

The role of the European Banking Authority in respect of the Draft of the Directive establishing a framework for the recovery and resolution of credit institutions and investment firms

Introduction

The international financial market crisis has placed fundamental challenges before the European Union as well as revealing the lack of efficient crisis management mechanisms related to financial institutions. The progressive integration of markets has led to a situation in which tremors taking place on one domestic market are immediately transferred to other Member States.

The above experience has shown that in order to maintain financial stability and restore public confidence towards financial market entities, the public authorities have to acquire tools enabling them to prevent systemic losses caused by disorderly default of financial institutions and allowing to minimize the involvement of public resources. This would also limit the risk of taxpayers having to cover the costs of saving institutions about to go bankrupt.

The European Commission (EC) has decided that aside from stricter requirements limiting the likelihood of a bank finding itself in an emergency situation, what is necessary is a reliable mechanism serving the reintroduction of market discipline and at the same time limiting the so called “moral hazard” consisting in hiding the actual condition of a bank by its managers, excessive lengthening of the remedial process and taking unreasonable risks related to the bank’s activity in the belief that the public authorities will protect it against bankruptcy. The above will limit the distortion of competition as well as the risk of a systemic banking crisis which could contribute to the decline of economic prosperity. The crisis management framework proposed in the directive also aims at providing safety of using financial services, strengthening depositor protection and legal certainty.

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According to the assumptions of the European Commission the proposed Directive of the European Parliament and Council establishing a framework for the recovery and resolution of credit institutions and investment firms and amending directives is to be the answer to the experiences gained during the last crash on financial markets, which revealed the weaknesses of European crisis management with regard to financial institutions.

The aim of this document is to introduce the most essential stipulations of the aforementioned directive as well as characterize the role of the *European Banking Authority* (EBA) in relation to the tasks entrusted to it and its decision-making procedures.

1. Basic stipulations of the proposed directive establishing a framework for the recovery and resolution of credit institutions and investment firms

The proposal of the aforementioned directive encompasses three areas of proceedings: preparatory and preventive measures, early intervention measures and resolution tools and powers. The regulation also determines the rules of coordination of cross-border crisis management with regard to EU banking groups, cooperation arrangements with third countries and mechanisms of covering costs resulting from actions conducted in scope of resolution regimes [Draft of the Directive].

1.1. The process of orderly winding down the banking groups

Thematic scope of the draft for the directive presented by the EC is related to the crisis management of banks and investment firms, which is a broader term than the process of an orderly wind-down, and also contains recovery and early intervention activities, as well as activities preceding the curative process, which should increase its effectiveness. The resolutions of the draft for the directive show that the EC adopted the stance that the activities shall be undertaken at the bank group level (and not single banks). Should the criteria for beginning the resolution process be applicable, the host country body will be obligated to inform the resolution body of the home country and other members of the resolution college, as well as to propose appropriate actions. Should the home country body decide that the risk of bankruptcy and the resolution actions proposed by the host country body have negative influence on the group or other entities of the group, the resolution body of the home country will have the right to propose a scheme of action

regarding the group to the resolution college within 24 hours. This scheme should specify activities to be undertaken by resolution bodies appropriate to the home entity and/or group entities in order to preserve the value of the group as a whole, to reduce the impact on financial stability in countries where the group is operating, and to reduce the use of public funds; the method of coordinating activities and the financial plan shall be decided in accordance with rules corresponding to the resolution plans.

Should a college member refuse to adopt this scheme, there will be a possibility to refer the matter to the EBA, which will be obliged to make a decision within 24 hours. Such decision would be binding for the college members.

1.2. The subjective scope of the planned solutions.

The solutions proposed by the EC would be generally applicable to loan institutions and investment firms as specified in the Directive 2006/48/WE. In Polish environment, the definition of a loan institution will consist of „an enterprise whose activities consist of receiving deposits or other funds subject to repayment by the public, and of providing loans as a principal”. Second of the above-mentioned entity groups are the investment firms. In the information memorandum for the draft for the directive, the EC quotes Lehman Brothers as an example justifying inclusion of this category of entities in the scope of binding of the planned regulations. The above-mentioned example refers to investment banks, which de facto are not present in Poland. In Poland it would mean inclusion brokerage houses in the subjective scope of the Directive.

1.3. Financing the process of orderly wind-downs.

The draft for the directive projects three ways of using the funds from guaranteed deposit systems in the resolution process:

1. withdrawal of guaranteed funds in accordance with the Directive 94/19/WE,
2. providing the availability of guaranteed funds in case of using the resolution tools,
3. financing the costs of the resolution process.

The Directive would also obligate the host countries to include the possibility to co-finance the resolution process in context of the whole group during planning of the solutions for financing the resolution processes.

The EC proposal would also introduce compulsory loans of at most half of the funds accumulated in the mechanism for financing cross-border resolution, should the funds accumulated in the relevant country prove to be insufficient. Refusal to lend could only occur if the funds for such lend would prove to be insufficient for financing the foreseeable processes of the orderly wind-down.

1.4. Waiver or conversion of obligations.

The instrument for waiving or converting the obligations would allow performing a partial or complete waiver of unsecured obligations or their conversion to shares or other equity instruments. The above-mentioned tool would absorb the losses suffered by the bank undergoing the process of the orderly wind-down, and rebuild its capital position in the scope that guarantees fulfilling the capital requirements. In the draft for the directive, a procedure was specified for using above-mentioned tool, indicating the necessity of its sequential usage. In accordance with the solution proposed in the draft for the directive, the losses should be covered by Common Equity Tier 1 first. The next category specified in the draft for the directive are the capital instruments placed in Additional Tier 1 and Tier 2.

2. Involvement of the EBA in the *recovery and resolution processes in accordance with the Draft of the Directive.*

The concept presented in the Draft of the Directive assumes that authorities of host countries have limited powers to conduct activities in relation to entities being part of groups whose parent entities are subject to supervision of other Member States, the so called home countries. Therefore, a number of solutions essential for the financial stability of individual states would have to be implemented on a group level (home countries) or a pan-European level. Tasks entrusted to the EBA in accordance with the proposed directive are:

- 1) binding mediation in event of difference in opinions between individual national authorities on almost every stage of recovery and resolution proceedings of financial institutions conducted on group level, and in particular:
 - a) assessment of group recovery plans [art. 8 of the Draft of Directive],
 - b) requirements and procedure for group resolution plans [art. 12 of the Draft of Directive],

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- c) powers to address or remove impediments to resolvability: group treatment [art. 15 of the Draft of Directive],
 - d) review of proposed group financial support agreement and mediation [art. 17 of the Draft of Directive],
 - e) assessment of the decision of the domestic supervisor on prohibition or restriction of group financial support [art. 21 of the Draft of Directive],
 - f) coordination of early intervention measures and appointment of special manager in relation to groups [art. 25 of the Draft of Directive],
 - g) assessment of the possibility of conducting independent actions by the national resolution authority, other than those proposed by the group authority [art. 83 of the Draft of Directive],
- 2) participation in resolution colleges on the group level; the EBA may participate in individual meetings or actions of such colleges if it deems it appropriate, though it does not have any voting rights [art. 80 of the Draft of Directive],
 - 3) design of drafts of more than 20 regulatory technical standards to be endorsed by the EC,
 - 4) design of guidelines in order to support the convergence of practices in scope of supervision and resolution, on the basis of which the Commission may issue delegated acts:
 - a) in relation to the interpretation of different circumstances in which an institution is treated as failing or likely to fail [art. 27 of the Draft of Directive],
 - b) in relation to determining when the liquidation of assets or liabilities under normal insolvency proceedings may adversely affect the financial market [art. 36 of the Draft of Directive],
 - c) in scope of determining the circumstances in which it would be appropriate to conduct activities consisting in cancelling existing shares and/or conversion of eligible liabilities into shares of the institution under resolution at a rate of conversion that severely dilutes existing shareholdings [art. 42 of the Draft of Directive],
 - d) regarding the rate of conversion of debt into equity - these guidelines are to determine in particular the manner in which affected creditors may acquire appropriate compensation by means of utilizing the conversion rate, as well as regarding the conversion rates which may be appropriate to reflect the priority of senior li-

- abilities under applicable insolvency law [art. 45 of the Draft of Directive],
- 5) recognition of means utilized by resolution authorities in third countries, Member States should hold responsibility over the performance of EBA decisions concerning the recognition of such means [art. 85 of the Draft of Directive],
 - 6) conclusion of non-binding framework cooperation agreements with third countries; national authorities should conclude bilateral arrangements that are as far as possible in line with the EBA framework arrangements [art. 88 of the Draft of Directive].

3. EBA decision-making process

The task of supporting Member States and their citizens is the responsibility of specialized and decentralized EU agencies. They have been created in response to the desire to place EU authorities in various Member States and the need to cope with new legal, technical or scientific problems. EU agencies are a form of public authority established in accordance with the European law. They are quasi-autonomous in relation to institutions/main bodies of the EU and have their own legal personality. What differentiates them from the basic EU bodies is among others the manner in which they are established. The establishment of an agency requires only a secondary law act (regulation). What is more, agencies do not have to be mentioned in treaties. EU agencies are created in order to fulfill scientific, consulting and expertise, technical, administrative, management or other specific directorial tasks included in appropriate founding resolutions of the Council of the European Union. Agencies and regulatory bodies are among others: agencies dealing with individual areas of EU policy, common security and defense policy agencies or agencies dealing with police and court cooperation in criminal cases.

The EBA is an EU body and possesses legal personality. The EBA possesses the widest scope of legal capacity granted to legal entities by national law in each Member State. The EBA may in particular purchase or sell movables and real estate. It may be part of court proceedings. The EBA includes the Board of Supervisors, Management Board, Chairperson, Executive Director and Joint Board of Appeal. In chapter II of the *Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (Europe-*

an Banking Authority), amending the Decision No 716/2009/EC and repealing the Commission Decision 2009/78/EC, hereinafter referred to as the “*Regulation*” the regulator has granted the EBA the right to make individual decisions in two areas (among other rights), i.e.:

- 1) concerning competent authorities in events determined in art. 18 section 3 and article 19 section 3 of the *Regulation*,
- 2) addressed to financial institutions in events determined in art. 17 section 6, art. 18 section 4 and art. 19 section 4 of the *Regulation* in cases regarding directly applied Union law.

In accordance with art. 43 of the *Regulation* the above decisions are made by the Board of Supervisors of the EBA. The Board of Supervisors includes among others, the heads of the national public authorities competent for the supervision of credit institutions in individual Member States.

The decision-making process has been regulated in art. 44 of the *Regulation*. As a matter of principle, the decisions of the Board are undertaken by a simple majority of votes. Each member is entitled to one vote. In events shown in art. 44 of the aforementioned *Regulation* a qualified majority of votes is needed to make decisions. In relation to decisions made by the Board in accordance with art. 19 section of the *Regulation* in event of decisions made by an authority responsible for consolidated supervision, the decision is treated as passed if it has been confirmed by a simple majority of votes, unless it has been rejected by members who constitute a blocking minority, as stipulated in art. 16 section 4 of the Treaty on European Union and art. 3 of Protocol no. 36 regarding transitional provisions. All other decisions made in accordance with art. 19 section of the *Regulation* are passed according to the general principle, i.e. by a simple majority of votes where each member is entitled to one vote.

What is more, in accordance with art. 19 of the *Regulation* the Board of Supervisors calls an independent panel in order to impartially settle disputes. This panel includes the Chairperson and two members of the Board, which may not represent the bodies being party to the dispute, may not be interested in the conflict and may not have direct relations with the interested parties of the conflict. The panel’s tasks are among others the recommendation of decisions which are to be finally accepted by the Board, in accordance with the above procedure, regulated in art. 44 section 1 paragraph three of the *Regulation*. Importantly,

during execution of tasks, the members of the Board are obliged to impartially and independently act for the sole benefit of the European Union as a whole. They may not take instructions from any EU bodies or institutions, governments of individual Member States or other public or private entities and may not address them for such instructions. It is worth noticing that before passing a decision the EBA is obliged to inform each indicated addressee of a given decision of the intention of undertaking thereof, giving such addressee the opportunity to state his opinion on the matter on a specified date.

The EBA may use its competence to make decisions directed at national supervisory authorities in two events:

- 1) in an emergency situation, i.e. such that may severely jeopardize the appropriate functioning of financial markets and their integrity or the stability of the whole or part of the financial system of the EU [art. 18 section 3 of the *Regulation*],
- 2) in event of the inability to settle a dispute between supervisory authorities of different Member States during the conciliation phase [art. 19 section 3 of the *Regulation*].

Individual decisions addressed directly to national financial institutions are in fact auxiliary in character in the meaning that they constitute a peculiar substitute means of realization of activities deemed by the EBA as legitimate, advisable, necessary or essential, in a situation when a national supervisory authority does not agree with the EBA decisions addressed directly to it. Individual decisions addressed directly to national financial institutions may be issued exclusively in situations where the national supervisory authority did not conform with the earlier EBA decision applicable directly to it. This means that issuing a decision addressed directly to national financial institutions by the EBA has to be preceded by issuing a decision directed at a national supervisory authority, which is subsequently not executed by such organ [Opinion].

4. Procedures of appeal from EBA decisions

The following means of appeal may be used in relation to EBA decisions: notification, appeal and complaint to the ECJ.

4.1 Notification

The so called safeguards related to the decisions issued on the basis of art. 18 and 19 have been enumerated in art. 38 of the *Regulation*.

In art. 38 of the *Regulation* the European legislator has laid a duty on the EBA to ensure that the decisions made on the basis of art. 18 and 19 of the *Regulation* do not influence the fiscal obligations of Member States in any way, regardless of the entity they are directed to. When a given Member State considers that a decision directed at a national supervisory authority impinges the state's fiscal responsibilities, such state may notify the EBA and the Commission (and the Board in event of a decision mentioned in art. 18 section 3 of the *Regulation*), that the national authority will not implement the above decision. Only a Member State has title to prepare such notifications. The submission of the notification effects in a obligatory suspension of the EBA decision.

The European legislator has provided very short periods for effective submission of the aforementioned remedy. In event of decisions mentioned in art. 18 section 3 of the *Regulation* the period for submitting the notification is 3 working days of delivering the EBA decision to the national supervisory authority. In event of decisions mentioned in art. 19 section 3 of the *Regulation* this period is 2 weeks. The Member State should precisely and particularly explain why and in what manner does the decision of the EBA influence the fiscal responsibilities of the state.

Depending on the legal bases of issuing the decision by the EBA, the European legislator has given the power to consider submitted notifications to various bodies. With regard to decisions issued by the EBA on the basis of art. 18 section 3 of the *Regulation* the notification is considered by the Board. With regard to decisions issued by the EBA on the basis of art. 19 section 3 of the *Regulation* the notification is examined by the EBA itself. The periods for considering the submitted notification are also very short and equal appropriately 1 month [art. 19 section 3 of the *Regulation*] or 10 days [art. 18 sect. 3 of the *Regulation*].

The European legislator has also included conclusions which may be effected as a result of considering the above notification. In even when the notification is considered by the EBA, it may adjudicate on maintaining, amending or repealing its decision. If the decision is maintained or amended, the EBA states that it does not have any influence on the state's fiscal responsibilities. In an event in which the notification is considered by the Board, it may decide only on the repealing or maintaining of the EBA decision. If the Board does not decide on repealing the decision of the EBA, its suspension is cancelled.

Decisions issued by the EBA as a result of submitting a safeguard related to decisions issued on the basis of art. 19 section 3 of the *Regulation*, are obligatorily verified by the Board during the period mentioned in art. 38 section 2 paragraph 5 of the *Regulation*. If the Board does not decide on maintaining the primary decision of the EBA, the decision expires. The above verification process is not applied in event of the Board's conclusions issued as a result of submitting a notification related to the EBA decision issued on the basis of art. 18 section 3 of the *Regulation*. In event of such conclusions of the Board, the legislator has provided institutions which tend to re-examination of the case. Of the Board does not repeal the decision of the EBA issued on the basis of art. 18 section 3 of the *Regulation* and the interested Member State still considers the EBA decision as influencing its fiscal responsibilities, it may utilize the possibility of re-examination of the case by the Board. In order to do so the Member State has to notify the Commission as well as the EBA and to address the Board for a re-examination of the case, while stating all the reasons it considers the decision of the Board to be wrong. As a result of the re-examination of the case, the Board either confirms its primary decision or issues another decision in accordance with the rules mentioned in art. 38 section 3 of the *Regulation*. The period for re-examination of the case by the Board is four weeks and may be lengthened if specific circumstances of the case require so [Opinion].

4. 2. Appeal

A distinct means of appeal from EBA decisions is the appeal considered by the Joint Board of Appeal. Unlike the above remedy it may be used in relation to all decisions mentioned in art. 17, 18 and 19 of the *Regulation*. The right to file an appeal may be utilized by a wide range of entities. The title to file an appeal has been granted by the European legislator to each individual and legal entity as well as appropriate bodies in relation to both decisions directly addressed to the given entity and to EBA decisions directed at another entity but directly and individually influencing the individual/legal entity or appropriate body. Such a wide scope means that a national supervisory authority is entitled to file an appeal with regard to a decision addressed directly to a national financial institution, provided that the authority proves that such decision "directly and individually" concerns it [Opinion].

Unlike the legal remedy it does not by operation of law effect in suspending the decision issued by the EBA. However, the Joint Board of

Appeal is entitled to suspend the execution of the contested EBA decision if it decides that circumstances so require.

4.3. Complaint to the European Court of Justice

A complaint to the European Court of Justice (ECJ) may be submitted against a decision of the Joint Board of Appeal or, in a situation when there is no possibility to file an appeal to the Joint Board of Appeal, such complaint may be submitted against the decision of the EBA, in accordance with art. 263 of the Treaty on the Functioning of the Union. Art. 263 of the Treaty on the Functioning of the Union enumerates a wide range of entities entitled to submit a complaint to the ECJ, in particular: a Member State, the European Parliament, the Council, the Commission, the European Court of Auditors, the European Central Bank, the Committee of the Regions as well as each individual and legal entity. There is also a possibility to directly submit a complaint to the ECJ in relation to a decision of the EBA without application of the aforementioned process of appeal. The right to directly submit a complaint to the ECJ in relation to a decision of the EBA is entrusted in Member States, EU bodies and individual and legal entities.

What is important is to conduct an evaluation of the interrelationship between the legal remedy (notification) [art. 38 of the *Regulation*] and the means of appeal (appeal / complaint to the ECJ) [art 60 and 61 of the *Regulation*]. An analysis of the *Regulation* shows a separation of procedures of considering the legal remedy and means of appeal. The use of means of appeal does not have to be preceded by the exhaustion of the remedial procedure. The prerequisites which entitle one to use a given means are also distinct. As has been pointed out above, the prerequisite to utilize the remedial means (notification) is the influence of the decision of the EBA on the fiscal responsibilities of a Member State, while the prerequisites to use the appeal procedure which the appealing party could base its objections on are not precise. In event of a complaint to the ECJ the prerequisites should be found in the essence of art. 263 of the TFEU and art. 61 section 1 of the *Regulation*. Pursuant to art. 263 of the TFEU a complaint to the ECJ may be based on the following claims: lack of competence, infringement of essential legal requirements, infringement of the Treatises or any one legal principle related to their application or the misuse of powers [Opinion].

It should be noted that unlike the means of appeal, the remedial procedure effects in an obligatory suspension of the EBA decision's exe-

cution. Thus, while utilizing the appeal procedure, it should be remembered that filing an appeal does not cause an automatic suspension of a decision. However, in scope of discretionary power, the Joint Board of Appeal has the competence to suspend the execution of the contested decision if it decides that circumstances so require. It has the competence to do so also with regard to submitting a complaint to the ECJ, as in accordance with art. 278 of the TFEU, complaints submitted to the European Court of Justice do not have suspensory effect. The ECJ may however adjudicate the suspension of execution of the contested decision if it decides that circumstances so require. Therefore it is necessary to consider the legitimacy and purposefulness of each submitted appeal to suspend a decision of the EBA.

Conclusion

Assessing the impact of the new European supervisory architecture, particularly the role of the EBA, it can be concluded that it is based on a rather complex regulatory system, based on a number of new institutions that emphasize financial stability at the expense of market efficiency, weakening domestic surveillance powers. For home countries, with global headquarters of large banks, the benefits of the new regulations may outweigh the costs. For host countries, these costs appear to be disproportionate to the benefits. Summary assessment of the new European supervisory control is illustrated by the Table No 1 [Kasiewicz, Kurkliński (ed.), Miklaszewska, 2012, p. 45-46].

Table No 1. Evaluation of the new European supervisory regulations (micro level)

Target	Benefits	Costs
financial stability	banking crisis preventions	funding for a new supervisory architecture in 60% by national supervisors
harmonization of regulatory standards and increase the market transparency	increase the market discipline	high costs of reporting for banks
the risks systemic reduction – stress tests	harmonization of regulatory standards	lack of flexibility, local host supervisors marginalization
consumer protection	unrealized goal	

Source: [Kasiewicz, Kurkliński (ed.), Miklaszewska, 2012, p. 46, An assessment of the long-term economic impact of stronger capital and liquidity requirements, Basel Committee on Banking Supervision, August 2010, Assessment of the Cumulative Impact of Various Regulatory Initiatives on the European Banking Sector, DG for Internal Policies, July 2011]

The published proposal of the Directive shows that the EC has adopted a concept based on the creation of a legal framework of actions related to cross-border entities. The presented proposal assumes that authorities of host countries have limited powers to conduct activities in relation to entities being part of groups whose parent entities are subject to supervision of other Member States. Furthermore, it assumes that a range of conclusions essential for the financial stability of individual states would be made on a pan-European level by means of the introduced mechanism of binding EBA mediations.

Acknowledging the essential role which the EBA may play in mediation and conciliatory processes, one should stress the fact that transferring the right to conduct binding mediation in scope of recovery and resolution of banks (which constitutes decision-making competence), while simultaneously leaving the responsibility for the consequences of actions on national authorities seems premature taking into account the current level of European integration [Proposal of the Government Position Paper].

At the same time, the perspective and view of interests of both dependent entities (including their minority shareholders) and the host

country (including the local financial market) may seem dissimilar in such solutions. In a situation when a common decision cannot be made and both the group resolution plan and the outline of resolution actions related to the group determining the rules of financing the entire procedure, are approved by the EBA, this institution in fact directly or indirectly decides on charging the costs to the resolution authorities (and in consequence the individual states).

It has to be mentioned that the possibility of changing a disadvantageous decision of a consolidating supervisor by means of binding mediation conducted by the EBA may be blocked. The *Regulation* enables the blocking of an EBA decision which changes the consolidating supervisor by means of the so called blocking minority, which in practice may mean that three large home countries in conjunction with one smaller state may be able to block each disadvantageous EBA conclusion made pursuant to binding mediation.

Not respecting EBA decisions (issued in relation to discovering of EU law infringement as understood in art. 17 section 1 of the *Regulation*) will be noted in the EBA annual report, which will be handed to other aforementioned EU bodies and institutions. Taking the above into account, not respecting a decision made by the EBA by a national authority may generate various effects, such as juridical, financial or prestige-related.

Regarding the solutions included in the proposed Directive in scope of the role of the EBA, as well as the presented decision-making and appeal procedures of this institution it seems that the above solutions should be modified, particularly in scope of leaving more competence to national supervisory authorities and other national institutions being part of the financial safety net. As the responsibility for the financial stability rests on national authorities of the financial safety net and in event of bankruptcy of a bank the costs related to it are borne by its deposit guarantee fund, the national authorities should be able to make the definitive decisions related to entities acting under their jurisdiction. In event of lack of an agreement between the national authorities during the so called group proceedings it would be wise to consider the substitution of the proposed binding mediation tool with a mechanism of non-binding consultations with the EBA, while at the same time giving the national authorities of the financial safety net the possibility to conduct actions independently while realizing its rights directly in relation to the

entity being in an emergency situation. Poland as a country with a very strong presence of foreign capital in the banking sector should pursue to strengthen the role of the host supervisor and the possibility of influencing on the activities of cross-border financial institutions. In the long run you could count with two solutions:

- 1) hold a joint support especially among the countries of Central and Eastern Europe to promote the specificity of the host country, or;
- 2) take action to strengthen the role of the banking sector with the national capital [Kasiewicz, Kurkliński, Miklaszewska, 2012, p. 45].

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Summary

According to the assumptions of the European Commission the Draft of the Directive of the European Parliament and Council establishing a framework for the recovery and resolution of credit institutions and investment firms and amending directives is to be the answer to the experiences gained during the last crash on financial markets, which revealed the weaknesses of European crisis management with regard to financial institutions. The aim of this document is to introduce the most essential stipulations of the aforementioned directive as well as characterize the role of the EBA in relation to the tasks entrusted to it and its decision-making procedures. Regarding the solutions included in the proposed Directive in scope of the role of the EBA, as well as the presented decision-making and appeal procedures of this institution it seems that the solutions should be modified, particularly in scope of leaving more competence to national supervisory authorities and other national institutions being part of the financial safety net.

Key words:

financial stability, European Banking Authority

Streszczenie

Zgodnie z założeniami Komisji Europejskiej projekt Dyrektywy Parlamentu Europejskiego i Rady ustanawiającej ramy dla restrukturyzacji oraz uporządkowanej likwidacji instytucji kredytowych i przedsiębiorstw inwestycyjnych oraz zmieniającej inne dyrektywy ma być odpowiedzią na doświadczenia zdobyte podczas ostatniego kryzysu na rynkach finansowych, który ujawnił słabości europejskiego zarządzania kryzysowego w odniesieniu do instytucji finansowych. Celem niniejszego artykułu jest przedstawienie najistotniejszych zagadnień związanych z propozycjami zawartymi w projekcie wyżej wymienionej Dyrektywy, a także charakterystyka roli Europejskiego Organ Nadzoru Bankowego w kontekście powierzonych jej zadań oraz procedur decyzyjnych. Wydaje się, że rozwiązania zaproponowane w projekcie Dyrektywy w zakresie roli Europejskiego Organ Nadzoru Bankowego, w kontekście procedur podejmowania decyzji oraz zastosowania środków odwoławczych, powinny zostać zmienione, szczególnie w zakresie pozostawienia więcej kompetencji w rękach krajowych organów nadzorczych oraz innych krajowych instytucji stanowiących część sieci bezpieczeństwa finansowego.

Słowa kluczowe

stabilność finansowa, Europejski Organ Nadzoru Bankowego