego as a state-owned bank, whereas he does not find publications in the area of legal sciences concerning the systemically extremely important public development finance institutions, which Bank Gospodarstwa Krajowego undoubtedly is. The scarcity of literature on the functioning of Bank Gospodarstwa Krajowego made it necessary for the Author to base his research mainly on analysing the legal acts. In the area of literature, the Author primarily used pieces related to the analysis of the provisions of the Banking Act.

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The views expressed in the publication are the author's personal views and do not express the official position of the institution where he is employed.

Part I

Legal Framework for the Functioning of Public Development Finance Institutions Within the Context of the Legislation of the European Union and Its Selected States

Chapter 1
The Concept and Tasks of a "Public Development Finance Institution" as Regards the European Union Law Regulations

In this chapter, the Author outlines the principles of the functioning of public development finance institutions in the legal framework of the European Union. In the Author's opinion, it is important to find the most relevant legal solutions in the area of their functioning, enabling them to be given the status of a public development finance institution.

Public Development Finance Institutions in the Sources of European Union Law

The market economy does not always operate efficiently. The reason for the existence of market economy failures can be, for example, information asymmetry. This phenomenon can be at least partially mitigated by actions taken by public development finance institutions, inter alia by increasing the supply of financing available for investment in areas where market failures have been identified. This is because such institutions have a greater capacity to overcome existing imperfections than entities operating under market conditions. The legal regulations for such institutions in principle emphasise that their activities should be concentrated only in areas where market failures are identified and are therefore inadequately supported by commercial providers of financing.[11]

[11] Communication from the Commission to the European Parliament and the Council of 22 July 2015 – Working together for jobs and growth: the role of National Promotional Banks (NPBs) in supporting the Investment Plan for Europe, Brussels (COM/2015/0361 final).

The activities of public development finance institutions should focus on the following market segments (Schmit et al., 2011; Skuza, 2015f):
1) financing of small and medium-sized enterprises, environmental investments, innovation;
2) participation in projects in line with European Union policies, including those co-financed by international finance institutions, e.g. the European Investment Bank, the European Bank for Reconstruction and Development;
3) financing of local government units;
4) financing areas of a social nature, e.g. social housing, projects in education or combating unemployment;
5) financing export taking into account international regulations.

Bearing in mind the definition of "public development finance institutions" at the level of European Union law, the Author points to Article 2, section 1, item 3 of the Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013 — the European Fund for Strategic Investments.[12] According to this provision, a national promotional bank or institution means a legal entity carrying out financial activities on a professional basis which is given a mandate by a member state or a member state's entity at a central, regional or local level, to carry out development or promotional activities. The above definition is, in the Author's opinion, very general and it can hardly be inferred from it as to the possibility of creating legal regulations defining the rules for the operation of such an entity. In the context of public development finance institutions, however, it makes more sense to refer to the regulations contained in Article 429a, section 2 of the CRR. According to these regulations relating to the rules for the determination of certain prudential indicators, it is an institution[13] (with the profile of a credit institution) that meets strictly defined conditions together, namely:
1) it has been established by a member state's central government, regional government or local authority;
2) its activity is limited to advancing specified objectives of financial, social or economic public policy in accordance with the laws and provisions governing that institution, including articles of association, on a non-

[12] OJ EU L 169 of 1 July 2015, p. 1, as amended.
[13] The provisions of the CRR mainly apply to credit institutions.

-competitive basis; public policy objectives may include the provision of financing for promotional or development purposes to specified economic sectors or geographical areas of the relevant member state;
3) its goal is not to maximise profit or market share;
4) in respect of which, subject to Union State aid rules, the central government, regional government or local authority has an obligation to protect the credit institution's viability or directly or indirectly guarantees at least 90% of the credit institution's own funds requirements, funding requirements or promotional loans granted;
5) it does not take covered deposits as defined in point (5) of Article 2(1) of Directive 2014/49/EU on deposit guarantee schemes[14] or in national law implementing that Directive that may be classified as a fixed term or savings deposits from consumers as defined in point (a) of Article 3 of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC.[15]

The establishment of a public development finance institution and its legal form in a member state of the European Union is a sovereign decision of each member state. However, it is essential that rules are put in place to prevent potential negative effects from materialising, such as[16]:
1) losses incurred by the State as guarantor of the liabilities of a public development finance institution, stemming from the application of substandard credit risk assessment standards;
2) misallocation of resources due to political decisions;
3) supporting undertakings in financial difficulty;
4) crowding out of the entities operating under market conditions.

The areas of involvement of public development finance institutions should be limited to addressing market failures. However, such an approach cannot be interpreted as involvement in inherently unprofitable projects. Their activities should be profitable (although they should not be focused solely on profit) to maintain a stable financial situation without the need for permanent recapitalisation by the state due to losses incurred.

[14] OJ EU L 173 of 12 June 2014, p. 149, as amended.
[15] OJ EU L 133 of 22 May 2008, p. 66, as amended.
[16] Communication from the Commission to the European Parliament and the Council of 22 July 2015, op. cit.

Activities of Public Development Finance Institutions in the Context of State Aid Issues and Statistical Classification

It should be emphasised that the resources of public development finance institutions are state resources within the meaning of Article 107, section 1 of the Treaty on the Functioning of the European Union (hereinafter TFEU).[17] The activities of such entities are classified as state aid if all of the following conditions are met together, i.e.:

1) any aid is granted by a member state or through state resources in any form whatsoever;
2) it distorts or threatens to distort competition;
3) it favours certain undertakings or the production of certain goods;
4) it affects trade between member states.

In the area of state aid, it is important to distinguish between so-called first and second-level aid. First-level aid is the support that may be granted at the stage of the formation of a public development finance institution or its operation in the form of, for example, a state guarantee or recapitalisation (state – public development finance institution relationship). Such aid shall be considered to be conforming with the common market as long as such support does not impact distortion of competition, i.e. public development finance institutions will only operate in the identified market failure and their possible commercial operations will be properly separated and will not make use of such support (Lizak & Skuza, 2017). Second-level aid, on the other hand, is aid contained in the activities of public finance institutions (institution – client line of aid), which may or may not occur. The activities of public development finance institutions are categorised as State aid if the four criteria mentioned above and specified in Article 107(1) of the TFEU are met. These institutions can operate both on aid principles – based on acceptable legal systems (e.g. General Block Exemption Regulation, *de minimis*) or notified programmes, as long as all the above-mentioned prerequisites for state aid are met – and also on market principles – based on the so-called market economy operator test. The decisions on the approval of state aid issued by the European Commission contain a clause providing for a review after a certain period. Reassessment of the market failures and the remit is necessary to take account of economic development and the evolutions of the market and, by the same token, the evolution of market

[17] OJ EU C 326 of 26 October 2012, p. 47, as amended.

failures. At the request of a Member State, such an assessment is also possible *ex ante*[18] (Lizak & Skuza, 2017).

The activities of public development finance institutions should be accounted for outside the general government sector. However, in the event that credit decisions require government approval or the members of the bodies of such an institution (e.g. the management board) are employed by the government administration, the activities of such an institution would have to be marked as transactions of the government and local government sector. Detailed rules on the statistical recognition of public development finance institutions are contained in Eurostat's European System of National and Regional Accounts (ESA 2010) and guidance provided to Member States.[19]

With regard to the inclusion of public development finance institutions in European Union statistics, it can be pointed out, for example, that, for the sake of transparency in the activities of such institutions, the European Commission has drawn attention to the need to separate development activities from commercial activities (e.g. in the United Kingdom and Latvia). In practice, however, the separation of commercial activities into another entity only included the case of the British Business Bank. This is because the European Commission considered that, in its commercial part, it would operate in a sector where commercial banks are also active and therefore no market failure (commercial financing of the SME sector) was found to exist. Meanwhile, the development part of the British Business Bank (the so-called Mandated Arm) can operate both through aid schemes (based on the *General Block Exemption Regulation* or *de minimis*) and on market conditions (with the proviso that in the market schemes that are introduced, mechanisms must be put in place to ensure that private sector entities are not crowded out (Lizak & Skuza, 2017). In contrast, in the case of another British institution, i.e. the Green Investment Bank, the European Commission acknowledged that the entire operations of this institution were categorised as operations within the market failure, without the need for any division (even in the area of internal regulations of an organisational

[18] Commission Decision of 4 July 2014 on the approval of State aid pursuant to Articles 107 and 108 of the TFEU. Cases to which the Commission does not object (OJ EU C 210, SA.37554, p. 1).

[19] Retrieved from: http://ec.europa.eu/eurostat/documents/3859598/5925693/KS-02-13-269-EN.PDF, http://ec.europa.eu/eurostat/documents/3859598/5937189/KS-GQ-14-010-EN.PDF/c1466fde-141c-418d-b7f1-eb8d5765aa1d, http://ec.europa.eu/eurostat/web/government-finance-statistics/methodology/advice-to-member-states [Retrieved on 1 October 2022]; Communication from the Commission to the European Parliament and the Council of 22 July 2015, op. cit.

nature). On the other hand, in the operations of the Latvian Hipoteku Banka, the problem identified by the European Commission was related to the lack of adequate separation of development and commercial operations, i.e. insufficient organisational, financial and accounting division was found within the institution.[20] In view of the above, the European Commission accused Hipoteku Banka of unlawful use of financial means from the state recapitalisation for commercial operations (mortgages), which in the opinion of the European Commission distorted competition in the European Union market. As a result, Hipoteku Banka (currently operating as Altum,[21] a so-called Financial Development Institution) was obliged to sell loan portfolios recognised as commercial (Lizak & Skuza, 2017).

Summary and Conclusion

1. European Union regulations introduce a very vague legal definition of a public development finance institution, which only indicates the direction of such institutions. More useful are the solutions relating to prudential regulations (CRR) and soft law,[22] which implicitly indicate what rationale should be followed in their establishment. The most important of these are operating within an identified market failure and not crowding out with their activities entities operating under market conditions.
2. Public development finance institutions can operate as mandated or on their own account. However, the fact that a public development finance institution operates on its own account under market conditions does not necessarily imply that it is of commercial nature. This is because activities carried out under commercial principles are directed solely at maximising profit, irrespective of the scope of activities carried out, and relate to the overall objective of doing business. The development activity may be of an aid nature (it must then meet all four prerequisites for state aid as set out in the TFEU) and must always be carried out within an identified market failure.

[20] The Decision 2015/1582 of 17 July 2013 on the measures SA.30704 — 12/C (ex NN 53/10), which Latvia has implemented for Latvian Mortgage and Land Bank — 'commercial segment' (OJ UE L 250 of 25 September 2015, p. 1).

[21] More on the establishment and functioning of this institution in Chapter Two.

[22] Communication from the Commission to the European Parliament and the Council of 22 July 2015, op. cit.

3. In the field of European Union law regulations on capital requirements, there are solutions indicating the scope of activities and the organisation of public development finance institutions. The CRR identifies the legal and organisational conditions of such institutions enabling a specific approach to the application of certain prudential standards to their receivables. The basic rationale enabling this approach is the developmental purpose of the operation, guarantees from the state and the inability to fund the operation with consumer deposits.
4. The National Recovery and Resilience Plan, the post-crisis challenges posed by the COVID-19 pandemic and the turmoil in the commodities market require increased involvement of public development finance institutions. Ultimately, in the Author's opinion, the solution for their establishment and functioning, taking into account the institutions already operating, should be regulated by a separate directive for the avoidance of doubts in the principles of their functioning, especially in the context of state aid and inclusion (or not) of their activities in the so-called General Government sector.

Chapter 2
Examples of Public Development Finance Institutions in Selected Central and Eastern European States

In this chapter, the Author takes a closer look at the functioning of public development finance institutions in the Central and Eastern European countries, i.e. Bulgaria, Croatia, the Czech Republic, Hungary, Latvia, Lithuania, Slovakia and Slovenia. In the Author's opinion, the research sample adopted is an appropriate benchmark for Bank Gospodarstwa Krajowego because of the need for the countries whose legislation has been analysed herein to undergo systemic and economic transformation.

Bulgaria

In Bulgaria, the Bulgarian Development Bank (hereinafter BDB or the Bank) operates under the Bulgarian Development Bank Act[23]. This bank is a credit institution within the meaning of the CRD IV operating in the form of a joint stock company with at least 51% State Treasury participation. Its headquarters are in Sofia, but it has the ability to open representative offices and branches.

The objectives of the BDB's activities are the following:

1) supporting, stimulating and developing the economic, export and technological potential of small and medium-sized enterprises by facilitating their access to financing;

[23] Закон за Българската банка за развитие. Държавен вестник, бр. 43 of 29 April 2008. Retrieved from: https://bbr.bg/bg/zakon-za-bbr/ [Retrieved on 9 August 2022].

2) raising domestic and foreign funds and managing medium and long-term measures necessary for the fulfilment of the country's economic development and the management of such measures;
3) financing of public investments and projects of priority importance in the country's economy;
4) raising funds and project management from international finance institutions;
5) raising funds and providing financing for tasks aimed to bridge regional development gaps.

In its operations, BDB is guided by the principles of transparency, profitability, efficiency, market compliance and best banking practices.

The priorities of the BDB's activities must be in line with the policy of the Council of Ministers of the Republic of Bulgaria in the area of small and medium-sized enterprises. The main activities of the BDB in this area include the following:

1) export loans to small and medium-sized enterprises;
2) offering instruments related to the stimulation of export, e.g. guarantees of participation in tenders, performance bonds, advance payment guarantees, guarantees of repayment of exporters' credits, etc;
3) financing of small and medium-sized enterprises through equity commitment through the Capital Investment Fund;
4) providing credit for the operations of small and medium-sized enterprises;
5) providing guarantees to supplement collateral, for small and medium--sized enterprises to facilitate obtaining loans directly or through the National Guarantee Fund;
6) refinancing of banks lending to small and medium-sized enterprises;
7) refinancing of foreign banks providing loans to buyers of goods or services of small and medium-sized enterprises;
8) financing of foreign investment of small and medium-sized enterprises;
9) management of European Union funds;
10) advisory services related to drafting projects involving European Union funds;
11) advisory services to small and medium-sized enterprises on optimising their capital structure;
12) supporting activities related to governmental, local governmental or international projects aimed at the economic development of the country.

The BDB performs the above-mentioned banking activities under the provisions of the Credit Institutions Act on the basis of its banking licence granted by the Bulgarian National Bank.[24]

When implementing its policy of supporting small and medium-sized enterprises, the Council of Ministers may set strategic goals and objectives for the BDB and, at the request of the Minister of Economy, also approves a three-year strategy for the operation of the BDB in line with the state's economic policy. The BDB may not carry out activities other than those set out in the Bulgarian Development Bank Act, unless this is necessary in connection with the conduct of such activities or debt collection. However, it may establish or acquire companies to provide ancillary services.

The total holdings of BDB in subsidiaries other than banks, investment intermediaries, insurance companies or finance institutions may not exceed 40% of its equity and, including investments in real estate and other fixed assets, may not exceed 100% of its own funds.

The powers of the State Treasury at the general meeting are exercised by the Minister of Economy. By 31 May, the BDB shall submit an annual activity report for the previous year to the Minister of Economy, which is communicated to the Council of Ministers. The shares of BDB held by the State Treasury must represent at least 51% of the registered capital. In addition to the State Treasury, the shares of BDB may be held by the Council of Europe Development Bank, the European Investment Bank and the European Investment Fund, public development finance institutions in the European Union Member States. The shares of BDB cannot be pledged, are subject to dematerialisation and carry one vote at the general meeting.

The BDB creates a reserve fund in accordance with the provisions on commercial companies of the Trade Act. The Bank may not pay dividends before the reserve fund is sufficiently covered and where this would be contrary to the prudential requirements set by the Bulgarian National Bank.

The sources of funding for the BDB activities are the following:

1) BDB's operating income;
2) proceeds from bonds issued by BDB;
3) loans from domestic, foreign and international institutions;
4) financial resources from European Union funds and special-purpose funds for the development of economic sectors and geographical regions;
5) other sources.

[24] Закон за кредитните институции – Държавен вестник, бр. 59 of 21 July 2006. Retrieved from: https://www.lex.bg/laws/ldoc/2135541971 [Retrieved on 9 August 2022].

State guarantees may only be issued to finance the activities of the BDB using a bond or loan facility if the period of such financing exceeds one year. The Bank's liabilities on such account are guaranteed by the State and become its obligation in the event that the Council of Ministers has granted a guarantee on behalf of and for the account of the State in accordance with the Constitution of the Republic of Bulgaria and the regulations on state debt. The request for the guarantee is submitted by the BDB's supervisory board – through the Minister of Economy – to the Minister of Finance.

The Capital Investment Fund is a subsidiary of BDB, which holds at least 51% of the capital of the Capital Investment Fund. Shareholders of the Capital Investment Fund may also be domestic, foreign or international financial or credit institutions. Conversely, the Capital Investment Fund's activities are guided by the priorities of the BDB and include the following:

1) equity participation in the small and medium-sized enterprise sector;
2) advisory services on the capital structure of small and medium-sized enterprises, consultancy and business transformation services;
3) investment consulting services;
4) advisory services for the management of pools of securities of small and medium-sized enterprises.

The Capital Investment Fund can participate in equity in small and medium-sized enterprises to increase their competitiveness, provide funds for research and development, increase production capacity, finance before raising funds on the regulated market and use European Union funds.

The fund may participate in equity in small and medium-sized enterprises to an extent not exceeding 34% of the shares in any one entity. In addition, the total participation in respect of any one undertaking must not exceed 10% of the Fund's capital.

The National Guarantee Fund is a subsidiary of the BDB, in which the BDB holds at least 51% of the capital. Shareholders of the National Guarantee Fund may also be domestic, foreign or international financial or credit institutions. Conversely, the National Guarantee Fund's activities are guided by the priorities of the BDB and include the following:

1) providing guarantees to supplement the collateral for loans to small and medium-sized enterprises;
2) offering other instruments for small and medium-sized enterprises, such as guarantees of participation in tenders, performance bonds, advance payment guarantees, guarantees of repayment of exporters' credits;

3) providing guarantees to supplement the collateral for loans to small and medium-sized enterprises carrying out research and development activities and for the implementation of research results.

In principle, guarantees issued by the National Guarantee Fund can cover up to 50% of the commitment and, for certain Rural Development Programmes, up to 80% of the commitment. The maximum amount of guarantees granted to a single entity by the National Guarantee Fund may not exceed 10% of the Fund's capital.

The BDB can only be put into liquidation by way of an act.

Croatia

In the Republic of Croatia, the function of a public development finance institution is performed by the Croatian Bank for Reconstruction and Development (hereinafter HBOR or the Bank), based in Zagreb. HBOR is a financial institution with the special status of a legal entity established under a separate act (Zakon o Hrvatskoj banci za obnovu i razvitak; hereinafter HBOR Act) and is not subject to registration in the court register.[25] HBOR cannot be declared bankrupt or liquidated and can only cease to operate under the provisions of an enacted separate act.

Unless otherwise provided in the regulations on HBOR, the provisions of the Zakon o trgovini (relating to the operation of commercial companies) and the provisions of the Zakon o bankama (hereinafter referred to as the Banking Act) shall apply to its activities, except for the provisions concerning the central bank's approval for the provision of banking and other financial services, as well as the establishment of branches and legal entities, banking supervision, deposit guarantee, liquidation and bankruptcy.[26] HBOR is also not subject to the provisions on maintaining the reserve compulsory

[25] Zakon o Hrvatskoj banci za obnovu i razvitak, NN 138/06, 25/13. Retrieved from: https://www.zakon.hr/z/570/Zakon-o-Hrvatskoj-banci-za-obnovu-i-razvitak [Retrieved on 6 February 2022].

[26] Zakon o bankama, NN 84/2002 of 17 July 2002. Retrieved from: https://narodne-novine.nn.hr/clanci/sluzbeni/2002_07_84_1388.html [Retrieved on 6 February 2022]; Zakon o osiguranju, NN 30/15, 112/18, 63/20, 133/20 of 10 December 2020. Retrieved from: https://www.zakon.hr/z/369/Zakon-o-osiguranju [Retrieved on 6 February 2022]; Zakon o trgovini, NN 87/08, 96/08, 116/08, 76/09, 114/11, 68/13, 30/14, 32/19, 98/19, 32/20 of 20 March 2020. Retrieved from: https://www.zakon.hr/z/175/Zakon-o-trgovini [Retrieved on 6 February 2022]; Zakon o radu, NN 93/14 of 30 July 2014. Retrieved from: https://narodne-novine.nn.hr/clanci/sluzbeni/2014_07_93_1872.html [Retrieved on 6 February 2022].

at the central bank and limiting the scope and growth rate of deposits, the provisions on the organisation and functioning of state administrative bodies and the on public servants, concerning the conclusion of credit and guarantee transactions of non-budgetary users, and insurance regulations.[27] HBOR is also not subject to corporate income tax.

HBOR can incorporate companies and be a partner/shareholder in the country and abroad. It may also be a member of international finance institutions and international organisations responsible for areas of economic development stimulation and participate in their work. Participation in companies and membership in organisations is decided by the supervisory board.

The Bank is liable for its obligations with all its assets. Furthermore, the Republic of Croatia guarantees HBOR's obligations unconditionally, irrevocably and on the first call and without the need to issue a separate guarantee document. The liability of the Republic of Croatia as guarantor for the obligations of HBOR is joint and several and unlimited.

Through its activities, the Bank supports sustainable and balanced economic and social development, in line with the strategic objectives of the Republic of Croatia. HBOR's activities include primarily the following:

1) financing of economic recovery and development;
2) funding infrastructure;
3) export promotion;
4) supporting the development of small and medium-sized enterprises;
5) supporting environmental protection;
6) insurance for the export of goods and services against non-market risks.

In order to carry out these activities, HBOR:

1) provides loans and accepts deposits;
2) provides bank guarantees;
3) enters into insurance and reinsurance contracts;
4) invests in debt and equity instruments;
5) performs other financial activities and services to fulfil statutory tasks.

The activities of insuring the export of goods and services against non-market risks and concluding the insurance and reinsurance contract are performed by HBOR in the name and on behalf of the Republic of Croatia. In addition, the government of the Republic of Croatia may entrust HBOR with the performance of other financial activities if it considers that this is

[27] Zakon o osiguranju, NN 30/2015, 112/18, 63/20, 133/20, op. cit.

in the interest of the State. All of these actions and activities are carried out by HBOR in accordance with state aid regulations.

HBOR carries out its activities directly or through banks or other legal entities. Loans and guarantees granted, as well as other forms of HBOR activity, must be secured in a manner appropriate to standard banking operations. The Bank minimises the risk of its activities by following principles similar to those set out for standard banking operations. It can raise funds by issuing debt securities and borrowing on domestic and international markets.

The share capital of HBOR is HRK 7,000,000,000 and consists of shares of equal nominal value, which cannot be divided, transferred or pledged and can only be owned by the Republic of Croatia.

The Bank does not operate for profit. The profit is allocated to increase the HBOR reserve capital. If, at the request of the Council of Ministers of the Republic of Croatia, HBOR approves financing conditions that deviate negatively from market conditions, the difference in the amount of revenue shall be made up from the state budget of the Republic of Croatia.

The HBOR bodies are the management board and the supervisory board.

The board of directors of HBOR consists of three members, who, including the President, are appointed and dismissed by the supervisory board. The term of office for the president and board members is five years, with the possibility of reappointment. The management board conducts the affairs and disposes of HBOR's assets in accordance with the HBOR Act and the by-laws. The bank is jointly represented by the president and one or two members of the management board. The management board may authorise other persons to represent the entity in certain matters. The board takes decisions by a simple majority of all members. The president of the management board directs and presides over its meetings, harmonises the powers and duties of HBOR and reports to the supervisory board on behalf of the management board. Members of the management board have the powers and duties conferred upon them by a decision of the president of the management board. The duties of the members of the management board may be changed during their term of office. The rights and duties of the president and members of the management board, including remuneration, are defined by the contract between the president and HBOR, represented by the president of the supervisory board.

The supervisory board of the HBOR is composed of ten members. It is composed of six ministers of the Republic of Croatia, of which the minister in charge of finance, the minister competent for economic affairs and the minister in charge of regional development and EU funds are mandatory members of the supervisory board, while the other three ministers are

appointed by the Council of Ministers. These are the ministers responsible for tourism, agriculture, environment, construction, entrepreneurship and craftsmanship. The Croatian Parliament appoints three members and their permanent deputies to the Supervisory Board from among the MPs. In addition, the president of the Croatian Chamber of Commerce is also a member of the supervisory board by law. The minister competent for finance is the president of the supervisory board and the minister in charge of the economy is the vice-president. The members-ministers of the supervisory board and the president of the Croatian Chamber of Commerce, appoint their deputies who, in their absence, attend the meetings of the board.

The supervisory board decides on HBOR's business policy and strategy, oversees the management and makes other decisions on matters within its mandate. It may condition the conclusion of certain transactions or types of transactions on prior consent. It appoints and dismisses the president and members of the management board and represents HBOR to the president and members of the management board.

The by-laws of HBOR are adopted by the supervisory board by a qualified majority of three-quarters of the members present, but by at least a majority of all members. Other internal acts and decisions of the board are taken by a simple majority of the members present, with the mandatory presence of at least half of all members. The draft by-laws, as well as other acts and decisions, are submitted by the management board to the supervisory board for adoption.

The by-laws must include provisions on the following:

1) HBOR's object and registered office;
2) HBOR's bodies, the way they work and their remit;
3) internal structure and certain remit;
4) carrying out technical and financial control in the implementation of the loans;
5) organisation of internal control and audit.

In addition to the above-mentioned provisions, the by-laws may also contain regulations on other matters of particular relevance to HBOR's activities.

The supervisory board adopts HBOR's annual financial report, which is accepted after its approval by the Croatian Parliament. The audit of HBOR's financial statements is carried out by authorised audit firms, and the decision on the selection of the audit firm for the financial year is made by the supervisory board based on a proposal from the management board.

Czech Republic

In the Czech Republic, the activities of the public development finance institution are focused on supporting export.[28] However, it must be emphasised that state support must comply with state aid rules.[29] Activities are mainly directed at:

1) export credit insurance;
2) funded support mechanism (so-called officially supported financing);
3) export credit interest rate stabilisation mechanism.

Export credit insurance refers to activities carried out by Exportní garanční a pojišťovací společnost, a.s. (hereinafter referred to as the Export Insurance Company) in connection with export under a licence granted by the Czech National Bank, such as the following:

1) insurance for short-term export credits against the risk of non-payment of receivables arising from political risk or a combination of political risk and non-transferable commercial risk;
2) insurance for long-term export and investment credits against the risk of non-payment of receivables arising from political risks, or a combination of political risks and non-transferable commercial risks, or against the risk of non-payment of receivables arising from non-transferable commercial risks;
3) insurance of foreign investments against political risks;
4) insurance against losses to exporters and investors in connection with the preparation and conduct of business;
5) insurance for loans granted to a manufacturer or exporter to finance production for export against the risk of non-payment of the loan as a result of the manufacturer's or exporter's inability to meet the terms of the export contract;
6) insurance of bank guarantees or other services provided by the exporter's bank on behalf of the exporter to the foreign entity against the risk of non-performance by the exporter of its obligations under the export contract;

[28] Zákon č. 58/1995 Sb. Zákon o pojišťování a financování vývozu se státní podporou a o doplnění zákona of 14 March 1995. Retrieved from: https://www.zakonyprolidi.cz/cs/1995-58 [Retrieved on 10 May 2022].

[29] Zákon č. 215/2004 Sb. Zákon o úpravě některých vztahů v oblasti veřejné podpory a o změně zákona o podpoře výzkumu a vývoje of 2 April 2004. Retrieved from: https://www.zakonyprolidi.cz/cs/2004-215 [Retrieved on 10 May 2022].

7) insurance against the risk of loss arising from a decrease in the exchange rate of the Czech koruna against foreign currencies at the date of payment of the insurance claim and against the difference between the exchange rates applicable at the date of conclusion of the contract and the date of payment of the insurance claim;
8) reinsurance business consisting of the assumption of the various risks listed in items 1, 2 and 5, insured by foreign credit insurance companies;
9) reinsurance business to credit insurance companies in respect of export insurance against non-transferable political risks and non-transferable commercial risks;
10) insurance and reinsurance of loans to small and medium-sized entrepreneurs with permanent residence or registered office in the Czech Republic.

Officially supported financing, in turn, means short- and long-term financing and the provision of export credits, credits to finance production for export, credits to finance investments and projects, as well as the provision of short- and long-term financial services associated with export in the following form:

1) refinancing loan:
   a) to the exporter's bank and an importer's bank to finance export;
   b) to the exporter's bank and the manufacturer's bank to finance production for export;
   c) to the investor's bank to finance the investment;
   d) to the exporter's bank to finance projects;
2) direct credit:
   a) to the exporter, foreign company or foreign entity to finance export;
   b) to the exporter and the manufacturer to finance production for export;
   c) to the investor to finance the investment;
   d) to the exporter bank to finance projects;
   e) to a non-bank company to purchase the exporter's export-related receivables;
3) export-related financial services, including, in particular, the following:
   a) bank guarantees;
   b) opening of letters of credit and the payment and settlement system;
   c) hedging transactions;
   d) financing of local costs in the country of the importer's registered office or permanent residence.

The export credit interest rate stabilisation mechanism is defined as the compensation for the difference between the interest calculated at a fixed rate for export credits provided by the exporter's bank, in accordance with international arrangements for state-supported export credits, with a repayment period of at least two years and with interest determined on the basis of the 6-month market interest rate.

Export credit insurance is provided by the Export Insurance Company (hereinafter the Company). Such loans can be insured provided that the State is the sole shareholder of the Export Insurance Company. Unless otherwise stipulated in the regulations on export support, the regulations on the insurance industry's operations in the field of insurance (other than life insurance) and reinsurance apply to the Company's operations. In addition to the requirements set out in the Commercial Companies Act,[30] the memorandum of association of the Export Insurance Company shall include a prohibition on granting permission to employees to engage in business or any other form of gainful activity, the scope of which would coincide with its activities.

Funds for export credit insurance come from the profit of the Export Insurance Company or subsidies from the state budget, which may be provided depending on the structure of outstanding insurance liabilities. Reserve provisions are created in accordance with the regulations governing the creation of reserves for insurance companies. The Export Insurance Company is also obliged to set up a separate reserve provision for export credit insurance loss compensation. When insuring export credit risks, the Company submits the basic economic parameters of the newly introduced export credit risk insurance types to the Minister of Finance for approval.

The Export Insurance Company cannot undertake to insure those export credit risks that exceed its insurance capacity. This term shall be construed as the upper limit of outstanding insurance liabilities under insurance contracts and insurance commitment contracts by which the Company is contractually bound during the period ending at the end of the calendar year in question. A limit is set in the state budget for a given year that determines its insurance capacity, as well as the amounts of subsidies from the state budget for the compensation of insurance funds.

The Export Insurance Company can insure individual export credit risks up to 20% of the insurance capacity. With the approval of the Minister of Finance and the Minister of Industry and Trade, the Company may insure

[30] Zákon č. 90/2012 Sb. Zákon o obchodních společnostech a družstvech (zákon o obchodních korporacích) of 25 January 2012. Retrieved from: https://www.zakonyprolidi.cz/cs/2012-90 [Retrieved on 10 May 2022].

individual export credit risks up to 40% of the insurance capacity. However, with the approval of the Council of Ministers, it may insure individual credit risks in excess of 40% of the insurance capacity.

For insurance transactions with unusually high risks, the Minister of Finance shall determine by regulation the ratio of the sum of reserves and funds and outstanding insurance liabilities and the share of the Export Insurance Company in insurance claims paid using such reserves and funds. Particularly high insurance risks are understood to be risks that are not normally insurable, arising from political risks and a combination of commercial and political risks, as well as the risk of credit default due to a manufacturer's or exporter's inability to meet the terms of an export contract fulfilment of which is in the state's interest.

The Export Insurance Company submits information on export credit insurance annually to the Chamber of Deputies of the Parliament of the Czech Republic, which should include, in particular, the data on:

1) Export Insurance Company, in particular, its share capital and changes in the composition of its management and supervisory boards, as well as its balance sheet;
2) export credit insurance, in particular an analysis of this type of insurance, including broken down by territory and sector, and the use of funds received from the state budget, as well as data on the ratio of demand for this type of insurance to the insurance capacity of the Export Insurance Company and a forecast of the development of this insurance.

The Export Insurance Company may only carry out insurance and reinsurance activities within the scope of the authorisation granted by the Czech National Bank. The provisions governing the insurance industry shall not apply to the activities of the Export Insurance Company in relation to:

1) assessments of the entities holding shares in the Export Insurance Company and their changes;
2) sources of assets or other financial resources of the Export Insurance Company;
3) the provision of non-life insurance in excess of the authorisation granted;
4) the possibility of opening a branch in the territory of another Member State.

The insufficient capital required to meet the solvency capital requirement is covered by a state guarantee. The amount of share capital under the act governing the insurance industry must allow for the sustainable discharge of liabilities and must not be less than 30% of the solvency capital requirement.

The company may not create legal entities or acquire shares in legal entities, with the following exception:
1) Česká exportní banka, a.s. (hereinafter the Export Bank);
2) the acquisition of shares in a legal person that is a debtor, but only for the period necessary to recover the debt from the debtor;
3) a legal person carrying out insurance and reinsurance activities in the field of credit insurance and activities related to insurance and reinsurance activities, in accordance with the act governing the insurance industry.[31]

The Czech National Bank supervises the Export Insurance Company with regard to the regulations governing the activities of the insurance industry, with the proviso that the provisions of the Act governing the activities of the insurance industry with regard to the imposition of compulsory administration, the transfer of the insurance portfolio or a part thereof, the transfer of the reinsurance contract portfolio or a part thereof, the withdrawal of the authorisation for the domestic insurance company and the domestic reinsurance company, the conversion of the domestic insurance company or the domestic reinsurance company, as well as the provisions on co-insurance in the Member States do not apply to the activities of the Export Insurance Company.

Officially supported financing in the Czech Republic is provided by the Export Bank. The condition for officially supported financing is that the state owns at least two-thirds of the Export Bank. The state exercises shareholder rights through the relevant ministries. Unless otherwise stipulated in the regulations on export support, the Export Bank shall be governed by the provisions of Zákon o bankach č. 21/1992 Sb. (hereinafter the Banking Act).[32]

The memorandum of association of the Export Bank should include the following:
1) provisions on the allocation of profits to replenish funds to ensure the operation of the Export Bank;
2) a prohibition on granting permission to employees to engage in business or any other form of gainful activity, the scope of which would coincide with the activities of the Export Bank.

The Export Bank provides officially supported financing and carries out activities in accordance with the authorisation granted under the provisions of the Banking Act under the conditions applicable in international markets. It

[31] Zákon č. 277/2009 Sb. Zákon o pojišťovnictví of 22 July 2009. Retrieved from: https://www.zakonyprolidi.cz/cs/2009-277 [Retrieved on 10 May 2022].

[32] Zákon č. 21/1992 Sb. – Zákon o bankach of 20 December 1991. Retrieved from: https://www.zakonyprolidi.cz/cs/1992-21 [Retrieved on 10 May 2022].

primarily obtains the funds for the officially supported financing on the financial markets, while the costs associated with providing the financing are mainly covered by a portion of the interest income remaining at its disposal equal to a fixed margin on the interest rate applicable to the officially supported financing.

The Export Bank may not hold shares in legal entities, with the exception of:

1) legal persons engaged in the business of making and transferring interbank payments and transmitting interbank information;
2) share in legal entities which the Export Bank has acquired and holds for a period of up to one year as of the date of acquisition in connection with the exercise of the collateral;
3) a legal entity established for a limited period of time for the provision of officially supported financing and the raising of funds, in which the Export Bank is or will be a majority shareholder at the time of acquisition.

The Export Bank's losses resulting from the provision of officially supported financing are covered by the state budget. For that, the bank applies to the Minister of Finance for a subsidy to cover losses.

The Export Bank submits information on officially supported financing annually to the Chamber of Deputies of the Parliament of the Czech Republic, which should include, in particular, the data on:

1) the Export Bank, in particular on the share capital, changes in the composition of the management and supervisory boards, as well as financial data (balance sheet, profit and loss account);
2) the provision of officially supported financing, in particular analysis, including broken down by territory and sector, and the use of funds received from the state budget, as well as the ratio between demand for officially supported financing and the Export Bank's ability to meet it, and the projected development of officially supported financing.

The conditions for the stabilisation of export credit interest rates are the following:

1) export credit compliance with international regulations;
2) agreeing on a fixed interest rate for export credits;
3) export credit risk insurance by the Export Insurance Company;
4) the exporter may not be a foreign company.

The Export Bank performs the function of paying and clearing agents under the export credit interest rate stabilisation mechanism. The Minister of Finance is required to provide the Export Bank with funds for the operation of the export credit interest rate stabilisation mechanism.

The exporter's bank shall submit to the Export Insurance Company an application for interest rate stabilisation or a notice of excess interest rate transfer within 15 days after the expiry of 6 months as of the date of the first drawdown of the export credit, and thereafter at 6-month intervals between successive drawdowns or at the end of export credit drawdowns and at 6-month intervals from the first day of the export credit repayment period until full repayment.

In the event of an excess in the settlement of interest, the exporter's bank is obliged to transfer the amount of such excess to the paying and clearing agent (Export Bank), within 15 days of the date on which the notice of transfer of excess interest is sent. In the event that the bank acquires the right to interest rate stabilisation, the Export Insurance Company instructs the Export Bank to proceed with the payment of the difference in interest rates so that the payment is made within 30 days as of the date of service of the request for interest rate stabilisation.

The Export Insurance Company shall notify the Minister of Finance by the end of the following calendar month at the latest of the applications submitted by the exporter's bank for interest rate stabilisation, the bank's notifications of the transfer of excess from interest rate differences and the submitted payment orders for interest rate stabilisation for the previous quarter.

State guarantees cover the obligations of the following entities:

1) the Export Insurance Company – for export credit risk insurance; if the value of the share capital of the Export Insurance Company decreases below the amount of the solvency capital requirement or below the amount of the minimum capital requirement; the Minister of Finance will recapitalise the Export Insurance Company in order to ensure that the solvency capital requirement or the minimum capital requirement is satisfied – within 6 months as of the date of receipt of the request for recapitalisation from the Export Insurance Company;
2) the Export Bank – for the repayment of funds it received and liabilities from its other transactions in the financial markets.

State guarantees are unconditional and irrevocable. The Minister of Finance is authorised to confirm the state guarantee in writing. In the event of a payment made by the state under a guarantee granted, the Export Insurance Company and the Export Bank are obliged to settle their obligations to the state on account of such payment by assignment to the Minister of Finance of the receivables taken over in connection with export credit risk insurance or officially supported financing, in an amount corresponding to the state's share in the repayment of the obligations arising from the guarantee provided.

The Export Insurance Company is obliged to apply to the Minister of Finance for an increase in the share capital as soon as it is determined that the amount of the share capital is insufficient to satisfy the solvency capital requirement or the minimum capital requirement, and in the event that the Export Insurance Company has been requested by the Czech National Bank to submit a recovery plan. Together with the application, the Export Insurance Company shall include an explanation of the reason for the decrease in share capital, including projections of the development of the solvency capital requirement and minimum capital requirement over the next three years, as well as proposed actions to reduce its level of risk.

Lithuania

In Lithuania, the function of the public investment support institution is performed by the joint stock company Viešųjų Investicijų Plėtros Agentūra (hereinafter the Public Investment Development Agency or the Company). In 2012, the Council of Ministers of the Republic of Lithuania decided to:[33]

1) establish a joint stock company – the Public Investment Development Agency;
2) mandate this action to the Minister of Finance;
   a) draw up and sign the Company's articles of association and other documents relating to its establishment;
   b) in performance of the state's asset obligations indicated in the Company's articles of association, transfer the amount of LTL 350,000 from the allocated amount approved by the Minister of Finance as the state's contribution to the Company's share capital. The Company's shares give the Treasury 100% of the voting rights at the general meeting of shareholders;
   c) represent the State Treasury in the Company in order to exercise the State's property and non-property rights as a shareholder of the Company.

The Company is a legal entity operating in accordance with the provisions of the Lietuvos Respublikos akcinių bendrovių įstatymas (hereinafter referred to as the Act on Joint Stock Companies of the Republic of Lithuania) and

[33] Dėl Uždaroji akcinė bendrovė Viešųjų investicijų plėtros agentūra – 2012 m. lapkričio 28 d. LR Vyriausybės nutarimu, Nr. 1428 of 28 November 2012. Retrieved from: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.438353?jfwid=eilnns5zf [Retrieved on 31 March 2022].

other legal acts of the Republic of Lithuania, the articles of association and internal documents of the Company.[34]

It should be noted that the Company operates intending to make a profit by engaging funds for investment in the public sector, modernisation of public infrastructure and public services, as well as providing financial services related to such funds.

The company achieves its objectives by:

1) introducing financial instruments, participating as a unit trust (fund of funds), financial intermediary or in other forms;
2) The company achieves its stated objectives through the management and provision of financial services that are financed by the funds, i.e. the provision of loans, financial securities and financial guarantees to entities implementing urban development, public infrastructure and energy efficiency projects;
3) evaluating, selecting and supervising the implementation of public sector projects financed by financial instruments;
4) attracting private investment in the public sector;
5) promoting financial instruments, providing methodological assistance in the development of projects using financial instruments.

The Company's shares are dematerialised. In turn, shareholders are entitled to the following non-property rights:

1) the right to attend the general meeting;
2) the right to vote at the general meeting;
3) the right to receive certain information about the Company;
4) the right to initiate legal proceedings for the rectification of damage resulting from the non-performance or improper performance of duties by the Company's managing director, members of the Company's management or supervisory board of the Company, which are stipulated by the legal acts of the Republic of Lithuania and the Company's Articles of Association, as well as in other cases stipulated by separate legislation;
5) other non-property rights indicated in separate provisions of generally applicable law.

[34] Lietuvos Respublikos akcinių bendrovių įstatymas, Nr. VIII-1835 of 13 July 2000. Retrieved from: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.106080/asr [Retrieved on 31 March 2022]; Lietuvos respublikos valstybės ir savivaldybių turto valdymo, naudojimo ir disponavimo juo įstatymas, Nr. VIII-729 of 12 May 1998. Retrieved from: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/1521eca2b65f11e3b2cee015b961c954 [Retrieved on 31 March 2022].

The Company's shareholders have the following property rights:
1) the right to a portion of the Company's profits (dividends);
2) the right to participate in the distribution of the Company's funds in the event that the Company's share capital were to be reduced in order to make a payment to shareholders;
3) the right to receive part of the Company's assets in the event of liquidation;
4) the right to receive shares free of charge in the event of an increase in the Company's share capital from the Company's funds;
5) pre-emptive right to purchase shares issued by the Company, unless the general meeting, by a majority of three-quarters of the votes, waives the pre-emptive right;
6) other property rights indicated in the laws of the Republic of Lithuania.

The Company has the following bodies:
1) the general meeting;
2) the supervisory board;
3) the management board;
4) the managing director of the Company.

The general meeting has the exclusive right to:
1) amend the Company's articles of association, unless otherwise provided by separate regulations;
2) change the registered office of the Company;
3) appoint and dismiss the Company's supervisory board and its members;
4) select the audit firm for the audit of the Company's annual financial statements;
5) approve the financial statements;
6) approve the interim financial statements prepared for the purpose of deciding on the allocation of the dividend for a period of less than a financial year;
7) decide on the distribution of the dividend for a period of less than a financial year;
8) decide on the increase of the Company's share capital;
9) determine the series, number and nominal value of the Company's shares and the minimum issue price;
10) decide on the waiver of the pre-emptive right to acquire the Company's shares from a particular share issue;
11) decide on the decrease of the Company's share capital;
12) decide on the conversion of the Company's shares of one series into shares of another series;

13) decide on the liquidation of the Company;
14) delect the liquidator for the Company;
15) decide on the reorganisation or division of the Company and approve the terms and conditions of such reorganisation or division;
16) decide on the distribution of profit (dividend);
17) decide on the establishment and use of reserve provisions;
18) decide on the issue of convertible debentures;
19) decide on the acquisition of the Company's own shares;
20) decide on the reorganisation of the Company;
21) decide on the restructuring of the Company;
22) grant the Company's governing bodies the right to dispose of all the Company's assets;
23) take other decisions which do not fall within the remit of the Company's bodies.

A resolution of the general meeting shall be deemed to have been adopted if more votes are cast in favour than against. A majority of two-thirds or three-quarters of the votes of the shareholders present at the general meeting is required for certain decisions set out in the Commercial Companies Act.

The management board of the Company is obliged to convene an extraordinary general meeting in the following cases:
1) the Company's equity falls below the amount of the Company's share capital prescribed by the law of the Republic of Lithuania;
2) the Company's financial resources are not sufficient to ensure its stable operations;
3) in other cases specified in the Commercial Companies Act and other acts of the Republic of Lithuania.

The supervisory board of the Company is the collective body managing the Company, and supervising its operations, and its method of operation is determined by the regulations adopted by the board. The supervisory board cannot delegate or assign to other bodies of the Company functions that are within the scope of its remit.

The supervisory board consists of three members, who are elected by the general meeting for a term of four years. It elects the chairperson of the supervisory board from among its members. The board is composed of:
1) two representatives of the Ministry of Finance of the Republic of Lithuania;
2) representative of UAB Investicijų ir verslo garantijos (hereinafter referred to as the Central Investment Management Agency).

Moreover, the supervisory board:

1) elects the members of the management board and dismisses them from office (in the event that the Company incurs a loss, the supervisory board is required to consider whether the members of the management board should continue to remain in office);
2) supervises the activities of the management board, the managing director and the deputy managing director;
3) makes proposals to the general meeting on the Company's operational strategy, the annual financial statements, the proposed distribution of profit (loss) and the evaluation of the performance of the management board, the managing director and the deputy managing director;
4) submit proposals to the general meeting concerning the draft resolution on the distribution of the dividend for a period shorter than the financial year, the interim financial statements, and the interim report prepared for such resolution;
5) submits proposals to the management board and the managing director to repeal their resolutions contrary to the acts and other laws, the articles of association of the Company and the decisions of the general meeting;
6) decides on other matters related to the supervision of the Company's operations.

The meetings of the supervisory board are convened by the chairperson of the supervisory board. They may also be convened by the board at the request of at least two-thirds of its members. The supervisory board may adopt resolutions if at least half of its members are present at the meeting. A resolution is deemed to have been adopted if more votes are cast in its favour than against it. A decision to dismiss a member of the management board requires the votes of more than two-thirds of the supervisory board members present at the meeting. Each member of the board shall have one vote. In the event of an equal number of votes cast in favour and against the proposal, the chairperson of the supervisory board shall have the casting vote.

The general meeting dismisses the supervisory board in its entirety or its individual members, and, if its individual members are dismissed, the general meeting shall appoint new members before the end of the board's term of office for the remainder of that term. Members of the Supervisory Board may resign before the end of their term of office by notifying the Company not less than 14 days in advance.

The management board is composed of five members, including the president. The management board is composed of representatives from the following institutions:

1) four representatives of the Ministry of Finance;
2) a representative of the Central Investment Management Agency.

The supervisory board elects the management board for a four-year term of office. During the election, each member of the board can vote either "in favour" of or "against" the proposed candidate. The candidates who receive more votes "in favour" are elected. Where the vote is for the election of individual members of the management board, they shall only be elected until the end of the term of office of the current management board.

The management board deliberates on the approval of the following:
1) the Company's operational strategy;
2) the Company's annual report;
3) the Company's interim report;
4) the Company's management structure and the positions of its employees;
5) positions which are staffed by a selection process;
6) regulations for branches and representative offices of the Company.

The management board makes decisions:
1) in the area of the procedure for the selection of the Company's managing director through a selection process, the election and dismissal of the director, the determination of his/her remuneration and other terms and conditions of the employment contract, as well as the approval of job descriptions, the granting of incentive bonuses;
2) on the establishment by the Company of other legal persons or on the subscription by the Company of shares in other legal persons;
3) on the establishment of branches and representative offices of the Company or on the termination of their activities, as well as on the appointment and dismissal of executive officers;
4) relating to the investment, transfer or lease of the Company's fixed assets (calculated separately for each type of transaction), the nominal value of which exceeds one-twentieth of the Company's share capital;
5) concerning the creation of a pledge or mortgage on the Company's fixed assets (calculated separately for each type of transaction), the nominal value of which exceeds 1/20 (one-twentieth) of the Company's share capital;
6) pertaining to hedging or guaranteeing the obligations of other persons in excess of 1/20 (one-twentieth) of the Company's share capital;
7) on the acquisition of fixed assets which price exceeds one-twentieth of the Company's share capital;

8) on other matters within the remit of the management board in accordance with the Lietuvos Respublikos akcinių bendrovių įstatymas (hereinafter referred to as the Act on Joint Stock Companies)[35] and decisions of the general meeting.

Moreover, the Company's management board:
1) examines materials presented by the managing director on the implementation of the Company's strategy, the organisation of the business and the financial standing of the Company;
2) examines materials presented by the managing director on the Company's economic performance, estimated profits and losses, accounting data, inventory and other changes in the Company's assets;
3) examines the Company's complete annual financial statements, the proposed distribution of profit (loss) and submits them together with the Company's annual report to the supervisory board at the general meeting;
4) examines the draft resolutions on the payment of the dividend for a period of less than one financial year and the interim financial statements drawn up for this decision;
5) is responsible for convening and conducting the general meeting in a timely manner;
6) submits any documents required by the Supervisory Board relating to the Company's operations;
7) respects the Company's trade secrets, including protecting confidential information that has been disclosed to members of the management board.

The management board may take decisions if at least two-thirds of its members are present. A resolution of the management board is deemed to have been adopted when more votes are cast in favour than against it.

The supervisory board may dismiss the management board in its entirety or its individual members before the end of their term of office.

The ordinary course of the Company's business shall be conducted by the managing director, who shall be elected by a selection process and dismissed by the Company's management board, or persons designated by it, who also act on behalf of the Company.

As part of his/her mandate, the managing director:
1) organises the day-to-day operations of the Company and pursues its objectives;

[35] Lietuvos Respublikos akcinių bendrovių įstatymas, Nr. VIII-1835, op. cit.

2) issues orders concerning the Company's operations;
3) concludes and terminates employment contracts with the Company's employees and determines their remuneration;
4) is responsible for the preparation of the Company's annual financial statements;
5) is responsible for drafting resolutions on the distribution of the dividend for a period of less than one financial year, preparing the interim financial statements and the interim report;
6) draws up the annual report on the Company's operations;
7) concludes contracts with an audit firm if an audit is required by law;
8) opens and closes bank accounts;
9) represents the Company or ensures its representation before institutions, organisations and courts, in arbitration procedures and when dealing with third parties;
10) ensures the creation of appropriate working conditions for the Company's employees and the protection of the Company's trade secrets;
11) subject to the relevant decision of the management board, carries out transactions relating to the investment, transfer or lease of the Company's fixed assets (separately for each type of transaction), the book value of which exceeds 1/20 (one-twentieth) of the Company's share capital;
12) subject to the decision of the management board, carries out transactions concerning the pledge or mortgage on the Company's fixed assets (separately for each type of transaction), the book value of which exceeds 1/20 (one-twentieth) of the Company's share capital;
13) subject to the decision of the management board, carries out transactions pertaining to hedging or guaranteeing the obligations of other persons in excess of 1/20 (one-twentieth) of the Company's share capital;
14) subject to the decision of the management board, carries out transactions for the acquisition of fixed assets which price exceeds one-twentieth of the Company's share capital;
15) is responsible for submitting documents and information to the general meeting, the supervisory board, the management board and the person keeping the register of legal persons;
16) is responsible for publishing the information in the source indicated in the articles of association;

performs other functions as indicated in the Companies Act[36], other legislation and the articles of association.

[36] Lietuvos Respublikos akcinių bendrovių įstatymas, Nr. VIII-1835, op. cit.

Latvia

There is a separate legal act in the legal system of the Republic of Latvia (Attīstības finanšu institūcijas likums; hereinafter the LV Financial Institutions Act), which regulates the creation and rules of operation of public development finance institutions.[37] In the legislator's view, this legal solution is intended to ensure the effective operation of financial institutions supporting development (hereinafter referred to as the Financial Institution) through the implementation of support and development programmes, as well as to ensure the performance of the mandated tasks of state institutions, as defined in other normative acts, through the implementation of state economic policy. The support and development programme is implemented in the form of financial instruments or grants. Financial instruments include loans, guarantees, export credits, the provision of export credit guarantees and export insurance, participation in the capital of commercial companies, and participation in investment funds, including alternative funds.

The Financial Institution carries out support programmes that include:

1) development of small and medium-sized enterprises, including start-ups;
2) providing micro-credit;
3) construction or renovation of residential buildings;
4) development of state or local government infrastructure;
5) nature conservation;
6) infrastructure development;
7) development of technology and innovation;
8) creation of venture capital;
9) development of agriculture, processing of agricultural products, agricultural land and fish and forestry farms;
10) promoting the employment of specific socially disadvantaged groups and implementing social support programmes;
11) supporting business cooperation processes;
12) supporting regions in need of special support;
13) supporting export development;
14) implementation and co-financing of European Union programmes or projects;
15) implementation and co-financing of programmes or projects of international financial institutions, as well as other areas of support as defined in normative acts.

[37] Attīstības finanšu institūcijas likums. Latvijas Vēstnesis, Nr. 228of 15 November 2014. Retrieved from: https://www.vestnesis.lv/op/2014/228.1 [Retrieved on 15 September 2022].

The Financial Institution is a joint stock company in which 100% of the shares are owned by the State Treasury. Forty percent of the rights from the shares of the Financial Institution are exercised by the Minister of Finance, and 30% each by the Minister of Economy and the Minister of Agriculture. The shares of the Financial Institution may not be pledged or otherwise encumbered. The articles of association of the Financial Institution require the approval of the Council of Ministers.

In areas not regulated by the LV Financial Institutions Act, the provisions of the Publiskas personas kapitāla daļu un kapitālsabiedrību pārvaldības likums (hereinafter referred to as the Act on the Management of LV Public Entity Shares and Capital Companies),[38] as well as the Komerclikums (hereinafter referred to as the LV Commercial Code).[39] The provisions of the Komercdarbības atbalsta kontroles likums (hereinafter referred to as the Act on the Control of LV Business Support)[40] are also applicable to the Financial Institutions' support programmes deemed as business support.

The general meeting of the Financial Institution can pass resolutions when representatives of all shareholders are present. One vote is attached to each share. The general meeting is chaired by a representative of the Minister of Finance.

The general meeting of the Financial Institution decides on the following:
1) the amount of reserve capital and the principle of creating reserve provisions;
2) approval of the business and financial plan;
3) appointing and dismissing the head of the internal audit function;
4) determining the remuneration of statutory auditors;
5) approving the conditions of employment of the head of the internal audit function;
6) approving the internal audit function's plan of action, the costs of its operation and the staffing limits of the function;
7) approving the internal control system;
8) covering losses from reserve capital in cases where the Financial Institution incurs losses.

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[38] Publiskas personas kapitāla daļu un kapitālsabiedrību pārvaldības likums. Latvijas Vēstnesis, Nr. 216 of 31 October 2014. Retrieved from: https://likumi.lv/ta/id/269907-publiskas-personas-kapitala-dalu-un-kapitalsabiedribu-parvaldibas-likums [Retrieved on 15 September 2022].

[39] Komerclikums. Latvijas Vēstnesis, Nr. 158/160 of 4 May 2000. Retrieved from: https://www.vestnesis.lv/ta/id/5490-komerclikums [Retrieved on 15 September 2022].

[40] Komercdarbības atbalsta kontroles likums. Latvijas Vēstnesis, Nr. 123 of 27 June 2014. Retrieved from: https://likumi.lv/ta/id/267199-komercdarbibas-atbalsta-kontroles-likums [Retrieved on 15 September 2022].

The supervisory board of the Financial Institution is composed of three members. Each of the three Ministers (of Finance, Economy, Agriculture) has the right to nominate one candidate for the supervisory board. The term of office of the supervisory board is three years. Members of the board and management board of a financial institution are subject to requirements similar to those for members of the boards and management boards of credit institutions.

In addition to the tasks set out in the Act on the Management of LV Public Entity Shares and Capital Companies, the tasks of the supervisory board of the Financial Institution also include the following:

1) ensuring the drafting, approval and overseeing the implementation of the Financial Institution's roadmap;
2) ongoing oversight of the operation of the Financial Institution's internal control system;
3) assessing and arranging or refusing the acquisition of real estate, disposing of or encumbering it with property rights, if transactions with such property specify the repayment of liabilities (enforcement);
4) carrying out the risk management tasks of the Financial Institution.

An investment or disinvestment in shares or stock of a capital company, acquisition or disposal of a business, as well as contributions to capital funds, including alternative investment funds, require the consent of the general meeting. The above actions may only be pursued within the framework of programmes or tasks mandated by state institutions.

The management board of a financial institution may not consist of more than five members. Members of the management board are appointed for a three-year term of office. The president of the management board, in turn, is elected by the supervisory board from among its members.

Oversight of the drafting and implementation of the programmes is ensured by the relevant area ministry or by an institution specified in normative acts. Programmes are created with the sole purpose of addressing or mitigating identified market failures. The Council of Ministers appoints a consulting council of the Financial Institution for the development and implementation of such a programme and determines its working procedures and oversight activities to ensure the development and implementation of the programme, as well as the institutions represented on the council. Representatives of entrepreneurial organisations are entitled to participate in the consulting council in an advisory capacity.

The Council of Ministers approves the programmes and determines the mode of implementation, funding, including for the costs of the Financial

Institution. Prior to the approval of the programme by the Council of Ministers, the Financial Institution assesses the programme's impact, risks, potential benefits and costs. The institution implements the approved programmes and conducts consultations to implement the approved programme and provides awareness-raising activities for relevant target groups.

The implementation of the approved programmes or tasks entrusted to the Financial Institution is carried out with funds from the state budget, including state loans, European Union funds and other foreign financial aid, as well as other sources of funding. The Financial Institution may also use financial resources raised from the financial markets and its own funds to finance approved programmes.

The Financial Institution manages its financial resources in accordance with its financial management strategy and risk management policy. It assesses the quality of its assets and guarantees provided in accordance with International Financial Reporting Standards, the implementation of which is set out in Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards[41].

To ensure adequate management of financial resources and risks, the management board of the Financial Institution:

1) ensures the development and approval of risk management policies and oversees their implementation;
2) approves risk management methods;
3) supervises the loan portfolio assets and other credit risk assets, as well as the operation of the quality management system for guarantees issued;
4) approves the methodology for write-downs;
5) approves the risk assessment procedure and methodology.

The Financial Institution creates supplementary capital to ensure financial stability and long-term operation, as well as to limit the impact of the risks assumed in the implementation of the approved programme. The supplementary capital includes, in particular, the following:

1) share in the expected loss under the public funding programme, determined taking into account the risk management policy;
2) expenditure relating to the approved programme, as reflected in the obligations of the Financial Institution;
3) profit of the Financial Institution.

[41] OJ EU L 243 of 11 September 2002, p. 1, as amended.

The supplementary capital may be reduced by:

1) write-downs in the reporting financial year for the loan portfolio, other credit risk assets or guarantees provided, if the full or partial coverage of the risk of public financing of the programme is determined in accordance with the terms of the approved programme, taking into account the Financial Institution's methodology for building up savings;
2) exceeding expected losses by actual losses in the write-downs made and assets of the written-down loan portfolio or other credit risks or guarantee compensations paid after the implementation of approved programmes;
3) the remaining part of the supplementary capital related to covering the expected loss of the approved programme if the implementation of the approved programme is discontinued;
4) the part of the amount of the increase in the share capital of the Financial Institution originating from the supplementary capital.

The profit of the Financial Institution is used to increase the supplementary capital. It does not bear the costs of using public funds, i.e. from the state budget, European Union funds, other foreign financial assistance, contributed to implementing the approved programme.

The guarantees given by the Financial Institution are the liability of the State Treasury up to the amount determined annually in the Budget Act. The Council of Ministers determines the manner in which the liabilities of the State Treasury for guarantees granted by the Financial Institution are projected when drafting the budget act for a given year.

The Financial Institution prepares its annual financial statements in accordance with International Financial Reporting Standards, the implementation of which is set out in Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards. Within one month after the approval of the annual financial statements, the Financial Institution publishes the annual financial statements or abridged annual financial statements approved by the shareholders' meeting on its website.

The Altum Company is an example of the functioning of a financial institution in the Republic of Latvia.[42]

[42] Grozījums Ministru kabineta 2015.gada 9.aprīļa rīkojumā Nr.180 "Par akciju sabiedrības "Attīstības finanšu institūcija Altum" statūtu apstiprināšanu", Nr.356. Rīgā of 7 July 2015. Retrieved from: https://www.vestnesis.lv/op/2015/130.7 [Retrieved on 15 September 2022].

The economic activities of the aforementioned company include the following:
1) lending;
2) financing of service activities n.e.c., excluding insurance and pension funds;
3) activities of head offices;
4) management consulting;
5) other business and other management consultancy activities;
6) market research and public opinion polling.

With respect to matters not regulated in the articles of association, the company's operations are governed by the provisions of the Act on Financial Institutions Supporting LV Development, the Act on the Capital Participation of Public Persons and the Management of LV Capital Companies and LV commercial law, as well as other normative acts.[43]

The company's share capital is EUR 204,862,333 and the nominal value of one share is EUR 1. The company's shares are registered and subject to dematerialisation.

The supervisory board, consisting of three members, takes decisions by a simple majority of the board members present. The management board, on the other hand, consists of five members and also takes decisions by a simple majority of the board members present. The members of the management board represent the company acting jointly. They may authorise one or more of the members of the management board to carry out specific transactions or specific types of transactions. If the supervisory board rejects the management board's proposals regarding a particular matter, the management board has the right to convene an extraordinary general meeting, which makes the final decision.

Slovakia

In the Slovak Republic, the Exportno-Importna Banka Slovenskej Republiky (hereinafter Eximbanka SR or Export-Import Bank) performs the function of a public development finance institution, on the basis of

[43] Publiskas personas kapitāla daļu un kapitālsabiedrību pārvaldības likums, Latvijas Vēstnesis: 216, 31.10.2014 and Komerclikums. Latvijas Vēstnesis, Nr. 158/160 of 4 May 2000. Retrieved from: https://likumi.lv/ta/id/269907-publiskas-personas-kapitala-dalu-un-kapitalsabiedribu-parvaldibas-likums [Retrieved on 15 September 2022].

a separate act.[44] This legal entity has its registered office in Bratislava and is subject to registration in the Commercial Register. Eximbanka SR is not a bank, insurance company or reinsurance company within the meaning of separate regulations and has not been established for the purpose of making a profit.

In accordance with the state's foreign and fiscal policy, European Union regulations and in order to fulfil the obligations arising from the Slovak Republic's membership in international organisations, Eximbanka SR supports export-import activities through export credit financing, export credit insurance and import credit financing to increase the competitiveness of domestic products and to promote economic relations between the Slovak Republic and other countries. In carrying out its statutory tasks, Eximbanka SR carries out activities in support of employment, regional development, environmental protection and support for investment in new technologies and related infrastructure. When raising the funds necessary to fulfil its statutory tasks, Eximbanka SR acts on its own behalf in the financial markets.

Eximbanka SR's activities include the following:

1) export credit financing;
2) import credit financing;
3) export credit insurance;
4) export credit reinsurance;
5) providing guarantees.

Eximbanka SR can provide insurance for the following:

1) medium and long-term export credits against all political and commercial risks that may arise in the buyer's country or a third country;
2) short-term export credits against any political risks that may arise in the buyer's country or in a third country;
3) medium and long-term export credits to encourage exporters to invest abroad against any political and commercial risks that may exist there;
4) short-term export credits against economic risks caused by a foreign buyer.

Export credit insurance by Eximbanka SR is subject to credit insurance regulations approved by the management board with the approval of the Minister of Finance.

[44] Zákon č. 80/1997 Z. z. o Exportno-importnej banke Slovenskej republiky of 6 February 1997. Retrieved from: https://www.zakonypreludi.sk/zz/1997-80 [Retrieved on 22 March 2022].

Subject to reinsurance rules, Eximbanka SR may:
1) when providing insurance, enter into reinsurance contracts with reinsurers on the domestic or international reinsurance market;
2) reinsure exporters' export-related business.

Eximbanka also has the right to the following:
1) discount and rediscount promissory notes;
2) issue bonds – for the performance of its statutory tasks;
3) invest spare funds;
4) borrow in foreign currencies from banks or other financial institutions;
5) provide direct loans, refinance or co-finance short, medium and long--term loans to exporters or importers for the purchase of goods and services from domestic suppliers, and provide financial loans in euro or other currencies on domestic or international financial markets;
6) provide short-term loans from its own resources (up to 25% of their value);
7) assert state claims in accordance with the mandate granted by the Minister of Finance;
8) use own funds to invest in financial instruments;
9) insure and reinsure exporters' receivables against commercial risks;
10) maintain client accounts and accounts of funds available to implement financial engineering instruments on the basis of separate regulations;
11) provide payment and settlement services;
12) make domestic and international financial transfers;
13) perform the function of emission organiser on the basis of separate regulations;
14) carry out business activities on its own account using means of payment in foreign currencies;
15) carry out other activities related to the obligations under this act.

Eximbanka SR may provide import or export guarantees in accordance with the rules on the provision of guarantees approved by the management board. It may also create persons and acquire shares in other legal persons only with the approval of the Council of Ministers.

The State Treasury is unconditionally and irrevocably liable for Eximbanka SR's liabilities arising from statutory activities, excluding liabilities arising from insurance or reinsurance of marketable risks.

Eximbanka's activities are funded through the following sources:
1) own funds;
   a) share capital;
   b) special funds;
   c) profits generated during the current accounting period;
   d) profits brought forward;
2) repayable financial resources.

The increase or reduction of the share capital of Eximbanka SR, as well as the manner of its increase and the use of the funds from its reduction, are determined by the Council of Ministers according to the proposal presented by the management board after it has been approved by the supervisory board and the Minister of Finance.

Eximbanka SR's own funds are not subject to seizure. In addition, the following are also not subject to enforcement:
1) Eximbanka SR real estate;
2) Eximbanka SR's financial instruments and the institution's shares in other legal entities;
3) funds for the financing of export credits, import credits, export credit insurance, export credit reinsurance, the provision of guarantees and the reinsurance of export receivables against commercial risks;
4) Eximbanka SR receivables in banks, financial institutions, exporters, importers, foreign clients and foreign suppliers;
5) banks, financial institutions, exporters, importers, foreign clients and foreign suppliers.

The institution's own resources are used to create funds for the following purposes:
1) provisions;
2) to finance export credits;
3) to finance import credits;
4) guarantees;
5) to cover marketable risks;
6) to cover non-marketable risks;
7) other special purpose funds.

Eximbanka SR, for its insurance business, sets up the following reserve provisions:
1) for premiums;
2) for losses;

3) technical reserve provision for the settlement of exceptional export credit insurance risks;
4) other technical reserve provisions.

A premium reserve is created from that part of the premiums arising from signed insurance contracts which relate to a future accounting period. Its amount is defined as the sum of the technical reserves, calculated according to the value of the individual insurance policies.

The reserve for losses is intended for compensation under insurance on the basis of insurance claims:
1) declared before the end of the current accounting period but not settled during that period;
2) arising but not reported in the current accounting period.

The amount of the reserve for losses is determined as the sum of the loss reserves calculated for individual insurance claims. Where the amount of the reserve provision for losses cannot be determined in the above manner, mathematical and statistical methods should be used.

The provision for extraordinary risks relating to export credit insurance is established from that part of the premiums arising from signed insurance contracts which are intended to cover differences in the payment of claims due. The technical provision for extraordinary risks is determined by applying a qualified estimation method, in particular, according to the premium value and insured risk associated with the insurance policies taken out and according to their reinsurance method.

Eximbanka SR prepares the draft budget for the fiscal year and submits it to the Council of Ministers after consulting with the Minister of Finance. Eximbanka SR submits the draft budget for the fiscal year in question, together with the opinion of the Council of Ministers, to the National Council of the Slovak Republic for approval within the timeframe set for presenting the draft state budget for the following fiscal year. The draft budget for the fiscal year also includes a draft business and financial plan.

If the budget of Eximbanka SR is not approved by 1 January of the fiscal year in question, the institution shall operate on the basis of the budget submitted to the Council of Ministers after it was consulted with the Minister of Finance. Where the budgeted level of operating revenue is exceeded, after taking into account provisions and write-downs, it may, with the approval of the Minister of Finance, increase the budgeted level of operating expenses by the amount by which it has exceeded the level of operating revenue. If Eximbanka SR's revenue exceeds the budgeted level, the institution may exceed the budgeted level of

expenses by the amount by which the budgeted revenue level is exceeded. Where Eximbanka SR's budget includes the cost of projects or activities that will be implemented only partially or not at all, it may use the released funds to cover the expenditure of projects that were not budgeted. The reallocation of funds requires the approval of the Minister of Finance.

Eximbanka SR operates in accordance with the budget approved by the National Council of the Slovak Republic. The institution covers the costs arising from its activities from the income generated by such activities. Profits are used to supplement funds, contribute to the state budget or increase share capital. Eximbanka SR submits the demand for funds from the state budget for the next fiscal year within the timeframe and to the extent determined by the Minister of Finance for the purpose of preparing the state budget for the next fiscal year.

Eximbanka SR has the following bodies:
1) the management board,
2) the supervisory board,
3) CEO.

The management board of Eximbanka SR:
1) approves the organisational structure of Eximbanka SR;
2) approves the regulations of the management board;
3) gives its consent to the appointment of Eximbanka SR employees as members of the enterprise's executive, supervisory and controlling bodies;
4) is responsible for the proper keeping of the accounts and for the management of the institution;
5) approves the terms and conditions governing the granting of loans by Eximbanka SR;
6) approves the rules for the establishment and use of reserves;
7) approves the terms and conditions of the guarantees provided by Eximbanka SR;
8) approves the transfer of ownership and lease of fixed assets owned by Eximbanka SR and their encumbrance by third-party rights.

With the approval of the Minister of Finance, the management board approves the terms and conditions of Eximbanka SR's credit insurance.

The management board submits to the Minister of Finance for approval the drafts of the following:
1) financial statements;
2) annual report on the company's operations;
3) selecting an expert auditor to audit the financial statements;
4) distribution of profit.

After consultation with the Minister of Finance, the management board submits the draft financial plan of Eximbanka SR for the financial year in question to the National Council of the Slovak Republic for approval.

The management board consists of five members, these being the chief executive officer, three deputy chief executive officers and a member who is not an employee of Eximbanka SR. The chief executive officer, together with another member of the management board, is authorised to make declarations of intent on behalf of the management board; in the absence of the chief executive officer, the deputy chief executive officer, together with another member of the management board, is authorised to do so. The chief executive officer and the deputies and other members of the management board are appointed and dismissed by the government based on the recommendation of the Minister of Finance. The chief executive officer and the deputies on the management board are appointed for a six-year term of office and the other members for a three-year term. If the position of chief executive officer, deputy chief executive officer or other members of the management board becomes vacant before the end of their term of office, such term of office shall be deemed to have ended. The new term of office shall commence upon the appointment of a new chief executive officer, deputy chief executive officer or other members of the management board.

Being a member of the management board may not be combined with being a member of the management, supervisory or controlling bodies of an exporter, importer, exporter's bank or importer's bank. A member of the management board may not act as a proxy or person authorised to act on behalf of a bank or a branch of a foreign bank. Members of the management board are not allowed to carry out, in their own name and on their own account, business transactions related to the activities of Eximbanka SR or to act as intermediaries in business transactions on behalf of this institution for the benefit of other persons or entrepreneurs, nor participate in the business activities of a bank or branch of a foreign bank or other company with the same or similar activities.

The Council of Ministers removes a member of the management board from office in the following cases:

1) the member violates the provisions of the Act governing Eximbanka SR operations[45] or related provisions of generally applicable law;
2) the member is convicted of a criminal offence by a final court judgement;
3) the member's state of health does not allow him/her to continue to perform his/her duties;
4) the member performs a function that is impossible to combine with that of a member of the management board.

[45] Zákon č. 80/1997 Z. z. o Exportno-importnej banke Slovenskej republiky, op. cit. p. 46

A board member may resign from the position by delivering a resignation in writing to the management board. In this case, membership ceases upon delivery of the resignation. If, as a result of a resignation from office, the number of remaining members of the management board would be less than three, the resigning person's service on the management board shall be deemed to end no earlier than the appointment of a new member. The CEO and deputy chief executive officers shall in any case remain in office and exercise their rights until the Council of Ministers appoints a new CEO and deputy chief executive officers. The Council of Ministers may dismiss a member of the management board upon the request of the Minister of Finance. The supervisory board determines the amount of remuneration for the members of the management board.

The supervisory board is the supervisory body of Eximbanka SR. It consists of seven members, including its chairperson. Members of the supervisory board are appointed and dismissed by the Council of Ministers based on the recommendation of the Minister of Finance. The chairperson of the board is appointed and dismissed by the members of the Council of Ministers by secret ballot. In the event of a failure by the management board or by the CEO to fulfil their duties, or in the event of significant irregularities in the management of Eximbanka SR, the supervisory board shall call upon the management board or the CEO to take corrective action and shall inform the national control authorities thereof.

The supervisory board has a term of six years and its members cannot serve concurrently on other Eximbanka SR' bodies. Being a member of the supervisory board may not be combined with being a member of the management, supervisory or controlling bodies of companies and other entrepreneurs that are exporters, importers, exporter's banks or importer's banks. Members of the supervisory board are not allowed to carry out, in their own name and on their own account, business transactions related to the activities of Eximbanka SR or to act as intermediaries in business transactions on behalf of this institution for the benefit of other persons or entrepreneurs, nor participate in the business activities of a bank or branch of a foreign bank or other company with the same or similar activities.

The Council of Ministers (compulsorily) removes a member of the supervisory board from office in the following cases:

1) the member violates the provisions of the Act governing Eximbanka SR operations[46] or related provisions of generally applicable law;
2) the member is convicted of a criminal offence by a final court judgement;

[46] Ibidem.

3) the member's state of health does not allow him/her to continue to perform his/her duties;
4) the member performs a function that is impossible to combine with that of a member of the supervisory board.

The Council of Ministers may (optionally) dismiss a member of the supervisory board from office on the recommendation of the Minister of Finance for reasons other than those mentioned above.

A supervisory board member may resign by submitting a written resignation to the board. The term of office ends upon the submission of the resignation. If, as a result of a resignation from office, the number of remaining members of the supervisory board wuld be less than four, the resigning person's service shall be deemed to end no earlier than the appointment of a new member of the board. The members of the supervisory board receive remuneration, the amount of which is determined by the Minister of Finance.

At the proposal of the management board, the supervisory board approves the following:
1) principles of asset management and financial resources of Eximbanka SR;
2) the manner in which Eximbanka SR funds are created and used and other funds are established;
3) terms and conditions of maintaining client accounts;
4) regulations of the supervisory board.

The supervisory board approves in particular the following:
1) increasing and decreasing the share capital of Eximbanka SR;
2) terms and conditions of granting loans by Eximbanka SR;
3) terms and conditions of credit insurance by Eximbanka SR;
4) terms and conditions of providing a guarantee by Eximbanka SR;
5) annual reports of Eximbanka SR;
6) Eximbanka SR's budget for the financial year in question;
7) the transfer of ownership and leasing of fixed assets held by Eximbanka SR and the encumbrance of real estate belonging to the institution by third-party rights;
8) increase of foreign sources of funding of Eximbanka SR;
9) the taking of loans by Eximbanka SR;
10) transactions that may involve significant benefits for the members of the management board and persons affiliated with them.

The Supervisory Board gives its opinion on the proposal for the selection of the auditor to audit the financial statements, based on a recommendation from the Audit Committee prior to its approval by the Minister of Finance.

The supervisory board also evaluates the proposal for the distribution of profit and submits it to the Minister of Finance.

The CEO is the chairperson of the management board and cannot simultaneously be a member of other Eximbanka SR bodies. The CEO represents Eximbanka SR in its dealings with external parties. The CEO may, together with the deputies, take decisions on urgent matters which, without this quality (i.e. being urgent), would be subject to approval by the management board. However, such decisions must be unanimous. The CEO is obliged to inform the management board of the decisions taken in this way at its next meeting.

The CEO may establish an Advisory Committee composed of experts in specific fields corresponding to the subject matter of Eximbanka SR business, but the experts may not be employees of the institution. The members of the Advisory Committee are appointed and dismissed by the CEO.

The employment relations of Eximbanka SR are governed by labour laws, in addition, employees are required to:

1) treat as confidential any information they may come into possession of in the course of their duties at Eximbanka SR;
2) refrain from accepting remuneration or other benefits, except for those that come from Eximbanka SR or have been lawfully provided to them in connection with their duties at the institution;
3) refrain from any action that may lead to a conflict between the interests of Eximbanka SR and their personal interests and, in particular, refrain from the unauthorised use of information acquired in the course of their professional duties for their own benefit or that of third parties.

Members of the management board and employees may also not serve on the management, supervisory or controlling bodies of business legal entities, with the above restrictions not applying where a member of the management board has been appointed to serve on the relevant body by Eximbanka SR. In turn, Eximbanka SR employees are not allowed to conduct any economic activity without the prior approval of the CEO. The above prohibition does not apply to scientific, pedagogical, literary, or artistic activities and the management of personal property.

Eximbanka SR submits the annual report to the National Bank of Slovakia within thirty days of its adoption. It is also obliged, without the need to obtain the client's consent, to immediately submit to the register of loans and bank guarantees kept by the National Bank of Slovakia data on loans granted to importers and exporters, and on collateral for receivables of importers or exporters under loans and liabilities incurred by Eximbanka SR towards

exporters or importers in EUR or in another currency. The submission and protection of the above-mentioned data by this institution is subject to the supervision of the National Bank of Slovakia.

The Minister of Finance approves the following:

1) amendments of the articles of association;
2) financial statements;
3) annual reports;
4) distribution of profit;
5) selection of the expert auditor to audit the financial statements.

The Minister of Finance determines the rules for the remuneration and granting of other benefits to the CEO and the deputies. In addition, Eximbanka SR is required to prepare and submit information in the form of reports, statements and reviews to the Minister of Finance.

Eximbanka SR's financial statements are audited by an expert auditor, who verifies the conformity of the data indicated in the annual report with the data contained in the financial statements, reports, statements and other documents required by the Minister of Finance. The cost of the audit by the auditor is borne by Eximbanka SR.

The Audit Committee is composed of three members, including the Chairperson. Members are appointed and dismissed by the Minister of Finance; members of the Audit Committee may also be members of the Supervisory Board – with the exception of the Chairperson of the supervisory board. The Chairperson of the Committee is appointed and dismissed by its members. At least one member of the Audit Committee must have at least five years of professional experience in the field of accounting and auditing and must meet the criteria for independence. Members of the Audit Committee are appointed for a term of six years and may not serve more than two consecutive terms of office. A member of the Audit Committee may be dismissed before the end of his or her term of office. A member of the Audit Committee may resign by submitting a written resignation and ceases to be a member of the Audit Committee upon delivery of the said resignation. If, as a result of a resignation from the office of the member of the Audit Committee, the number of remaining members would be less than two, the resigning person's service shall be deemed to end no earlier than the appointment of a new member. Members of the Audit Committee may not be substituted in the performance of their duties. They receive remuneration for their duties, the amount of which is determined by the Minister of Finance.

The Minister of Finance supervises the activities of Eximbanka SR on behalf of the state by ensuring compliance with the following:
1) the Act on Eximbanka SR operations and other provisions of generally applicable law;
2) principles of economy, efficiency and expediency in the spending of funds from the state budget.

Where, in the course of the supervision, the Minister of Finance finds irregularities, the Minister of Finance may take the following measures:
1) restriction or suspension of operations;
2) reduction of operating costs;
3) suspension of bonus payments;
4) proposing the dismissal of executive officers;
5) imposing a fine.

The above measures and fines may be applied concurrently. The imposition of a fine or the application of other measures is without prejudice to liability under separate provisions.

A representative of the Minister of Finance has the right to attend meetings of the Eximbanka SR bodies where the results of state supervision and annual financial reports are discussed.

Information concerning Eximbanka SR's clients that is not publicly available, in particular information on transactions made and account balances, is confidential. Eximbanka SR is required to ensure that such information is protected against misuse, disclosure, damage, destruction and loss or theft. The institution is not authorised to disseminate such information to a third party without prior written consent. It is not considered a breach of the confidentiality obligation to provide information which does not explicitly mention the name of the bank, insurer or reinsurer or the name of the client. Eximbanka SR may, however, provide the person exercising state supervision of its activities with a report on the facts covered by the confidentiality obligation.

It shall not be considered a breach of the confidentiality obligation to provide information on Eximbanka SR's client at the written request of banks or insurance companies with which cooperation agreements on banking and insurance services have been signed, provided that such information is relevant for the performance of the provisions of these agreements.

Eximbanka SR may provide information concerning its clients only upon written request in cases specified in the special provisions. The written

request may contain data from which the institution can identify the case. Eximbanka SR is entitled to be remunerated for providing information about its client.

Members of the management board who are no longer employees of Eximbanka SR, as well as members of the supervisory board, are obliged to maintain the confidentiality of all information they come into possession of in the course of their function. At the same time, the confidentiality obligation continues to be valid even after their resignation. In urgent matters, Eximbanka SR employees may be exempted from confidentiality by the President. The president, deputy presidents, members of the management board and members of the supervisory board may be exempted from confidentiality obligation by the Council of Ministers. The obligation to maintain the confidentiality of information obtained in the course of their official duties also extends to the members of the Advisory Committee appointed by the President, as well as to employees and members of the bodies of subsidiaries. In matters of public interest, they may be exempted from confidentiality obligations by the President.

Eximbanka SR is obliged to keep documents relating to the transactions carried out in accordance with the special provisions and to ensure that the data and the information processed are protected against misuse, destruction, damage, deletion or loss.

The following are considered to be persons with a special relationship with Eximbanka SR:

1) members of the management board;
2) members of the supervisory board;
3) persons who are close to the members of the management or supervisory board;
4) members of the Advisory Committee;
5) members of the management and supervisory bodies of subsidiaries.

Eximbanka SR can only extend credit to the above-mentioned persons with the approval of the management board issued on the basis of an analysis of the applicant's business situation and financial condition.

Slovenia

Slovenska izvozna in razvojna banka, d.d. in Ljubljana (hereinafter the SID Bank) is a specialised bank authorised to carry out supporting, promotional and development activities. Zakon o Slovenski izvozni in razvojni banki (hereinafter referred to as the SID Bank Act)[47] regulates the business objectives, ownership relations and organisation of the entity mandated to perform tasks and services in the field of support and development in the area of international trade, economic cooperation and development cooperation, entrepreneurship, innovation and research and education activities, ecology, energy and infrastructure, as well as in other areas relevant to the development of the Republic of Slovenia.[48] The Republic of Slovenia may be the sole shareholder of SID Bank. The minimum amount of the SID Bank's share capital is EUR 300 million. The SID Bank Act precludes the payment of dividends and only allows the entire profit to be used to increase the reserve capital.

Taking into account the objectives of the SID Bank, the execution of transactions and the activities of the SID Bank must comply with the laws of the Republic of Slovenia and the European Union, and be in line with the following:

1) principle of sustainable development;
2) long-term development guidelines of the Republic of Slovenia and the European Union;
3) economic viability of individual projects and investments or deposits;
4) principles of non-competition, equal treatment and transparency in the conduct of business.

The activities of the SID Bank are based on long-term documents defining the development directions of the European Union and the Republic of Slovenia (strategies, resolutions, programmes). In order to carry out the activities of the SID Bank, as well as to implement the long-term development policies of the Republic of Slovenia and the European Union, the Republic of Slovenia is obliged to provide adequate capital support to the SID Bank. The SID Bank's transactions, projects, investments, deposits or other financial activities are subject to an assessment of economic, environmental and social

[47] Zakon o Slovenski izvozni in razvojni banki, Uradni list RS, št. 56/08, 20/09, 25/15 – ZBan-2 in 61/20 of 6 June 2008. Retrieved from: http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5207 [Retrieved on 8 July 2022].

[48] The activities of the SID Bank are summarised in S. Skuza (2015f). The Activities of Bank Gospodarstwa Krajowego in the domestic systemic environment. Difin.

viability on the basis of good practice and international criteria, as well as their impact on the development of the Republic of Slovenia.

SID Bank provides services with the aim of creating direct or indirect added value in line with its presumed objectives, with a primary focus on preserving capital, but without being oriented towards maximising profit. In its activities, SID Bank, in order to achieve the objective of not competing with financial institutions, is committed to the principle of equal access and equal treatment of all recipients of SID Bank's financial services, as well as the principle of transparency of the services offered. It also takes into account the principles of international good banking practice in its operations.

SID Bank supports the country's economic and social policies by providing financial services in sectors where there are market failures, particularly in the following areas:

1) international business and international economic cooperation, particularly with a view to promoting long-term trade transactions that enable participants to enter foreign markets and operate there, including support for transactions accompanying export, preparation for international business, investment and initiatives in the field of sustainable export growth and internationalisation of the economy, as well as activities aimed at initiating or implementing ventures to enter third markets with domestic, foreign and international actors;
2) development of the economy, particularly taking into account small and medium-sized enterprises, entrepreneurship and venture capital funds, primarily with a view to financing entrepreneurial projects at all stages of development, enabling the creation of new enterprises and linking them to tasks and programmes carried out by economic, innovation and financial operators;
3) research and development and innovation, in particular, to stimulate competitiveness and growth as part of research and development programmes, to promote innovation and streamline research and development activities and to transfer knowledge and provide a variety of support to those responsible for the design and development of products, production processes and services;
4) education, in particular, to stimulate and improve the level of education, knowledge and knowledge management and initiatives needed for learning new skills and acquiring expertise;
5) employment, inter alia, in order to provide companies with incentives to employ people with the skills and knowledge necessary for their growth or to teach various individuals new skills;

6) environmental protection and energy efficiency, in particular, to finance and stimulate measures taken to protect the environment, the proper management of waste, the appropriate use of natural resources, the improvement of investments in environmental infrastructure, the use of renewable energy sources and the efficient use of energy;
7) regional development, particularly with a view to ensuring sustainable development at the domestic, regional and local levels, reducing disparities in economic development and other activities, with a focus on achieving public objectives in regional and rural development;
8) development of housing, in particular with a view to ensuring adequate access to housing and stimulating the construction, renovation and maintenance of housing and dwellings for specific groups of beneficiaries, including ensuring the right environment and conditions for the creation of adequate housing;
9) economic and public infrastructure, rural development, especially to improve logistical, municipal and other infrastructure; in addition, the SID Bank implements financing schemes and public-private partnerships for the construction of such infrastructure, e.g. for urban development or revitalisation.

In carrying out the above tasks, SID Bank applies the practices, guidelines, policy objectives and strategies for the sustainable development of the Republic of Slovenia and the European Union. For the implementation of the above activities, SID Bank provides services regulated by Zakon o bančništvu, Uradni list RS, št. 92/21 (hereinafter the Banking Act).[49] In addition to these types of services, the SID Bank may also provide other types of services, e.g. consultancy, and training, if they serve to support the services that the SID Bank provides to fulfil its statutory tasks.

Bearing in mind the objectives of the SID Bank's activities, it should be noted that it has the right to free and direct access to retrieve the following data electronically in the name of and on behalf of the Republic of Slovenia:
1) individual and financial information that legal persons and natural persons carrying out economic activities are required to provide to the relevant organisations;
2) data from the Commercial Register and other registers kept by the Agency of the Republic of Slovenia for Public Legal Records and Related Services (Agencija Republike Slovenije za javnopravne evidence in

[49] Zakon o bančništvu, Uradni list RS, št. 92/21 of 8 June 2021. Retrieved from: https://www.uradni-list.si/_pdf/2021/Ur/u2021092.pdf [Retrieved on 8 July 2022].

storitve – AJPES), the Statistical Office of the Republic of Slovenia or the courts;
3) statistical and other data processed by ministries and other state authorities and the Bank of Slovenia that are necessary for the performance of the Bank's SID tasks and for which it demonstrates a legitimate interest.

SID Bank implements projects directly or indirectly through or jointly with other banks, financial institutions and other institutions (consortia), in accordance with the principle of competition and equal treatment. In its operations, SID Bank is driven by international good banking practices and risk management principles.

On the basis of agreements entered into with individual ministries and other state authorities, SID Bank can transfer funds for the development and implement government programmes, as well as other programmes or projects, in accordance with European Union rules. In providing services, it uses financial instruments such as loans, guarantees and sureties, factoring, financial leasing and soft loans. To provide its services and use financial instruments, SID Bank has the ability to borrow, issue debt securities, as well as incur other forms of debt.

The Republic of Slovenia is irrevocably and unconditionally liable for the obligations of the SID Bank arising from projects undertaken in connection with the implementation of tasks within the scope of the SID Bank Act. In the event that SID Bank, upon written request of a creditor, fails to fulfil an obligation to that creditor, that obligation shall, upon request of the creditor, be fulfilled immediately by the Republic of Slovenia.

SID Bank carries out its undertakings in accordance with the provisions of the SID Bank Act, the Banking Act and Zakon o gospodarskih družbah (hereinafter referred to as the Companies Act)[50] and in accordance with other generally applicable laws. With regard to the area of application of the Banking Act, the following exceptions exist:
1) when assessing large involvement, the SID Bank's balance sheet total is used as the basis for determining risk instead of own funds;
2) capital requirements for SID Bank are half of the capital requirements that apply to commercial banks;

[50] Zakon o gospodarskih družbah. Uradni list RS, št. 65/09 – uradno prečiščeno besedilo, 33/11, 91/11, 32/12, 57/12, 44/13 – odl. US, 82/13, 55/15, 15/17, 22/19 – ZPosS, 158/20 – ZIntPK-C in 18/21 of 19 April 2006. Retrieved from: http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4291 [Retrieved on 8 July 2022].

3) SID Bank is not obliged to have a permit for the establishment of a branch of the Bank in the Republic of Slovenia, a Member State of the European Union or a third country;
4) provisions on the preparation of a recovery plan and on guaranteed deposits do not apply to the SID Bank.

The Bank of Slovenia, the Insurance Supervision Agency (*Agencija za zavarovalni nadzor*) and the Ministry of Finance supervise the activities of SID Bank within their remit. The Bank of Slovenia, in turn, supervises the activities of the SID Bank with regard to the implementation of the Banking Act. The Ministry of Finance is responsible for conducting the proceedings related to the exemption of SID Bank from the relevant European Union regulations.

By 31 May each year, SID Bank shall submit a report to the Government of the Republic of Slovenia on the implementation of the mandates received under the Act for the previous year. The Government of the Republic of Slovenia reports to the National Assembly once a year on the implementation of its tasks by the SID Bank.

A member of the management board of the SID Bank, in addition to the requirements set out in the Banking Act, is also required to meet the following conditions:
1) must have at least fifteen years of professional experience, of which at least seven years of experience in running or supervising the affairs of a company of comparable size and operations to SID Bank or other comparable businesses,
2) must have adequate knowledge of the SID Bank's activities or of the specific areas it manages.

The members of SID Bank's management board are appointed by the supervisory board from among the candidates who entered the public recruitment process. The supervisory board of SID Bank consists of seven members who are appointed by the Government of the Republic of Slovenia:
1) five – as representatives of the scientific community – appointed at the request of the minister competent for development and European affairs;
2) one – as a representative of the Minister of Finance – appointed at the request of the minister competent for financial affairs;
3) one – as a representative of the Minister of the Economy – appointed at the request of the Minister competent for economic affairs.

Hungary

Magyar Fejlesztési Bank Zártkörűen Működő (hereinafter MFB) operates on the basis of Act XX of 2001 on the Hungarian Development Bank.[51] The institution is a specialised credit institution (with a banking licence), operating in the form of a joint-stock company in which 100% of the shares are held by the State Treasury. The provisions of the Credit Institutions and Financial Enterprises Act,[52] unless otherwise provided in the MFB Act, apply to the activities of the MFB. The MFB is also not obliged to participate in the National Insurance Fund (deposit guarantee) in Hungary.[53]

It is advisable that the MFB, in line with the principles of transparency, expediency, profitability, efficiency and prudence, and having regard to the need to secure the resources necessary to achieve the economic development objectives defined by the state's medium- and long-term economic strategies, participate, alone or jointly with other domestic or international institutions, in:

1) raising or brokering medium- and long-term funding from domestic and foreign sources, including grants necessary to achieve economic development objectives;
2) ensuring the development of credit and capital financing for the state and investments that are important for the national economy (mainly development of infrastructure, agriculture, environmental protection, job creation, education, tourism, sport and recreation, bridging structural and regional disparities, rural development and harmonisation of urban and rural infrastructure standards);
3) providing credit and equity financing for the activities of businesses, in particular, small and medium-sized enterprises, primary agricultural producers, and family farms;
4) settlement of financed undertakings of the state and local government units as well as investments related to membership in the European Union and the performance of tasks related to the use of European Union funds;

[51] 2001. évi XX. törvény a Magyar Fejlesztési Bank Részvénytársaságról. Magyar Közlöny, Nr. 2001/58, s. 03751–03755 of 26 June 2007. Retrieved from: https://net.jogtar.hu/jogszabaly?docid=a0100020.tv [Retrieved on 3 March 2022].

[52] 2013. évi CCXXXVII. törvény a hitelintézetekről és a pénzügyi vállalkozásokról. Magyar Közlöny, s. 85961–86081 of 23 December 2013. Retrieved from: https://www.takarekbank.hu/files/17/56799.pdf [Retrieved on 3 March 2022].

[53] The activities of the MFB are summarised in S. Skuza (2015f). The Activities of Bank Gospodarstwa Krajowego in the domestic systemic environment. Difin.

5) performing duties related to certain payments of the state, the European Union and international undertakings;
6) refinancing of loans necessary for:
   a) the purchase of real estate owned by the state or local government units;
   b) carrying out repairs for cooperatives and housing communities;
   c) capital investment for development purposes;
7) providing credit to finance investments of businesses, local government units and individuals in regions affected by a natural disaster, which are necessary to repair the damage caused by the disaster;
8) refinancing of credits and loans necessary to microfinance activities in the field of business promotion;
9) granting of credits in respect of the purchase of real estate necessary for the functioning of political parties;
10) providing credit and equity financing to certain state-owned legal persons and providing bank guarantees in their favour;
11) exercising ownership rights on behalf of the State Treasury, with regard to certain state entities, in order to carry out and improve the efficiency of activities and investments relevant to the national economy, as well as to improve competitiveness, especially in the area of sustainable agricultural development;
12) carrying out other tasks in the field of development policy on the basis of a resolution of the Council of Ministers.

The MFB may – in the area of its defined statutory purposes – provide the following financial services:
1) taking deposits and other repayable funds from legal persons only;
2) granting credits and loans;
3) performing financial leasing services;
4) providing bank guarantees or sureties;
5) providing credit references;
6) trading activities related to foreign currency and foreign exchange operations, promissory notes and cheques;
7) financial services intermediation.

On the basis of separate regulations or agreements entered into with the relevant ministry or other entities, it may also perform tasks aimed at improving the effectiveness of its activities as an intermediary institution – with regard to operational programmes financed from public funds and European Union funds.

MFB can acquire:
1) investment certificates issued by investment funds that have their registered office in Hungary;
2) venture capital fund certificates issued by such funds operated by entities with registered offices in Hungary.

MFB is required to separate its property from that of the state and is obliged to keep separate reporting in accordance with such separation. The costs associated with carrying out activities on behalf of the state are covered by the state budget. At a minimum, MFB activities should ensure that the value of the funds entrusted is preserved.

In order to fulfil its tasks, MFB may provide financial services, either directly or through other credit institutions. In addition to loans or credits related to investments, MFB may provide a loan or credit solely to finance the following:
1) intangible assets;
2) financial assets;
3) value added tax paid on the purchase of fixed assets;
4) the needs of working capital;
5) redemption of credit or loan for development or working capital purposes;
6) financial services of a financial institution.

MFB may only provide a surety or guarantee for loans or credits relating to financing the above-mentioned areas of activity.

The activities of the MFB are guaranteed (absolutely, directly) by the state treasury through:
1) meeting payment obligations arising from incurred credits and loans and from bonds issued by MFB to raise funds;
2) fulfilment of obligations arising from loans granted and joint and several guarantees (absolute, direct guarantees) or bank guarantees undertaken in favour of third parties.

The Budget Act sets out annually:
1) the limit on the total amount of credits, loans and bonds that MFB can take out to raise finance;
2) limit on the amount of liabilities arising from commitments granted and joint and several guarantees or bank guarantees undertaken in favour of third parties by MFB on the basis of a resolution of the Council of Ministers;
3) limit on the total amount in connection with credits and loans taken out and bonds issued by MFB for more than one year, expressed in forints,

which are covered by the collateral provided by the agreement relating to the exchange rate;
4) the amount of credits and loans granted by MFB at its own risk for which a guarantee is provided by the state treasury on the basis of a resolution of the Council of Ministers.

MFB carries out foreign currency financing transactions for periods longer than one year in consultation with the minister competent for public finance and the minister competent for the state treasury.

MFB shares do not carry the right to dividends and profits can only be used to increase the accumulated profit reserve (equivalent to the supplementary capital).

The regulations governing the activities of commercial banks apply to MFB with two exceptions of a *lex specialis* nature:
1) the exposure of MFB to credit institutions – shown separately for each entity or each group of entities – may not exceed 200% of MFB's own funds;
2) the exposure of MFB to financial institutions that are not credit institutions – shown separately for each entity or each group of entities – may not exceed 200% of MFB's own funds;
3) the aggregate exposure of MFB to a client that is not a credit institution or belonging to a group of clients that are not credit institutions may not exceed 60% of MFB's own funds.

In addition, the following regulations of the CRR do not apply to the activities of MFB:
1) Articles 89–91 (qualifying holdings outside the financial sector);
2) Articles 102–106 (trading book);
3) Articles 411–428 (liquidity).

The MFB may only acquire – directly or indirectly – shares or stock of the following:
1) financial institution, investment firm, commodities brokers, institution providing clearing or settlement services, investment fund managers, stock exchanges, insurance companies, subsidiaries and international financial organisations;
2) certain state-owned economic operators;
3) in companies established to perform public tasks;
4) to mitigate losses arising from financial services for up to six years from the date of acquisition;
5) for the purpose of performing its tasks.

The total amount of the MFB's exposure to any one entity must not exceed 35% of the MFB's own funds. The amount of contribution of MFB made for development investments in an investment fund or a venture capital fund may not exceed 20% of MFB's own funds. In turn, the total amount of MFB's exposure to investment funds and venture capital funds must not exceed 100% of MFB's own funds.

The MFB shall submit to the Registry Court the annual financial statements and the annual consolidated financial statements – together with the auditor's opinion – approved by the executor of the property right, within 180 days from the balance sheet date of the relevant financial year, in the same form and with the content (wording) on the basis of which the auditor has audited the annual financial statements and the annual consolidated financial statements.

By 15 June, the MFB submits its financial statements to the executor of the property right, who decides on the approval of the financial statements within 15 days of their submission.

MFB is supervised by the Hungarian Financial Supervisory Authority. This office submits a report on the activities of the executor of the ownership rights and presents it to the Council of Ministers within 30 days of the receipt of such report. The bodies of MFB are the executor of the ownership rights, the management board and the supervisory board. The owner, or executor of ownership rights, is the State Treasury, represented by the minister competent for the State Treasury. The executor of ownership rights analyses the suitability, viability and professionalism of MFB management.

As executor of ownership rights, the Minister competent for the State Treasury submits a report to the Council of Ministers by 31 August on the activities of the MFB of the previous year. The report analyses in detail the account of the activities of MFB in the given year and the expediency and profitability of the MFB's financial management. The report also includes an analysis of income and assets, financial conditions, obligations undertaken in the previous year and carried over from earlier periods together with their due date and an evaluation thereof, and settlements with the state budget.

The executive body of the MFB is the executive board, which consists of five to nine members. Members of the executive board are appointed (for a period of five years) and dismissed by the executor of the ownership rights. The executor of the ownership rights approves the rights of the CEO. The CEO is a member and chairperson of the executive board and is entitled to hold the title of Chief Executive Officer – CEO. Member of the executive board, as well as their relatives, may not be members of the European Parliament, the Hungarian Parliament or a municipal government.

The supervisory board is the supervisory body of MFB. The chairperson and members of the supervisory board are appointed and dismissed by the executor of the ownership rights. MFB auditors, on the other hand, are appointed for a fixed period of time by the executor of the ownership rights.

MFB may only employ persons with no criminal record and who have the necessary theoretical knowledge and practical training to carry out the tasks assigned. Detailed rules applicable for employees are defined in the organisational and operational regulations and the articles of association of MFB. Employees of the MFB must maintain the trade, banking and security secrets used by them in the performance of their tasks. The president – chief executive officer – of MFB may grant an exemption from the obligation of confidentiality in respect of business matters relating to the activities of MFB. In addition, MFB employees may not, without prior authorization of MFB, enter into any other employment relationship or carry out any other activities – with the exception of scientific, educational, artistic, training, journalistic or intellectual activities covered by legal protection.

Members of the executive board, the supervisory board as well as employees may not hold office in a political party or any public role on behalf of or in the interest of a political party – with the exception of persons running in parliamentary or local government elections. In turn, an MFB employee may not hold senior management positions in a company or be a member of the supervisory board, except where the MFB or the State Treasury holds a direct or indirect stake in such a company.

Summary and Conclusion

1. In the examples of public development finance institutions in Central and Eastern Europe analysed herein, it can be observed that countries have adopted different legal solutions – from comprehensive regulation for a completely new institution that is not a bank or an insurance company within the meaning of the legislation relating to these institutions (Slovakia), through *lex specialis* provisions relating to licensed financial institutions operating in the market (Hungary, Croatia, Czech Republic, Bulgaria, Slovenia) or guidance provisions on separate rules for the operation of development finance institutions (Latvia), to a model that is completely liberal in legal terms, i.e. the establishment of a development institution on the basis of the existing commercial law and profit-oriented legislation (Lithuania).
2. Apart from the solution applied in Lithuania, regulations of a *lex specialis* nature are, to varying degrees, an indispensable part of the regulatory

environment of the rules for the operation of public development finance institutions in each of the countries analysed herein. The Author does not recommend the adoption of one particular solution from a selected country. It would be reasonable to analyse the solutions in order to develop an optimal regulatory environment for Bank Gospodarstwa Krajowego.

3. The examples of Bulgaria, Croatia, Slovenia and Hungary seem, in the Author's opinion, to be the most appropriate for a comparative analysis with the solutions pertaining to Bank Gospodarstwa Krajowego. This is supported by the focus of the main activities of public development finance institutions in these countries on banking, which coincides with the activities of Bank Gospodarstwa Krajowego.
4. Due to the divergence between the objectives of functioning (value maximisation) of commercial and missionary activities, the Author does not recommend applying a liberal (Lithuanian) solution, i.e. the establishment and functioning of a bank solely under the rules of the Banking Act,[54] or a company under the Code of Commercial Partnerships and Companies.[55] In the Author's opinion, focusing on making a profit would not be compatible with operating within a market failure. Although the Lithuanian Public Investment Development Agency operates in certain economic sectors, it does so on a commercial basis. It is therefore an institution through which the state, as owner/investor, carries out economic activities that are competing with other entities on a market economy basis.
5. To minimise *lex specialis* solutions in the introduction of this publication, the Author does not recommend applying a solution creating a public development finance institution as a non-regulated and licensed entity. The analysis of examples of selected foreign legal solutions prompts the Author to the necessity of preparing solutions for the functioning of Bank Gospodarstwa Krajowego in the area of defining the list of business objectives (purpose and product restrictions) and the responsibility (guarantee) of the state for its activity.
6. The Author did not notice specific arrangements for the possibility of recapitalising a public development finance institution with public resources in any of the cases analysed. It must therefore be presumed that such a recapitalisation in the cases under review can only be made from state budget expenditure.

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[54] Banking Act of 29 August 1997 (Journal of Laws of 2021, item 2439, as amended).

[55] Act of 15 September 2000 – Code of Commercial Partnerships and Companies (Journal of Laws of 2022, item 1467, 1488).

Part II

Regulatory Framework of Domestic Law Within the Context of the Establishment and Operation of Bank Gospodarstwa Krajowego

Chapter 3
Conditions and Legal Basis for the Functioning of State-Owned Banks in Poland

In this chapter, the Author presents and subjects to legal analysis the principles of functioning of a state-owned bank specified in the Banking Act of 29 August 1997 (hereinafter referred to as the Banking Act). This is the legal form in which Bank Gospodarstwa Krajowego operates, as confirmed by the provisions of the Act of 14 March 2003 on Bank Gospodarstwa Krajowego (hereinafter the BGK Act).

Establishment and Status of a State-Owned Bank

The matter of the establishment of a state-owned bank is regulated by Article 14 of the Banking Act. A state-owned bank may be established by the Council of Ministers by a resolution. The same procedure is followed for its liquidation. The establishment or liquidation of a state-owned bank requires consultation with the Financial Supervision Authority, except for the case referred to in Article 147, section 1, item 2 of the Banking Act, i.e. a request by the Financial Supervision Authority to the Council of Ministers to liquidate a state-owned bank.

The regulation of the Council of Ministers on the establishment of a state-owned bank specifies the following:

1) its name;
2) registered office;
3) subject and scope of its business activity;
4) statutory funds, including funds set aside from the assets of the State Treasury, which become the bank's assets.

A state-owned bank is a legal person within the meaning of Article 40 of the Act of 23 April 1964 – Civil Code,[56] acquiring this personality as at the date of entry into force of the Regulation of the Council of Ministers on its establishment (Tereszkiewicz, 2005; Sikorski, 2015). The Author points out that the concept of a state-owned bank is not to be understood as a bank in the form of a joint-stock company owned solely by the State Treasury. Such entities should be governed by the rules on banks operating as joint-stock companies, not by the rules on state-owned banks.

The possibility of creating a state-owned bank is a solution that allows the state to influence the shape of the financial system. According to Władysław L. Jaworski (2000), state-owned banks should not dominate the structure of the banking sector and their purpose should be solely to support government and local government programmes. However, this is not a regulatory obligation, as, in the Author's opinion, a state-owned bank established under the Banking Act is a bank carrying out activities of a commercial nature.

Article 14 of the Banking Act is a special provision in relation to the general principle adopted in Article 13 of that Act, allowing the State Treasury to establish a state-owned bank on a sole proprietorship basis; it is also a special norm in relation to Article 301 of the Act of 15 September 2000 – Code of Commercial Partnerships and Companies[57] in relation to a bank operating in the form of a joint-stock company, and Article 6 § 2 of the Act of 16 September 1982 – Cooperative Act (hereinafter the Cooperative Act)[58] – in relation to a cooperative bank (Sikorski, 2015).

Several bodies are involved in the process of establishing a state-owned bank. The Council of Ministers is not authorised to act independently in this area *ex officio*. The mandate to issue the regulation in question may also not be transferred by the Council of Ministers to another body (Tereszkiewicz, 2005). The motion of the minister competent for state assets should include in its content the name, registered office, object and scope of activity of the bank, its statutory funds, including funds set aside from the property of the State Treasury, which become the property of the new legal entity, i.e. the state-owned bank.

Some researchers (Fojcik-Mastalska, 2007; Tereszkiewicz, 2005) raise doubts as to whether the opinion of the Financial Supervision Authority on the establishment does not necessarily have to be positive. In proceedings for the establishment of a state-owned bank, the role of the Financial

[56] Journal of Laws of 1964 No. 16, item 93; i.e. Journal of Laws of 2022, item 1360.
[57] Journal of Laws of 2022, item 1467, 1488.
[58] Journal of Laws of 2021, item 648.

Supervision Authority has been limited to giving an opinion only – unlike in the case of banks in the form of joint-stock companies or cooperative banks. In fact, with regard to such entities, the Financial Supervision Authority takes binding decisions on the authorisation of their establishment (Kosiński, 2013). Proposals have been made in the literature to strengthen the role of the supervisory authority in this area. According to Eugenia Fojcik-Mastalska (2007), the Financial Supervision Authority should authorise the establishment of a state-owned bank or act in consultation with the Council of Ministers. However, the above procedure for the establishment of a state-owned bank does not exclude the authorisation of the Financial Supervision Authority to issue a permit for such a bank to commence operations, as indicated by Article 32, section 5 of the Banking Act (Smykla, 2011). A similar procedure applies in the event of liquidation of a state-owned bank, and the motion for liquidation may be filed by the Financial Supervision Authority only in an extraordinary case if the loss exceeds half of its own funds (Mazur, 2008).

A state-owned bank is not subject to registration in the National Court Register, as the provisions of Article 14, section 3 of the Banking Act exclude such an obligation. However, there is no doubt that a state-owned bank is an entrepreneur and is subject to the legal norms applicable to entrepreneurs in legal transactions (Szwaja, 2019).

The interpretation of Article 14a of the Banking Act by negation indicates the specific status of a state-owned bank. The wording of this Article stipulates that a state-owned bank is not a state-owned enterprise, a state organisational unit or a unit of the public finance sector within the meaning of separate regulations. The provisions of the Act of 25 September 1981 on state-owned enterprises[59] do not apply, even *mutatis mutandis*, to a state-owned bank. The provision does not define a state-owned bank, but enables the adoption of the general principle that the activities of such a state-owned bank entity are not subject to organisational arrangements specific to the public sector (Daniluk, 2022). Furthermore, it should be noted that under Article 9, item 14 of the Public Finance Act of 27 August 2009[60] banks, including state-owned banks, are not treated as part of the public finance sector (Kawulski, 2013).

[59] Journal of Laws of 1981, No. 24, item 122; i.e. Journal of Laws of 2021, item 1317; of 2022, item 1846.

[60] Journal of Laws of 2009, No. 157, item 1240; i.e. Journal of Laws of 2022, item 1634, 1725, 1747, 1768, 1964.

Bodies of the State-Owned Bank and Their Remit

The Article 15 of the Banking Act specifies the bodies of the state-owned bank. The bodies of a state-owned bank are the supervisory board and the management board. A clear point to be made here is the impossibility of bodies other than the management board and the supervisory board to function in a state-owned bank (Kawulski, 2013). The management board is the governing body, while the supervisory board has control and supervisory powers and, in addition, some of the powers that are part of the scope of authority of the decision-making body (general meeting) in other legal entities. The lack of an equivalent to the general meeting, in fact, means that some of its remit in a state-owned bank must actually be exercised by the supervisory board (Fojcik-Mastalska, 2007; Sikorski, 2015).

Members of the authorities of a state-owned bank are subject to a non-compete obligation, which is defined by law in very general terms (Sikorski, 2015). The only example of such activity indicated by the Banking Act is combining a position on the management or supervisory board of a state-owned bank with simultaneously holding a position on the management or supervisory board of another bank. By analogy, a guideline in defining the scope of competitive activities may be the norms relating to joint-stock companies or cooperatives set out respectively in Article 380 § 1 of the Act of 15 September 2000 – Code of Commercial Partnerships and Companies and Article 56 § 3 of the Cooperative Act of 16 September 1982. The non-compete is absolute, i.e. it cannot be restricted in any way (Tollik, 1999). This prohibition, and in particular its scope, may instead be further detailed in the regulations of the articles of association of the state-owned bank (Tereszkiewicz, 2005). In addition, with regard to the restriction of activities, employees of a state-owned bank holding the positions of president, vice-president, member of the management board and treasurer are subject to restrictions under the Act of 21 August 1997 on Restrictions on the Conduct of Business by Persons Performing Public Functions[61] (Sikorski, 2015).

The concept of "competitive activity" does not have a formalised legal definition, but it can be presumed that it is competition between market participants seeking to achieve their objectives by offering goods and services that stand out from others in terms of price, quality or other features that may induce recipients to choose them (Skoczyński, 2004). This concept therefore does not refer exclusively to the profit-making domain of a given entity (Kuczyński, 1997; Mazur, 2008).

[61] Journal of Laws of 2022, item 1110.

Article 16 of the Banking Act addresses the issue of the appointment of the supervisory board of a state-owned bank. The supervisory board is appointed for a period of three years from among persons with appropriate qualifications in the field of finances. The chairperson of the supervisory board is appointed and dismissed by the Prime Minister. The members of the supervisory board are appointed by the Prime Minister from among persons who are not members of the management board of that bank. Members of the supervisory board are dismissed in the same manner in which they were appointed (Sikorski, 2015; Kawulski, 2013).

It should be noted that the members of the supervisory board of a state-owned bank are appointed for a joint term of office. The dismissal of a member of the board before the expiry of his or her term of office and the appointment of a new person in his or her place does not shorten or terminate the term of office of the board – the term of office continues until the end of the 3-year period (Kawulski, 2013). This solution is the same as the joint term of office provision adopted in the Code of Commercial Partnerships and Companies (Kosiński, 2013). The provisions of the Banking Act do not contain solutions specifying the number (even the maximum) of members of the supervisory board of a state-owned bank. This number should therefore be determined by the provisions of the articles of association (Mazur, 2008; Kawulski, 2013).

As mentioned, the supervisory board may only be composed of persons with relevant qualifications in finance. However, the provisions of the Banking Act do not specify exactly what qualifications are required for supervisory board members, using only general wording. The literature tends to argue that board members must have a degree in finance, law or economics and professional experience in a bank in a managerial capacity (Tereszkiewicz, 2005; Sikorski, 2015). The assessment with regard to the fulfilment of the condition of relevant qualifications is to be examined by the Prime Minister on a case-by-case basis (Kosiński, 2013). Relevant financial qualifications can, for example, be documented by completion of a specific type of university degree, postgraduate studies, a degree, e.g. in economic sciences, legal sciences, management, and a specific length of service in financial institutions (Ofiarski, 2013). According to Piotr Tereszkiewicz (2005), the requirement to have a theoretical education and practical experience (e.g. working in a managerial capacity in banks, or serving as a member of a management or supervisory board) should be regarded as fulfilling the requirements. In view of the need to ensure substantive supervision of the bank's activities, the requirement of appropriate qualifications should thus be interpreted in a narrowing manner. According to Piotr Tereszkiewicz (2005), the concept

of "relevant qualifications" should be further clarified in the regulation establishing the articles of association of a state-owned bank.

Article 17 of the Banking Act regulates the appointment of the management board of a state-owned bank. The mandate to appoint and dismiss members of the management board of a state-owned bank is vested in the supervisory board. However, it should be noted that the president of the management board of a state-owned bank is actively involved in the appointment of the other members of the management board. This is because their appointment is made by resolution of the supervisory board solely on the proposal of the president (Kosiński, 2013). With regard to the dismissal of the president, the decision of the supervisory board is unconstrained, whereas with regard to the dismissal of a member of the management board, a proposal from the president of the management board is necessary (Sikorski, 2015).

The approval of the Financial Supervision Authority is required for the appointment of the president of the management board and one board member. Such consent is given in the form of an administrative decision (Sikorski, 2015). The above solution is similar to the method of appointment of the management board in a bank operating in the form of a joint-stock company and makes it necessary to apply Article 22b of the Banking Act accordingly in this respect (Mazur, 2008).

The provisions of Article 17 of the Banking Act do not indicate the requirements in the area of qualifications or experience that a candidate for a member of the management board of a state-owned bank – including the position of the president – should have. However, it may be presumed that the solutions contained in Article 30, section 1, item 2 of the Banking Act should also be applied with regard to these persons, i.e. the establishers shall provide a guarantee of prudent and stable management of the bank, the persons expected to take up the positions of members of the supervisory board and the management board in the bank shall meet the requirements set out in Article 22aa of the Banking Act and, in addition, the members of the management board referred to in Article 22a, section 3 and 4 of that Act shall demonstrate a proven command of the Polish language (Tereszkiewicz, 2005; Sikorski, 2015).

The Banking Act also does not specify the term of office of the management board of a state-owned bank or the number of persons comprising the board (Kosiński, 2013). As in the case of the supervisory board, the number of members of a bank's management board should be determined by the articles of association of the state-owned bank; in addition, its provisions should also regulate the duration of the term of office (Mazur, 2008).

The powers of the supervisory board and the management board of a state-owned bank are defined in Article 18 of the Banking Act. The

supervisory board supervises the activities of the state-owned bank, approves the financial statements presented by the management board and the distribution of profit and the manner of covering losses, and adopts reports on the bank's activities, makes recommendations to the bank's management board and may suspend members of the bank's management board. The supervisory board revokes a resolution of the bank's management board if it is found to be inconsistent with the law or the bank's articles of association. The management board in turn considers matters relating to the bank's business and adopts resolutions on these matters, the implementation of which is ensured by the president of the management board of the bank. The president of the management board of a state-owned bank represents the bank, chairs the bank's management board and organises the bank's operations. The detailed scope of activities of the supervisory board and the management board and the persons authorised to represent the bank are laid down in the articles of association of the state-owned bank.

Article 18 of the Banking Act does not regulate the detailed scope of the remit of the state-owned bank bodies, as well as the mutual relations between them. The detailed scope of activities of the supervisory board and the management board, as well as the persons authorised to represent a state-owned bank, should therefore be set out in its articles of association (Ofiarski, 2013). This is because the Banking Act only defines the core remit of the state-owned bank authorities (Sikorski, 2015). Article 18 of the Banking Act assigns the primary powers to the bodies of a state-owned bank, i.e. the supervisory board and the management board. In this respect, the solutions used in banks operating in other legal forms (joint stock, cooperative) and regulated by the provisions of the Code of Commercial Partnerships and Companies and Cooperative Act were modelled on (Ofiarski, 2013). The above bodies may also adopt internal regulations (Tollik, 1999).

The competencies of the supervisory board are related to the overall activities carried out by the state-owned bank and their results (Ofiarski, 2013). In the absence of an ownership body in the structure of a state-owned bank, some of its powers are exercised by the supervisory board. Apart from supervisory activities, the supervisory board approves the financial statements presented by the management board and the distribution of profit and the coverage of losses, adopts the bank's activity reports, makes recommendations to the management board and suspends the members of the management board (Mazur, 2008). Pursuant to Article 17 of the Banking Act, the supervisory board appoints and dismisses the members of the management board of a state-owned bank, and pursuant to Article 18, section 3 of the Act, the board is obliged to revoke management board

resolutions if they are found to be non-compliant with the provisions of the law or the bank's articles of association (Sikorski, 2015).

The powers of the supervisory board are broadly in line with those of supervisory boards in banks in the form of joint stock companies as set out in the provisions of the Code of Commercial Partnerships and Companies. This is because the banks' bodies and their powers are rightly subject to legal principles that are as similar as possible (as far as the distinctiveness of their organisational and legal forms allows) (Fojcik-Mastalska, 2007).

The management board handles matters concerning the day-to-day business of the bank. This applies to matters that are not reserved to the remit of the supervisory board (Tollik, 1999). It is also obliged to implement the recommendations of the supervisory board indicated pursuant to Article 18, section 1 of the Banking Act. The implementation of management board resolutions is entrusted to the president of the management board (Sikorski, 2015). The management board of a state-owned bank makes decisions through resolutions; the board's decisions are therefore of a collegial nature (Ofiarski, 2013). Within the scope of its powers, as specified in the bank's articles of association, the management board of the bank adopts resolutions to ensure the functioning of the bank in the ordinary course of business. In contrast, in the performance of its duties, the management board of a state-owned bank is bound by the recommendations of the supervisory board. This restriction only affects internal relations, as legal acts carried out against the recommendations are not invalid (Ofiarski, 2013).

It should be noted that in a state-owned bank, the president of the management board occupies a special position, as he or she ensures the implementation of the resolutions of the management board, represents the bank, chairs the management board and organises its activities. However, it is not a body of a state-owned bank, but performs an executive function for the management board, in accordance with Article 18, section 2 of the Banking Act (Fojcik-Mastalska, 2007; Sikorski, 2015). The Act, therefore, grants the president of the management board significant powers of an executive and representative nature (Tereszkiewicz, 2005).

Articles of Association of a State-Owned Bank

Pursuant to Article 19 of the Banking Act, the articles of association of a state-owned bank are laid down by a regulation of the minister in charge of state assets in consultation with the minister competent for financial institutions, after consultation with the Financial Supervision Authority, having regard to

the need for the efficient performance of tasks by the state-owned bank. The articles of association of a state-owned bank primarily determine its structure and rules of operation. The subject matter covered by the articles of association includes, in particular, the types of banking activities carried out by the bank, the scope, subject matter and internal organisation of the bank, the detailed scope of powers of the bodies (supervisory board, management board, president of the management board), the principles of representation and financial management (Pyzioł, 2000). In the case of a state-owned bank, the articles of association are established in the form of regulation. Thus, as in the case of the establishment of a state-owned bank, the legislator also provided for a normative procedure for the establishment of the articles of association (Kosiński, 2013).

The Banking Act does not contain regulations explicitly defining the content of the articles of association of a state-owned bank. Article 18, section 5 of the Banking Act only implies that the articles of association should contain provisions on the detailed scope of the activities of the supervisory board and the management board. The articles of association should also regulate the scope of authority of the persons authorised to represent the bank (Tereszkiewicz, 2005; Fojcik-Mastalska, 2007). The essential elements of the articles of association of a bank in the form of a joint-stock company are listed in Article 31, section 3 of the Banking Act. These are, in particular, the following (Ofiarski, 2013):

1) name of the company, which should include the distinguishing word "bank" and be distinct from the names of other banks and indicate the legal form of the bank;
2) the registered office, the object and the scope of the bank's activities, including the activities relating to the trading of financial instruments that the bank intends to carry out;
3) bodies and their remit, with particular reference to the powers of the members of the management board, whose appointment requires the approval of the Financial Supervision Authority, and the rules of decision-making, the basic organisational structure of the bank, the rules for making declarations regarding property rights and obligations, the procedure for issuing internal regulations and the procedure for making decisions on incurring liabilities or disposing of assets the total value of which with respect to one entity exceeds 5% of own funds;
4) principles of operation of the internal control system;
5) own funds and financial management principles.

The manner in which the ministers competent for assets and those competent for financial institutions cooperate when establishing the articles of association of a state-owned bank is a result of the regulations adopted

in the Act of 4 September 1997 on divisions of government administration[62] defining the scope of government administration divisions and the authority of the minister in charge of a given division. The division of state assets covers matters relating to the management of State Treasury assets, including the protection of the interests of the State Treasury (with the exception of matters that are assigned to other sections under separate provisions), while the Financial Institutions section covers matters relating to the functioning of the financial market, including matters relating to banks (Ofiarski, 2013).

Before a state-owned bank is conferred with its articles of association, the minister competent for state assets is obliged to consult the Financial Supervision Authority. Although the procedure for establishing the articles of association of a state-owned bank is different from that for other types of banks, Article 31, section 3 of the Banking Act, which indicates the most important elements of the content of the bank's articles of association, can be applied accordingly (Fojcik-Mastalska, 2007). In the view of Arkadiusz Kawulski (2013), *de lege ferenda* consideration may be given to increasing the powers of the Financial Supervision Authority when establishing the articles of association of a state-owned bank, by giving the Financial Supervision Authority the power to approve the (draft) articles of association of a state-owned bank or to issue a positive opinion.

The Specifics of the Assessment of Creditworthiness by a State-Owned Bank

Article 128b of the Banking Act introduces a separate regulation for state-owned banks with regard to the case where the costs of servicing and the risk of guarantee or surety payments will not be charged to the financial result of the state-owned bank. In such a case, it may entrust another financial institution, under an agreement, with the assessment of the ability to repay the liability and the analysis of the risk of payment of the obligation in the case of the granting of sureties or guarantees under the provisions of the Act of 8 May 1997 on sureties and guarantees granted by the State Treasury and certain legal persons[63] (hereinafter referred to as the Sureties and Guarantees Act) or other Acts setting out the principles for the granting of sureties and guarantees by a state-owned bank.

[62] Journal of Laws of 2021, item 1893, as amended.
[63] Journal of Laws of 2022, item 1613.

Where the costs of servicing and the risk of guarantee or surety payments will be charged to the financial result of a state-owned bank, the Financial Supervisory Authority may, upon its request, authorise it to entrust another bank with the assessment of the ability to repay the liability and the analysis of the risk of payment of the obligation in the following events:

1) the granting by a state-owned bank of guarantees or sureties for a portfolio of loans understood as a collection of individual loans granted by that bank, for which the total amount of the limit of guarantees or sureties for a specified period is set by an agreement between that bank and the state-owned bank;
2) the granting of a surety or guarantee for a portfolio of other obligations, understood as a set of individual civil law contracts, for which the total amount of the surety or guarantee limit is specified in an agreement between that bank and the state-owned bank.

Summary and Conclusion

1. The provisions of the Banking Act relating exclusively to state-owned banks are not overly elaborate. They are limited (apart from Article 128b of the Banking Act) to organisational and corporate matters only. The biggest difference in the rules on the operation of state-owned banks compared to banks operating as joint stock companies or cooperative banks is the issue of not having to obtain supervisory approval to establish such an entity. To be considered as a *de lege ferenda* proposal is the strengthening of the role of the supervisory authority in the case of the establishment of state-owned banks, nevertheless this issue is not related to the functioning of Bank Gospodarstwa Krajowego, which is the subject of the Author's research herein.
2. The separate regulation in the area of state-owned banks concerning corporate matters is due to the fact that, in the case of these entities, there is a lack of regulation of these areas in acts such as the Code of Commercial Partnerships and Companies or the Cooperative Law. Also, the Act of 25 September 1981 on State-Owned Enterprises[64] is not applicable due to the provision of Article 4, section 2, item 1 stating that its provisions do not apply to banks.
3. With regard to possible discretionary inclusions of a state-owned bank, attention should be drawn to Article 128b of the Banking Act. This

[64] Journal of Laws of 2021, item 1317, of 2022, item 1846.

provision, as originally drafted, concerned the possibility of exempting state-owned banks from certain prudential standards applicable to banks operating in other legal forms. Nonetheless, it should be noted that the provision was drafted solely with the scope of activities of Bank Gospodarstwa Krajowego in mind. This is indicated by the introduction of such a solution in Article 15 of the BGK Act. According to the original version of this provision, the Banking Supervision Authority could, at the request of a state-owned bank, exempt part of the bank's activities or all of its activities related to the handling of funds created, entrusted or transferred to that bank under separate laws from the obligation to comply with certain requirements and standards referred to in the Act, provided that:

1) the activity is financially separated and, in particular, the bank does not participate in its financing;
2) the risks associated with these activities shall not in any way be borne by the bank and, in particular, the bank shall not be liable for losses arising from these activities.

The current wording of the provision in Article 128b of the Banking Act covers the issue of guarantees or sureties provided by a state-owned bank and the outsourcing of creditworthiness assessment. In the Author's opinion, this provision is questionable from the point of view of domestic and European Union law. In theory, it cannot be ruled out that the Council of Ministers will establish a state-owned bank with a commercial focus, and such a solution would constitute a preferential treatment compared to other entities operating on an analogous basis. In the Author's opinion, the Article 128b of the Banking Act should be removed or amended by providing such opportunities to all banks.

4. In the Author's opinion, it is also unjustified to maintain the solution contained in Article 14a of the Banking Act indicating by negation what entity a state-owned bank is not within the meaning of other provisions. The above issue should in fact be determined by the very status of a state-owned bank. Furthermore, in accordance with Article 3, section 1, item 16 of the of the Act of 16 December 2016 on the principles of state property management,[65] the state-owned bank has the status of a state legal entity. In the Author's opinion, this provision does not add normative value and should be deleted.

[65] Journal of Laws of 2021, item 1933; of 2022, item 807, 872, 1459, 1512.

Chapter 4
The Original Legal Measures Establishing Bank Gospodarstwa Krajowego

This chapter aims to present and analyse the legal regulatory environment of Bank Gospodarstwa Krajowego at the time of its establishment in 1924. The Author attempts to present the specifics of the original regulation governing the activities of Bank Gospodarstwa Krajowego. In turn, the Author to pay particular attention to the issue of the scope of its tasks, the sources and conditions of their financing, as well as its organisational and financial ties with the state. The Author wishes to analyse the original legal arrangements for Bank Gospodarstwa Krajowego and use the conclusions for the application part of this publication. The chapter will be prepared based on normative acts, i.e. the Regulation of the President of the Republic of Poland of 30 May 1924 on the merger (fusion) of State Credit Institutions into Bank Gospodarstwa Krajowego[66] (hereinafter the Regulation of 1924) and the Regulation of the Minister of the Treasury of 31 May 1924 on the articles of association of Bank Gospodarstwa Krajowego[67].

Establishment and Status of Bank Gospodarstwa Krajowego

The economic situation of Poland in the 1920s prompted the need for legal solutions to enable economic reform. Part of such solutions was the adoption of the Act of 11 January 1924 on State Treasury Repair and Currency

[66] Journal of Laws No. 46, item 477, as amended.
[67] Journal of Laws No. 46, item 478, as amended.

Reform[68] (hereinafter the Act of 1924). In accordance with Article 1 of the 1924 Act, in order to carry out remedial and reform measures, a number of solutions were adopted in the following areas:
1) taxes and state loans;
2) monetary system;
3) functioning of financial institutions.

Article 1, item 7 of the Act of 1924 provided for corrective action in the field of state finances by approving (without infringing the rights of third parties flowing from the applicable civil legislation) amendments to the articles of association of long-term credit institutions, as well as amending laws and articles of association or establishing articles of association of state financial institutions, state-owned enterprises, state-subsidised institutions and those in which the state held shares for the following purposes:
1) centralising their activities;
2) reorganisation to maximise cost efficiency in their operations;
3) ensuring that these institutions' available funds can be invested in government securities;
4) reorganisation or merger (fusion).

Pursuant to Article 2 of the Act of 1924, the implementation of the aforementioned provisions was scheduled for implementation by 30 June 1924 by means of regulations of the President of the Republic of Poland, issued on the basis of relevant resolutions of the Council of Ministers. According to Article 44 of the Constitution of the Republic of Poland of 17 March 1921,[69] the President of the Republic was obliged to sign acts together with the relevant ministers and had them published in the Journal of the Laws of the Republic of Poland. To implement the laws and by invoking statutory authority, the President – among other things – had the power to issue executive orders and to ensure their enforcement by means of compulsory measures. To be valid, the acts of the President of the Republic of Poland required the signature of the Prime Minister and the relevant minister, who assumed responsibility by signing them. Pursuant to the Act of 1924, a regulation of the President of the Republic of Poland of 30 May 1924 was issued on the merger (fusion) of the State Credit Institutions into Bank Gospodarstwa Krajowego. At the same time as the President of the Republic of Poland issued the Regulation of 1924 on the basis and within the limits of

[68] Journal of Laws No. 4, item 28.
[69] Journal of Laws No. 44, item 267, as amended.

the Act of 1924, the provisions of the acts in conflict with the new act issued by the President of the Republic of Poland were repealed.

Pursuant to Article 1 of the Regulation of 1924, Polski Bank Krajowy established by the Act of 7 April 1922, Państwowy Bank Odbudowy established by the Act of 23 March 1922, Zakład Kredytowy Miast Małopolskich approved by the rescript of the Minister of Treasury of 6 December 1919 No. 84200/23113 S. III were merged into a single entity under the name "Bank Gospodarstwa Krajowego". Bank Gospodarstwa Krajowego was therefore created as a result of a merger (fusion). The Minister of the Treasury was obliged to establish the article of association of Bank Gospodarstwa Krajowego in accordance with Article 2 of the Regulation of 1924.

Pursuant to Article 3 of the Regulation of 1924, Bank Gospodarstwa Krajowego was a state-owned institution with legal personality, and was also entitled to use a seal with the state emblem and the inscription "Bank Gospodarstwa Krajowego" in the rim. The registered office of the Bank was in the capital city of Warsaw, and the area of operations was the entire country. With the approval of the Minister of the Treasury, Bank Gospodarstwa Krajowego could open and close branches and representative offices in the country and abroad.

Article 4 of the Regulation of 1924 restricted the group of shareholders of Bank Gospodarstwa Krajowego to the State Treasury, state-owned enterprises, local government units or enterprises owned by them. The total involvement of the State Treasury and state-owned enterprises in the share capital of Bank Gospodarstwa Krajowego could not be less than 60% of the share capital. The share capital could be increased by increasing the shares of the state or, with the permission of the Minister of the Treasury, the shares of local government units, as well as state or local government enterprises. The share capital could only be reduced with the approval of the Minister of the Treasury on the request of the supervisory board, passed by a two-thirds majority of its statutory membership. The State Treasury also had the right to transfer part of its shares to state-owned enterprises. The value of a single share could not be less than PLN 25,000.

The share capital of Bank Gospodarstwa Krajowego consisted of shares of the following:

1) state, which included the net assets of the three merging state institutions (Polski Bank Krajowy, Państwowy Bank Odbudowy, Zakład Kredytowy Miast Małopolskich);
2) local government units, which included the net assets of the Zakład Kredytowy Miast Małopolskich;
3) local government units, their associations and enterprises owned by them.

Shareholders were liable for the obligations of Bank Gospodarstwa Krajowego up to the amount of their shares in the share capital, with the exception of the State Treasury. This is because the State Treasury's guarantees covered the following:
1) issuance of mortgage bonds of Polski Bank Krajowy – without limitation;
2) liability arising from the issue of communal bonds – up to PLN 200 million;
3) railway bonds – up to PLN 20 million.[70]

Operating Principles of Bank Gospodarstwa Krajowego

Pursuant to Article 5 of the Regulation of 1924, the tasks of Bank Gospodarstwa Krajowego included the following:
1) the provision of long-term credit by:
   a) issuance of mortgage bonds (mortgage-backed),
   b) communal and railway bonds, and bank bonds for industrial and other needs;
2) supporting self-government savings institutions;
3) supporting the building and reconstruction projects in the country;
4) the performance of all banking activities, with particular emphasis on the needs of the State Treasury, state-owned enterprises and local government units.

Article 7 of the Regulation of 1924 introduced the principle that funds allocated from the state treasury for credit purposes, insofar as they were not directly at the disposal of the state authorities, could only be managed by Bank Gospodarstwa Krajowego. Article 8 of the Regulation of 1924, in turn, granted the entity the right to issue mortgage bonds and communal, railway and bank bonds in domestic or foreign currency. The nominal value of the mortgage bonds issued could not exceed the value of the mortgage claims. The above rule also applied to communal, railway and bank bonds, i.e. in each of these business areas, the total amount of the issue could not exceed the amount of the claim.

Pursuant to Article 9 of the Regulation of 1924, Bank Gospodarstwa Krajowego was permitted to grant mortgage, communal, railway and industrial loans – using mortgage bonds and bond instruments or in cash.

[70] The amounts are presented after the 1924 denomination.

Backed by receivables from granted loans secured by mortgages, including factory properties, Bank Gospodarstwa Krajowego was entitled to issue mortgage bonds and, based on communal, railway or industrial loans granted – communal, railway or bank bonds. The mortgage, communal, railway, and bank bonds issued by Bank Gospodarstwa Krajowego were bearer financial instruments. In the event of overdue repayment of mortgage, communal, railway or industrial loans, Bank Gospodarstwa Krajowego was obliged to redeem mortgage bonds or bonds respectively for an amount corresponding to the repaid principal of the loans granted. The payment of interest and principal on the issue of mortgage bonds or bonds was secured by the mortgage or communal, railway or industrial claims of Bank Gospodarstwa Krajowego, as well as by all its assets. The interest rate on the mortgage bonds issued and other above-mentioned bonds had to always be equal to the interest rate on the loans under which the mortgage or other bonds were issued.

To ensure timely interest payments on mortgage and other bonds, Bank Gospodarstwa Krajowego was obliged to create a special reserve:

1) from the upfront fee (commission) that borrowers taking out a mortgage, railway or communal loan were required to pay at a rate of 0.25%, and an industrial loan at a rate of 1.0% of its value;
2) from profits made from the purchase of mortgage or other bonds to be written off;
3) from the portion of surplus income allocated to the mortgage, communal, railway or industrial loan reserve fund;
4) from the proceeds of overdue coupons and drawn mortgage bonds or communal, railway or bank bonds.

Bank Gospodarstwa Krajowego had the right to grant loans backed by mortgages:

1) on land properties for which mortgage books had been created;
2) on the properties recorded in the mortgage books with brick buildings in cities indicated by the Minister of the Treasury at the request of the supervisory board;
   a) on residential and other public buildings;
   b) on factory properties with assured permanent use.

Bank Gospodarstwa Krajowego could only grant loans secured by mortgages if such a loan granted, together with other existing mortgages preceding it, was within the first half of the property's valuation.

The buildings securing the loan had to be compulsorily insured against the risk of fire with an institution designated by the Minister of the Treasury, and

compensation could not be paid without the approval of Bank Gospodarstwa Krajowego. The bank assessed the value of the property to be used as a security taking into account land tax, revenue assessments, purchase and lease contracts, property prices, rents and fire insurance. Mortgage loans with a value in excess of PLN 100,000 required approval of the supervisory board.

Bank Gospodarstwa Krajowego could provide loans using the issue of communal bonds to the following entities:

1) to State Treasury and local government units:
   a) to repay or facilitate the repayment of debts as part of the restructuring;
   b) for investments and production enterprises, and for the establishment or financing of district or municipal credit facilities;
   c) for public utility purposes;
2) to water companies for the purposes indicated in their articles of association (the loan could not exceed the cost of the work for which it is taken out; if the loan is taken out by a water company subsidised by the State, the loan could not exceed the cost not covered by the subsidy);
3) other legal and public institutions with the right to impose public levies to cover their needs.

Communal loans could only be granted by Bank Gospodarstwa Krajowego with the approval of the supervisory board, and in cases where the value of the loan exceeded PLN 1 million, the approval of the Minister of the Treasury was also required.

Bank Gospodarstwa Krajowego could issue communal bonds on the basis of communal loans granted to the state, districts, municipalities and other local government associations, water companies and other legal and public corporations with the right to collect public levies to cover their needs.

To support railway construction, Bank Gospodarstwa Krajowego could provide loans, using the instrument of issuing railway bonds:

1) to the State Treasury, local government units and their associations – to raise the funds needed to build railway lines;
2) to private railway companies by virtue of obligations secured on the mortgage of railway lines.

A railway loan could only be granted by a resolution of the supervisory board, at the request of the board of directors, approved by the Minister of the Treasury.

Loans granted for factory buildings were only permitted to form the basis of an industrial bond issue if the buildings could be relatively easily adapted for housing or for industrial purposes which, in the opinion of the appraisers, were necessary for local development.

Bank Gospodarstwa Krajowego could carry out all banking operations, with priority given to the needs of the State Treasury, state-owned enterprises, local government units, equivalent enterprises and the promotion of construction in the area of reconstruction of the state. In particular, the Bank could:

1) purchase and dispose of promissory notes and warrants;
2) provide loans to municipalities, counties, other local government associations and municipal and county savings banks, as well as credit banks with the guarantee of the competent local government units;
3) provide term loans with the following as collateral:
   a) fixed-rate public securities;
   b) gold, silver and other valuables;
   c) goods and documents for goods (certificates from freight depots, shipping companies);
   d) rail transport documents, as well as the Waterway Transport Authority;
   e) deposit notes (promissory note issued as security) secured by a mortgage or with at least two signatures recognised as solvent;
4) purchase and sell, for its own account, foreign currencies and securities issued or guaranteed by the State, as well as shares in companies established with the Bank's participation, and, for the account of third parties, currencies and securities – without limitation;
5) provide guarantees for the obligations of local government units, state and local government enterprises and private individuals, as well as loans deemed justified on general economic grounds;
6) collect receivables;
7) issue remittances that can be cashed domestically or abroad (cheques), where Bank Gospodarstwa Krajowego had branches or representative offices;
8) maintain a depository for securities, documents and valuables;
9) accept cash into interest-bearing accounts;
10) establish, operate or act as intermediary in the establishment of industrial and commercial enterprises, insofar as they were owned by the State, local government associations or corporations which were granted the right to impose public levies for their own purposes, and private

enterprises the establishment of which by Bank Gospodarstwa Krajowego or its participation in them was deemed necessary by the Minister of the Treasury;
11) accept subscriptions for shares and bonds of state, local government or private companies – without guaranteeing the success of the subscription;
12) settle interest coupons on debt securities in favour of third parties;
13) rent deposit boxes.

Pursuant to Article 10 of the Regulation of 1924, Bank Gospodarstwa Krajowego was allowed to accept funds for savings deposits. The amount of the State Treasury's guarantee for such a task was PLN 5 million. Bank Gospodarstwa Krajowego issued interest-bearing cash notes for deposited funds (of at least PLN 100), however the total amount of notes issued could not exceed 50% of the own capital.

Bank Gospodarstwa Krajowego had the right to accept funds into the current account and to effect, up to the amount deposited, withdrawals ordered to be paid immediately or on notice or by paying in cash remittances (cheques) issued by Bank Gospodarstwa Krajowego, as well as by transferring, at the request of the depositor, a certain amount in whole or in part to the account of another person. Bank Gospodarstwa Krajowego was also authorised to maintain its own freight depots and issue warrants.

Article 11 of the Regulation of 1924 granted Bank Gospodarstwa Krajowego the right to operate or mediate the establishment of enterprises where these were owned by the State, local government associations and corporations with the right to impose public levies for their own purposes or such private enterprises whose establishment or participation in them was deemed advisable by the Minister of the Treasury.

Pursuant to Article 12 of the Regulation of 1924, Bank Gospodarstwa Krajowego had the right to acquire real estate insofar as it was necessary for the conduct of its banking business or in the event of foreclosure in order to protect it from losses due to its mortgage loans.

Bodies of Bank Gospodarstwa Krajowego, Their Remit and Personnel Matters

The bodies of Bank Gospodarstwa Krajowego consisted of the following:
1) president of the Bank;
2) the supervisory board;
3) board of directors.

In addition, Bank Gospodarstwa Krajowego had the following supporting bodies:
1) audit committee;
2) discount committees;
3) committees for self-government and savings institutions.

Pursuant to Article 15 of the Regulation of 1924, the president (who was also chairperson of the supervisory board) was appointed by the President of the Republic at the request of the Council of Ministers, submitted by the Minister of the Treasury, for a period of five years. The president's primary responsibility was to oversee the activities of Bank Gospodarstwa Krajowego, chair the board and supervise the implementation of its resolutions. The chairperson of the Supervisory Board had the right to suspend resolutions of the Board which, in his or her opinion, were not in line with laws, the articles of association of Bank Gospodarstwa Krajowego or the interests of the State Treasury. The chairperson of the supervisory board was allowed to attend meetings of the board of directors in an advisory capacity. In the event that the resolution of the board of directors was not, in the opinion of the chairperson, in line with the basic objectives of Bank Gospodarstwa Krajowego, the chairperson could suspend the implementation of the resolution – until it was resolved by the board. The president was also obliged to submit monthly activity reports to the Minister of the Treasury.

Pursuant to Article 16 of the Regulation of 1924, the president could not simultaneously be a member of parliament or senator, hold state, municipal or private office, or be a member of the management or supervisory bodies of other enterprises. This restriction did not apply to the right to sit on the board of Bank Polski and on the boards and audit committees of companies in which Bank Gospodarstwa Krajowego held shares. The president had to have legal capacity and full civil rights. The remuneration of the president was determined by the Council of Ministers. The president could be dismissed by the President of the Republic of Poland at the request of the Council of Ministers in the event that he or she failed to fulfil his or her duties, was incapable of performing them or no longer met the conditions in terms of legal capacity or having full civil rights. The request of the Council of Ministers had to be based on the ruling of a three-member committee set up at the request of the Minister of the Treasury, comprising a representative of the Minister of the Treasury, a representative of the President of the Supreme Court and a representative of the First President of the Supreme Administrative Tribunal.

The supervisory board consisted of a chairperson and between nine and 15 members. Nine members were appointed and dismissed by the Minister

of the Treasury, the other six members by local government units, their associations or their companies depending on their contribution to the share capital. If shareholders representing local government units did not nominate all candidates for the supervisory board within six weeks of the call for nominations, the right of nomination was vested in the Minister of the Treasury from among the representatives of local government units. Members of the board were appointed for a joint three-year term of office, had to have full legal capacity and full civil rights, and could not hold a seat as members of the parliament or a senator.

The tasks of the supervisory board included exercising general supervision over the activities of Bank Gospodarstwa Krajowego, supervising the activities of its executive bodies and deciding on matters that were not reserved to the remit of the Minister of the Treasury. In particular, the scope of the board's activities included the following:

1) determining the number of members of the board of directors and submitting them to the Minister of the Treasury for approval, as well as setting their remuneration (subject to the approval of the Minister of the Treasury);
2) adopting rules of procedure and other internal regulations;
3) appointment of members of discount committees (censors) and committees for self-government savings institutions;
4) establishment and changes to the remuneration system and service and disciplinary standards for officials and employees of Bank Gospodarstwa Krajowego;
5) consideration of the expenditure plan of Bank Gospodarstwa Krajowego presented by the board of directors and its submission to the Minister of the Treasury for approval;
6) setting deposit and loan interest rates and commission rates;
7) submitting for approval to the Minister of the Treasury proposals for the acquisition and sale of real estate except in cases of acquisition of real estate to protect claims;
8) presenting an annual report for the approval of the Minister of the Treasury;
9) approval of certain mortgage, communal or railway loans in excess of certain amounts;
10) granting, at the request of the board of directors, communal loans and confirming on the communal bonds that they have been issued on the basis of a loan granted to the state, local government units or their associations, water companies or other legal-public corporations having the right to impose public levies to finance their own needs;

11) granting of railway loans as well as the acquisition of railway securities, at the request of the board of directors, and the certifying on railway bonds that they were issued on the basis of a loan granted pursuant to the articles of association or on the basis of railway securities acquired pursuant to the articles of association;
12) within the industrial, construction and reconstruction loans department, setting higher limits up to which, together with previously granted loans, loans may be granted by the board of directors and approving loans in excess of such limits, and confirming them on bank bonds;
13) considering matters which, either by virtue of the articles of association or at the request of the board of directors, have been submitted to the supervisory board for its consideration;
14) deciding on issues not resolved by the members of the board of directors when no proposal has obtained the required majority.

Each year, the supervisory board selected a deputy chairperson from among its members and presented the selected candidate to the Minister of the Treasury for approval. The deputy chairperson performed the rights of the chairperson in the absence of the chairperson.

To be valid, the resolutions of the supervisory board required the attendance of the chairperson or the deputy chairperson and more than half of the other members of the board. Resolutions were passed by majority of votes and, in the event of equal votes, the chairperson had the casting vote. The supervisory board met at least once every two months and was convened by the chairperson or, in his or her absence, the deputy chairperson on his or her own initiative, at the request of the board of directors, the audit committee or at least three members of the supervisory board. Members of the supervisory board were remunerated as determined by the Minister of the Treasury, and received travel and daily allowances as determined by the supervisory board.

The supervisory board could elect an executive committee from among its members, consisting of the president of Bank Gospodarstwa Krajowego, his or her deputy and five members. The scope of the committee's activities was defined by regulations adopted by the supervisory board and approved by the Minister of the Treasury. The presence of five members, including three appointed by the Minister of the Treasury, was required to validly pass resolutions of the executive committee.

Pursuant to Article 18 of the Regulation of 1924, the Director was appointed by the chairperson on terms determined by the supervisory board and approved by the Minister of the Treasury. The supervisory board also determined the number of directors and their deputies. The members of

the board of directors were selected by the supervisory board and approved by the Minister of the Treasury. The powers and duties of the board of directors included managing the affairs of Bank Gospodarstwa Krajowego, administering its assets in accordance with its articles of association and representing it before the external parties.

The officers and employees of Bank Gospodarstwa Krajowego were subordinate to the board of directors. The employment relationships of the directors and their deputies were determined by the Minister of the Treasury at the proposal of the board. The appointment of officers and employees of Bank Gospodarstwa Krajowego, on the other hand, as well as their dismissal and retirement, was within the remit of the chairperson on the proposal of the board of directors. Members of the supervisory board, board of directors as well as officers and associates of Bank Gospodarstwa Krajowego were obliged to maintain bank secrecy. In the performance of their official duties, officers of Bank Gospodarstwa Krajowego had the legal protection afforded to public servants.

The supervisory board had the power to reserve the right to elect the registered holders of commercial power of attorney, the chief accountant, and the branch managers of Bank Gospodarstwa Krajowego. Directors, deputy directors and other officers took an oath of office, which was modelled on the oath prescribed for public servants. In turn, the board of directors had the right to participate in the deliberations of the supervisory board in an advisory capacity.

The audit committee consisted of five members. One or two members were appointed by the local government units (depending on the number of shares taken up), while the remaining members were appointed by the Minister of the Treasury. Members of the committee were appointed for a period of two years. The audit committee reviewed the balance sheet of Bank Gospodarstwa Krajowego in the first quarter of each year and submitted a report to the supervisory board, which was obliged to submit this report with its comments to the Minister of the Treasury. Notwithstanding the foregoing, the committee, acting in consultation with the chairperson as well as on its own initiative or on the initiative of the chairperson, could inspect Bank Gospodarstwa Krajowego and its branches at any time. It had the right to demand all explanations from the board of directors and the supervisory board and the right to inspect the books, documents and correspondence of Bank Gospodarstwa Krajowego, as well as to conduct an inventory.

Bank Gospodarstwa Krajowego was supervised by the Minister of the Treasury. To ensure proper cooperation and coordination between the government

and the Bank's authorities, the Minister of the Treasury had the power to appoint a government commissioner whose duty it was to oversee the activities of Bank Gospodarstwa Krajowego and observance of the provisions of the articles of association. The government commissioner was appointed by the Minister of the Treasury from among the civil servants. The Commissioner was remunerated from the funds of Bank Gospodarstwa Krajowego at a rate set by the Minister of the Treasury.

The Commissioner's responsibilities included, in particular, the following:

1) supervision of the proper activities of Bank Gospodarstwa Krajowego in the field of long-term credit and control of the issue of mortgage and other bonds in the area of compliance with the applicable laws;
2) attendance at supervisory board meetings in an advisory capacity, and the right to attend meetings of the board of directors in an advisory capacity;
3) controlling the books, documents and cash registers of Bank Gospodarstwa Krajowego and working together with the audit committee.

Any doubts that may have arisen in the interpretation of the articles of association were submitted by the supervisory board or the board of directors to the Minister of the Treasury for settlement.

Reporting and Property Matters

The calendar year was a balance sheet year at Bank Gospodarstwa Krajowego. At the end of each year, the management was required to close the accounts, draw up a balance sheet and take stock of the Bank's assets. The financial statements were to be sent by the supervisory board, after being signed by the board of directors and the chief accountant, no later than by 1 May of the year following the reporting year (together with the supervisory board's report) to the Minister of the Treasury, who, after examination, would issue a decision as to whether to grant discharge to the authorities of Bank Gospodarstwa Krajowego.

The distribution of Bank Gospodarstwa Krajowego net profit was carried out according to the following principles:

1) 35% – for the creation of special provisions for the Bank's mortgage bonds and debentures, in relation to the number of individual emissions;
2) 40% – for the creation of a reserve fund;
3) 25% – to be decided by the Council of Ministers and local government units in relation to the shares held.

From the income of Bank Gospodarstwa Krajowego, after deduction of depreciation, the supervisory board could allocate, with the approval of the Minister of the Treasury, a certain amount of funds to be distributed among the members of the board of directors and employees of Bank Gospodarstwa Krajowego.

The assets and income of Bank Gospodarstwa Krajowego were exempt from taxation, with the exception of property tax and land tax. Books of Bank Gospodarstwa Krajowego and certified copies thereof had the evidentiary force of public documents.

Should circumstances require the liquidation of Bank Gospodarstwa Krajowego, the Minister of the Treasury, after obtaining the opinion of the supervisory board, was obliged to submit an appropriate proposal to the legislative bodies. If such a proposal were to be granted, the net assets of Bank Gospodarstwa Krajowego would pass to the shareholders – in proportion to their shareholdings.

Summary and Conclusion

1. The regulations in force at the time of the establishment of Bank Gospodarstwa Krajowego must be regarded as an overall separate approach to the functioning of the newly established institution. There is no doubt that the institution established by the Regulation of 1924 was a bank and carried out banking activities. This is due to the fact that Bank Gospodarstwa Krajowego uses the name "bank", that it was created as a result of a merger of banking institutions and that the scope of tasks based on banking activities was defined by the Regulation of 1924. However, it should be noted that the Regulation of 1924 did not include the provision that "the provisions of … shall apply to the activities of Bank Gospodarstwa Krajowego unless otherwise provided by the act ….".
2. At the time of the establishment of Bank Gospodarstwa Krajowego, the Act of 23 March 1920 on the supervision of banking enterprises and exchange offices was in force.[71] According to Article 1 of said act, a licence was required to open and operate banking houses and exchange offices, issued by the Minister of the Treasury, who supervised such institutions. The scope of this act did not include the activities of, inter alia, credit institutions that operated on the basis of articles of association approved

[71] Journal of Laws No. 30, item 175.

by the state authority.[72] It should be emphasised that the provisions of this act mainly focused on supervisory and punitive-compensation issues. Considering the organisational and legal form of Bank Gospodarstwa Krajowego and the scope of the aforementioned Act, in the Author's opinion, it was not necessary to refer to the provisions of this Act in the Regulation of 1924.

3. The provisions of the Regulation of 1924 and the articles of association defined the scope operation of Bank Gospodarstwa Krajowego in great detail and, in the Author's opinion – comprehensively. These regulations covered in their scope ownership issues, the purpose of the operation, matters of restriction of business activities of employees and bodies of Bank Gospodarstwa Krajowego, corporate and supervisory issues, as well as the product offering, together with the setting of principles of public activities. Particularly noteworthy is the matter of the regulation of the pricing arrangements of certain instruments in the provisions of the Regulation of 1924 (the so-called service at cost), the priority of the fulfilment of tasks and interests of the state, as well as matters pertaining to the management of conflicts of interest of the management and the personnel matters of employees of Bank Gospodarstwa Krajowego.
4. In terms of the current reality of the functioning of the economy, it can be stated that Bank Gospodarstwa Krajowego was established by a normative act of universally applicable law as a public development finance institution with the main task of supporting state economic policy.

[72] In addition, at the time of the establishment of Bank Gospodarstwa Krajowego, the Russian Credit Act (Collection of Laws Vol. XI Part II Ch. 10. Articles 1–35, 50, 57–78), and the German Mortgage Banks Act of 13 July 1899 (Journal of Laws of German Government p. 373).

Chapter 5
Constitutional Foundations and Analysis of the Current Regulations Governing Bank Gospodarstwa Krajowego

The Author intends this chapter to analyse the systemic basis for the possibility of the functioning of public development finance institutions in Poland, as well as the content of the provisions of the Act of 14 March 2003 on Bank Gospodarstwa Krajowego[73] (hereinafter the BGK Act), together with an assessment as to the legitimacy of their functioning. The Author aims to carry out research to enable the drafting of an Author's draft BGK Act.

Constitutional Legal Basis for the Functioning of Public Development Finance Institutions

The Author would like to analyse the provisions pertaining to the operation of public development finance institutions by starting with the analysis of the provisions of the Constitution of the Republic of Poland of 2 April 1997.[74] In the Author's opinion, the basis of the economic system of the state is laid down in Article 20 of the Constitution of the Republic of Poland, which stipulates that a social market economy based on freedom of economic activity, private property and solidarity, dialogue and cooperation between social partners constitutes the basis of the economic system of the Republic of Poland. The above provisions confirm that the Constitution of the Republic of Poland

[73] Journal of Laws of 2003, No. 65, item 594; i.e. Journal of Laws of 2022, item 2153.

[74] Journal of Laws of 1997 No. 78, item 483; 2001 No. 28, item 319; 2006 No. 200, item 1471; 2009 No. 114, item 946.

aims not only to define the political system of the state, but also to develop certain principles upon which the economic system will be based (Garlicki & Zubik, 2016). In a social market economy, the role of the state is not limited to that of a "night watchman", but it is also not a "welfare state" (Skrzydło, 2013). The principle of a social market economy outlines the framework which should contain the principles for the conduct of economic policy (Garlicki & Zubik, 2016). The concept of a "social market economy" is known in both economics and legal sciences, but has no clear normative content. It derives from German concepts from the 1920s, according to which the basis of the economic system is the free market, with the possibility of state interference in economic processes in order to maintain social order. This interference should be limited exclusively to stimulating economic processes, their programming and balancing (Tuleja, 2021). The concept of a "social market economy" itself derives from Article 151, section 1 of the 1919 Constitution of the Weimar Republic,[75] i.e. stating that "the organisation of economic life must conform to the principles of justice and aim to ensure that everyone enjoys a dignified existence. Within these limits, the economic freedom of the individual should be ensured". Thus, the provisions of the Constitution of the Weimar Republic gave legitimacy to the public authority to intervene, creating the opportunity to move away from the role of the state functioning as a "night watchman" in the market economy. Formerly, the acceptance of precisely such a liberal conception of the state prevailed by implication (Garlicki & Zubik, 2016).

Leszek Garlicki and Marek Zubik (2016) trace some standardisation of the social market economy to Article 99 of the Constitution of 1921, according to which the Republic of Poland recognised all property, whether personal property of individual citizens or a set of obligations of citizens, institutions, self-governing bodies and, finally, the state itself, as one of the most important foundations of the social system and legal order, and guarantees to all inhabitants, institutions and communities the protection of their property, and allows only in cases provided for by law, the abolition or limitation of property, whether personal or collective, for reasons of higher interest, with compensation. Only the act of law can stipulate what goods and to what extent are to be exclusively the property of the state for the benefit of the public and to what extent the rights of citizens and their legally recognised associations to the free use of land, waters, minerals and other natural treasures may, for public reasons, be restricted.

[75] Die Verfassung des Deutschen Reichs ["Weimarer Reichsverfassung"] of 11 August 1919. Retrieved from: http://www.documentarchiv.de/wr/wrv.html [Retrieved on 10 October 2022].

After the Second World War, the concept of "socio-economic system" in national systems took on greater significance. In particular, the Article 20, section 1 of the 1949 Constitution of the Federal Republic of Germany[76] should be noted in this regard, which states that the state is a democratic and social federal state (Garlicki & Zubik, 2016; Tuleja, 2021). The need to maintain an active role of the state in the reconstruction of the economic system, i.e. the transition from a command economy to a market economy, has caused that in the majority of new constitutions in the countries of our region, a relatively broad scope has been given to the regulation of economic and social issues (Bożyk, 1996; Garlicki & Zubik, 2016).

As for the Constitution of the Republic of Poland, it should be noted that it grants the state considerable freedom in shaping the solutions that establish a social market economy. These solutions can be modified – depending on economic and social conditions[77] (Tuleja, 2021). It should be emphasised, however, that the provisions of Article 20 of the Constitution of the Republic of Poland do not impose a precisely defined economic system, as "the authors of the new Constitution of the Republic of Poland (...) agreed that the thesis of state neutrality in the economic field must be rejected" (Witkowski, 2002). This was because they had intended it to remain "fully neutral from the point of view of the ideological options determining the shape of the state's influence on the economy" (Banasiński, 1998; Garlicki & Zubik, 2016).

The course of the work on drafting the Constitution of the Republic of Poland indicates that its authors' intention was to draw on the German concept of the *soziale Marktwirtschaft*, which, although not explicitly expressed in the Constitution of the Federal Republic of Germany, is one of the ideological foundations of that country's economic system. The underlying principle of this concept is to allow "corrective" state interference in the functioning of the market economy (Czarnek, 2014; Garlicki & Zubik, 2016). In this interpretation, the social market economy is one of the instruments for achieving the idea of both a social and a lawful state (Maciąg, 1998, Garlicki and Zubik, 2016).

The provisions of Article 20 of the Constitution of the Republic of Poland are among the most general constitutional clauses both in terms of their subject matter and the way they are formulated. They articulate a principle addressed to public authorities, assigning them the duty to shape the

[76] Basic Law for the Federal Republic of Germany of 23 May 1949, BGBl. 2014 I S. 2438. Retrieved from: http://libr.sejm.gov.pl/tek01/txt/konst/niemcy.html [Retrieved on 10 October 2022].

[77] Judgment of the Constitutional Tribunal, file ref. K 43/12 of 7 May 2014 (50/5/A/2014).

economic system in such a way, through the adoption of appropriate legal regulations, which corresponds to the vision of a social market economy[78] (Garlicki & Zubik, 2016).

Although the Article 20 of the Constitution of the Republic of Poland does not define the concept of a "social market economy", it refers to a concept developed in contemporary social thought, which has, however, been subject to modifications due to changing social and economic conditions. The basic content of this regulation is the assertion that the economic order must be based on the idea of a free market, followed by the indication that this has to be an "orderly" market.

The introduction of the term "social market economy" into the wording of the Constitution of the Republic of Poland means that it has also acquired a legal dimension (Banasiński, 1998). While it is not possible to assign a precise legal content to this concept, its meaning can be determined by treating it as one of the constitutional general clauses (Garlicki & Zubik, 2016).

In the Author's opinion, the legal basis for the possibility of the functioning of public development finance institutions in Poland is set out in Article 20 of the Constitution of the Republic of Poland. The concept of "social market economy" adopted therein introduces the possibility of correcting free market processes. The above interpretation may, in the Author's opinion, be the same as the EU's solutions allowing public development finance institutions to operate in the area of market failures. The author notes that there is a concept of "market failures" in the national legal system. This phrase is mentioned in Article 6, section 2, item 1(a) of the Act of 4 July 2019 on the system of development institutions[79] (hereinafter the Development Institutions System Act), and under Article 2, section 1, item 2 of this Act, Bank Gospodarstwa Krajowego is also a public development institution.

Concept for a BGK Act

The remainder of this chapter analyses the provisions of the BGK Act, which is intended to be the basis – together with an analysis of the solutions of the law of the European Union and a group of Member States, as well as the assumptions set out in the introduction to the thesis – for the preparation of the Author's draft act.

[78] Judgment of the Constitutional Tribunal K 43/12, op. cit.

[79] Journal of Laws of 2022, item 760, 1079.

The Act of 14 March 2003 on Bank Gospodarstwa Krajowego was prepared within the framework of the "Entrepreneurship – Development – Work" programme. The aim of preparing this act was to regulate the formal and legal situation of Bank Gospodarstwa Krajowego in view of the integration with the European Union and the need to increase the efficiency of the use of public funds (Substantiation to the Government's Draft Act, 2002). At the time of the commencement of work on the draft BGK Act, this entity was mainly performing tasks from the field of activity of the Ministry of Finance, which translated into granting specific powers with regard to the appointment and dismissal of the bodies of this institution precisely to the minister competent for financial institutions. The Substantiation of the BGK Act indicates that, in terms of operational capacity, Bank Gospodarstwa Krajowego could undertake tasks by expanding its activities in the following areas (Substantiation to the Government's Draft Act, 2002):

1) supporting government socio-economic programmes;
2) banking services to public sector entities;
3) supporting self-government and regional development.

Pursuant to § 18, section 1 of the Regulation of the Prime Minister of 20 June 2002 on Principles of Legislative Techniques[80] (hereinafter the Principles),[81] the subject of the Act shall be defined as concisely as possible, but in a manner that adequately communicates its content. Pursuant to §19, section 1 of the Principles, the above description can be done descriptively – starting the title with the preposition "on" in lower case.

In the Author's opinion, the title of the BGK Act is not questionable and is appropriate to the content of the legislation. However, emphasising the importance of Bank Gospodarstwa Krajowego for the system of supporting the national economy, the Author considers it reasonable to introduce a preamble which would constitute a reference to the tradition of the Second Polish Republic and would refer to the concept of "social market economy" referred to in Article 20 of the Constitution of the Republic of Poland.

[80] Announcement by the Prime Minister of 29 February 2016 on the announcement of the consolidated text of the Regulation of the Prime Minister on Principles of Legislative Techniques. Annexe to the Regulation of the Prime Minister of 20 June 2002 on Principles of Legislative Techniques (Journal of Laws of 2016, item 283).

[81] Ibidem.

Subject Matter of the Act

Article 1 of the BGK Act defines its material scope, which includes the tasks, scope of activities and organisation of Bank Gospodarstwa Krajowego. The provisions included in that article are mandatory in the context of drafting the provisions of each act of law and do not contain regulations of a *lex specialis* nature. It should be emphasised that Bank Gospodarstwa Krajowego was not established by the BGK Act, and its regulations do not contain the wording "Bank Gospodarstwa Krajowego is hereby established" or a similar one. The wording of this legal act consists of a presentation of the tasks, scope of activities and organisation of Bank Gospodarstwa Krajowego.

In the Author's opinion, Article 1 of the BGK Act does not require amendment. Pursuant to § 21, section 1, item 1 of the Principles, the General Provisions shall include a statement of the scope of matters regulated by the Act and the entities to which it applies or matters and entities excluded from its regulation.

Status and Registered Office and Rules for Adopting the Articles of Association

Article 2 of the BGK Act indicates the legal form and registered office of Bank Gospodarstwa Krajowego, as well as matters relating to the procedure for the adoption of its articles of association. Bank Gospodarstwa Krajowego was established by a Regulation of 1924 and operates as a state-owned bank within the meaning of the Banking Act. The articles of association of Bank Gospodarstwa Krajowego is adopted by way of a regulation of the minister competent for economy, after consultation with the minister competent for financial institutions and the Financial Supervision Authority. At a minimum, the articles of association must set out matters relating to the following:

1) internal organisation and detailed scope of activities;
2) detailed scope of activities of the supervisory board and the management board;
3) own funds and principles of managing its financial economy.

When adopting the articles of association, the minister competent for economic affairs is obliged to consult the ministers responsible for supervising the funds created, entrusted or transferred to Bank Gospodarstwa Krajowego under separate acts.

The provisions of Article 2, section 5 of the BGK Act also inform that Bank Gospodarstwa Krajowego belongs to the system of development institutions referred to in Article 2, section 1 of the Act of 4 July 2019 on institution system.[82]

Prior to the entry into force of the BGK Act, the status of Bank Gospodarstwa Krajowego as a state-owned bank was defined by Article 185 of the Banking Act. According to the wording of this provision, Bank Gospodarstwa Krajowego was a state-owned bank and operated on the basis of this act of law, although the scope of its activities included the following:

1) involving credit institutions abolished or considered abolished under the Decrees of 25 October 1948:
   a) on the principles and mode of liquidation of certain banking enterprises,
   b) on the principles and mode of liquidation of certain long-term credit institutions,
   c) on banking reform;
2) mandated by the Minister of Finance, subject to the terms and conditions of the mandate being agreed by Bank Gospodarstwa Krajowego with the mandator.

Currently, regulations concerning the legal form of Bank Gospodarstwa Krajowego and the performance of the above-mentioned additional non-banking activities are contained in the provisions of Articles 2 and 4 of the BGK Act.

Article 2, section 1 of the BGK Act indicates the legal form of functioning of Bank Gospodarstwa Krajowego (state-owned bank), while referring to the original legal basis establishing this entity and defining the principles of its activities, i.e. the Regulation of 1924. The provision of Article 2, section 1 of the BGK Act is not of a *lex specialis* nature, and its content merely conveys the primary source of law for the establishment and operation of Bank Gospodarstwa Krajowego, as well as the legal ruling that this entity is not a legal person established under a separate act and with a separate status, but a state-owned bank within the meaning of the Banking Act. In the Author's opinion, it is not appropriate to refer to the Regulation of 1924. This is because, pursuant to § 4, section 3 of the Principles, an act of law may refer to the provisions of the same or another Act, but it is not suitable to refer to the provisions of other normative acts. The provisions of the Principles therefore do not permit reference to secondary legislation,

[82] Journal of Laws of 2022, item 760, 1079.

which is what the Regulation of 1924 undoubtedly was. The author believes that it would also not be appropriate to refer to the Act of 1924, as this act, as well as the Regulation of 1924, are not acts that are currently in force as common law. In the Author's opinion, the intention of the drafter, when introducing the provision referring to the Regulation of 1924, was to emphasise the continuity of Bank Gospodarstwa Krajowego. However, such a statutory reference alone does not have any legal effect, and continuity of operation can be confirmed in other ways. The continuity is indicated by the fact that Bank Gospodarstwa Krajowego, despite starting the liquidation process, has never been liquidated[83]. In the Author's opinion, it seems more reasonable to emphasise the reference to the traditions of the Second Polish Republic in the preamble.

Article 2, section 2 of the BGK Act is the provision designating the city of Warszawa as the seat of Bank Gospodarstwa Krajowego. As already noted, Bank Gospodarstwa Krajowego was not established by an act of law and therefore, in the Author's opinion, this provision is not necessary. Since Bank Gospodarstwa Krajowego was not established by an act of law, the seat should not be defined in this way either. The above matter should be regulated by the articles of association.

The provisions of Article 2, section 3 of the BGK Act are of a *lex specialis* nature in relation to the provisions of Article 19 of the Banking Act, as they indicate the minister competent for economy as the authority authorised to issue, by way of a regulation, the articles of association of Bank Gospodarstwa Krajowego. In the Author's opinion, this is justified in view of the mission and purpose of Bank Gospodarstwa Krajowego. It must be stressed that Bank Gospodarstwa Krajowego should fulfil the function of a public development finance institution, and it is therefore appropriate to include in its functioning the role of the minister competent for economic affairs. Pursuant to Article 9, section 1 of the Act of 4 September 1997 on divisions of government administration[84] (hereinafter referred to as the Act on Divisions of Government Administration), the division of economy includes, inter alia, matters of the economy, including competitiveness of the economy, economic cooperation with foreign countries, innovation, economic activity, including entrepreneurship and industry, promotion of the Polish economy domestically and abroad. The area of responsibility

[83] Bank Gospodarstwa Krajowego was to be replaced by Bank Inwestycyjny, in accordance with the Decree of 25 October 1948 on Banking Reform (Journal of Laws No. 52, item 412, as amended).

[84] Journal of Laws of 2021, item 1893, as amended.

of the minister competent for economic affairs includes, among other things the following:
1) development of the conditions for undertaking and carrying out economic activities;
2) taking measures to boost the competitiveness and innovation of the Polish economy;
3) development of entrepreneurship.

In this regard, it seems reasonable to point out that on 16 February 2016, the Council of Ministers adopted Resolution No. 14/2016 on the adoption of the "Plan for Responsible Development".[85] The adopted government document implied, among other things, the need to adapt the legal system in the area of the functioning of existing development support institutions in order to integrate them for the purpose of initiating or financing investment projects, and supporting the development of entrepreneurship and innovation. In view of the above, the Act of 10 June 2016 amending the Act on Export Insurance Guaranteed by the State Treasury and Certain Other Acts[86] (hereinafter referred to as the Act on Export Insurance Guaranteed by the State Treasury) introduced solutions concerning the change of corporate rules in relation to Bank Gospodarstwa Krajowego, consisting in the designation of the minister competent for economic affairs as the authority competent to issue the articles of association, as well as strengthening its powers in the context of members of the Bank's bodies.

In the Author's opinion, indicating in Article 2, section 3 of the BGK Act the scope of the content of the articles of association by the term "in particular" is unjustified. The provisions of the Banking Act do not specify areas that are obligatory elements of the articles of association even for state-owned banks; the solutions of the Banking Act for banks in the form of joint-stock companies, as defined in Article 31, section 3 of the Banking Act, can be referred to in this respect. According to this provision, the draft articles of association should specify, in particular:
1) the company name, which should include the distinguishing word "bank" and be distinct from the names of other banks and indicate whether it is a state-owned bank, a bank in the form of a joint stock company or a cooperative bank;

[85] Resolution of the Council of Ministers No. 14/2016 of 16 February 2016 on the adoption of the "Plan for Responsible Development" (RM-111-18-16).

[86] Journal of Laws, item 888.

2) the seat, object of activity and scope of the bank's operations, taking into account the activities referred to in Article 69, section 2, items 1–7 of the Act of 29 July 2005 on trading in financial instruments,[87] which the bank intends to perform in accordance with Article 70, section 2 of that Act;
3) bodies and their remit, with particular reference to the powers of the members of the management board referred to in Article 22b, section 1 of the Banking Act, and the rules of decision-making, the basic organisational structure of the bank, the rules for making declarations regarding property rights and obligations, the procedure for issuing internal regulations and the procedure for making decisions on incurring liabilities or disposing of assets the total value of which with respect to one entity exceeds 5% of own funds;
4) the operating principles of the management system, including the internal control system;
5) own funds and financial management principles.

In the Author's opinion, having regard to Article 92, section 1 of the Constitution of the Republic of Poland, the BGK Act should instead contain guidelines for issuing the articles of association by means of a regulation. The aforementioned provision of the Constitution of the Republic of Poland stipulates that regulations are issued by the authorities indicated in the said act, on the basis of a detailed mandate set out in the act and with the aim of its implementation. Such mandate should specify the authority competent to issue a regulation and the scope of matters ordered to be regulated, as well as the guidelines for the content of the act.

The provisions of Article 2, section 4 of the BGK Act are of a *lex specialis* nature due to the specific nature of Bank Gospodarstwa Krajowego and the handling of certain funds. In the Author's opinion, it is not justified to indicate the necessity for the draft regulation (articles of association) to be reviewed by the ministers responsible for the operation of the funds established at Bank Gospodarstwa Krajowego. Any draft regulation under the provisions of Chapter 5 of Resolution No. 190 of the Council of Ministers of 29 October 2013 – Regulations of the Council of Ministers[88] is in fact subject to mandatory inter-ministerial consultation. In the Author's opinion, the articles of association of Bank Gospodarstwa Krajowego should be issued by the minister competent for the economy in consultation with the minister competent for financial institutions, after consultation with

[87] Journal of Laws of 2022, item 1500, 1488, 1933.
[88] Official Gazette of the Republic of Poland, item 979.

the Financial Supervision Authority, without the need to indicate in the BGK Act provisions concerning the need for obligatory consultation with other ministers.

Article 2, section 5 of the BGK Act contains informative provisions relating to the Development Institutions System Act. Under Article 2, section 1 of this Act, in addition to Bank Gospodarstwa Krajowego, the system of development institutions consists of the following:

1) Polish Development Fund;
2) Polish Agency for Enterprise Development;
3) Korporacja Ubezpieczeń Kredytów Eksportowych Spółka Akcyjna;
4) Polska Agencja Inwestycji i Handlu Spółka Akcyjna;
5) Agencja Rozwoju Przemysłu Spółka Akcyjna.

In the Author's opinion, the BGK Act should also include informative provisions emphasising the nature of Bank Gospodarstwa Krajowego as a public development finance institution. It would be reasonable to supplement the provisions of the Act to state that Bank Gospodarstwa Krajowego may use the name "Public Development Bank" for promotional purposes.

Operating Principles and Applicable Prudential Requirements

Article 3, section 1 of the BGK Act indicates that to the extent not regulated by that Act, the Bank's operations were regulated by the provisions of the Banking Act. In the Author's opinion, this provision constitutes the most important directional solution in the BGK Act indicating the possibility of applying solutions of a *lex specialis* nature.

When analysing the provisions of Article 3, section 1a of the BGK Act, it is important to note the specifics of the legal regulations applied. Since Bank Gospodarstwa Krajowego is not governed by the CRD IV (on the basis of Article 2, section 5, item 18 of the CRD IV) and the CRR (considering that only entities regulated by the CRD IV are covered by Article 1 of the CRR), it is therefore necessary to "incorporate" the need to apply these provisions into national law. Theoretically, however, it is conceivable to adopt a legal solution that would create regulations exclusively for Bank Gospodarstwa Krajowego, nevertheless, taking into account the fact that the aforementioned EU legal acts (especially the CRR, as the provisions of the CRD IV should be implemented into national law) are quite extensive and that almost all the regulations contained therein would be complied with,

for pragmatic reasons, incorporation of the CRR (as an act to be applied directly) and introduction of any necessary solutions of *lex specialis* nature is, in the Author's opinion, an appropriate solution.

The regulations in Article 3, section 1b–1d of the BGK Act refer to the area of guarantees and sureties provided by Bank Gospodarstwa Krajowego as part of its portfolio, as well as to the risk assessment model based on the outsourcing of risk assessment to lending banks. An important *lex specialis* solution for guarantees is the exemption from the need to apply Article 123 of the CRR in this area.[89] When issuing guarantees for credit in a portfolio (a significant number of exposures with similar characteristics) to small and medium-sized enterprises, Bank Gospodarstwa Krajowego is not obliged to examine whether they are retail (up to EUR 1 million) and does not apply the rules for creating capital requirements in accordance with the scope set out in the CRR. Furthermore, Bank Gospodarstwa Krajowego is not obliged to comply with the concentration limits set out in Article 395 of the CRR.

The provisions of article 3, section 1a–1e of the BGK Act are solutions of a *lex specialis* nature compared to the regulations of the CRR, but, in the Author's opinion – unjustified with regard to the operation of only one bank. Such regulations should apply to all banks at the level of the Banking Act. In particular, in the Author's opinion, constitutional doubts are raised by the provisions of Article 3, section 1e of the BGK Act, the content of which implies that to the extent not covered by the provisions of the BGK Act concerning exemptions from the need to apply the provisions of the CRR, the Financial Supervision Authority may, at the request of BGK, exempt this entity from the obligation to comply with other prudential requirements set out in that Regulation or limit their application, taking into account the need to ensure the safety of the BGK's operation and the funds gathered therein, as well as the effectiveness of the performance of its statutory tasks. Exemptions should be introduced on the basis of universally applicable legal

[89] Exposures that comply with the following criteria shall be assigned a risk weight of 75%:

a) the exposure shall be either to a natural person or persons, or to a small or medium-sized enterprise (SME);
b) the exposure shall be one of a significant number of exposures with similar characteristics such that the risks associated with such lending are substantially reduced;
c) the total amount owed to the institution and parent undertakings and its subsidiaries, including any exposure in default, by the obligor client or group of connected clients, but excluding exposures fully and completely secured on residential property collateral that have been assigned to the exposure class laid down in item (i) of Article 112, shall not, to the knowledge of the institution, exceed EUR 1 million. The institution shall take reasonable steps to acquire this knowledge.

sources, i.e. by an act of law or regulation. In theory, with such a solution, any prudential standards currently applicable to Bank Gospodarstwa Krajowego could be abolished by a resolution of the Financial Supervision Authority. Moreover, resolutions of the Financial Supervision Authority are not generally applicable laws (Olszak, 2011).

Article 3, section 1f, item 1 of the BGK Act is a provision of a *lex specialis* nature. Pursuant to this provision, Articles 141m–141x of the Banking Act (relating to bank rehabilitation plans) and the provisions of Articles 158–159 of the Banking Act (relating to the issues of declaring bankruptcy and suspension of operations) are excluded from application to Bank Gospodarstwa Krajowego. Due to the lack of capacity of Bank Gospodarstwa Krajowego to become insolvent, these exemptions should, in the Author's opinion, be regarded as justified. The Author also agrees with the solution set forth in Article 3, section 1, item 2 of the BGK Act stating that the provisions of Articles 142–157f and Article 169 of the Banking Act shall apply accordingly to the operations of Bank Gospodarstwa Krajowego.

In the Author's opinion, the solution contained in Article 3, section 1g of the BGK Act, which excludes, in relation to Bank Gospodarstwa Krajowego, the application of government financial stabilisation instruments within the meaning of the Act of 12 February 2010 on recapitalisation of certain institutions and on government financial stabilisation instruments.[90] In the event of Bank Gospodarstwa Krajowego taking over its shareholding rights through a decision of the Bank Guarantee Fund, the provisions of the CRR on prudential consolidation shall not apply to this entity.[91] However, in the Author's opinion, this provision should not be included in the provisions of this act, but in the Act of 12 February 2010 on the recapitalisation of certain institutions and on government financial stabilisation instruments.[92]

However, pursuant to Article 3, section 2 of the BGK Act, Bank Gospodarstwa Krajowego is subject to Article 6, section 4of the Bankruptcy Act of 28 February 2003,[93] which means that its bankruptcy as a legal person established in the performance of an obligation imposed by the Act cannot be declared. This was confirmed in the Ministry of Justice's opinion of 25 August 2009, file ref. DL-P III 4290-30/09. Pursuant to Article 6, section 4 of the Bankruptcy Act of 28 February 2003, unless that act provides otherwise, institutions and legal persons established by way of an act and

[90] Journal of Laws of 2022, item 396.
[91] Article 10a–24 of the CRR.
[92] Journal of Laws of 2022, item 396.
[93] Journal of Laws of 2022, item 1520.

those established in performance of an obligation imposed by an act cannot be declared bankrupt. Bank Gospodarstwa Krajowego was in fact established by the Regulation of 1924, which was the execution of a statutory mandate. This means that Bank Gospodarstwa Krajowego cannot become bankrupt, only its liquidation is possible. In the event of its liquidation, the property and liabilities shall be taken over by the State Treasury on the date of liquidation. In the Author's opinion, the provision should be in a form corresponding to Article 53 of the Act of 29 August 1997 on Narodowy Bank Polski, stating explicitly that the entity cannot be declared bankrupt.

Pursuant to Article 3, section 3b of the BGK Act, the obligations of the Minister responsible for public finance meet the requirements of credit protection provided by the State Treasury within the meaning of Articles 213–215 of the CRR.[94] Therefore, the exposures to Bank Gospodarstwa Krajowego are assigned a risk weight according to the rules set forth in Article 114, section 4 of the CRR, i.e. exposures to Member States' central governments, and central banks denominated and funded in the domestic currency of that central government and central bank shall be assigned a risk weight of 0%.

Article 3, section 3c of the BGK Act provides clarification of the regulations contained in the CRR. As regards the statutory fund of Bank Gospodarstwa Krajowego, it is indicated that it constitutes an equity instrument within the

[94] Pursuant to Article 213 of the CRR, credit protection deriving from a guarantee shall qualify as eligible unfunded credit protection where all the following conditions are met:
1) the credit protection is direct;
2) the extent of the credit protection is clearly defined and incontrovertible;
3) the credit protection contract does not contain any clause, the fulfilment of which is outside the direct control of the lender, that:
   a) would allow the protection provider to cancel the protection unilaterally;
   b) would increase the effective cost of protection as a result of a deterioration in the credit quality of the protected exposure;
   c) could prevent the protection provider from being obliged to pay out in a timely manner in the event that the original obligor fails to make any payments due;
   d) could allow the maturity of the credit protection to be reduced by the protection provider;
4) the credit protection contract is legally effective and enforceable in all jurisdictions which are relevant at the time of the conclusion of the credit agreement.

Pursuant to Article 214 of the CRR, credit institutions may treat the exposures as protected by a guarantee provided by the central government, provided the following conditions are met:
1) the counter-guarantee covers all credit risk elements of the claim;
2) both the original guarantee and the counter-guarantee meet the requirements for guarantees;
3) the cover is robust and nothing in the historical evidence suggests that the coverage of the counter-guarantee is less than effectively equivalent to that of a direct guarantee by the entity in question.

meaning of Articles 26, section 1, letter a and Article 28 of the CRR. As regards liquidity standards, the BGK Act introduces in Article 3, section 3d a clarification that, when calculating the liquidity necessary to comply with the prudential requirements referred to in the provisions of the CRR, Bank Gospodarstwa Krajowego includes as liquidity inflows the entirety of undrawn unconditional off-balance sheet obligations received from the State Treasury. The above can be seen as a specific interpretation of the CRR in the area of own funds and liquidity. In the Author's opinion, these provisions should be removed as they apply, at least in theory, to all banks. It would make sense to clarify them at the level of the CRR or by an appropriate interpretation.

The provisions of Article 3, section 3–3b of the BGK Act are a solution of a *lex specialis* nature in relation to the Act of 23 April 1964 – Civil Code[95] and indirectly (in relation to banks that are state-owned legal persons) the Banking Act. Pursuant to Article 40 § 1 of the Civil Code Act, the State Treasury is not liable for the obligations of state-owned legal persons, unless a separate provision provides otherwise. With regard to the security and financial stability of operations, in accordance with Article 3, section 3 of the BGK Act, the Minister responsible for public finance provides Bank Gospodarstwa Krajowego with funds for:

1) maintaining own funds at a level that guarantees the fulfilment of statutory tasks;
2) compliance with the prudential requirements regarding liquidity, as set out in the provisions of the CRR and the Banking Act – aiming to cover the risks of banking activities borne by Bank Gospodarstwa Krajowego.

Thanks to the legal solutions contained in Article 3, section 3–3b of the BGK Act, Bank Gospodarstwa Krajowego may be deemed to be an entity holding State Treasury counter-guarantees for its liabilities within the meaning of the provisions of Articles 213–215 of the CRR. The above-mentioned provisions of the BGK Act do not directly constitute a counter-guarantee, i.e. a "guarantee of a guarantee", but oblige the Minister of Finance to provide adequate measures related to liquidity and solvency. However, such a mechanism is less favourable for creditors and more complicated than a classic guarantee, since third parties as creditors cannot have a claim against the State Treasury and Bank Gospodarstwa Krajowego will always be the counterparty for them. In the Author's opinion, the obligations of Bank Gospodarstwa Krajowego should be covered by irrevocable and unconditional guarantees – having in

[95] Journal of Laws of 2022, item 1360.

mind the examples of some of the public development finance institutions analysed herein, as well as the transparency of the solution for investors, especially institutional investors.

The regulations of Article 3, section 4 of the BGK Act constitute a *lex specialis* provision compared to the solutions of other banks operating under the Banking Act, where liquidation or bankruptcy proceedings may take place. In the Author's opinion, consideration could possibly be given to a statutory clarification that the liquidation of Bank Gospodarstwa Krajowego can only take place by an act of law. Such provisions were included in the pre-war solutions for the operation of Bank Gospodarstwa Krajowego.

The provisions of Article 3, section 5 and 6 of the BGK Act are of a *lex specialis* nature compared to the CRR, and their intention is to enable Bank Gospodarstwa Krajowego to implement large projects by increasing concentration limits. The provision of Article 3, section 5 of the BGK Act introduces the liberalisation of concentration limits. Thus, Bank Gospodarstwa Krajowego does not take on exposures towards:

1) a group of related clients,
2) a domestic bank,
3) investment fund

– the value of which, after taking into account the effect of credit risk mitigation, exceeds 50% of Bank Gospodarstwa Krajowego's eligible capital. The requirement under the CRR sets the above concentration limits at 25% of Tier 1 capital. Similar solutions can be found in the legislation governing the operation of a Hungarian or Slovenian public development finance institution. In the Author's opinion, such a solution is not necessary for the functioning of a public development finance institution, and the instrument of direct and irrevocable guarantees of the State Treasury, combined with the provision of own funds at an appropriate level, should be sufficient for the possibility of financing large projects on the basis of *lex generalis* principles.

Guarantee of Repayment of Liquidity Loans

The regulations of Article 3a of the BGK Act address the issue of State Treasury guarantees in the context of the repayment of certain loans by Bank Gospodarstwa Krajowego. In order to meet the prudential requirements with regard to liquidity set out in the provisions of the CRR, the minister competent for public finance may grant, on behalf of the State Treasury, guarantees for the repayment of loans and credit lines granted to Bank Gospodarstwa Krajowego by a national bank, a foreign bank or a credit

institution and for the fulfilment by the issuer of monetary benefits of debt securities issued by that entity. The maturity of the debt securities may not be less than one month or more than five years.

The guarantee covers the repayment of a loan or the redemption of debt securities issued by Bank Gospodarstwa Krajowego, together with contractual interest and other costs associated with that loan or those debt securities. However, the guarantee may not cover the repayment of a loan with interest which is secured by treasury securities and securities issued by Narodowy Bank Polski – up to their nominal value.

Payments under the guarantee shall be reduced by repayments of the loan or redemption of debt securities made by Bank Gospodarstwa Krajowego and by the amounts obtained by the domestic bank, foreign bank, credit institution granting the loan or owners of debt securities issued by Bank Gospodarstwa Krajowego as a result of settling the claim from the collateral of the granted loan or issue of debt securities. Guarantees are not subject to the provisions of the Sureties and Guarantees Act, with the exception of Article 31 of that Act, i.e. the stipulation that the total amount up to which sureties and guarantees may be granted by the State Treasury is determined by the Budget Act.

The regulations contained in Article 3a of the BGK Act are of a *lex specialis* nature compared to the provisions of the Sureties and Guarantees Act and make it possible to obtain liquidity guarantees. Pursuant to Article 7 of this Act, a surety or guarantee may be granted on the condition that the loan covered by it is used to finance investment projects involving:

1) development or maintenance of infrastructure;
2) development of exports of goods and services;
3) Environmental protection;
4) creation of new jobs related to the investment in question under regional aid;
5) implementation of new technical or technological solutions resulting from scientific research or development work;
6) restructuring of companies.

In turn, according to Article 7, section 2 of the Act on Sureties and Guarantees, a surety or guarantee may also be granted on the condition that the credit covered by it is used for:

1) financing the purchase of materials or finished goods intended for the implementation of projects involving the manufacture of investment assets for export, with a contract value above EUR 10,000,000;

2) replenishment of funds established, pursuant to separate acts, at Bank Gospodarstwa Krajowego, if the funds earmarked for credit repayment come from sources other than the state budget, with the exclusion of state budget funds disbursed for subsidies to credit subject to a preferential interest rate;
3) establishing lines of credit by banks in order to:
a) finance investment projects of local government units and micro, small and medium-sized entrepreneurs;
b) co-finance programmes or projects under European Union aid programmes;
4) repay an obligation already covered by a State Treasury surety or guarantee, together with interest and other costs directly related to that obligation;
5) support the export of Polish goods and services as part of the implementation of government programmes.

In the Author's opinion, the solutions contained in Article 3 of the BGK Act obliging the Minister of Finance to provide funds to maintain liquidity and solvency, as well as the possibility to recapitalise with treasury securities arising from Article 5a of that Act, are solutions that strengthen the status of Bank Gospodarstwa Krajowego and there is no need for additional liquidity guarantees. Furthermore, the introduction of the tool of unconditional and irrevocable guarantees for all obligations of Bank Gospodarstwa Krajowego, as proposed by the Author, leads to the conclusion that it is unjustified to maintain this provision.

Exclusion of the Application of Certain Provisions

The provisions of Article 3b of the BGK Act indicate exclusions from the application of the provisions relating to the Act of 16 December 2016 on Principles of State Property Management[96] (hereinafter: the Act on Principles of State Property Management) and the Act of 9 June 2016 on the principles for setting the remuneration of the persons in charge of certain companies[97] (hereinafter: the Act on Principles for Setting the Remuneration of the Persons in Charge of Certain Companies).

[96] Journal of Laws of 2021, item 1933; of 2022, item 807, 872, 1459, 1512.
[97] Journal of Laws of 2020, item 1907.

The following shall not apply to legal transactions by Bank Gospodarstwa Krajowego:
1) Article 15 of the Act on Principles of State Property Management;
2) Article 38, section 1 of the Act on the Principles of State Property Management – in relation to legal transactions concerning the disposal of fixed assets within the meaning of the Accounting Act of 29 September 1994[98] (hereinafter the Accounting Act) of a value not exceeding PLN 5 million;
3) Article 38, section 2 of the Act on the Principles of State Property Management – in relation to legal transactions concerning giving fixed assets within the meaning of the Accounting Act to another entity for use, if the market value of the object of the legal transaction does not exceed PLN 5 million;
4) Article 38, section 1 and 2 of the Act on the Principles of State Property Management – in relation to legal transactions concerning receivables arising from the performance of banking transactions within the meaning of Article 5, section 1 and 2 of the Banking Act and transactions concerning financial instruments within the meaning of Article 2, section 1 of the Act on Trading in Financial Instruments of 29 July 2005.

In the case of the exercise of rights in a foreign fund, a management company, an EU alternative investment fund or a manager from the European Union within the meaning of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds[99] (hereinafter the Investment Funds Act), Bank Gospodarstwa Krajowego shall not apply the obligations arising from:
1) provisions of the Act on the Principles for Setting the Remuneration of the Persons in Charge of Certain Companies;
2) provisions of the Act on Principles of State Property Management.

On the other hand, if a foreign fund, a management company, an EU alternative investment fund or an EU manager within the meaning of the Investment Funds Act were established by Bank Gospodarstwa Krajowego, or Bank Gospodarstwa Krajowego participated in such entities, or Bank Gospodarstwa Krajowego intended to establish such entities, or it intended to participate in such entities, the obligations arising from the provisions of Section III of the Act of 16 February 2007 on Competition and Consumer

[98] Journal of Laws of 2021, item 217, 2105, 2106; of 2022, item 1488.
[99] Journal of Laws of 2022, item 1523, 1488, 1933.

Protection,[100] i.e. the provisions relating to the concentration of entrepreneurs, would also not apply.

The regulations of Article 3b of the BGK Act provide for the exemption of Bank Gospodarstwa Krajowego from the application of the provisions of Article 15 and, in part, of Article 38, section 1 and 2 of the Act on the Principles of State Property Management, requiring the approval of the competent authorities for certain disposals of fixed assets. In the opinion of the legislator, the specific nature of banking activity justified the exclusion of the application of the aforementioned provisions with regard receivables arising from the performance of banking transactions within the meaning of Article 5, section 1 and 2 of the Banking Act and transactions concerning financial instruments within the meaning of Article 2, section 1 of the Act on Trading in Financial Instruments of 29 July 2005.[101] The exemptions are also justified by the nature of the activities undertaken by Bank Gospodarstwa Krajowego in the area of trading in stock of significant value. The existence of the requirements indicated in the Act in this respect may have significantly limited Bank Gospodarstwa Krajowego's ability to manage the risks associated with the conduct of its banking activities. The amendment to the BGK Act was intended to exclude the obligations arising from the wording of the provision in relation to actions concerning financial instruments and definitively resolves the absence of a requirement to obtain the consent of the bodies indicated in the provision for such legal actions (Substantiation to the Government's Draft Act, 2018).

In the Author's opinion, the *lex specialis* provision included in Article 3b of the BGK Act is justified in terms of its merits, but it should be found in the source acts and refer to all state-owned banks (abstract norm) and not only to Bank Gospodarstwa Krajowego. It should be emphasised that, according to Article 4, section 4 of the Act on Principles of State Property Management, it does not apply to companies, so, in the Author's opinion, it should also not apply to state-owned banks, and therefore an amendment to this act is suggested. The provisions of the Act on Principles of State Property Management concerning state-owned legal persons, excluding its application to companies, should be extended to state-owned banks. If restrictions need to be imposed in the operational and investment area, they can be introduced in the provisions of the articles of association. The author suggests analogous solutions to be adopted with regard to the provisions of the Act of 9 June 2016 on the principles for setting the remuneration of

[100] Journal of Laws of 2021, item 275.

[101] Journal of Laws of 2022, item 1500, 1488, 1933.

the persons in charge of certain companies[102]. There is no justification why only Bank Gospodarstwa Krajowego should be treated differently in the area of remuneration in certain situations (covered by Article 3b of the BGK Act) and not, for example, other state-owned banks or other entities in the Polish Development Fund group.

Business Objectives

In Article 4 of the BGK Act, the legislator defines the objectives of Bank Gospodarstwa Krajowego. The basic objectives of the business, as defined by the Act and separate regulations, include supporting the economic policy of the Council of Ministers, government social and economic programmes, including those providing sureties and guarantees, and programmes of local government and regional development, including, in particular, the projects which are:

1) implemented with funding from the European Union and international financial institutions;
2) related to infrastructure, connected with the development of the sector of micro, small and medium-sized entrepreneurs' sector

– including those implemented with the use of public funds.

The provisions of Article 4 of the BGK Act emphasise the mission of Bank Gospodarstwa Krajowego as a public development finance institution performing specific tasks. During the conclusion of the negotiating chapter "Freedom to provide services", the Polish side requested for Bank Gospodarstwa Krajowego to be exempted from the Banking Directives, declaring that Bank Gospodarstwa Krajowego would perform certain specialised functions within the scope of tasks mandated by the state. Maintaining the capacity to perform all banking activities was, in turn, essential to also perform the tasks of bank account agreements, lending and deposit activities (Olszówka and Skuza, 2002).

The purpose of Bank Gospodarstwa Krajowego is specific in relation to the purpose of purely business activities, which is not explicitly stated in the Banking Act, i.e. the Author has in mind the commercial purpose of the operation of the business, i.e. maximising value/profit in the long term. Defining a different purpose for the operation of Bank Gospodarstwa Krajowego is itself well-founded, but in the Author's opinion a thorough

[102] Journal of Laws of 2020, item 1907.

revision is necessary. A reference to the market failure should be introduced in the statutory provisions. Such an issue and concept is explicitly referred to in Article 6, section 2, item 1, letter a of the Development Institutions System Act. In the Author's opinion, the purpose of Bank Gospodarstwa Krajowego's activities should also refer to this situation, emphasising that the activities of this entity must not result in crowding out operators operating under market conditions.

In addition, the Author would advocate the introduction of a solution stipulating that Bank Gospodarstwa Krajowego cannot accept so-called covered deposits within the meaning of consumer legislation. The above would be consistent with the solution used in Article 429a, section 2, item 5 of the CRR, which the Author mentions in Chapter One. The introduction of such a restriction would abolish the operations of Bank Gospodarstwa Krajowego in an area where it is difficult to imagine there is a market failure (taking deposits from consumers).

Investments in Specific Entities or Instruments

In Article 4a of the BGK Act, the legislator included a list of investments based on the object and entity. Where the investment is in line with the core statutory business objectives, Bank Gospodarstwa Krajowego may make investments in:

1) entities raising funds from investors for investment purposes, in compliance with their stated investment policy, for the benefit of those investors, which:
   a) are supranational (e.g. the European Central Bank, the European Investment Bank, the European Investment Fund, the European Development Finance Institutions and bilateral development banks, the World Bank, the International Monetary Fund) or
   b) have been established by domestic banks, foreign banks, credit institutions, financial institutions, international financial institutions, domestic or foreign public finance entities, or
   c) have been established by the entities with the participation of institutions, banks or entities referred to in letters a and b, or
   d) have been established by Bank Gospodarstwa Krajowego jointly with the above-mentioned institutions, banks or entities, or
   e) carry out activities referred to in Article 3, section 1 of the Act on Investment Funds and Management of Alternative Investment Funds
1) instruments transferred or issued by the entities referred to in item 1.

The solutions of the BGK Act also specify the definition of the aforementioned investments. Such investments are understood to be, in particular, the purchase or acquisition of shares, participation units, investment certificates, any other financial instruments issued or offered by the entities referred to in Article 4a of the BGK Act, or the transfer of the funds to be managed by these entities.

The provision of Article 4a, section 1 of the BGK Act comprises a *lex specialis* allowing Bank Gospodarstwa Krajowego to make certain types of investments specified in terms of their entity. The provision of Article 4a, section 2 of the BGK Act, on the other hand, contains a list of instruments that may be the subject of investment. In the Author's opinion, the legislator decided by this regulation to emphasise the possibility of involvement in entities with a business purpose similar to that of Bank Gospodarstwa Krajowego. However, in the Author's opinion, after analysing the content of Article 4a, section 2 of the BGK Act, doubts arise as to the legitimacy of such a legal solution, especially in the context of the wording of Article 6, section 1 of the Banking Act. Pursuant to Article 6, section 1 of this Act, in addition to performing banking activities referred to in Article 5, section 1 and 2 of the Act (i.e. banking activities in the broad and narrow sense), banks may:

1) subscribe for or acquire shares and rights attached to shares, shares of another legal entity and investment fund units;
2) incur liabilities relating to the issue of securities;
3) trade in securities;
4) exchange the claim for the debtor's assets on terms agreed with the debtor;
5) acquire and dispose of a real property;
6) provide consultancy and advisory services on financial matters;
7) provide trust services and issue electronic identification means within the meaning of the trust services provisions;
8) provide other financial services;
9) perform other activities if the provisions of separate laws entitle them to do so.

In the Author's opinion, the powers of Bank Gospodarstwa Krajowego in the field of investment should not go beyond the usual framework of commercial banks' investment activities. Article 4a of the BGK Act should be removed; alternatively, an amendment to Article 6, section 1 of the Banking Act could be proposed to clarify the capacity and capital exposure of all banks within the meaning of the Act. This should not be a provision that extends the investment capacity of Bank Gospodarstwa Krajowego.

Scope of Tasks Undertaken

The regulations of Article 5 of the BGK Act outline the scope of the tasks of Bank Gospodarstwa Krajowego. Its remit includes the following:

1) performance of activities specified in the Banking Act;
2) servicing funds established, entrusted or turned over to this entity on the basis of separate acts;
3) handling export transactions using export promotion instruments and supporting the export of Polish goods and services, in compliance with separate regulations or as part of the implementation of government programmes;
4) carry out activities concerning credit institutions which have been liquidated or pronounced as such pursuant to:
   a) the Decree of 25 October 1948 on the principles and mode of liquidation of certain banking enterprises[103],
   b) the Decree of 25 October 1948 on the principles and mode of liquidation of certain long-term credit institutions[104],
   c) the Decree of 25 October 1948 on the banking reform[105];
5) conducting, directly or indirectly, guarantee or surety activities in respect of the implementation of the government guarantee and surety programmes or on the account of the State Treasury on the basis of the Sureties and Guarantees Act, in particular for the sector of micro, small and medium-sized entrepreneurs;
6) issuing declarations which are considered official documents within the meaning of Article 95, section 1 of the Banking Act enabling the deletion of entries made in Sections III and IV of land and mortgage registers or collections of documents, made in favour of:
   a) credit institutions liquidated or pronounced as such on the basis of the decrees referred to in item 4;
   b) the State Treasury in respect of:
      – acquisition of land and inventory from the State Land Fund established by the Decree of 6 September 1944 on the Agricultural Reform[106];
      – loans and credits granted between 1945 and 1990 for the demolition and repair, completing the construction process, superstructure,

[103] Journal of Laws No. 52, item 410, as amended.
[104] Journal of Laws No. 52, item 411, as amended.
[105] Journal of Laws No. 52, item 412, as amended.
[106] Journal of Laws of 1945 No. 3, item 13, as amended.

renovation and redevelopment of buildings, for the sale of land for development and the State's sale of single-family and multi-family houses;

c) the State Treasury or entities whose successor is the State Treasury, made prior to 1 September 1939;

7) supporting the development of residential construction, in particular the construction of residential premises for rent, in compliance with separate regulations or in connection with the implementation of government programmes.

In order to implement government programmes in the area of export support, guarantees and residential construction support, the minister competent for public finance transfers funds to increase the statutory fund of Bank Gospodarstwa Krajowego. Funds for such a purpose may also be raised from other sources, in particular borrowing and issuing bonds at home and abroad.

Bank Gospodarstwa Krajowego may also perform the role of an entity implementing a financial instrument or a fund of funds referred to in the Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006[107].

The provisions of Article 5, section 1 and 2a of the BGK Act present a list of the tasks of Bank Gospodarstwa Krajowego, emphasising to some extent its purpose and mission. In the Author's opinion, the provisions of Article 5 of the BGK Act should be amended. First, Article 2 of the BGK Act already determines that Bank Gospodarstwa Krajowego is a state-owned bank within the meaning of the Banking Act, so there is a possibility for this entity to perform banking activities. Second, in the Author's opinion, the provisions enabling certain activities, such as involvement in the process of handling EU funds, should be included in special laws regulating these areas (e.g. the Act of 6 December 2006 on the principles of development policy[108]), and not

[107] OJ EU L 347 of 20 December 2013, p. 320, as amended.

[108] Journal of Laws of 2006, No. 227, item 1658; i.e. Journal of Laws of 2021, item 1057; of 2022, item 1079, 1846.

in the BGK Act. Third, the list of tasks should reflect only pro-development priorities. In the Author's opinion, it is unwarranted to include tasks relating to the proceedings from the 1940s relating to issues of regime change in property and economic relations. A more appropriate solution should be the statutory regulation (termination) of the issues listed in Article 4, section 1, item 4 and 6 of the BGK Act by allowing the Attorney General of the Republic of Poland or the minister competent for state assets, for example, to handle such matters.

Pursuant to Article 4, section 1 of the Act of 15 December 2016 on the Attorney General of the Republic of Poland[109] (hereinafter the Act on the Attorney General), the tasks of the Attorney General include the following:

1) representation of the State Treasury before common and arbitration courts;
2) representation of government administrative bodies before common courts and the Supreme Court;
3) representation of the State Treasury, state organisational units without legal personality or government administration bodies before administrative courts;
4) representation of certain legal persons before common courts, arbitration courts and the Supreme Court.

Conversely, pursuant to Article 12, section 1 of the Act on Attorney General, this institution may represent the following:

1) state legal persons other than the State Treasury;
2) legal persons with State Treasury participation;
3) legal persons with the participation of state legal persons.

On the other hand, according to Article 9b, section 1 of the Act on Division of Government Administration, the department of state assets covers matters concerning the management of state property, including the exercise of property and personal rights vested in the State Treasury, as well as the protection of the interests of the State Treasury – with the exception of matters which, under separate provisions, are assigned to other departments.

In the Author's opinion, the provisions of the BGK Act with regard to the tasks of Bank Gospodarstwa Krajowego should be limited only to the indication of areas emphasising the pro-developmental and supporting the economic policy of the Council of Ministers objective. At the same time, as indicated above, the Author would advocate the previously indicated

[109] Journal of Laws of 2022, item 2100.

statutory restriction of Bank Gospodarstwa Krajowego's activities in the area of accepting deposits from clients having the status of a consumer within the meaning of separate regulations.

Transfer of Treasury Securities to Increase the Statutory Fund

Article 5a of the BGK Act regulates the transfer of treasury securities for recapitalisation. The Minister competent for public finance has the option of transferring treasury securities to increase the statutory fund of Bank Gospodarstwa Krajowego.

The minister competent for public finance shall determine, by issuing a letter of issue, the terms and conditions of the issue of treasury securities and the manner in which the benefits arising therefrom are to be executed. The letter of issue shall include in particular the following:

1) the issue date;
2) reference of the legal basis of the issue;
3) the nominal unit value;
4) the currency in which the issue may take place, or the manner of its determination;
5) the price or a manner of its determination;
6) the interest rate or a manner of its calculation;
7) the manner and dates of payment of the principal amount due and additional payments;
8) the date from which interest on treasury securities of that issue is to accrue;
9) redemption date and restrictions on the possibility of early redemption.

The issue of treasury securities takes place on the date on which the treasury securities are registered with the securities depository and in an amount equal to the nominal value of the securities issued.

The nominal value of liabilities from issued treasury securities is recognized as State Treasury debt, in accordance with the Public Finance Act of 27 August 2009[110] (hereinafter referred to as the Public Finance Act), but such issues are not included in the limits set out in the Budget Act.

The regulations of Article 5a of the BGK Act are *lex specialis* in the area of ensuring the financial stability of Bank Gospodarstwa Krajowego. These provisions were introduced by an amendment to the Act of 2 April 2009

[110] Journal of Laws of 2022, item 1634, 1725, 1747, 1768, 1964.

amending the Act on Sureties and Guarantees Issued by the State Treasury and Certain Legal Persons, the Act on Bank Gospodarstwa Krajowego and Certain Other Acts[111], allowing for the recapitalisation of Bank Gospodarstwa Krajowego with treasury securities. Particularly noteworthy are the provisions of Article 5a, section 6 of the BGK Act stipulating that the issue of treasury securities used to recapitalise Bank Gospodarstwa Krajowego does not count towards the limits set out in the Budget Act. The above makes it possible, in fact, to recapitalise Bank Gospodarstwa Krajowego at any time during the financial year, irrespective of the regulations of the Budget Act. In the Author's opinion, the provision is justified from the point of view of ensuring the financial stability of Bank Gospodarstwa Krajowego. The Author would advocate its amendment to remove Article 5a, section 7 of the BGK Act as so-called self-evident. For, in accordance with Article 72, section 1 of the Public Finance Act, the state public debt includes liabilities of the public finance sector from the following titles:

1) securities issued for cash claims;
2) incurred credits and loans;
3) deposits accepted;
4) due liabilities:
   a) resulting from separate acts and final court decisions or final administrative decisions;
   b) recognised as undisputed by the relevant debtor unit of the public finance sector.

Loan From the State Budget for Subordinated Liabilities

Pursuant to Article 5b of the BGK Act, the minister competent for public finance may grant such a loan to Bank Gospodarstwa Krajowego from state budget funds. Subscribing for debt securities issued by Bank Gospodarstwa Krajowego by the Treasury is also understood as a loan. The form of a state-owned bank limits the possibility of increasing its own funds for recapitalisation from budgetary resources (in the form of cash and treasury securities) and net profit. This is because a state-owned bank does not issue shares. To a certain extent, under all legal forms prescribed for banks, it is possible to increase own funds by taking out so-called subordinated loans.

Pursuant to Article 126 of the Banking Act, banks are required to hold own funds within the meaning of the CRR, adjusted to the size of their

[111] Journal of Laws of 2009 No. 65, item 545; of 2015, item 1169.

business.[112] On the other hand, pursuant to Article 127, section 1 of that Act, subordinated loans qualify as Additional Tier 1 instruments, and Tier 2 instruments, upon approval by the Financial Supervision Authority.

Subordinated loans qualify as Tier II instruments if, inter alia, the following conditions are met[113]:

1) are taken out and fully paid for;
2) are not granted by any of the following entities:
   a) the institution or its subsidiaries;
   b) an undertaking in which the institution has a participation in the form of ownership, direct or by way of control, of 20% or more of the voting rights or capital of that undertaking;
3) the subordinated loans are neither secured nor subject to a guarantee that enhances the seniority of the claim by any of the following:
   a) the institution or its subsidiaries;
   b) the parent undertaking of the institution or its subsidiaries;
   c) the parent financial holding company or its subsidiaries;
   d) the mixed activity holding company or its subsidiaries;
   e) the mixed financial holding company or its subsidiaries;
   f) any undertaking that has close links with the entities referred to in letters a–e;
4) have an original maturity of at least five years.

The construct of loans from budgetary funds can also be found in the activities of Korporacja Ubezpieczeń Kredytów Eksportowych S.A. (hereinafter KUKE) in the field of export insurance guaranteed by the State Treasury. Pursuant to Article 13, section 2 of the Act on Export Insurance Guaranteed by the State Treasury, payment of compensation and insurance guarantee amounts by KUKE is guaranteed by the State Treasury through:

1) surety by the minister competent for public finance on behalf of the State Treasury for a bank loan plus interest taken out by KUKE;
2) providing loans from the state budget.

In the author's opinion, the provision for loans in relation to Bank Gospodarstwa Krajowego is unwarranted. This is because the entity has no insolvency capacity and, and in the absence of insolvency capacity, it is pointless to create subordinated capital. In addition, there are already opportunities to recapitalise with treasury securities and thus increase the statutory fund of Bank Gospodarstwa Krajowego.

[112] The sum of Tier 1 and Tier II.

[113] Article 52 and 63 of the CRR.

Reduction of the Statutory Fund

The issue of reduction of the statutory fund of Bank Gospodarstwa Krajowego is regulated in Article 5c of the BGK Act. In the event that the entity has own funds at a level higher than the level which Bank Gospodarstwa Krajowego is obliged to maintain in accordance with the Banking Act and the prudential requirements set out in the CRR, the Supervisory Board, at the request of the minister competent for financial institutions, may, by way of a resolution, reduce the statutory fund. The requirement to obtain authorisation from the supervisory authority referred to in Article 77 of the CRR, i.e. the Financial Supervision Authority, does not apply to the reduction.

The above provision is *lex specialis* to the wording of Article 77 of the CRR, which stipulates that the institution concerned is required to obtain prior authorisation from the competent authority to carry out one or two of the following activities:

1) reduce, redeem or repurchase Common Equity Tier 1 instruments issued by the institution in a manner that is permitted under applicable national law;
2) effect the call, redemption, repayment or repurchase of Additional Tier 1 instruments or Tier 2 instruments as applicable, prior to the date of their contractual maturity.

The provisions of Article 5c of the BGK Act indicate three forms of reduction of the statutory fund by the Supervisory Board of Bank Gospodarstwa Krajowego (at the request of the minister competent for financial institutions): payment of the funds to the budget, "return" of treasury securities to the State Treasury and transfer, free of charge, of shares or stocks to the State Treasury or state legal persons. The reduction of the statutory fund by the "return" of bonds or other financial instruments only covers instruments that were previously transferred for the recapitalisation of Bank Gospodarstwa Krajowego. In the Author's opinion, the provisions of Article 5c of the BGK Act may have a negative impact on the status of Bank Gospodarstwa Krajowego as a bank and reduce its credibility on financial markets. It would seem that the general provisions regarding the possibility of reducing own funds should be followed in this area. The Author would advocate the deletion of this provision.

Allocation of Net Profit

Article 5d of the BGK Act specifies how BGK's net profit is to be allocated. This profit may be allocated to:
1) increase of BGK's own funds;
2) make payment to the state budget;
3) implement other purposes determined by the supervisory board.

Article 5d, section 3 of the BGK Act constitutes a *lex specialis* solution as regards the possibility to allocate the net profit of Bank Gospodarstwa Krajowego for other purposes determined by the supervisory board. Maintaining this solution introduces a *de facto* discretion for the supervisory board and this is not limited in any way. In the Author's opinion, given the purpose and mission of Bank Gospodarstwa Krajowego, as well as the State's support instruments for Bank Gospodarstwa Krajowego, the net profit should be fully allocated to its own funds.

Scope of Activity

The provisions of Article 6 of the BGK Act govern the scope of the activities of Bank Gospodarstwa Krajowego. The scope of activities of Bank Gospodarstwa Krajowego may include the following:
1) banking services for state budget accounts;
2) servicing the budgets of local government units;
3) servicing state accounts or local government legal persons accounts established under separate acts to perform public tasks;
4) other activities as defined by separate acts;
5) other activities carried out with the use of public funds, as defined in the agreements entered into with government administration bodies.

The regulations of Article 6, section 1 of the BGK Act are informative, mainly emphasising the primary mission of Bank Gospodarstwa Krajowego as a public finance bank (Article 6, section 1, item 1–3 of the BGK Act). However, it should be noted that the provisions on the ability of Bank Gospodarstwa Krajowego to handle the banking of public funds do not entail decisions on the remit and must have a substantive basis in other source legislation, such as the Public Finance Act. The provisions of the BGK Act in itself do not provide a legal basis for the listed tasks. In the Author's opinion,

a provision on the possibility of carrying out tasks specified in other laws, such as Article 196 of the Public Finance Act of 27 August 2009, is sufficient. In the Author's opinion, these provisions are not necessary in the BGK Act.

Issue of Mortgage Bonds

Pursuant to provision 6a of the BGK Act, Bank Gospodarstwa Krajowego may issue mortgage bonds, in particular for the purpose of implementing government programmes in the area of supporting residential construction. The amendment to the Act of 2 April 2009 amending the Act on Sureties and Guarantees Issued by the State Treasury and Certain Legal Persons, the Act on Bank Gospodarstwa Krajowego and certain other acts enabled the list of activities performed by Bank Gospodarstwa Krajowego to be expanded to include the issue of mortgage bonds on the terms and conditions set out in the provisions of the Act of 29 July 1997 on Mortgage Bonds and Mortgage Banks[114] (hereinafter the Mortgage Bond Act).

Pursuant to Article 3, section 1 of the Mortgage Bond Act, a mortgage bond is a registered or bearer security based on the mortgage bank's claims secured by mortgages, in which the mortgage bank undertakes towards the holder to fulfil certain monetary benefits. In turn, according to Article 3, section 2 of the said Act, a public mortgage bond is a registered or bearer security, the basis of the issue of which is the mortgage bank's claims under the following:

1) loans in the part secured with due interest by a guarantee or surety of Narodowy Bank Polski, the European Central Bank, governments or central banks of European Union Member States, the Organisation for Economic Co-operation and Development, with the exception of countries which are in the process of restructuring or have restructured their foreign debts within the last five years, as well as a guarantee or surety of the State Treasury in accordance with the provisions of separate acts, or
2) loans granted to the entities listed in item 1, or
3) loans in the part secured with due interest by a guarantee or surety of local government units and loans granted to local government units.

At the time of the enactment of the amendment to the BGK Act enabling the issuance of mortgage bonds, a significant part of Bank Gospodarstwa Krajowego's business was focused on lending related to real estate financing.

[114] Journal of Laws of 2022, item 581, 872.

The Author would advocate the deletion of the Article referred to above. Bank Gospodarstwa Krajowego is also not a mortgage bank and is not involved in the mortgage market. It should be emphasised that, to date, Bank Gospodarstwa Krajowego has not issued mortgage bonds.

Bodies of Bank Gospodarstwa Krajowego

Article 7 of the BGK Act specifies that the bodies of BGK are the supervisory board and the management board. This Article is informative and reiterates the provisions of the Banking Act. In the Author's opinion, the provision is not necessary as it does not introduce solutions in the field of bodies other than those applicable to state-owned banks. Each state-owned bank has only two bodies – the management board and the supervisory board – and it is therefore redundant to reiterate this information in the BGK Act.

Composition and Functioning of the Supervisory Board

The regulations of Article 8 of the BGK Act set out the matters related to the functioning of the supervisory board, i.e. its composition, the conditions for the appointment and dismissal of its individual members. The supervisory board consists of 14 members (including the chairperson) appointed from among qualified persons. The supervisory board is capable of performing its tasks and adopting resolutions if the number of its members is not less than nine. If the number of members of the supervisory board is less than 14, the action shall be taken within 30 days to increase the number of members to 14. The term of office of the supervisory board is four years.

The chairperson of the supervisory board is appointed and dismissed by the Prime Minister on the proposal of the minister competent for economic affairs. The other members of the supervisory board are appointed and dismissed by the Prime Minister on the proposal of the relevant ministers. A member of the supervisory board may not be a member of the management board.

The supervisory board is composed of:

1) three representatives of the minister competent for economic affairs;
2) two representatives of the minister competent for regional development;
3) a representative of the minister competent for financial institutions;
4) a representative of the minister competent for public finance;
5) a representative of the minister competent for construction, spatial development and planning, and housing;

6) a representative of the minister competent for transportation;
7) a representative of the minister competent for energy;
8) a representative of the minister competent for higher education and science;
9) a representative of the minister competent for state assets;
10) a representative of the minister competent for climate issues;

The term of office of a supervisory board member expires at the end of the term, as a result of death, resignation or dismissal from the supervisory board. If a supervisory board member's term of office expires during the board's term of office, a new member shall be appointed for the remainder of the term of office. After the expiry of the term of office of the supervisory board, the members of the board are obliged to perform their duties until the date of appointment of a new supervisory board.

The regulations of Article 8 of the BGK Act constitute a *lex specialis* in relation to the Banking Act. In the Author's opinion, this solution should be limited only to the minimum and maximum number of supervisory board members. Other solutions concerning the expiry of the mandate and conduct after the end of the term of office, on the other hand, should take place on the basis of *lex generalis*. In the Author's opinion, the appointment and dismissal of supervisory board members should also be done based on the principles of *lex generalis*. It is not reasonable to identify so many bodies entitled to appoint their own representatives (dilution of authority and decision-making areas between multiple bodies).

Tasks of the Supervisory Board

Pursuant to Article 9 of the BGK Act, the tasks of the supervisory board include in particular the following:
1) supervising the activities of Bank Gospodarstwa Krajowego;
2) ensuring conformity of the activities of the management board with the legal regulations and articles of association;
3) adopting the annual financial and material plan;
4) approving the financial statements submitted by the management board;
5) approving the distribution of profit and the method of covering losses;
6) receiving the report on the operations.

The supervisory board repeals the resolutions of the management board which do not conform to the legal regulations or articles of association.

In the Author's opinion, the provision of Article 9 of the BGK Act does not introduce any content separate from the scope of tasks of the supervisory board in a state-owned bank under Article 18 of the Banking Act. The BGK Act in its original wording[115] indicated an additional task for the supervisory board of Bank Gospodarstwa Krajowego, namely to give binding recommendations in relation to the use of public funds. Pursuant to Article 12 of the originally enacted BGK Act, in justified cases, the minister competent for financial institutions could make binding recommendations to the supervisory board regarding the implementation of tasks with the use of public funds in accordance with the current socio-economic policy of the state. In turn, under Article 12, section 2 of the original version of the BGK Act, the tasks of the supervisory board were to develop and provide guidelines to the management board on BGK's activities in connection with the recommendations referred to in Article 12 of the BGK Act. Under Article 8, section 5, item 4 of the original version of the BGK Act, failure to implement the aforementioned recommendations constituted grounds for dismissal of a member of the supervisory board of Bank Gospodarstwa Krajowego. The provisions of Article 12 (and consequently Article 9, section 1, item 2) of the original version of the BGK Act were deleted by the Act of 10 June 2016 amending the Act on Export Insurance Guaranteed by the State Treasury and certain other acts.[116] In the Author's opinion, the deletion of the aforementioned provisions was a justified solution, especially in the context of the legal personality of Bank Gospodarstwa Krajowego, as well as its activities and bearing risk. On the other hand, the role of the state agent, e.g. in the servicing of certain funds or consolidation processes, the tasks of Bank Gospodarstwa Krajowego are defined by the relevant provisions of generally applicable law, so there is no need to make recommendations in relation to this area of activity.

Composition and Functioning of the Management Board

The legislator included in Article 10 of the BGK Act provisions of an organisational nature related to the functioning of the Bank's management board. The management board consists of six members, including the President, First Vice President and Vice President. The management

[115] Journal of Laws of 2003 No. 65, item 594.

[116] Journal of Laws, item 888.

board can direct the business of Bank Gospodarstwa Krajowego and adopt resolutions if the number of its members is not less than 3. If the number of members of the management board is less than 6, action shall be taken within 30 days to increase the number of members to 6.

The following are authorised to make declarations on behalf of Bank Gospodarstwa Krajowego, including with regard to property rights and obligations:

1) two members of the management board acting jointly;
2) proxies – within the scope of the powers of attorney received, acting alone or jointly with another proxy or member of the management board.

The Prime Minister appoints and dismisses:

1) the president of the management board – at the request of the minister competent for economic affairs;
2) the first vice president of the management board – at the request of the minister competent for financial institutions;
3) the vice president of the management board – at the request of the minister competent for transportation;
4) one board member each – at the request of the minister in charge of regional development, the minister competent for economic affairs and the minister in charge of public finance, respectively.

The appointment of the president of the management board and one member of the management board shall be made with the approval of the Financial Supervision Authority with the appropriate application of Article 22a, section 2 and Article 22b of the Banking Act. The president of the management board represents Bank Gospodarstwa Krajowego before third parties, chairs the meetings of the management board and organises the Bank's operations.

It should be noted that in the original version of the BGK Act, the dismissal of the members of the management board before the expiry of their term of office could take place under certain statutory conditions, either in an obligatory or optional manner. It is mandatory for the minister competent for financial institutions to dismiss a member of the management board before the end of his or her term of office if he or she has been convicted of a wilful crime by a final and binding court sentence. The minister competent for financial institutions, at the request of the supervisory board, could dismiss members of the management board before the expiry of the term of office if:

1) they failed to fulfil their duties as a result of a long-term illness of more than six months, as determined by a medical certificate;
2) criminal or fiscal criminal proceedings were conducted against them;

3) their continuation of their functions did not warrant prudent and stable management of the bank;
4) they failed to implement the guidelines of the supervisory board regarding the activities of Bank Gospodarstwa Krajowego issued in connection with the recommendations referred to in Article 12 of the original version of the BGK Act.

The original wording of Article 12 of the BGK Act indicated the special powers of the minister competent for financial institutions with respect to the supervisory board – with regard to tasks performed with the use of public funds. Pursuant to the aforementioned provision, the minister competent for financial institutions – given the public mission of Bank Gospodarstwa Krajowego – could make binding recommendations to the supervisory board aimed at ensuring that Bank Gospodarstwa Krajowego's activities are in line with the current socio-economic policy of the state.

The provision of Article 12 of the BGK Act was deleted by the Act of 10 June 2016 amending the Act on Export Insurance Guaranteed by the State Treasury and certain other acts. In the Author's opinion, this was a justified action. This is because there are no substantive justifications for the interference of a political factor in decision-making on matters of a of a substantive nature.

In the Author's opinion, the scope of Article 10 of the BGK Act should be limited to the maximum number of members of the management board. Other matters should be governed by the *lex generalis* standards, and powers of attorney by articles of association.

Remit of the Management Board Members

The remit of the individual members of the Management Board is set forth in the Article 10 of the BGK Act. Therefore, the remit of:
1) first vice-president of the management board – include matters relating to the operation of the financial market;
2) vice president of the management board – include matters relating to the development of transport infrastructure;
3) member of the management board appointed on the proposal of the minister competent for regional development – include matters of regional policy and regional development;

4) member of the management board appointed on the proposal of the minister competent for economic affairs – include matters relating to the promotion of the economy;
5) member of the management board appointed on the proposal of the minister competent for public finance – include matters concerning the implementation of income and expenditure of the state budget.

The above-mentioned regulation constitutes *lex specialis* in relation to the Banking Act and indicates the remit of the individual members of the management board of Bank Gospodarstwa Krajowego. In the Author's opinion, this provision should be deleted, as the determination of the remit should not be a legislative matter, or even matter of constitutional documents. The division of responsibilities should be within the management remit of the bodies of Bank Gospodarstwa Krajowego.

Term of Office of the Management Board

Article 11, section 1 of the BGK Act sets the term of office of the management board at five years. This provision is a *lex specialis* in relation to the Banking Act, where this matter is governed by the articles of association. Article 11, section 2–9 of the BGK Act is a *lex specialis* in terms of legislative regulation of the matter of suspension or resignation, but in the Author's opinion there is no justification for regulating it at the level of the BGK Act, especially in the context of the absence of such solutions in the provisions of the Banking Act. These issues should be regulated on a *lex generalis* basis. In the context of *lex specialis* solutions, the Author would only be in favour of retaining the provision on the duration of the term of office.

Principles of Remuneration of Members of Bank Gospodarstwa Krajowego's Bodies

The provisions of Article 11a of the BGK Act refer to the Act of 9 June 2016 on the Principles for Setting the Remuneration of the Persons in Charge of Certain Companies[117] (hereinafter the Act on the Principles for Setting the Remuneration of the Persons in Charge of Certain Companies). The principles

[117] Journal of Laws of 2016, item 1202; i.e. Journal of Laws of 2020, item 1907.

arising from the Act on the principles for setting the remuneration of the persons in charge of certain companies apply to the remuneration of members of the management board and the supervisory board. For the avoidance of doubts, the wording of Article 11a of the BGK Act stipulates that the tasks of the entity authorised to exercise the rights attached to the shares and of the general meeting will be performed by the minister competent for economy. Within the framework of these tasks, the minister competent for economic affairs defined, in the form of a declaration, the principles of remuneration of members of the management board and supervisory board, which is modelled on the existing solutions concerning the determination of remuneration of presidents of management boards in single-person companies of the State Treasury. In the Author's opinion, the Article 11a of the BGK Act should be amended to refer to the appropriate application of the provisions of the Act on the Principles for Setting the Remuneration of the Persons in Charge of Certain Companies. Pursuant to Article 4, section 2 of this act, the fixed part of the remuneration of a member of the management body shall be set taking into account the scale of the company's activities, in particular the value of its assets, the revenues generated and the size of its workforce, in the following amount:

1) from one to three times the assessment base – for a company that has met at least two of the following conditions in at least one of the last two financial years:
   a) employed an average of up to 10 employees;
   b) achieved an annual net turnover from sales of goods, products and services and financial operations of less than the PLN equivalent of EUR 2 million;
   c) the total assets of its balance sheet as at the end of one of those years were less than the PLN equivalent of EUR 2 million;
2) from two to four times the assessment base – for a company that has met at least two of the following conditions in at least one of the last two financial years:
   a) employed an average of at least 11 employees;
   b) achieved an annual net turnover from sales of goods, products and services and financial operations of at least the PLN equivalent of EUR 2 million;
   c) the total assets of its balance sheet as at the end of one of those years were at least the PLN equivalent of EUR 2 million;
3) from three to five times the assessment base – for a company that has met at least two of the following conditions in at least one of the last two financial years:
   a) employed an average of at least 51 employees;

   b) achieved an annual net turnover from sales of goods, products and services and financial operations higher than the PLN equivalent of EUR 10 million;
   c) the total assets of its balance sheet as at the end of one of those years were higher than the PLN equivalent of EUR 10 million;
4) from four to eight times the assessment base – for a company that has met at least two of the following conditions in at least one of the last two financial years:
   a) employed an average of at least 251 employees;
   b) achieved an annual net turnover from sales of goods, products and services and financial operations higher than the PLN equivalent of EUR 50 million;
   c) the total assets of its balance sheet as at the end of one of those years were higher than the PLN equivalent of EUR 43 million;
5) from seven to fifteen times the assessment base – for a company that has met at least two of the following conditions in at least one of the last two financial years:
   a) employed an average of at least 1251 employees;
   b) achieved an annual net turnover from sales of goods, products and services and financial operations higher than the PLN equivalent of EUR 250 million;
   c) the total assets of its balance sheet as at the end of one of those years were higher than the PLN equivalent of EUR 215 million.

The variable part of the remuneration of a member of the management body, representing the supplementary remuneration for the company's financial year, depends on the level of achievement of management objectives. The weights of the management objectives, as well as impartial and measurable criteria for their achievement and accountability are set for individual or all members of the management body. In case of companies pursuing a public mission or companies pursuing a public task, the degree of fulfilment of the public mission or the degree of fulfilment of the public task shall also be taken into account in determining the management objectives, their weighting and the criteria for their implementation and accountability, during the period serving as a basis for determining the supplementary remuneration. The variable part of the remuneration in a company may not exceed 50% and, in public and other large-scale companies, 100% of the basic remuneration of the member of the management body in the previous financial year.

Management objectives may be, in particular include the following:
1) an increase in either net profit or earnings before interest, taxes, depreciation and amortisation, or a positive change in the growth rate of one of these results;
2) achieving or changing certain production or sales volumes;
3) the value of income, in particular from sales, from operations, from other operating activities or from financial activities;
4) a reduction in losses, management or operating costs;
5) implementation of a restructuring strategy or plan;
6) achieving or changing certain ratios, in particular profitability, liquidity, management efficiency or solvency;
7) implementation of the investment, taking into account, in particular, scale, rate of return, innovation, timeliness of implementation;
8) a change in the company's market position, calculated as market share or according to other criteria, or in its relationships with counterparties identified as key according to specific criteria;
9) implementation of the HR policy in place and increased staff involvement.

In the Author's opinion, the determination of the remuneration of BGK's bodies should refer to the provisions of the Act of 9 June 2016 on the principles for setting the remuneration of the persons in charge of certain companies. In this respect, the Author proposes to apply this Act accordingly and to set remuneration according to the indicators indicated in the aforementioned act, i.e. turnover, assets and employment.

Supervisory Powers of Competent Ministers

The regulations of Article 12a of the BGK Act establish obligations in the area of communication of information in relation to the bodies of Bank Gospodarstwa Krajowego and their individual members. Ministers competent to request the appointment of members of the management board or the supervisory board may request the board, the management board and the members of the supervisory board and the management board recommended by them, respectively, to provide information concerning Bank Gospodarstwa Krajowego within the area of activity of such minister.

The provisions of the above article constitute a *lex specialis* in the area of the authority of the relevant ministers as regards the provision of information from the supervisory board, the management board or the relevant member

of the supervisory board relating to their areas of activity. The provisions of the Banking Act do not regulate such matters. In the Author's opinion, the provision should be deleted and the matter of providing information should be based on the general corporate rules applicable to other banks, including state-owned banks. Indeed, it should be noted that the supervisory board or the management board are bodies of Bank Gospodarstwa Krajowego and act in its name and on its behalf. It should also be emphasised that any change in the composition of the board or administrative departments as set forth in the articles of association necessitates an amendment to Article 12a of the BGK Act.

Summary and Conclusion

1. The concept of "social market economy" included in Article 20 of the Polish Constitution indicates the priority of free market processes in the economy. However, these processes should take place in an orderly manner. The activities of Bank Gospodarstwa Krajowego are part of such a focus.
2. The current solutions contained in the provisions of the BGK Act indicate a significant expansion of the provisions of a *lex specialis* nature compared to its original version. It should be emphasised that the original wording of the BGK Act did not contain solutions of a *lex specialis* nature in terms of the different application of prudential standards or investment opportunities compared to commercial banks. It can also be seen that there have been significant and extensive changes compared to the original version of the BGK Act in the area of corporate matters with regard to the appointment and dismissal, as well as the division of powers among the members of the management board. The Author presents a comparison of the two versions of the BGK Act in Appendix 3.
3. The BGK Act contains certain solutions regarding the state's responsibility for the solvency and liquidity of Bank Gospodarstwa Krajowego. However, these solutions do not constitute coverage of BGK's liabilities by direct and irrevocable guarantees from the state.
4. The provisions of the BGK Act also define the primary purpose of Bank Gospodarstwa Krajowego's activities, which essentially consists of supporting the economic policy of the Council of Ministers. In the Author's opinion, it is precisely the proper definition of the purpose of operation of a public development finance institution that should constitute the basic element of legal regulation distinguishing such an institution

from financial institutions operating solely on market conditions with an aim to maximise profit/value. In the Author's opinion, the provisions of the BGK Act regarding the functioning of Bank Gospodarstwa Krajowego as a public development finance institution should be thoroughly amended. First and foremost, it is essential to make reference to doing business within an identified market failure. Such a regulation would be a confirmation that the activities of Bank Gospodarstwa Krajowego must not crowd out institutions operating under market conditions.

5. In the Author's opinion, the structure of a state-owned bank is appropriate for the functioning of a public development finance institution in Poland. The operation of such an institution as a licensed bank would seem to be appropriate given the issues of compliance with certain prudential standards and the exercise of financial supervision. Such a legal form with a defined purpose of operation and certain regulations of a *lex specialis* nature seems to be a sufficient legal solution for the operation of a public development finance institution. In the Author's opinion, it would not be advisable to change the legal form to a bank operating in the form of a joint stock company or a cooperative bank. In principle, banks operating in such legal forms are oriented towards maximising profit/value. Currently, besides the regionalisation of the range of activities, the functioning of the principle of self-help, which was originally the basic premise for the establishment of such institutions, is hardly even noticeable in cooperative banks or in cooperative savings and credit unions.[118]
6. Solutions at the level of European Union legislation and examples of the functioning of public development finance institutions incline to adopt a legal solution providing for the coverage of Bank Gospodarstwa Krajowego's liabilities by unconditional and irrevocable guarantees of the State Treasury.
7. In the Author's opinion, the deviations in the corporate area from the operation of state-owned banks operating under market conditions should come down solely to the designation of the role of the minister competent for economic affairs, instead of the minister competent for state assets. The above solution already exists in the BGK Act. In addition, a limitation on the number of members of the bodies and the length of their term of office seems reasonable in this respect.
8. The possibility of recapitalising this institution with treasury securities, irrespective of the debt limit set in the Budget Act, should be regarded

[118] More on the nature of cooperative banking can be found in: Zalcewicz (2009).

not only as warranted, but also as an innovative and unique solution on a European scale, strengthening the potential of Bank Gospodarstwa Krajowego. Such a solution is not in place in any of the cases of public development finance institutions reviewed.

9. The Author argues in favour of not introducing solutions of a *lex specialis* nature in the area of prudential standards as well as investment opportunities. The issues of the proper financial standing of Bank Gospodarstwa Krajowego should determine the amount of its capital, as well as the solutions providing for unconditional and irrevocable guarantees of the State Treasury.
10. To some extent, the BGK Act contains regulations concerning the rules for the operation of public development finance institutions determined indirectly by European Union law. Under Article 4 of the BGK Act, Bank Gospodarstwa Krajowego is oriented towards supporting the economic policy of the Council of Ministers and, in accordance with Article 3, section 3–3b of that Act, has mechanisms corresponding to counter-guarantees from the State Treasury. In the Author's opinion, the guidelines from the European Commission Communication[119] and the provisions of the CRR should provide guidance for further amendments to the BGK Act.

[119] Communication from the Commission to the European Parliament and the Council of 22 July 2015, op. cit.

Conclusion

As Michał Mariański (2016) observes, currently the financial market is a specific legal environment within which private law standards intersect with public law standards. The above assertion also includes legal regulations for the operation of public development finance institutions.

Public development finance institutions are not defined in European Union law in such a way as to clearly determine such status for existing or newly established entities. Generally applicable law or regulations of a guideline nature are much more useful at EU level for defining the characteristics of a public development finance institution. The analysis of the above regulations confirms the need for solutions that would be *lex specialis* to regulations for financial institutions operating under market conditions. The examples of public development finance institutions (outside Lithuania) presented herein indicate to varying degrees that such arrangements are in place. In the Author's opinion, it is difficult to imagine support activities on a purely market-based basis, especially in identified market failures, with a simultaneous focus on highly profitable activities.

An analysis of domestic, foreign and European legal solutions leads to the conclusion of the need to maintain certain solutions of a *lex specialis* nature with regard to the operation of a public development finance institution such as Bank Gospodarstwa Krajowego. The purpose of such an institution cannot be aligned with the operation of a bank operating under market conditions. Nevertheless, the Author's research and the assumption, adopted in the introduction to this publication, of minimising solutions of a *lex specialis* nature in the operations of Bank Gospodarstwa Krajowego in relation to the solutions applicable to commercial banks come down to the necessity of taking into account such solutions in relation to the areas indicated below:

1) the purpose of the activities of Bank Gospodarstwa Krajowego (with restrictions on its ability to engage with certain fields/clients);

2) the State's responsibility for the activities of a public development finance institution, which Bank Gospodarstwa Krajowego undoubtedly is.

The Author points out in this publication that the solutions set out in these areas are already in place in the BGK Act, but the Author nevertheless proposes their thorough modification.

The provisions establishing the purpose of Bank Gospodarstwa Krajowego in particular should be amended. In the Author's opinion, the solutions defining the scope of this entity's activities should clearly indicate its restriction only to areas with an identified market failure. Adopting such a statutory restriction would preclude activities that could distort competition and lead to commercial operators being crowded out of the market.

Referring in the provisions of the BGK Act to the notion of operating only in the area of an identified market failure would necessitate an *ex ante* analysis at the management level of instrumental/organisational aspects in the event of a decision to engage in a specific area. A restriction on BGK's activities would also be the introduction of a prohibition on the financing of Bank Gospodarstwa Krajowego's activities with consumer deposits within the meaning of Directive of the European Parliament and of the Council 2008/48/EC. In the Author's opinion, the above restrictions on the activities of Bank Gospodarstwa Krajowego should be correlated with the second major change, i.e. the possibility of its liabilities being covered by guarantees from the state. Examples of the functioning of public development finance institutions confirm the possibility of such a solution at the level of national law. The current provisions of the BGK Act are showing more of a need for government bodies to provide funds for liquidity and solvency. Such a solution cannot, however, be identified as an explicit state guarantee. In the Author's opinion, it is necessary to introduce a certain framework of coherent legal solutions – limiting the activities of a public development finance institution versus the state guaranteeing the liabilities of such an institution.

It should be noted that the liabilities of many public development finance institutions in the European Union are covered by state guarantees. The Spanish Instituto de Crédito Oficial (ICO)[120] or the German Kreditanstalt

[120] The Spanish ICO is governed by the provisions contained in Real Decreto-Ley 12/1995, de 28 de diciembre – in light of these provisions, the debts and obligations that the ICO incurs are subject to an irrevocable and unconditional guarantee by the State to third parties. The activities of the ICO are summarised in S. Skuza (2015e). The Activities of Bank Gospodarstwa Krajowego in the domestic systemic environment. Difin.

für Wiederaufbau (KfW)[121] can also be highlighted in addition to the examples identified in this thesis.

State guarantees to public development finance institutions must be assessed as fulfilling the conditions of Article 107, section 1 of TFEU, i.e. constituting State aid. The European Commission accepts the existence of such guarantees in the Member States. This is evidenced by the statement in the Commission's decision of 21 October 2008 in case C 10/08 (ex NN 7/08) on state aid, which Germany granted in connection with the restructuring of IKB Deutsche Industriebank AG (section 6 – "KfW's tasks are the promotion of small and medium-sized enterprises, of housing finance and modernisation and of education and advanced training, the financing of municipal infrastructure projects, the promotion of export and project finance, support for developing and transition countries, and the protection of the environment and the climate. KfW raises the bulk of the funds required for those development activities on the capital market. The development function given to it by the State is anchored in the KfW Law (German: *Gesetz über die KfW*). In the exercise of its public function KfW is covered by the public guarantee mechanism.").[122]

In the case of the introduction of regulations concerning State Treasury guarantees for Bank Gospodarstwa Krajowego, the appropriate solution is to indirectly limit such guarantees to liabilities arising from the activities of this entity in areas where market failures exist or may arise. In such a case, in the Author's opinion, it could be argued that state interference through the provision of guarantees only applies to those areas where commercial involvement is lacking or there are problems in securing it.

A specific solution of the Polish legal system related to security and underwriting activities is the possibility of recapitalising Bank Gospodarstwa Krajowego with treasury securities. The provisions of the BGK Act allow this entity to be recapitalised at any time without having to take into account expenditure limits or debt limits set in the Budget Act. Pursuant to Article 52, section 1, item 2 of the Public Finance Act of 27 August 2009,[123] the expenditure of the state budget is subject to a non-exceedable

[121] According to Article 1 of the Gesetz über die KfW, the federal government is liable for loans taken out and bonds issued by the institution, futures transactions structured as standing transactions, rights attached to options and other loans to the institution, as well as loans to third parties, insofar as they are expressly guaranteed by the institution. The activities of the KfW are summarised in S. Skuza (2015f). The Activities of Bank Gospodarstwa Krajowego in the domestic systemic environment. Difin.

[122] OJ EU L 278 of 25 October 2009, p. 33.

[123] Journal of Laws of 2022, item 1634, 1725, 1747, 1768, 1964.

limit. However, the budgetary rules set out in this law, with few exceptions (e.g. transfers from specific purpose reserves), prevent arbitrary transfers of limits between budget parts.

With regard to organisational and corporate matters, the Author proposes to adopt solutions of a of a *lex specialis* nature to a minimum extent, i.e. the body issuing the articles of association and the determination of the term of office of the management board. It is also important to regulate the allocation of the profit of Bank Gospodarstwa Krajowego. In the Author's opinion, a provision stating that the profit should only be allocated to the institution's own funds would underline the functioning of Bank Gospodarstwa Krajowego as a public development financial institution.

The Author presents in Appendix 1 a draft act on BGK answering the research question posed in the introduction of the publication. In the Author's opinion, the prepared draft act on BGK answers the research question posed in the paper with an assumption of a *lex specialis* nature. In doing so, the Author has also achieved the assumed application aspect of the publication. The draft prepared can be used by lawmakers to develop solutions in the legislative process. In Appendix 2, the Author presents a tabular comparison of the wording of the provisions of the current BGK Act and the draft proposed by the Author.

The Author leaves the assessment of the findings in this publication to its Readers.

Appendices

Appendix 1. The Author's draft act on BGK

Act
of ... 2022
on Bank Gospodarstwa Krajowego

referring to the best traditions of the Second Polish Republic and acknowledging that it is necessary to support the economic policy of the Council of Ministers with the use of the instruments of banking activity, the principles of functioning of Bank Gospodarstwa Krajowego are hereby set out, based on the principles of the social market economy referred to in Article 20 of the Act of 2 April 1997 – the Constitution of the Republic of Poland.

Article 1 [Material scope of the Act]
This Act defines the tasks, scope of activities and the organisation of Bank Gospodarstwa Krajowego.

Article 2 [Status and articles of association of Bank Gospodarstwa Krajowego]
1. Bank Gospodarstwa Krajowego, hereinafter referred to as "BGK", is a state-owned bank within the meaning of the Banking Act of 29 August 1997 (Journal of Laws of 2021, item 2439, as amended).
2. In addition to the name "Bank Gospodarstwa Krajowego", BGK may use the name "Polski Bank Rozwoju" in commercial relations or for advertising and marketing purposes.
3. BGK is a member of the development institution system referred to in Article 2, section 1 of the Act of 4 July 2019 on development institution system (Journal of Laws of 2022, item 760, 1079).

4. The minister in charge of economy, after consulting the minister competent for financial institutions, shall, by regulation, after obtaining the opinion of the Financial Supervision Authority, confer the articles of association of BGK, taking into account the status of BGK and the necessity of achieving the objectives referred to in Article 5, section 1.

Article 3 [Applicable regulations]

1. Unless the provisions of this Act provide otherwise, the provisions of the Banking Act of 29 August 1997 and the Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms amending Regulation (EU) No. 648/2012 (OJ EU L 176 of 27.06.2013, p. 1, as amended), hereinafter referred to as "Regulation No. 575/2013", as well as the provisions of acts adopted pursuant to the provisions of that Regulation, shall apply *mutatis mutandis* to the operations of BGK.
2. With regard to BGK:
   1) the provisions of Articles 141m–141x and Articles 158–159 of the Banking Act of 29 August 1997 shall not apply;
   2) the provisions of Articles 142–157f and Article 169 of the Banking Act of 29 August 1997 shall apply accordingly.

Article 4 [State Treasury guarantee]

1. BGK cannot be declared bankrupt.
2. BGK's liabilities are unconditionally and irrevocably guaranteed by the State Treasury.
3. The guarantees referred to in section 1 shall not be included in the limits specified in the Budget Act.
4. In the event of liquidation of BGK, its property and liabilities shall be taken over by the State Treasury on the date of liquidation.

Article 5 [Objectives of Bank Gospodarstwa Krajowego]

1. The primary objectives of BGK include supporting the economic policy of the Council of Ministers, within the framework of its commercial activities, in particular those referred to in Articles 5 and 6 of the Banking Act of 29 August 1997.
2. The BGK shall conduct the activities referred to in section 1 in a manner that ensures undistorted competition, in particular taking into account the market failures referred to in Article 6, section 2, item 1, letter a of the Act of 4 July 2019 on the system of development institutions.

Article 6 [Scope of the tasks of Bank Gospodarstwa Krajowego]

1. The tasks of BGK shall also include:
   1) servicing funds established, entrusted or turned over to BGK on the basis of separate acts;
   2) handling export transactions using export promotion instruments and supporting the export of Polish goods and services, in compliance with separate regulations or as part of the implementation of government programmes;
   3) conducting, directly or indirectly, guarantee or surety activities in respect of the implementation of government guarantee and surety programmes or on the account of the State Treasury on the basis of the Act of 8 May 1997 on Sureties and Guarantees Issued by the State Treasury and Certain Legal Persons (Journal of Laws of 2022, item 1613), in particular for the sector of micro, small and medium-sized entrepreneurs;
   4) supporting the development of residential construction, in particular the construction of residential premises for rent, in compliance with separate regulations or in connection with the implementation of government programmes;
   5) performing other activities as defined by separate acts.
2. The competent for economic affairs shall provide BGK with funds to maintain its own funds, taking into account the need to cover the business risks incurred by BGK.
3. In order to effectively conduct the activities referred to in Article 5, section 1 and perform the tasks referred to in section 1, BGK may also raise funds from other sources, in particular, it may take out credit and loans and issue bonds in Poland and abroad.
4. BGK shall not accept covered deposits referred to in Article 2, section 1, item 5 of the Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p. 149, as amended) made by consumers referred to in Article 3, letter a of the Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66, as amended).

Article 7 [Transfer of treasury securities]

1. At the request of the minister competent for economic affairs, the minister competent for public finance may assign treasury securities to increase the BGK's statutory fund.
2. The minister competent for public finance shall determine, by issuing a letter of issue, the terms and conditions of the issue of treasury securities referred to in section 1, and the manner in which the benefits arising therefrom are to be executed.
3. The letter of issue shall include in particular the following:
   1) the issue date;
   2) reference of the legal basis of the issue;
   3) the nominal unit value;
   4) the currency in which the issue may take place, or the manner of its determination;
   5) the price or a manner of its determination;
   6) the interest rate or a manner of its calculation;
   7) the manner and dates of payment of the principal amount due and additional payments;
   8) the date from which interest on treasury securities of that issue is to accrue;
   9) redemption date and restrictions on the possibility of early redemption.
4. The issue of treasury securities referred to in section 1 takes place on the date on which the treasury securities are registered with the securities depository and in an amount equal to the nominal value of the securities issued.
5. The provisions of Articles 98 and 102 of the Act of 27 August 2009 on Public Finance (Journal of Laws of 2022, item 1634, 1725, 1747, 1768, 1964) and secondary legislation issued pursuant to Article 97 of that Act shall not apply to the issue of treasury securities referred to in section 1.
6. The issue of treasury securities referred to in section 1 shall not be included in the limits specified in the Budget Act.

Article 8 [Net profit]

BGK's net profit shall be used to increase BGK's own funds.

Article 9 [Composition of the Supervisory Board]

The Supervisory Board shall be composed of at least 7 and no more than 9 members, including the chairperson.

Article 10 [the Management Board; term of office, composition]

1. The term of office of the Management Board shall be 5 years.
2. The Management Board shall be composed of at least 3 and no more than 7 members, including the President of the Management Board, the Vice-President of the Management Board – the first deputy of the President of the Management Board.

Article 11 [Reference to the Act on the Principles for Setting the Remuneration of the Persons in Charge of Certain Companies]

1. The minister competent for economic affairs shall determine the principles for the remuneration of members of the Management Board and members of the Supervisory Board.
2. The provisions of the Act of 9 June 2016 on the principles for setting the remuneration of the persons in charge of certain companies (Journal of Laws of 2020, item 1907) shall apply *mutatis mutandis* to the remuneration principles referred to in section 1.

Appendix 2. Comparison of the Author's draft to the current wording of the BGK Act

The Author's draft act on BGK	BGK Act
Referring to the best traditions of the Second Polish Republic and acknowledging that it is necessary to support the economic policy of the Council of Ministers with the use of the instruments of banking activity, the principles of functioning of Bank Gospodarstwa Krajowego are hereby set out, based on the principles of the social market economy referred to in Article 20 of the Act of 2 April 1997 – the Constitution of the Republic of Poland.	
Article 1	**Article 1**
This Act defines the tasks, scope of activities and the organisation of Bank Gospodarstwa Krajowego.	This Act defines the tasks, scope of activities and the organisation of Bank Gospodarstwa Krajowego.
Article 2	**Article 2**
1. Bank Gospodarstwa Krajowego, hereinafter referred to as "BGK", is a state-owned bank within the meaning of the Banking Act of 29 August 1997 (Journal of Laws of 2021, item 2439, as amended).	1. Bank Gospodarstwa Krajowego, hereinafter referred to as "BGK", established by the Regulation of the President of the Republic of Poland of 30 May 1924 on the merger (fusion) of State Credit Institutions into Bank Gospodarstwa Krajowego (Journal of Laws of 1936, item 438), is a state-owned bank within the meaning of the Banking Act of 29 August 1997 (Journal of Laws of 2020, item 1896, as amended).
	2. The seat of BGK is the capital city of Warsaw.
2. In addition to the name "Bank Gospodarstwa Krajowego", BGK may use the name "Polski Bank Rozwoju" in commercial relations or for advertising and marketing purposes.	
3. BGK is a member of the development institution system referred to in Article 2, section 1 of the Act of 4 July 2019 on development institution system (Journal of Laws of 2021, item 760 and 1079).	

The Author's draft act on BGK	BGK Act
4. The minister competent for economic affairs, after consulting the minister in charge of financial institutions, shall, by regulation, after obtaining the opinion of the Financial Supervision Authority, confer the articles of association of BGK, taking into account the status of BGK and the necessity of achieving the objectives referred to in Article 5, section 1.	3. The minister competent for economic affairs, after consulting the minister competent for financial institutions and the Financial Supervision Authority, confers, by way of a regulation, the articles of association of BGK. In the regulation, the minister shall specify, in particular, the following:
	1) the internal organisation and detailed scope of activities performed by BGK; 2) the detailed scope of activities of the Supervisory Board and the Management Board; 3) (*repealed*) 4) own funds of BGK and the principles of managing its financial economy.
	4. When adopting the articles of association of BGK, the minister competent for economic affairs consults the ministers responsible for supervising the funds created, entrusted or transferred to BGK under separate acts.
	5. BGK is a member of the development institution system referred to in Article 2, section 1 of the Act of 4 July 2019 on development institution system (Journal of Laws of 2021, item 1010 and 2219).
Article 3	**Article 3**
1. Unless the provisions of this Act provide otherwise, the provisions of the Banking Act of 29 August 1997 and the Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms amending Regulation (EU) No. 648/2012 (OJ EU L 176 of 27.06.2013, p. 1, as amended), hereinafter referred to as "Regulation No. 575/2013", as well as the provisions of acts adopted pursuant to the provisions of that Regulation, shall apply *mutatis mutandis* to the operations of BGK.	1. Unless provisions of the law provide otherwise, the provisions of the Act of 29 August 1997 – the Banking Act shall apply to BGK's operations.

The Author's draft act on BGK	BGK Act
	1a. BGK shall comply with the provisions of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ EU L 176, 27.06.2013, p. 1, as amended), hereinafter referred to as "Regulation No 575/2013", and acts adopted in accordance with the provisions of that Regulation, unless otherwise provided for in separate legislation. 1b. With regard to off-balance sheet exposures of BGK which occur as a result of sureties or guarantees under granted as part of the implementation of government programmes by BGK, resulting from the sureties or guarantees of the credit portfolio referred to in Article 128b, section 2, item 1 of the Banking Act of 29 August 1997, and satisfying the qualification requirements set by the bank extending a credit facility to be included in a category of retail exposures set out in Article 123, letter a and b of Regulation No 575/2013, BGK shall not apply: 1) the requirements referred to in Article 395, section 1 of the Regulation No. 575/2013; 2) the principles of determining the own funds requirement in respect of credit risk, as provided for in the Regulation No. 575/2013, in respect of: a) verification if the exposure satisfies the requirements to be qualified as a retail exposure referred to in Article 123 of Regulation No. 575/2013, b) individual classification of exposures as retail exposures. 1c. With regard to off-balance sheet exposures of BGK which occur as a result of BGK's counter-guarantees for theźliabilities of the guarantee funds for credit guarantees granted by these funds resulting from the sureties or guarantees of the credit portfolio referred to in Article 128b, section 2, item 1 of the Banking Act of 29 August 1997,

The Author's draft act on BGK	BGK Act
	and satisfying the qualification requirements set by the bank extending a credit facility to be subject to a surety of guarantee to be included in a category of retail exposures set out in Article 123, letter a and b of Regulation No 575/2013, BGK shall not apply: 1) the requirements referred to in Article 395, section 1 of the Regulation No. 575/2013; 2) the principles of determining the own funds requirement in respect of credit risk, as provided for in the Regulation No. 575/2013, in respect of: a) verification if the exposure satisfies the requirements to be qualified as a retail exposure referred to in Article 123 of Regulation No. 575/2013; b) individual classification of exposures as retail exposures; c) individual classification of exposures as past due. 1d. With regard to the off-balance sheet exposures of BGK which occur as a result BGK granting guarantees under guarantee lines, in connection with the implementation of a government programme, resulting from the guarantees of the credit portfolio referred to in Article 128b, section 2, item 1 of the Banking Act of 29 August 1997, BGK shall not apply: 1) the requirements referred to in Article 395, section 1 of the Regulation No. 575/2013; 2) the principles of determining the own funds requirement in respect of credit risk, as provided for in the Regulation No. 575/2013, in respect of: a) verification if the exposure satisfies the requirements to be qualified as a retail exposure referred to in Article 123 of Regulation No. 575/2013; b) individual classification of exposures as retail exposures. 1e. To the extent not covered by the provisions of items 1b–1d, the Financial Supervision Authority may, upon the request of BGK, release that bank

The Author's draft act on BGK	BGK Act
	from the obligation to comply with the prudential requirements referred to in item 1a or limit their application, taking into account the need to ensure the safety of BGK's operations and the funds deposited therein as well as the effective implementation of the tasks referred to in Article 5.
2. With regard to BGK: 1) the provisions of Articles 141m–141x and Articles 158–159 of the Banking Act of 29 August 1997 shall not apply; 2) the provisions of Articles 142–157f and Article 169 of the Banking Act of 29 August 1997 shall apply accordingly.	1f. With regard to BGK: 1) the provisions of Articles 141m–141x and Articles 158–159 of the Banking Act of 29 August 1997 shall not apply; 2) the provisions of Articles 142–157f and Article 169 of the Banking Act of 29 August 1997 shall apply accordingly.
	1g. In the event that BGK takes over the rights attached to the shares referred to in Article 19d, section 1 of the Act of 12 February 2010 on the recapitalisation of certain institutions and government financial stabilisation instruments (Journal of Laws of 2018, item 124, of 2019, item 1798 and of 2021, items 1598 and 2140), the prudential consolidation referred to in Article 10a–24 of Regulation No. 575/2013 shall not apply to BGK.
Article 4	
1. BGK cannot be declared bankrupt.	2. The Article 6, item 4 of the Act of 28 February 2003 – Bankruptcy and Reorganisation Act (Journal of Laws of 2020, item 1228 and 2320 and of 2021, item 1080, 1177, 1598 and 2140) shall apply to BGK.
2. BGK's liabilities are unconditionally and irrevocably guaranteed by the State Treasury.	
3. The guarantees referred to in section 1 shall not be included in the limits specified in the Budget Act.	
	3. The competent for public finance shall allocate BGK the funds to: 1) maintain own funds at a level which will guarantee the performance of the tasks referred to in Article 5;

The Author's draft act on BGK	BGK Act
	2) compliance with the prudential requirements regarding liquidity, as set out in the provisions of the Regulation No. 575/2013 and the Banking Act of 29 August 1997 – aiming to cover the risks of banking activities borne by BGK. 3a. The conditions and the procedure or allocating the funds referred to in item 3 shall be determined under an agreement entered into between the minister competent for public finance and BGK. 3b. The obligation referred to in item 3 shall satisfy the requirements of credit protection within the meaning of Articles 213–215 of the Regulation No. 575/2013 granted by the State Treasury. The exposures towards BGK are assigned a risk weight in compliance with Article 114, section 4 of the Regulation No. 575/2013. 3c. The statutory fund of BGK shall a capital instrument within the meaning of Article 26, section 1, letter a and Article 28 of Regulation No. 575/2013. 3d. When determining the liquidity necessary to satisfy the prudential requirements referred to in the provisions of Regulation 575/2013, BGK shall include the total undrawn unconditional off-balance sheet liabilities received from the Treasury as liquidity inflows as defined in the provisions of that Regulation.
4. In the event of liquidation of BGK, its property and liabilities shall be taken over by the State Treasury on the date of liquidation.	4. In the event of liquidation of BGK, its property and liabilities shall be taken over by the State Treasury on the date of liquidation.
	5. BGK shall not assume exposures towards: 1) a group of connected clients as referred to in Article 4, section 1, item 39 of the Regulation No. 575/2013, including with participation of entities referred to in sections 2 and 3, 2) a domestic bank, 3) an investment fund as referred to in Article 3, section 1 of the Act of 27 May 2004 on investment funds and management of alternative investment funds (Journal of Laws of 2021, item 605, 1595 and 2140)

The Author's draft act on BGK	BGK Act
	– the value of which, after taking into account the effect of the credit risk mitigation referred to in Articles 399 to 403 of Regulation No 575/2013, exceeds 50% of the value of BGK's eligible capital referred to in Article 4, section 1, item 71 of that regulation. 6. BGK shall not apply the prudential requirements for large exposures referred to in Article 395, section 1 of the Regulation No 575/2013 to exposures referred to in item 5.
	Article 3a
	1. In order to ensure that BGK meets the prudential liquidity requirements referred to in the provisions of Regulation 575/2013, the minister competent for public finance may grant, on behalf of the State Treasury, a guarantee for the repayment of loans and credit lines granted to BGK by a domestic bank, a foreign bank or a credit institution as well as for the fulfilment by the issuer of cash payments of debt securities issued by BGK, in particular bonds or bank securities. 2. The maturity of the debt securities referred to in section 1 may not be less than one month or more than five years. 3. The guarantee referred to in section 1 covers the repayment of a loan or the redemption of debt securities issued by BGK, together with contractual interest and other costs associated with that loan or those debt securities. The guarantee may not cover the repayment of a loan with interest which is secured by treasury securities and securities issued by Narodowy Bank Polski – up to their nominal value. 4. Payments under the guarantee shall be reduced by repayments of the loan or redemption of debt securities made by BGK and by the amounts obtained by the domestic bank, foreign bank, credit institution granting the loan or owners of debt securities issued by BGK as a result of settling the claim from the collateral of the granted loan or issue of debt securities.

The Author's draft act on BGK	BGK Act
	5. A fee shall be charged on the guarantee referred to in section 1. 6. The provisions of the Act of 8 May 1997 on Sureties and Guarantees Issued by the State Treasury and Certain Legal Persons (Journal of Laws of 2021, item 442, 1535, 2133 and 2232), with the exception of Article 31, shall not apply to the guarantee referred to in section 1.
	Article 3b
	1. The following shall not apply to legal transactions by BGK: 1) the provision of Article 15 of the Act of 16 December 2016 on the principles of state property management (Journal of Laws 2021, item 1933); 2) the provision of Article 38, section 1 of the Act of 16 December 2016 on the Principles of State Property Management – in relation to legal transactions concerning the disposal of fixed assets within the meaning of the Accounting Act of 29 September 1994 (Journal of Laws of 2021, item 217, 2105 and 2106) of a value not exceeding PLN 5,000,000; 3) the provision of the Article 38, section 2 of the Act of 16 December 2016 on the Principles of State Property Management – in relation to legal transactions concerning giving fixed assets within the meaning of the Accounting Act of 29 September 1994 to another entity for use, if the market value of the object of the legal transaction does not exceed PLN 5,000,000; 4) the provision of the Article 38, section 1 and 2 of the Act of 16 December 2016 on the Principles of State Property Management – in relation to legal transactions concerning receivables arising from the performance of banking transactions within the meaning of Article 5, section 1 and 2 of the Banking Act of 29 August 1997 and transactions concerning financial

The Author's draft act on BGK	BGK Act
	instruments within the meaning of Article 2, section 1 of the Act of 29 July 2005 on Trading in Financial Instruments (Journal of Laws of 2021, item 328, 355, 680, 1505, 1595 and 2140). 2. In the case of the exercise of rights in a foreign fund, a management company, an EU alternative investment fund or a manager from the UE within the meaning of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds, BGK shall not apply the obligations arising from: 1) the provisions of the Act of 9 June 2016 on the principles for setting the remuneration of the persons in charge of certain companies (Journal of Laws of 2020, item 1907); 2) the provisions of the Act of 16 December 2016 on the Principles of State Property Management. 3. In the event of the establishment of a foreign fund, a management company, an EU alternative investment fund or a manager from the UE within the meaning of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds, or BGK's participation in such entities, or BGK's intention to establish such entities, or BGK's intention to participate in such entities, the obligations arising from the provisions of Chapter III of the Act of 16 February 2007 on Competition and Consumer Protection (Journal of Laws of 2021, item 275) shall not apply.
Article 5	**Article 4**
1. The primary objectives of BGK include supporting the economic policy of the Council of Ministers, within the framework of its commercial activities, in particular those referred to in Articles 5 and 6 of the Banking Act of 29 August 1997.	The basic objectives of the BGK's business, as defined by the Act and separate regulations, include supporting the economic policy of the Council of Ministers, government social and economic programmes, including those providing sureties and guarantees, and programmes of local government and regional development, including, in particular, the projects which are: 1) implemented with the use of the European Union funds and funds from international financial institutions

The Author's draft act on BGK	BGK Act
	within the meaning of Article 4, section 1, item 3 of the Banking Act of 29 August 1997, 2) infrastructural in nature, 3) connected with the development of the sector of micro-, small- and medium-sized entrepreneurs sector – including those implemented with the use of public funds.
2. The BGK shall conduct the activities referred to in section 1 in a manner that ensures undistorted competition, in particular taking into account the market failures referred to in Article 6, section 2, item 1, letter a of the Act of 4 July 2019 on the system of development institutions.	
	Article 4a
	1. If the investment is in line with BGK's basic objectives referred to in Article 4, BGK may make investments in: 1) entities raising funds from investors for investment purposes, in compliance with their stated investment policy, for the benefit of those investors, which: a) are supranational, in particular the European Central Bank, the European Investment Bank, the European Investment Fund, the European Development Finance Institutions and bilateral development banks, the World Bank, the International Monetary Fund, and other supranational institutions and similar international organisations, or b) have been established by domestic banks, foreign banks, credit institutions, financial institutions, international financial institutions, domestic or foreign public finance entities, or c) have been established by the entities with the participation of institutions, banks or entities referred to in letters a and b, or d) have been established by the BGK jointly with institutions, banks or entities referred to in letters a and b or with entities referred to in letter c, or

The Author's draft act on BGK	BGK Act
	e) carry out activities referred to in Article 3, section 1 of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds; 2) instruments transferred or issued by the entities referred to in item 1. 2. Investments referred to in section 1 are understood to be, in particular, the purchase or acquisition of shares, participation units, investment certificates, any other financial instruments issued or offered by the entities referred to in section 1, item 1, or the transfer of the funds to be managed by these entities.
Article 6	**Article 5**
1. The tasks of BGK shall also include:	1. The tasks of BGK include:
	1) performance of activities specified in the Banking Act of 29 August 1997;
1) servicing funds established, entrusted or turned over to BGK on the basis of separate acts;	2) servicing funds established, entrusted or turned over to BGK on the basis of separate acts;
2) handling export transactions using export promotion instruments and supporting the export of Polish goods and services, in compliance with separate regulations or as part of the implementation of government programmes;	3) handling export transactions using export promotion instruments and supporting the export of Polish goods and services, in compliance with separate regulations or as part of the implementation of government programmes;
	4) carry out activities concerning credit institutions which have been liquidated or pronounced as such pursuant to: a) the Decree of 25 October 1948 on the principles and mode of liquidation of certain banking enterprises (Journal of Laws, item 410, of 1949, item 256 and of 1951, item 240); b) the Decree of 25 October 1948 on the principles and mode of liquidation of certain long-term credit institutions (Journal of Laws, item 411 and of 1951, item 241); a) the Decree of 25 October 1948 on the banking reform (Journal of Laws of 1951, item 279, of 1957, item 136 and of 1958, item 356);

The Author's draft act on BGK	BGK Act
3) conducting, directly or indirectly, guarantee or surety activities in respect of the implementation of government guarantee and surety programmes or on the account of the State Treasury on the basis of the Act of 8 May 1997 on Sureties and Guarantees Issued by the State Treasury and Certain Legal Persons (Journal of Laws of 2022, item 122, 568, 1086, 1747 and 2127), in particular for the sector of micro, small and medium-sized entrepreneurs;	5) conducting, directly or indirectly, guarantee or surety activities in respect of the implementation of government guarantee and surety programmes or on the account of the State Treasury on the basis of the Act of 8 May 1997 on Sureties and Guarantees Issued by the State Treasury and Certain Legal Persons, in particular for the sector of micro, small and medium-sized entrepreneurs;
	6) issuing declarations which are considered official documents within the meaning of Article 95, section 1 of the Banking Act of 29 August 1997 enabling the deletion of entries made in Sections III and IV of land and mortgage registers or collections of documents, made in favour of:
	a) credit institutions liquidated or pronounced as such on the basis of the decrees referred to in item 4, b) the State Treasury in respect of: – acquisition of land and inventory from the State Land Fund established by the Decree of 6 September 1944 on the banking reform (Journal of Laws of 1945, item 13, of 1957, item 172 and of 1968, item 6), – loans and credits granted between 1945 and 1990 for the demolition and repair, completing the construction process, superstructure, renovation and redevelopment of buildings, for the sale of land for development and the State's sale of single-family and multi-family houses; c) the State Treasury or entities whose successor is the State Treasury, made prior to 1 September 1939;

The Author's draft act on BGK	BGK Act
4) supporting the development of residential construction, in particular the construction of residential premises for rent, in compliance with separate regulations or in connection with the implementation of government programmes;	7) supporting the development of residential construction, in particular the construction of residential premises for rent, in compliance with separate regulations or in connection with the implementation of government programmes.
5) performing other activities as defined by separate acts.	
	2. The detailed scope of the activities referred to in section 1 shall be specified in separate regulations or agreements entered into with the competent ministers. 2a. BGK may also perform the role of an entity implementing a financial instrument or a fund of funds referred to in the Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ EU L 347 of 20.12.2013, p. 320). 2b. The principles and requirements concerning the performance of the role referred to in section 2a are defined by separate regulations and agreements entered into with the competent government public administration bodies or local government authorities. 3. The declarations referred to in section 1, item 6 shall be issued by BGK at the request of the owners of the encumbered real property after they have repaid the disclosed receivable. In order to determine the current amount of the disclosed receivable, BGK shall consider the relevant regulations concerning the monetary system,

The Author's draft act on BGK	BGK Act
	including the regulations concerning the denomination of the Polish zloty. 4. In order to implement the government programmes referred to in section 1, items 3, 5 and 7, the minister competent for public finance shall transfer the funds to increase the BGK statutory fund. 5. In order to implement the government programmes referred to in section 1, items 3, 5 and 7, BGK may also raise funds from other sources, in particular borrowing and issuing bonds at home and abroad. 6. If, pursuant to separate legislation or government programmes, BGK is obliged to perform tasks involving the provision of cash withdrawal services, the provision of such services shall also be understood as cash withdrawals effected by other domestic banks under an agreement entered into by BGK with those banks.
2. The competent for economic affairs shall provide BGK with funds to maintain its own funds, taking into account the need to cover the business risks incurred by BGK.	
3. In order to effectively conduct the activities referred to in Article 5, section 1 and perform the tasks referred to in section 1, BGK may also raise funds from other sources, in particular, it may take out credit and loans and issue bonds in Poland and abroad.	
4. BGK shall not accept covered deposits referred to in Article 2, section 1, item 5 of the Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.62.2014, p. 149, as amended) made by consumers referred to in Article 3, letter a of the Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66, as amended).	

The Author's draft act on BGK	BGK Act
Article 7	**Article 5a**
1. At the request of the minister competent for economic affairs, the minister competent for public finance may assign treasury securities to increase the BGK's statutory fund. 2. The minister competent for public finance shall determine, by issuing a letter of issue, the terms and conditions of the issue of treasury securities referred to in section 1, and the manner in which the benefits arising therefrom are to be executed. 3. The letter of issue shall include in particular the following: 1) the issue date; 2) reference of the legal basis of the issue; 3) the nominal unit value; 4) the currency in which the issue may take place, or the manner of its determination; 5) the price or a manner of its determination; 6) the interest rate or a manner of its calculation; 7) the manner and dates of payment of the principal amount due and additional payments; 8) the date from which interest on treasury securities of that issue is to accrue; 9) redemption date and restrictions on the possibility of early redemption. 4. The issue of treasury securities referred to in section 1 takes place on the date on which the treasury securities are registered with the securities depository and in an amount equal to the nominal value of the securities issued. 5. The provisions of Articles 98 and 102 of the Act of 27 August 2009 on Public Finance (Journal of Laws of 2022, item 1634, 1725, 1747, 1768, 1964) and secondary legislation issued pursuant to Article 97 of that Act shall not apply to the issue of treasury securities referred to in section 1. 6. The issue of treasury securities referred to in section 1 shall not be included in the limits specified in the Budget Act.	1. The minister competent for public finance may assign treasury securities to increase the BGK's statutory fund. 2. The minister competent for public finance shall determine, by issuing a letter of issue, the terms and conditions of the issue of treasury securities referred to in section 1, and the manner in which the benefits arising therefrom are to be executed. 3. The letter of issue shall include in particular the following: 1) the issue date; 2) reference of the legal basis of the issue; 3) the nominal unit value; 4) the currency in which the issue may take place, or the manner of its determination; 5) the price or a manner of its determination; 6) the interest rate or a manner of its calculation; 7) the manner and dates of payment of the principal amount due and additional payments; 8) the date from which interest on treasury securities of that issue is to accrue; 9) redemption date and restrictions on the possibility of early redemption. 4. The issue of treasury securities referred to in section 1 takes place on the date on which the treasury securities are registered with the securities depository and in an amount equal to the nominal value of the securities issued. 5. The provisions of Articles 97, 98 and 102 of the Act of 27 August 2009 on Public Finance (Journal of Laws of 2021, item 305, as amended) shall not apply to the issue of treasury securities referred to in section 1. 6. The issue of treasury securities referred to in section 1 shall not be included in the limits specified in the Budget Act. 7. The nominal value of liabilities on issued treasury securities referred to in section 1 shall be included in the debt of the state treasury, in compliance with the Act of 27 August 2009 on Public Finance.

The Author's draft act on BGK	BGK Act
	Article 5b
	1. The minister competent for public finance may grant BGK a loan from the state budget to increase its own funds. 2. The loan referred to in section 1 shall also be understood as the State Treasury taking up debt securities issued by BGK.
	Article 5c
	1. In the event that BGK's own funds are higher than the level which BGK is obliged to maintain in accordance with the Banking Act of 29 August 1997, and the prudential requirements that BGK complies with pursuant to Article 3, section 1a, the Supervisory Board may, at the request of the minister competent for financial institutions, reduce the statutory fund by way of a resolution. The requirement to obtain the authorisation referred to in Article 77 of Regulation No. 575/2013 shall not apply. 2. BGK's statutory fund may be decreased through: 1) the payment of the funds in the amount by which the statutory fund has been reduced to the state budget; 2) transfer to the state treasury, free of charge, of treasury securities held by BGK, as referred to in Article 5a, section 1; 3) transfer to the state treasury or another state legal person, free of charge, of shares or stocks previously transferred to BGK for the purpose of increasing the statutory fund. 3. The resolution referred to in section 1 shall specify the amount by which the statutory fund is to be reduced and the manner in which it is to be reduced.
Article 8	**Article 5d**
BGK's net profit shall be used to increase BGK's own funds.	The net profit of BGK may be allocated to: 1) increase of BGK's own funds; 2) make payment to the state budget; 3) implement other purposes determined by the supervisory board.

The Author's draft act on BGK	BGK Act
	Article 6
	1. The scope of BGK's activities may also include: 1) banking services for state budget accounts; 2) servicing the budgets of local government units; 3) servicing state accounts or local government legal persons accounts established under separate acts to perform public tasks; 4) other activities as defined by separate acts; 5) other activities carried out with the use of public funds, as defined in the agreements entered into with government administration bodies. 2. The detailed scope of the activities referred to in section 1 shall be specified in separate regulations and agreements entered into on the basis thereof.
	Article 6a
	1. BGK may issue mortgage bonds, in particular for the purpose of implementing government programmes referred to in Article 5m, section 1, item 7. 2. In the case of the issuance of mortgage bonds referred to in section 1, the provisions of Articles 1–8, Article 12a, section 3 and Articles 17 – 34 of the Act of 29 August 1997 on Mortgage Bonds and Mortgage Banks (Journal of Laws of 2022, item 581 and 872) shall apply accordingly.
	Article 7
	The bodies of BGK are the Supervisory Board and Management Board.
Article 9	**Article 8**
The Supervisory Board shall be composed of at least 7 and no more than 9 members, including the chairperson.	1. The Supervisory Board consists of 14 members, including the chairperson, appointed from among qualified persons.
	1a. The Supervisory Board is capable of performing its tasks and adopting resolutions if the number of its members is not less than nine.

The Author's draft act on BGK	BGK Act
	1b. If the number of members of the Supervisory Board is less than 14, action shall be taken within 30 days to increase the number of members to 14. 2. The term of office of the Supervisory Board is 4 years. 3. The chairperson of the Supervisory Board is appointed and dismissed by the Prime Minister on the proposal of the minister competent for economic affairs. The other members of the Supervisory Board are appointed and dismissed by the Prime Minister on the proposal of the relevant ministers referred to in section 4. A member of the Supervisory Board may not be a member of the Management Board. 4. The Supervisory Board is composed of: 1) three representatives of the minister competent for economic affairs; 2) two representatives of the minister competent for regional development; 3) a representative of the minister competent for financial institutions; 4) a representative of the minister competent for public finance; 5) (*repealed*) 6) a representative of the minister competent for construction, spatial development and planning, and housing; 7) a representative of the minister competent for transportation; 8) a representative of the minister competent for energy; 9) a representative of the minister competent for higher education and science; 10) a representative of the minister competent for state assets; 11) a representative of the minister competent for climate issues; 5. The term of office of a Supervisory Board member expires at the end of the term, as a result of death, resignation or dismissal from the Supervisory Board. 6. If a Supervisory Board member's term of office expires during the Supervisory Board's term of office, a new member shall be appointed for the remainder

The Author's draft act on BGK	BGK Act
	of the term of office. The provisions of sections 1, 3 and 4 shall apply accordingly. 7. After the expiry of the term of office of the Supervisory Board, the members of the Supervisory Board are obliged to perform their duties until the date of appointment of a new Supervisory Board.
	Article 9
	1. The tasks of the Supervisory Board include in particular: 1) supervising the operations of BGK; 2) (*repealed*) 3) ensuring conformity of the activities of the Management Board with the legal regulations and articles of association; 4) adopting the annual financial and material plan of BGK; 5) approving the financial statements submitted by the Management Board; 6) approving the distribution of profit and the method of covering losses; 7) receiving the report on the operations of BGK. 2. The Supervisory Board repeals the resolutions of the Management Board which do not conform to the legal regulations or articles of association. 3. (repealed)
Article 10	**Article 10**
	1. The Management Board shall manage the operations of BGK.
1. The term of office of the Management Board shall be 5 years.	
2. The Management Board shall be composed of at least 3 and no more than 7 members, including the President of the Management Board, the Vice-President of the Management Board – the first deputy of the President of the Management Board.	2. The management board consists of six members, including the President, First Vice President and Vice President.

The Author's draft act on BGK	BGK Act
	2a. The management board can direct the business of BGK and adopt resolutions if the number of its members is not less than 3. 2b. If the number of members of the Management Board is less than 6, action shall be taken within 30 days to increase the number of members to 6. 3. The following are authorised to make declarations on behalf of BGK, including with regard to property rights and obligations: 1) two members of the Management Board acting jointly; 2) proxies – within the scope of the powers of attorney received, acting alone or jointly with another proxy or member of the Management Board. 4. *(repealed)* 5. The Prime Minister appoints and dismisses: 1) the president of the Management Board – at the request of the minister competent for economic affairs; 2) the first vice president of the Management Board – at the request of the minister competent for financial institutions; 3) the vice president of the Management Board – at the request of the minister competent for transportation; 4) one board member each – at the request of the minister in charge of regional development, the minister competent for economic affairs and the minister in charge of public finance, respectively. 6. *(repealed)* 7. The appointment of the president of the Management Board and one member of the Management Board is subject to the approval of the Financial Supervision Authority. The provisions of Article 22, section 2 and Article 22b of the Banking Act of 29 August 1997 shall apply accordingly. 8. The president of the Management Board represents BGK before third parties, chairs the meetings of the Management Board and organises the BGK's operations.

The Author's draft act on BGK	BGK Act
	Article 10a
	The competencies of: 1) first vice-president of the Management Board – include matters relating to the operation of the financial market; 2) vice president of the Management Board – include matters relating to the development of transport infrastructure; 3) member of the Management Board appointed on the proposal of the minister competent for regional development – include matters of regional policy and regional development; 4) member of the Management Board appointed on the proposal of the minister competent for economic affairs – include matters relating to the promotion of the economy; 5) member of the Management Board appointed on the proposal of the minister competent for public finance – include matters concerning the implementation of income and expenditure of the state budget.
	Article 11
	1. The term of office of the Management Board shall be 5 years. 2. After the expiry of the term of office of the Management Board, the members of the Management Board are obliged to perform their duties until the new Management Board is appointed. 3. The Supervisory Board may, for valid reasons, suspend individual or all members of the Management Board for a period of up to three months. 4. During the period of suspension, a member of the Management Board shall receive half of the remuneration to which he or she is entitled. 5. The Supervisory Board may delegate, for a period of up to three months, members of the Supervisory Board to perform the duties of members of the Management Board: 1) who have been dismissed, have resigned or are otherwise unable to perform their duties; 2) if it considers such action necessary for the prudent and stable management of the bank.

The Author's draft act on BGK	BGK Act
	6. During the period of delegation referred to in section 5, the mandate of the member of the Supervisory Board shall be suspended. 7. The term of office of a Management Board member expires at the end of the term, as a result of death, resignation or dismissal from the supervisory board. 8. If a Management Board member's term of office expires during the Management Board's term of office, a new member shall be appointed for the remainder of the term of office of the Management Board. The provisions of Article 10, sections 5 and 7 shall apply accordingly. 9. The provisions on the termination of an assignment by the person accepting the assignment shall apply mutatis mutandis to the resignation of a member of the Management Board.
Article 11	**Article 11a**
1. The Minister responsible for economic affairs determines the principles for the remuneration of members of the Management Board and members of the Supervisory Board in the form of declarations. 2. The provisions of the Act of 9 June 2016 on the principles for setting the remuneration of the persons in charge of certain companies (Journal of Laws of 2020, item 1907) shall apply *mutatis mutandis* to the remuneration principles referred to in section 1.	The remuneration of members of the Management Board and members of the Supervisory Board is governed by the principles arising from the Act of 9 June 2016 on the principles for setting the remuneration of the persons in charge of certain companies, with the tasks of the entity authorised to exercise rights attached to the shares and the General Meeting being performed by the minister competent for the economic affairs. The Minister competent for economic affairs determines the principles for the remuneration of members of the Management Board and members of the Supervisory Board in the form of declarations.
	Article 12
	(repealed)
	Article 12a
	1. The minister competent for the economic affairs may request the Supervisory Board, the Management Board, the members of the Supervisory Board referred to in Article 8, section 4, item 1 and the members of the Management Board appointed at the request of that minister to provide information concerning BGK relating to supporting the economy.

The Author's draft act on BGK	BGK Act
	1a. The minister competent for state assets may request the Supervisory Board, the Management Board and the member of the Supervisory Board referred to in Article 8, section 4, item 10 to provide information concerning BGK relating to the management of state assets. 2. The minister competent for regional development may request the Supervisory Board, the Management Board, the members of the Supervisory Board referred to in Article 8, section 4, item 2 and the member of the Management Board appointed at the request of that minister to provide information concerning BGK relating to the regional policy and regional development. 3. The minister competent for the financial institutions may request the Supervisory Board, the Management Board, a member of the Supervisory Board referred to in Article 8, section 4, item 3 and the first vice-president of the Management Board to provide information concerning BGK relating to the functioning of the financial market. 4. The minister competent for public finance may request the Supervisory Board, the Management Board, the member of the Supervisory Board referred to in Article 8, section 4, item 4 and the member of the Management Board appointed at the request of that minister to provide information concerning BGK relating to achieving the state budget revenues and expenditures. 5. The minister competent for higher education and science may request the Supervisory Board, the Management Board and the member of the Supervisory Board referred to in Article 8, section 4, item 9 to provide information concerning BGK relating to the support of scientific research or higher education. 6. The minister competent for climate issues may request the Supervisory Board, the Management Board and the member of the Supervisory Board referred to in Article 8, section 4, item 11 to provide information concerning BGK relating to the support of environmental protection activities, including climate protection.

Appendix 3. Comparison of the original and the current version of the BGK Act

The original version of the BGK Act	The current version of the BGK Act
Article 1	**Article 1**
This Act defines the tasks, scope of activities and the organisation of Bank Gospodarstwa Krajowego.	This Act defines the tasks, scope of activities and the organisation of Bank Gospodarstwa Krajowego.
Article 2	**Article 2**
1. Bank Gospodarstwa Krajowego, hereinafter referred to as "BGK", established by the Regulation of the President of the Republic of Poland of 30 May 1924 on the merger (fusion) of State Credit Institutions into Bank Gospodarstwa Krajowego (Journal of Laws No. 46, item 477), is a state-owned bank within the meaning of the Banking Act of 29 August 1997 (Journal of Laws of 2002, No. 72, item 665, No. 126, item 1070, No. 141, item 1178, No. 144, item 1208, No. 153, item 1271, No. 169, item 1385 and 1387 and No. 241, item 2074 and of 2003, No. 50, item 424, No. 60, item 535 and No. 65, item 594).	1. Bank Gospodarstwa Krajowego, hereinafter referred to as "BGK", established by the Regulation of the President of the Republic of Poland of 30 May 1924 on the merger (fusion) of State Credit Institutions into Bank Gospodarstwa Krajowego (Journal of Laws of 1936, item 438), is a state-owned bank within the meaning of the Banking Act of 29 August 1997 (Journal of Laws of 2020, item 1896, as amended).
2. The seat of BGK is the capital city of Warsaw.	2. The seat of BGK is the capital city of Warsaw.
3. The minister competent for the State Treasury, after consulting the minister in charge of financial institutions and obtaining an opinion from the Banking Supervision Authority, confers, by way of a regulation, the articles of association of BGK. In the regulation, the minister shall specify, in particular, the following:	3. The minister competent for economic affairs, after consulting the minister competent for financial institutions and the Financial Supervision Authority, confers, by way of a regulation, the articles of association of BGK. In the regulation, the minister shall specify, in particular, the following:
1) the internal organisation and detailed scope of activities performed by BGK;	1) the internal organisation and detailed scope of activities performed by BGK;
2) the detailed scope of activities of the Supervisory Board and the Management Board;	2) the detailed scope of activities of the Supervisory Board and the Management Board;
3) persons authorised to represent BGK;	3) (*repealed*)
4) own funds of BGK and the principles of managing its financial economy.	4) own funds of BGK and the principles of managing its financial economy.

The original version of the BGK Act	The current version of the BGK Act
4. When adopting the articles of association of BGK, the minister competent for the State Treasury consults the ministers responsible for supervising the funds created, entrusted or transferred to BGK under separate acts.	4. When adopting the articles of association of BGK, the minister competent for economic affairs consults the ministers responsible for supervising the funds created, entrusted or transferred to BGK under separate acts.
	5. BGK is a member of the development institution system referred to in Article 2, section 1 of the Act of 4 July 2019 on development institution system (Journal of Laws of 2021, item 1010 and 2219).
Article 3	**Article 3**
Unless the provisions of the Act provide otherwise, the provisions of the Banking Act of 29 August 1997 shall apply to BGK's operations.	1. Unless provisions of the law provide otherwise, the provisions of the Banking Act of 29 August 1997 shall apply to BGK's operations. 1a. BGK shall comply with the provisions of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ EU L 176, 27.06.2013, p. 1, as amended), hereinafter referred to as "Regulation No 575/2013", and acts adopted in accordance with the provisions of that Regulation, unless otherwise provided for in separate legislation. 1b. With regard to off-balance sheet exposures of BGK which occur as a result of sureties or guarantees under granted as part of the implementation of government programmes by BGK, resulting from the sureties or guarantees of the credit portfolio referred to in Article 128b, section 2, item 1 of the Banking Act of 29 August 1997, and satisfying the qualification requirements set by the bank extending a credit facility to be included in a category of retail exposures set out in Article 123, letter a and b of Regulation No 575/2013, BGK shall not apply: 1) the requirements referred to in Article 395, section 1 of the Regulation No. 575/2013; 2) the principles of determining the own funds requirement in respect of credit risk, as provided for in the Regulation No. 575/2013, in respect of:

The original version of the BGK Act	The current version of the BGK Act
	a) verification if the exposure satisfies the requirements to be qualified as a retail exposure referred to in Article 123 of Regulation No. 575/2013; b) individual classification of exposures as retail exposures. 1c. With regard to off-balance sheet exposures of BGK which occur as a result of BGK's counter-guarantees for the liabilities of the guarantee funds for credit guarantees granted by these funds resulting from the sureties or guarantees of the credit portfolio referred to in Article 128b, section 2, item 1 of the Banking Act of 29 August 1997, and satisfying the qualification requirements set by the bank extending a credit facility to be subject to a surety of guarantee to be included in a category of retail exposures set out in Article 123, letter a and b of Regulation No 575/2013, BGK shall not apply: 1) the requirements referred to in Article 395, section 1 of the Regulation No. 575/2013; 2) the principles of determining the own funds requirement in respect of credit risk, as provided for in the Regulation No. 575/2013, in respect of: a) verification if the exposure satisfies the requirements to be qualified as a retail exposure referred to in Article 123 of Regulation No. 575/2013, b) individual classification of exposures as retail exposures, c) individual classification of exposures as past due. 1d. With regard to the off-balance sheet exposures of BGK which occur as a result BGK granting guarantees under guarantee lines, in connection with the implementation of a government programme, resulting from the guarantees of the credit portfolio referred to in Article 128b, section 2, item 1 of the Banking Act of 29 August 1997, BGK shall not apply: 1) the requirements referred to in Article 395, section 1 of the Regulation No. 575/2013;

The original version of the BGK Act	The current version of the BGK Act
	2) the principles of determining the own funds requirement in respect of credit risk, as provided for in the Regulation No. 575/2013, in respect of: a) verification if the exposure satisfies the requirements to be qualified as a retail exposure referred to in Article 123 of Regulation No. 575/2013, b) individual classification of exposures as retail exposures.
	1e. To the extent not covered by the provisions of items 1b–1d, the Financial Supervision Authority may, upon the request of BGK, release that bank from the obligation to comply with the prudential requirements referred to in item 1a or limit their application, taking into account the need to ensure the safety of BGK's operations and the funds deposited therein as well as the effective implementation of the tasks referred to in Article 5.
	1f. With regard to BGK:
	1) the provisions of Articles 141m–141x and Articles 158–159 of the Act of Banking Act of 29 August 1997 shall not apply;
	2) the provisions of Articles 142–157f and Article 169 of the Act of Banking Act of 29 August 1997 shall apply accordingly.
	1g. In the event that BGK takes over the rights attached to the shares referred to in Article 19d, section 1 of the Act of 12 February 2010 on the recapitalisation of certain institutions and government financial stabilisation instruments (Journal of Laws of 2018, item 124, of 2019, item 1798 and of 2021, items 1598 and 2140), the prudential consolidation referred to in Article 10a–24 of Regulation No. 575/2013 shall not apply to BGK.
	2. The Article 6, item 4 of the Act of 28 February 2003 – Bankruptcy and Reorganisation Act (Journal of Laws of 2020, item 1228 and 2320 and of 2021, item 1080, 1177, 1598 and 2140) shall apply to BGK.

The original version of the BGK Act	The current version of the BGK Act
	3. The minister competent for public finance shall allocate BGK the funds to:
	1) maintain own funds at a level which will guarantee the performance of the tasks referred to in Article 5;
	2) meet the prudential liquidity requirements set out in the provisions of Regulation No. 575/2013 and in the provisions of the Banking Act of 29 August 1997 – aiming to cover the risks of banking activities borne by BGK – aiming to cover the risks of banking activities borne by BGK. 3a. The conditions and the procedure or allocating the funds referred to in item 3 shall be determined under an agreement entered into between the minister competent for public finance and BGK. 3b. The obligation referred to in item 3 shall satisfy the requirements of credit protection within the meaning of Articles 213–215 of the Regulation No. 575/2013 granted by the State Treasury. The exposures towards BGK are assigned a risk weight in compliance with Article 114, section 4 of the Regulation No. 575/2013. 3c. The statutory fund of BGK shall a capital instrument within the meaning of Article 26, section 1, letter a and Article 28 of Regulation No. 575/2013. 3d. When determining the liquidity necessary to satisfy the prudential requirements referred to in the provisions of Regulation 575/2013, BGK shall include the total undrawn unconditional off-balance sheet liabilities received from the Treasury as liquidity inflows as defined in the provisions of that Regulation. 4. In the event of liquidation of BGK, its property and liabilities shall be taken over by the State Treasury on the date of liquidation. 5. BGK shall not assume exposures towards: 1) a group of connected clients as referred to in Article 4, section 1, item 39 of the Regulation No. 575/2013, including with participation of entities referred to in sections 2 and 3,

The original version of the BGK Act	The current version of the BGK Act
	2) a domestic bank, 3) an investment fund as referred to in Article 3, section 1 of the Act of 27 May 2004 on investment funds and management of alternative investment funds (Journal of Laws of 2021, item 605, 1595 and 2140) – the value of which, after taking into account the effect of the credit risk mitigation referred to in Articles 399 to 403 of Regulation No 575/2013, exceeds 50% of the value of BGK's eligible capital referred to in Article 4, section 1, item 6. BGK shall not apply the prudential requirements for large exposures referred to in Article 395, section 1 of the Regulation No 575/2013 to exposures referred to in item 5.
	Article 3a
	1. In order to ensure that BGK meets the prudential liquidity requirements referred to in the provisions of Regulation 575/2013, the minister competent for public finance may grant, on behalf of the State Treasury, a guarantee for the repayment of loans and credit lines granted to BGK by a domestic bank, a foreign bank or a credit institution as well as for the fulfilment by the issuer of cash payments of debt securities issued by BGK, in particular bonds or bank securities.
	2. The maturity of the debt securities referred to in section 1 may not be less than one month or more than five years.
	3. The guarantee referred to in section 1 covers the repayment of a loan or the redemption of debt securities issued by BGK, together with contractual interest and other costs associated with that loan or those debt securities. The guarantee may not cover the repayment of a loan with interest which is secured by treasury securities and securities issued by Narodowy Bank Polski – up to their nominal value.

The original version of the BGK Act	The current version of the BGK Act
	4. Payments under the guarantee shall be reduced by repayments of the loan or redemption of debt securities made by BGK and by the amounts obtained by the domestic bank, foreign bank, credit institution granting the loan or owners of debt securities issued by BGK as a result of settling the claim from the collateral of the granted loan or issue of debt securities.
	5. A fee shall be charged on the guarantee referred to in section 1.
	6. The provisions of the Act of 8 May 1997 on Sureties and Guarantees Issued by the State Treasury and Certain Legal Persons (Journal of Laws of 2021, item 442, 1535, 2133 and 2232), with the exception of Article 31, shall not apply to the guarantee referred to in section 1.
	Article 3b
	1. The following shall not apply to legal transactions by BGK:
	1) the provision of Article 15 of the Act of 16 December 2016 on the principles of state property management (Journal of Laws 2021, item 1933);
	2) the provision of Article 38, section 1 of the Act of 16 December 2016 on the Principles of State Property Management – in relation to legal transactions concerning the disposal of fixed assets within the meaning of the Accounting Act of 29 September 1994 (Journal of Laws of 2021, item 217, 2105 and 2106) of a value not exceeding PLN 5,000,000;
	3) the provision of the Article 38, section 2 of the Act of 16 December 2016 on the Principles of State Property Management – in relation to legal transactions concerning giving fixed assets within the meaning of the Accounting Act of 29 September 1994 to another entity for use, if the market value of the object of the legal transaction does not exceed PLN 5,000,000;

The original version of the BGK Act	The current version of the BGK Act
	4) the provision of the Article 38, section 1 and 2 of the Act of 16 December 2016 on the Principles of State Property Management – in relation to legal transactions concerning receivables arising from the performance of banking transactions within the meaning of Article 5, section 1 and 2 of the Banking Act of 29 August 1997 and transactions concerning financial instruments within the meaning of Article 2, section 1 of the Act of 29 July 2005 on Trading in Financial Instruments (Journal of Laws of 2021, item 328, 355, 680, 1505, 1595 and 2140).
	2. In the case of the exercise of rights in a foreign fund, a management company, an EU alternative investment fund or a manager from the UE within the meaning of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds, BGK shall not apply the obligations arising from:
	1) the provisions of the Act of 9 June 2016 on the principles for setting the remuneration of the persons in charge of certain companies (Journal of Laws of 2020, item 1907);
	2) the provisions of the Act of 16 December 2016 on the Principles of State Property Management.
	3. In the event of the establishment of a foreign fund, a management company, an EU alternative investment fund or a manager from the UE within the meaning of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds, or BGK's participation in such entities, or BGK's intention to establish such entities, or BGK's intention to participate in such entities, the obligations arising from the provisions of Chapter III of the Act of 16 February 2007 on Competition and Consumer Protection (Journal of Laws of 2021, item 275) shall not apply.

The original version of the BGK Act	The current version of the BGK Act
Article 4	**Article 4**
The basic objectives of the BGK's business, as defined by the Act and separate regulations, include supporting the government social and economic programmes and local government and regional development programmes implemented with the use of public funds.	The basic objectives of the BGK's business, as defined by the Act and separate regulations, include supporting the economic policy of the Council of Ministers, government social and economic programmes, including those providing sureties and guarantees, and programmes of local government and regional development, including, in particular, the projects which are: 1) implemented with the use of the European Union funds and funds from international financial institutions within the meaning of Article 4, section 1, item 3 of the Banking Act of 29 August 1997; 2) infrastructural in nature; 3) connected with the development of the sector of micro-, small- and medium-sized entrepreneurs sector: – including those implemented with the use of public funds.
	Article 4a
	1. If the investment is in line with BGK's basic objectives referred to in Article 4, BGK may make investments in:
	1) entities raising funds from investors for investment purposes, in compliance with their stated investment policy, for the benefit of those investors, which:
	a) are supranational, in particular the European Central Bank, the European Investment Bank, the European Investment Fund, the European Development Finance Institutions and bilateral development banks, the World Bank, the International Monetary Fund, and other supranational institutions and similar international organisations, or
	b) have been established by domestic banks, foreign banks, credit institutions, financial institutions, international financial institutions, domestic or foreign public finance entities, or

The original version of the BGK Act	The current version of the BGK Act
	c) have been established by the entities with the participation of institutions, banks or entities referred to in letters a and b, or
	d) have been established by the BGK jointly with institutions, banks or entities referred to in letters a and b or with entities referred to in letter c, or
	e) carry out activities referred to in Article 3, section 1 of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds;
	2) instruments transferred or issued by the entities referred to in item 1.
	2. Investments referred to in section 1 are understood to be, in particular, the purchase or acquisition of shares, participation units, investment certificates, any other financial instruments issued or offered by the entities referred to in section 1, item 1, or the transfer of the funds to be managed by these entities.
Article 5	**Article 5**
1. The tasks of BGK include:	1. The tasks of BGK include:
1) performance of activities specified in the Banking Act of 29 August 1997;	1) performance of activities specified in the Banking Act of 29 August 1997;
2) servicing funds established, entrusted or turned over to BGK on the basis of separate acts;	2) servicing funds established, entrusted or turned over to BGK on the basis of separate acts;
3) handling export transactions using export promotion instruments, in accordance with separate regulations;	3) handling export transactions using export promotion instruments and supporting the export of Polish goods and services, in compliance with separate regulations or as part of the implementation of government programmes;
4) carry out activities concerning credit institutions which have been liquidated or pronounced as such pursuant to:	4) carry out activities concerning credit institutions which have been liquidated or pronounced as such pursuant to:

The original version of the BGK Act	The current version of the BGK Act
a) the Decree of 25 October 1948 on the principles and mode of liquidation of certain banking enterprises (Journal of Laws No. 52, item 410, of 1949 No. 35, item 256 and of 1951 No. 31, item 240);	a) the Decree of 25 October 1948 on the principles and mode of liquidation of certain banking enterprises (Journal of Laws, item 410, of 1949, item 256 and of 1951, item 240);
b) the Decree of 25 October 1948 on the principles and mode of liquidation of certain long-term credit institutions (Journal of Laws No. 52, item 411 and of 1951 No. 31, item 241);	b) the Decree of 25 October 1948 on the principles and mode of liquidation of certain long-term credit institutions (Journal of Laws, item 411 and of 1951, item 241);
c) the Decree of 25 October 1948 on the banking reform (Journal of Laws of 1951 No. 36, item 279 and of 1957 No. 31, item 136).	a) the Decree of 25 October 1948 on the banking reform (Journal of Laws of 1951, item 279, of 1957, item 136 and of 1958, item 356);
	5) conducting, directly or indirectly, guarantee or surety activities in respect of the implementation of government guarantee and surety programmes or on the account of the State Treasury on the basis of the Act of 8 May 1997 on Sureties and Guarantees Issued by the State Treasury and Certain Legal Persons, in particular for the sector of micro, small and medium-sized entrepreneurs; 6) issuing declarations which are considered official documents within the meaning of Article 95, section 1 of the Banking Act of 29 August 1997 enabling the deletion of entries made in Sections III and IV of land and mortgage registers or collections of documents, made in favour of: a) credit institutions liquidated or pronounced as such on the basis of the decrees referred to in item 4, b) the State Treasury in respect of: – acquisition of land and inventory from the State Land Fund established by the Decree of 6 September 1944 on the banking reform (Journal of Laws of 1945, item 13, of 1957, item 172 and of 1968, item 6), – loans and credits granted between 1945 and 1990 for the demolition and repair, completing the construction process, superstructure, renovation and redevelopment of buildings, for the sale of land for development

The original version of the BGK Act	The current version of the BGK Act
	and the State's sale of single-family and multi-family houses; c) the State Treasury or entities whose successor is the State Treasury, made prior to 1 September 1939; 7) supporting the development of residential construction, in particular the construction of residential premises for rent, in compliance with separate regulations or in connection with the implementation of government programmes.
2. The detailed scope of the activities referred to in section 1 shall be specified in separate regulations and agreements entered into with the competent ministers.	2. The detailed scope of the activities referred to in section 1 shall be specified in separate regulations or agreements entered into with the competent ministers.
	2a. BGK may also perform the role of an entity implementing a financial instrument or a fund of funds referred to in the Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ EU L 347 of 20.12.2013, p. 320). 2b. The principles and requirements concerning the performance of the role referred to in section 2a are defined by separate regulations and agreements entered into with the competent government public administration bodies or local government authorities. 3. The declarations referred to in section 1, item 6 shall be issued by BGK at the request of the owners of the encumbered real property after they have repaid the disclosed receivable. In order to determine the current amount of the disclosed receivable,

The original version of the BGK Act	The current version of the BGK Act
	BGK shall consider the relevant regulations concerning the monetary system, including the regulations concerning the denomination of the Polish zloty. 4. In order to implement the government programmes referred to in section 1, items 3, 5 and 7, the minister competent for public finance shall transfer the funds to increase the BGK statutory fund. 5. In order to implement the government programmes referred to in section 1, items 3, 5 and 7, BGK may also raise funds from other sources, in particular borrowing and issuing bonds at home and abroad. 6. If, pursuant to separate legislation or government programmes, BGK is obliged to perform tasks involving the provision of cash withdrawal services, the provision of such services shall also be understood as cash withdrawals effected by other domestic banks under an agreement entered into by BGK with those banks.
	Article 5a
	1. The minister competent for public finance may assign treasury securities to increase the BGK's statutory fund. 2. The minister competent for public finance shall determine, by issuing a letter of issue, the terms and conditions of the issue of treasury securities referred to in section 1, and the manner in which the benefits arising therefrom are to be executed. 3. The letter of issue shall include in particular the following: 1) the issue date; 2) reference of the legal basis of the issue; 3) the nominal unit value; 4) the currency in which the issue may take place, or the manner of its determination; 5) the price or a manner of its determination; 6) the interest rate or a manner of its calculation; 7) the manner and dates of payment of the principal amount due and additional payments;

The original version of the BGK Act	The current version of the BGK Act
	8) the date from which interest on treasury securities of that issue is to accrue; 9) redemption date and restrictions on the possibility of early redemption. 4. The issue of treasury securities referred to in section 1 takes place on the date on which the treasury securities are registered with the securities depository and in an amount equal to the nominal value of the securities issued. 5. The provisions of Articles 97, 98 and 102 of the Act of 27 August 2009 on Public Finance (Journal of Laws of 2021, item 305, as amended) shall not apply to the issue of treasury securities referred to in section 1. 6. The issue of treasury securities referred to in section 1 shall not be included in the limits specified in the Budget Act. 7. The nominal value of liabilities on issued treasury securities referred to in section 1 shall be included in the debt of the state treasury, in compliance with the Act of 27 August 2009 on Public Finance.
	Article 5b
	1. The minister competent for public finance may grant BGK a loan from the state budget to increase its own funds. 2. The loan referred to in section 1 shall also be understood as the State Treasury taking up debt securities issued by BGK.
	Article 5c
	1. In the event that BGK's own funds are higher than the level which BGK is obliged to maintain in accordance with the Banking Act of 29 August 1997, and the prudential requirements that BGK complies with pursuant to Article 3, section 1a, the Supervisory Board may, at the request of the minister competent for financial institutions, reduce the statutory fund by way of a resolution. The requirement to obtain the authorisation referred to in Article 77 of Regulation No. 575/2013 shall not apply. 2. BGK's statutory fund may be decreased through:

The original version of the BGK Act	The current version of the BGK Act
	1) the payment of the funds in the amount by which the statutory fund has been reduced to the state budget; 2) transfer to the state treasury, free of charge, of treasury securities held by BGK, as referred to in Article 5a, section 1; 3) transfer to the state treasury or another state legal person, free of charge, of shares or stocks previously transferred to BGK for the purpose of increasing the statutory fund. 3. The resolution referred to in section 1 shall specify the amount by which the statutory fund is to be reduced and the manner in which it is to be reduced.
	Article 5d
	The net profit of BGK may be allocated to: 1) increase of BGK's own funds; 2) make payment to the state budget; 3) implement other purposes determined by the supervisory board.
Article 6	**Article 6**
1. The scope of BGK's activities may also include:	1. The scope of BGK's activities may also include:
1) banking services for state budget accounts;	1) banking services for state budget accounts;
2) servicing the budgets of local government units;	2) servicing the budgets of local government units;
3) servicing state accounts or local government legal persons accounts established under separate acts to perform public tasks;	3) servicing state accounts or local government legal persons accounts established under separate acts to perform public tasks;
4) other activities as defined by separate acts;	4) other activities as defined by separate acts;
5) other activities carried out with the use of public funds, as defined in the agreements entered into with government administration bodies.	5) other activities carried out with the use of public funds, as defined in the agreements entered into with government administration bodies.
2. The detailed scope of the activities referred to in section 1 shall be specified in separate regulations and agreements entered into on the basis thereof.	2. The detailed scope of the activities referred to in section 1 shall be specified in separate regulations and agreements entered into on the basis thereof.

The original version of the BGK Act	The current version of the BGK Act
	Article 6a
	1. BGK may issue mortgage bonds, in particular for the purpose of implementing government programmes referred to in Article 5m, section 1, item 7. 2. In the case of the issuance of mortgage bonds referred to in section 1, the provisions of Articles 1–8, Article 12a, section 3 and Articles 17–34 of the Act of 29 August 1997 on Mortgage Bonds and Mortgage Banks (Journal of Laws of 2022, item 581 and 872) shall apply accordingly.
Article 7	**Article 7**
The bodies of BGK are the Supervisory Board and Management Board.	The bodies of BGK are the Supervisory Board and Management Board.
Article 8	**Article 8**
1. The Supervisory Board consists of a chairperson and between 8 and 12 members, appointed for a period of 4 years from among persons with appropriate financial qualifications.	1. The Supervisory Board consists of 14 members, including the chairperson, appointed from among qualified persons.
	1a. The Supervisory Board is capable of performing its tasks and adopting resolutions if the number of its members is not less than nine.
	1b. If the number of members of the Supervisory Board is less than 14, action shall be taken within 30 days to increase the number of members to 14.
	2. The term of office of the Supervisory Board is 4 years.
2. The chairperson and members of the Supervisory Board is appointed by the minister competent for financial institutions, after consulting the minister in charge of the State Treasury, from among persons who are not members of the Management Board, subject to section 3.	3. The chairperson of the Supervisory Board is appointed and dismissed by the Prime Minister on the proposal of the minister competent for economic affairs. The other members of the Supervisory Board are appointed and dismissed by the Prime Minister on the proposal of the relevant ministers referred to in section 4. A member of the Supervisory Board may not be a member of the Management Board.

The original version of the BGK Act	The current version of the BGK Act
3. The Supervisory Board is composed of:	4. The Supervisory Board is composed of:
1) a representative of the minister competent for State Treasury; 2) a representative of the minister competent for economic affairs; 3) two representatives of the minister competent for construction, spatial planning and housing.	1) three representatives of the minister competent for economic affairs; 2) two representatives of the minister competent for regional development; 3) a representative of the minister competent for financial institutions; 4) a representative of the minister competent for public finance; 5) (*repealed*) 6) a representative of the minister competent for construction, spatial development and planning, and housing; 7) a representative of the minister competent for transportation; 8) a representative of the minister competent for energy; 9) a representative of the minister competent for higher education and science; 10) a representative of the minister competent for state assets; 11) a representative of the minister competent for climate issues.
4. The minister competent for financial institutions dismisses the chairperson or a member of the Supervisory Board before the expiry of his or her term of office if he or she has been convicted of a wilful crime by a final and binding court sentence. 5. The minister competent for financial institutions may dismiss the chairperson or members of the Supervisory Board before the expiry of the term of office if: 1) they fail to fulfil their duties as a result of a long-term illness of more than six months, as determined by a medical certificate; 2) criminal or fiscal criminal proceedings is conducted against them; 3) their continuation of their functions does not warrant the proper performance of the supervisory duties; 4) they fail to implement the guidelines regarding the activities of BGK, in accordance with the current socio-economic policy of the state referred to in Article 12.	

The original version of the BGK Act	The current version of the BGK Act
	5. The term of office of a Supervisory Board member expires at the end of the term, as a result of death, resignation or dismissal from the Supervisory Board.
	6. If a Supervisory Board member's term of office expires during the Supervisory Board's term of office, a new member shall be appointed for the remainder of the term of office. The provisions of sections 1, 3 and 4 shall apply accordingly.
	7. After the expiry of the term of office of the Supervisory Board, the members of the Supervisory Board are obliged to perform their duties until the date of appointment of a new Supervisory Board.
Article 9	**Article 9**
1. The tasks of the Supervisory Board include in particular:	1. The tasks of the Supervisory Board include in particular:
1) supervising the operations of BGK;	1) supervising the operations of BGK;
2) developing and providing guidance to the Management Board on BGK's operations in relation to the recommendations referred to in Article 12;	2) (*repealed*)
3) ensuring conformity of the activities of the Management Board with the legal regulations and the articles of association and the guidelines referred to in item 2;	3) ensuring conformity of the activities of the Management Board with the legal regulations and articles of association;
4) adopting the annual financial and material plan of BGK;	4) adopting the annual financial and material plan of BGK;
5) approving the financial statements submitted by the Management Board;	5) approving the financial statements submitted by the Management Board;
6) approving the distribution of profit and the method of covering losses;	6) approving the distribution of profit and the method of covering losses;
7) receiving the report on the operations of BGK.	7) receiving the report on the operations of BGK.
2. The Supervisory Board repeals the resolutions of the Management Board which do not conform to the legal regulations or articles of association.	2. The Supervisory Board repeals the resolutions of the Management Board which do not conform to the legal regulations or articles of association.
3. The Supervisory Board may repeal a resolution of the Management Board that is inconsistent with the guidelines referred to in section 1, item 2.	3. *(repealed)*

The original version of the BGK Act	The current version of the BGK Act
Article 10	**Article 10**
1. The Management Board shall manage the operations of BGK.	1. The Management Board shall manage the operations of BGK.
2. The Management Board consists of no fewer than 3 and no more than 7 persons, including the President, the Vice-President – First Vice-President, the Vice-Presidents and the other members of the Management Board.	2. The management board consists of six members, including the President, First Vice President and Vice President.
	2a. The management board can direct the business of BGK and adopt resolutions if the number of its members is not less than 3. 2b. If the number of members of the Management Board is less than 6, action shall be taken within 30 days to increase the number of members to 6. 3. The following are authorised to make declarations on behalf of BGK, including with regard to property rights and obligations: 1) two members of the Management Board acting jointly; 2) proxies – within the scope of the powers of attorney received, acting alone or jointly with another proxy or member of the Management Board.
3. The number of vice-presidents and members of the Management Board shall be determined by the Supervisory Board.	4. *(repealed)*
4. The President of the Management Board shall be appointed by the Supervisory Board.	5. The Prime Minister appoints and dismisses: 1) the president of the Management Board – at the request of the minister competent for economic affairs;
5. The vice-president – first vice-president, the vice-presidents and the other members of the Management Board shall be appointed by the Supervisory Board on the proposal of the president of the Management Board.	2) the first vice president of the Management Board – at the request of the minister competent for financial institutions; 3) the vice president of the Management Board – at the request of the minister competent for transportation; 4) one board member each – at the request of the minister in charge of regional development, the minister competent for economic affairs and the minister in charge of public finance, respectively. 6. (*repealed*)

The original version of the BGK Act	The current version of the BGK Act
6. The appointment of the president of the Management Board and one member of the Management Board is subject to the approval of the Banking Supervision Authority. The provisions of Article 22 of the Banking Act of 29 August 1997 shall apply accordingly.	7. The appointment of the president of the Management Board and one member of the Management Board is subject to the approval of the Financial Supervision Authority. The provisions of Article 22, section 2 and Article 22b of the Banking Act of 29 August 1997 shall apply accordingly.
7. The president of the Management Board represents BGK before third parties, chairs the meetings of the Management Board and organises the BGK's operations.	8. The president of the Management Board represents BGK before third parties, chairs the meetings of the Management Board and organises the BGK's operations.
	Article 10a
	The competencies of: 1) first vice-president of the Management Board – include matters relating to the operation of the financial market; 2) vice president of the Management Board – include matters relating to the development of transport infrastructure; 3) member of the Management Board appointed on the proposal of the minister competent for regional development – include matters of regional policy and regional development; 4) member of the Management Board appointed on the proposal of the minister competent for economic affairs – include matters relating to the promotion of the economy; 5) member of the Management Board appointed on the proposal of the minister competent for public finance – include matters concerning the implementation of income and expenditure of the state budget.
Article 11	**Article 11**
1. The term of office of the members of the Management Board shall be 5 years.	1. The term of office of the Management Board shall be 5 years.
2. The minister competent for financial institutions dismisses a member of the Management Board before the expiry of his or her term of office if he or she has been convicted of a wilful crime by a final and binding court sentence.	

The original version of the BGK Act	The current version of the BGK Act
3. The minister competent for financial institutions, at the request of the Supervisory Board, may dismiss members of the Management Board before the expiry of the term of office if: 1) they fail to fulfil their duties as a result of a long-term illness of more than six months, as determined by a medical certificate; 2) criminal or fiscal criminal proceedings is conducted against them; 3) their continuation of their functions does not warrant prudent and stable management of the bank; 4) they do not implement the Supervisory Board's guidelines on BGK's operations, issued in relation to the recommendations referred to in Article 12.	
	2. After the expiry of the term of office of the Management Board, the members of the Management Board are obliged to perform their duties until the new Management Board is appointed.
4. The Supervisory Board may, for valid reasons, suspend a member of the Management Board.	3. The Supervisory Board may, for valid reasons, suspend individual or all members of the Management Board for a period of up to three months.
	4. During the period of suspension, a member of the Management Board shall receive half of the remuneration to which he or she is entitled.
	5. The Supervisory Board may delegate, for a period of up to three months, members of the Supervisory Board to perform the duties of members of the Management Board: 1) who have been dismissed, have resigned or are otherwise unable to perform their duties; 2) if it considers such action necessary for the prudent and stable management of the bank. 6. During the period of delegation referred to in section 5, the mandate of the member of the Supervisory Board shall be suspended. 7. The term of office of a Management Board member expires at the end of the term, as a result of death, resignation or dismissal from the supervisory board.

The original version of the BGK Act	The current version of the BGK Act
	8. If a Management Board member's term of office expires during the Management Board's term of office, a new member shall be appointed for the remainder of the term of office of the Management Board. The provisions of Article 10, sections 5 and 7 shall apply accordingly. 9. The provisions on the termination of an assignment by the person accepting the assignment shall apply mutatis mutandis to the resignation of a member of the Management Board.
	Article 11a
	The remuneration of members of the Management Board and members of the Supervisory Board is governed by the principles arising from the Act of 9 June 2016 on the principles for setting the remuneration of the persons in charge of certain companies, with the tasks of the entity authorised to exercise rights attached to the shares and the General Meeting being performed by the minister competent for the economic affairs. The Minister responsible for economic affairs determines the principles for the remuneration of members of the Management Board and members of the Supervisory Board in the form of declarations.
Article 12	**Article 12**
In justified cases, the minister competent for financial institutions may make binding recommendations to the Supervisory Board regarding the implementation of tasks with the use of public funds referred to in Article 4–6 in accordance with the current socio-economic policy of the state.	*(repealed)*
	Article 12a
	1. The minister competent for the economic affairs may request the Supervisory Board, the Management Board, the members of the Supervisory Board referred to in Article 8, section 4, item 1 and the members of the Management Board appointed at the request of that minister to provide information concerning BGK relating to supporting the economy.

The original version of the BGK Act	The current version of the BGK Act
	1a. The minister competent for state assets may request the Supervisory Board, the Management Board and the member of the Supervisory Board referred to in Article 8, section 4, item 10 to provide information concerning BGK relating to the management of state assets. 2. The minister competent for regional development may request the Supervisory Board, the Management Board, the members of the Supervisory Board referred to in Article 8, section 4, item 2 and the member of the Management Board appointed at the request of that minister to provide information concerning BGK relating to the regional policy and regional development. 3. The minister competent for the financial institutions may request the Supervisory Board, the Management Board, a member of the Supervisory Board referred to in Article 8, section 4, item 3 and the first vice-president of the Management Board to provide information concerning BGK relating to the functioning of the financial market. 4. The minister competent for public finance may request the Supervisory Board, the Management Board, the member of the Supervisory Board referred to in Article 8, section 4, item 4 and the member of the Management Board appointed at the request of that minister to provide information concerning BGK relating to achieving the state budget revenues and expenditures. 5. The minister competent for higher education and science may request the Supervisory Board, the Management Board and the member of the Supervisory Board referred to in Article 8, section 4, item 9 to provide information concerning BGK relating to the support of scientific research or higher education. 6. The minister competent for climate issues may request the Supervisory Board, the Management Board and the member of the Supervisory Board referred to in Article 8, section 4, item 11 to provide information concerning BGK relating to the support of environmental protection activities, including climate protection.

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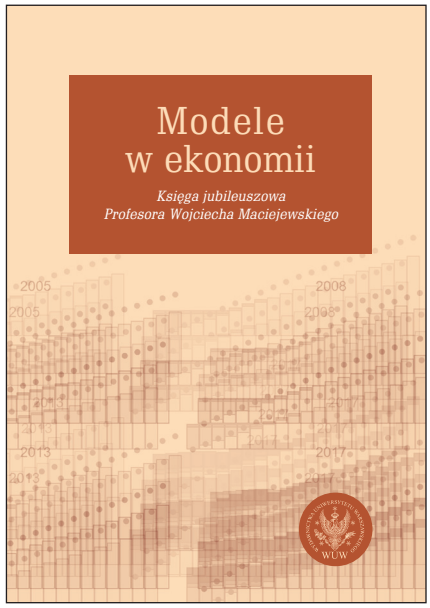

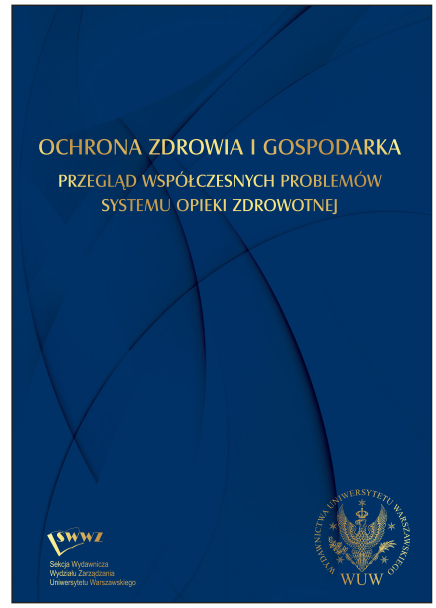

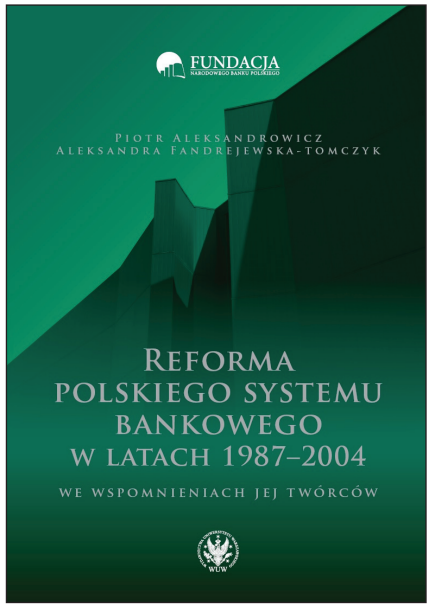

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From 1999–2012, he worked in the Financial Market Development Department of the Ministry of Finance and advanced from the role of clerk to Deputy Director of the Department. As Deputy Director of the Financial Market Development Department, he was responsible for regulations regarding the banking sector and financial stability.

Between 2006–2013, member of the Exchange Supervisory Board of Warsaw Stock Exchange (Giełda Papierów Wartościowych w Warszawie S.A.) (Secretary of the Exchange Supervisory Board, Chair of the Audit Committee, Member of the Nomination and Renumeration Committee).

From 2007–2012 a member of the Supervisory Board of Bank Gospodarstwa Krajowego (Deputy Chair of the Supervisory Board, Chair of the Audit Committee), between 2012–2017 he was employed at Bank Gospodarstwa Krajowego as Managing Director and Director of Compliance Office. During his employment at Bank Gospodarstwa Krajowego, Sebastian Skuza supervised the area of corporate governance and equity investments, as well as the legal area.

Between 2017–2020, he was the Undersecretary of State at the Ministry of Science and Higher Education, responsible for, among other things, finance, audit and control. From 2020–2023, served as the Undersecretary of State at the Ministry of Finance, responsible for budgeting, State Treasury debt management processes, EU funds budget and the financing of local government units. In 2021–2023, General Inspector of Financial Information. Since 2023, Deputy Chair of the KNF Board responsible for the capital market.

Author and co-author of around 160 publications on public finance, financial market, banking and financial stability, reviewer of scientific journals, PhD and habilitation dissertations, advisor on more than four hundred BA and MA theses and two PhD dissertations. Active academic lecturer in subjects of the financial market.

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