

## On the need to guarantee deposits of local government units – a discussion against the resolution of Podkarpacki Bank Spółdzielczy in Sanok

O potrzebie objęcia ochroną gwarancyjną depozytów jednostek  
samorządu terytorialnego – rozważania na przykładzie przymusowej restrukturyzacji  
Podkarpackiego Banku Spółdzielczego w Sanoku

О необходимости распространения гарантий по вкладам на субъекты местного  
самоуправления – обсуждение на примере принудительной реструктуризации  
Подкарпатского Кооперативного Банка в Сяноке

Про необхідність забезпечення гарантійного захисту вкладів органів місцевого  
самоврядування – міркування на прикладі примусової реструктуризації  
Підкарпатського кооперативного банку у Сяноку

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**Summary:** Local government, as a form of organizing local public life, participates in the exercise of public authority. Local government units (hereinafter: LGUs) run their own financial management and use specific financial outlays to carry out their responsibilities. They are also participants in the financial market and keep their free funds in bank accounts. The research conducted for the purposes of this study concerned the effects of excluding local government units from the deposit guarantee system. It attempts to assess the lack of guarantee protection of local government units in the context of compulsory restructuring conducted by the Bank Guarantee Fund (hereinafter: BFG). The dogmatic-legal method and the case study method were used. The research results allow us to conclude that the lack of protection of local government deposits is an important problem, and the applicable legislation does not provide due procedures, for example, in the selection of the right bank.

**Key words:** LGUs, deposit guarantee, banking services, banking market

**Streszczenie:** Samorząd terytorialny, jako forma organizacji lokalnego życia publicznego, uczestniczy w sprawowaniu władzy publicznej. Jednostki samorządu terytorialnego prowadzą własną gospodarkę finansową i wykorzystują określone nakłady finansowe do realizacji swoich zadań. Są także uczestnikami rynku finansowego, a posiadane wolne środki przechowują na rachunkach bankowych. Badanie prowadzone na potrzeby niniejszego opracowania dotyczyło skutków wyłączenia jednostek samorządu terytorialnego z systemu gwarantowania depozytów. Ich celem była próba oceny braku ochrony gwarancyjnej jednostek samorządu terytorialnego w kontekście przymusowej restrukturyzacji prowadzonej przez Bankowy Fundusz Gwarancyjny. W artykule posłużono się metodą dogmatyczno-prawną oraz studium przypadku. Otrzymane wyniki pozwalają wnioskować, że zagadnienie braku ochrony depozytów jednostek samorządu terytorialnego jest ważnym problemem, a obowiązujące ustawodawstwo nie zapewnia należytych procedur chociażby w zakresie wyboru właściwego banku.

**Słowa kluczowe:** jednostki samorządu terytorialnego, gwarancja depozytów, usługi bankowe, rynek bankowy

**Резюме:** Местное самоуправление, как форма организации местной общественной жизни, участвует в осуществлении публичной власти. Субъекты местного самоуправления самостоятельно управляют своими финансами и используют определенные финансовые ресурсы для выполнения своих задач. Они также являются участниками финансового рынка и хранят свободные средства на банковских счетах. Исследования, проведенные в рамках данной статьи, касались последствий исключения субъектов местного самоуправления из системы гарантирования вкладов. Их целью была попытка оценить отсутствие гарантийной защиты субъектов местного самоуправления в контексте принудительной реструктуризации, проводимой Банковским гарантийным фондом. В статье использовался догматико-правовой метод и метод кейс-стади. Полученные результаты позволяют сделать вывод о том, что проблема отсутствия защиты вкладов субъектов местного самоуправления является актуальной, а действующее законодательство не обеспечивает надлежащих процедур, в том числе и в отношении выбора подходящего банка.

**Ключевые слова:** субъекты местного самоуправления, гарантии по вкладам, банковские услуги, банковский рынок

**Резюме:** Місцеве самоврядування, як форма організації локального суспільного життя, бере участь у здійсненні публічної влади. Органи місцевого самоврядування здійснюють власне фінансове управління і використовують певні фінансові ресурси для виконання своїх завдань. Вони також є учасниками фінансового ринку і зберігають свої вільні кошти на банківських рахунках. Аналіз, проведений для цілей цього дослідження, стосувався наслідків виключення органів місцевого самоврядування із системи гарантування вкладів. Його метою була спроба оцінити відсутність гарантійного захисту органів місцевого самоврядування в контексті примусової реструктуризації, проведеної Банківським гарантійним фондом. У статті використано догматико-юридичний метод та метод аналізу конкретних ситуацій. Отримані результати дозволяють зробити висновок, що питання відсутності захисту вкладів органів місцевого самоврядування є важливою проблемою, а чинне законодавство не передбачає належних процедур, принаймні щодо вибору відповідного банку.

**Ключові слова:** органи місцевого самоврядування, гарантування вкладів, банківські послуги, банківський ринок

## Introduction

Local government units (LGUs), as participants in the banking market, hold bank accounts used for their operations. It should be noted that current legislation establishes specific rules for concluding bank account agreements by LGUs. Upon entering into a bank account agreement, an LGU becomes a depositor. At the same time, it is important to emphasize that LGUs, as participants in this market who leave idle funds in banks as deposits (under the terms and conditions of the agreement), are not subject to deposit guarantee protection. Deposits held in all domestic banks (except for Bank Gospodarstwa Krajowego) and in credit unions are guaranteed by the Bank Guarantee Fund (BFG).

Regulations that pertain to the financial aspects of LGU activity are enshrined in the Constitution of the Republic of Poland of 2 April 1997<sup>1</sup> and other acts.<sup>2</sup> We also need to point to the regulation of the European Charter of Local Self-Government.<sup>3</sup> Moreover, under Article 264 of the Public Finances Act of 27 August 2009,<sup>4</sup> banks handle the banking-related needs of LGUs. The research problem centres around issues also regulated in the Act of 10 June 2016 on the Bank Guarantee Fund, the deposit guarantee scheme and resolution.<sup>5</sup>

The research problem pertains to the lack of deposit guarantee protection for LGUs and focuses on considerations regarding possible changes in this area. The research area primarily covers legal aspects regulated by the Act on the BFG, the Public Finance Act, and the Public Procurement Law. Secondly, this area was extended to include the consequences of the first forced restructuring carried out by the BFG.

## 1. Local government units as participants in the banking market

The LGU-bank relation is bilateral. On the one hand, local governments use the services offered by banks, mainly depositing their funds in bank accounts or obtaining returnable sources of financial support. Thus, they become participants in the banking market. On the other hand, banks value providing services to LGUs mainly because they are stable, reliable, and have certain customers.<sup>6</sup> LGUs are considered safe bank customers with permanent cash inflows.<sup>7</sup> The European Charter of Local Self-Government emphasizes that local communities should have access to the offer of the capital market. Thanks to this, they will primarily be able to finance

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<sup>1</sup> Journal of Laws [Dziennik Ustaw] 1997 no. 78, item 483 as amended (hereinafter: Polish Constitution).

<sup>2</sup> Commune Self-Government Law of 8 March 1990, consolidated text: Journal of Laws 2023 item 1688 as amended; Powiat Self-Government Law of 5 June 1998, consolidated text: Journal of Laws 2023 item 572 as amended; Voivodship Self-Government Law of 5 June 1998, consolidated text: Journal of Laws 2023 item 1688 as amended.

<sup>3</sup> European Charter of Local Self-Government, Strasbourg, 15.10.1985, Journal of Laws 1994 no. 124, item 607.

<sup>4</sup> Consolidated text: Journal of Laws 2024 item 1089 as amended.

<sup>5</sup> Consolidated text: Journal of Laws 2023 item 1843 as amended (hereinafter: BGF Act).

<sup>6</sup> Cf. A. Czajkowska, *Obsługa finansowa jednostek samorządu terytorialnego w strategiach banków*, Acta Universitatis Lodziensis. Folia Oeconomica 2006, no. 197, p. 207.

<sup>7</sup> Najwyższa Izba Kontroli, Delegatura w Bydgoszczy, Informacja o wynikach kontroli bankowej obsługi wybranych jednostek samorządu terytorialnego, Bydgoszcz 2011, p. 4.

investment.<sup>8</sup> From the point of view of a bank's activity, the most optimal banking services include running a bank account, crediting current and investment activity, deposits, guarantees and organization of issuance of communal bonds. Maintaining a bank account is the starting point for such comprehensive care.<sup>9</sup> The doctrine notes that the legislator obliges local government units to have a bank account, but this involves encumbering their funds with risk.<sup>10</sup>

Local government units satisfy essential social needs, such as education, administration, local transport, or access to cultural institutions. Under Article 264 of the Public Finances Act, banking services for LGU budgets are delivered by a bank selected on terms specified in the Act of 11 September 2019 – Public Procurement Law.<sup>11</sup> The rules for providing banking services are specified in an agreement between an LGU and a bank. The Public Finances Act does not include a definition of the concept of “providing banking services to LGU budgets,” which is why the literature points out that this term should accommodate all financial services necessary for the proper functioning of an LGU's budget.<sup>12</sup> The provision of banking services to the LGU budget should not include accounts of separate units that have legal personality. The Regional Chamber of Audit in Poznań, among others, shares this view.<sup>13</sup> The tender for choosing a bank is announced and carried out by the commune head, mayor, president of the city, powiat head or voivodship marshal.

<sup>8</sup> W. Miemiec, *Europejska Karta Samorządu Terytorialnego jako zespół gwarancji samodzielności finansowej gmin – wybrane zagadnienia teoretyczno-prawne*, in: *Funkcjonowanie samorządu terytorialnego – doświadczenia i perspektywy*, ed. S. Dolata, Opole 1997, p. 202.

<sup>9</sup> Najwyższa Izba Kontroli, Delegatura w Bydgoszczy, Informacja o wynikach kontroli bankowej obsługi..., p. 4.

<sup>10</sup> M. Mikliński, *Rachunki bankowe jednostek samorządu terytorialnego w świetle ryzyka*, in: *Wyzwania dla jednostek samorządu terytorialnego wynikające z nowelizacji ustaw: o finansach publicznych i o utrzymaniu czystości i porządku w gminach*, eds. J. Gliniecka, S. Obuchowski, T. Sowiński, Warszawa 2021, p. 157.

<sup>11</sup> Consolidated text: Journal of Laws 2023 item 1720 as amended.

<sup>12</sup> M. Zdebel, *Bankowa obsługa budżetu jednostki samorządu terytorialnego a zasady otwierania i prowadzenia rachunków wspólnych*, in: *Verus amicus rara avis est. Studia poświęcone pamięci Wojciecha Organiściaka*, eds. A. Lityński, A. Matan, M. Mikołajczyk, D. Nawrot, G. Nancka, Katowice 2020, p. 885; W. Srokosz, *Bankowa obsługa budżetu jednostki samorządu terytorialnego*, *Finanse Komunalne* 2012, no. 5, p. 33.

<sup>13</sup> The Regional Chamber of Audit in Poznań, in a post-audit letter to the commune head of the Turek Commune, noticed, i.a., irregularities relating to the conclusion of a contract for the provision of comprehensive banking services to the Turek Commune along with LGUs that it administers, which included the Commune Public Library in Słodków, which is a local government cultural institution with legal personality. According to the Chamber, it is a violation of Article 264 (1) of the Public Finances Act.

The Public Finances Act does not specify any requirements as to the agreement referred to above; therefore, provisions of the Act of 23 April 1964 – Civil Code<sup>14</sup> and the Act of 29 August 1997 – Banking Law apply.<sup>15</sup> Under Article 275 of the Polish Civil Code, by a bank account contract, a bank commits to a bank account holder (here LGU), for a fixed or a non-fixed term, to keep their cash and, if the contract so provides, to carry out, on their instructions, money settlements. Under Article 52 of the Banking Law, the opening of a bank account is made by executing a written contract with the bank. Moreover, it is worth noting that the statutes do not lay down all elements of the content of such a contract. One may only name its required elements. The literature emphasizes that by using the phrase “in particular,” the legislator creates an open catalogue.<sup>16</sup>

Under Article 18 of the Public Procurement Act, the manager of the ordering party is responsible for the preparation and carrying out of the public procurement procedure. Other persons may also be responsible, but to the extent to which they are vested with activities related to the procedure and activities related to the preparation of the procedure. The manager of the ordering party may vest, through the power of attorney, ordinance or another internal act, the performance of specified activities, which in consequence will result in professional responsibility or liability for violation of the discipline of public finances of persons who receive such competences.<sup>17</sup> The subject of the order should clearly and comprehensively take into account all requirements and circumstances that may affect the making of offers by participating banks.<sup>18</sup> When choosing the best offer, the ordering party must consider the price or other criteria that refer to the subject of the order, in particular, the quality, functionality, technical parameters, operational costs, and service. The object of the order is described clearly and comprehensively by means of sufficiently precise and comprehensible terms and by taking into consideration all requirements and circumstances that may affect the making of the offer.

The objective of an LGU bank account is to collect funds that come from the incomes and revenues of this unit (also on account of loans and credits taken out). It is also used to handle expenditures and payments from the budget of a given unit.

<sup>14</sup> Consolidated text: Journal of Laws 2024 item 653 as amended (hereinafter: CC).

<sup>15</sup> Consolidated text: Journal of Laws 2023 item 1941 as amended.

<sup>16</sup> Z. Ofiarski, *Prawo bankowe*, Warszawa 2021, p. 232.

<sup>17</sup> P. Granecki, *Prawo zamówień publicznych. Komentarz*, Warszawa 2012, p. 147.

<sup>18</sup> E. Kowalewska, *Bankowa obsługa jednostek samorządu terytorialnego*, Ekonomiczne Problemy Usług 2018, no. 4 (133), p. 201.

Additionally, LGUs may enter into fixed-term deposit contracts and gather their available cash there.<sup>19</sup>

Comprehensive service provision for an LGU budget may include in particular:<sup>20</sup>

- 1) conclusion of a (current or auxiliary) bank account contract;
- 2) ongoing banking services that involve:
  - a) handling in- and out-payments from bank accounts;
  - b) executing cashless settlements;
  - c) handling bank payments in the Banking System;
  - d) Dissuing cash cheques;
- 3) ensuring interest rates for all funds located in the LGU's bank accounts;
- 4) locating available funds in short-term deposit accounts;
- 5) provision of gratuitous online electronic banking system;
- 6) providing a short-term credit in a current account.

Local government units often rely on repayable sources of financing, such as credits. This proceeds under Article 89 of the Public Finances Act. It needs to be noted that the sum of commitments taken out must not exceed the amount specified for a given year in the LGU's budget resolution. The objective of Article 89 of the Public Finances Act is to determine limitations on the LGU's taking out various commitments by, for example, referring to their financial standing. A high creditworthiness index is a measure of an LGU's good financial standing.<sup>21</sup> Legal scholars and commentators point out that creditworthiness is affected by macroeconomic indicators, including those beyond the LGUs' control, such as the economic situation or the state of public finances, and those dependent on the LGUs, that is, income or innovative potential, economic attractiveness.<sup>22</sup> The fact that LGUs are allowed and able to obtain repayable funds deserves credit.<sup>23</sup> Unfortunately, LGUs'

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<sup>19</sup> M. Kaczurak-Kozak, *Księgowania w układzie sprawozdawczości finansowej*, p. 6, [https://www.ksiegarnia.beck.pl/media/product\\_custom\\_files/1/7/17256-ksiegowania-w-ukladzie-sprawozdawczosci-finansowej-fragment.pdf](https://www.ksiegarnia.beck.pl/media/product_custom_files/1/7/17256-ksiegowania-w-ukladzie-sprawozdawczosci-finansowej-fragment.pdf) [access: 11.11.2023].

<sup>20</sup> Cf. source material: <https://bipreszel.warmia.mazury.pl/zamowienie/164/kompleksowa-obsluga-bankowa-budzetu-gminy-reszel-od-dnia-01-stycznia-2021-roku-do-dnia-31-grudnia-2023-roku-oraz-jednostek-organizacyjnych-gminy-reszel-wchodzacych-w-sklad-struktury-organizacyjnej-gminy.html>, <https://bip.lesnica.pl/10971/142/ogloszenie-o-zamowieniu-w-trybie-podstawowym-bez-negocjacji-pn-kompleksowa-obsluga-bankowa-gminy-i-jej-jednostek-organizacyjnych-na-lata-2023-2026-zp271102022.html> [access: 11.1.2023].

<sup>21</sup> E. Kowalewska, in: *Ustawa o finansach publicznych. Komentarz*, ed. Z. Ofiarski, Warszawa 2020, p. 597.

<sup>22</sup> M. Jastrzębska, *Zarządzanie długiem jednostki samorządu terytorialnego*, Warszawa 2009, pp. 10–13.

<sup>23</sup> E. Kowalewska, in: *Ustawa o finansach publicznych...*, pp. 598–599.

own incomes and incomes received as subsidies and grants are not sufficient to cover self-government expenses. This means that LGUs must make commitments.<sup>24</sup>

Irrespective of the macroeconomic situation, local governments should manage finances rationally. We may even say that LGUs need a financial partner who will provide them with comprehensive services. With banks' operation in mind, we need to emphasize that LGUs are increasingly seen as strategic clients, for whom services will be provided long-term. We may also note here an intensified interest of commercial banks in providing services to LGUs. As a leader in providing banking services, PKO BP comes to the fore. It looks after 300 local governments in Poland.<sup>25</sup>

## 2. Scope of guarantee protection – exclusion of local government units

It needs to be pointed out that under Article 22 of the BGF Act, a selective protection scope was introduced.<sup>26</sup> Thus, under Article 2 (3) in connection with Articles 20 and 21 of the BGF Act, LGUs were excluded from the normative definition of a depositor. It is also worth referring to the Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes.<sup>27</sup> Under Article 5 (1) (j) of the Directive, LGUs' deposits as deposits made by public authorities are expressly excluded from repayment by the deposit guarantee scheme. The catalogue of actors excluded by statute from the concept of "depositor" is closed and exclusive. An extending interpretation is not admissible.<sup>28</sup>

Given the above, it needs to be stated that the legislator used the possibility prescribed under the law of the European Union, which gave the Member States the opportunity to exclude the protection of funds deposited in banks by, inter alia, regional and local authorities.<sup>29</sup> Based on this, we may also conclude that an LGU is not a depositor. This implies certain consequences which were made apparent by

<sup>24</sup> J. Zawora, P. Zawora, *Deficyt i zadłużenie samorządów gminnych w świetle ograniczeń ustawowych*, *Przedsiębiorstwo i Region* 2013, no. 5, p. 131.

<sup>25</sup> Source material: <https://media.pkobp.pl/172594-pko-bank-polski-wygral-przetargi-na-obsluge-budzetow-wroclawia-i-poznania> [access: 11.11.2023] and <https://o.forum-ekonomiczne.pl/samorzady-oczekuja-kompleksowej-obslugi-bankowej/> [access: 11.11.2023].

<sup>26</sup> P. Zawadzka, in: *Ustawa o Bankowym Funduszu Gwarancyjnym, systemie gwarantowania depozytów oraz przemysłowej restrukturyzacji. Komentarz*, eds. P. Zawadzka, P. Zimmerman, R. Sura, Warszawa 2017, p. 116.

<sup>27</sup> OJ L 173, 12.06.2014, pp. 149–178 (hereinafter: DGS Directive).

<sup>28</sup> Z. Ofiarski, *Prawo bankowe*, p. 719.

<sup>29</sup> P. Zawadzka, in: *Ustawa o Bankowym Funduszu...*, p. 122.



the resolution and steps taken by the BGF. This exclusion was mostly dictated by the specific nature of the activity of LGUs and the fact that their limited number (compared to the general number of depositors) limits the effects on the stability of the financial system.<sup>30</sup> At the same time, the Polish legislator did not employ the possibility prescribed in Article 5 (2) (b) DGS Directive, which allows the Member States to decide to include in the coverage deposits held by LGUs with an annual budget of up to EUR 500,000. Moreover, it is worth noting that under Article 2 (1) of the Act of 1995, LGUs' funds were covered by an obligatory guarantee scheme.<sup>31</sup>

### 3. Resolution of Podkarpacki Bank Spółdzielczy in Sanok

When talking about the first resolution conducted by the BGF, that is the compulsory restructuring of Podkarpacki Bank Spółdzielczy in Sanok (hereinafter: PBS), we need to point out that since 2016, BGF has played the role of a resolution authority apart from its function of a deposit guarantor. It is worth emphasizing that resolution is an alternative to the declaration of insolvency, used in strictly defined situations only and after meeting statutory requirements.<sup>32</sup> In BGF's opinion, the resolution of PBS was necessary to ensure the continuation of its critical operations. The alternative was PBS's bankruptcy. In such a situation, LGUs who had funds in this bank would have lost them irretrievably (as seen in BGF's estimates). Given this, we may assume that the resolution protected these funds, though not fully, as this example shows.

The resolution of PBS in Sanok was initiated pursuant to the decision of the BGF Management Board<sup>33</sup> on 17 January 2020. As a result, PLN 182,875,609 of the bank's capital was written down. Out of the resolution instruments referred to in the BGF Act, a bridge institution was the chosen method. Bank Nowy BFG S.A. was established with a capital of PLN 100 million. The BGF initiated the resolution because three conditions that oblige the Fund (under Article 101 (7) of the BGF Act) to take such actions were met.

<sup>30</sup> Ibidem, p. 116.

<sup>31</sup> For more, see: L. Góral, *Publicznoprawna ochrona środków budżetowych jednostek samorządu terytorialnego*, Przegląd Ustawodawstwa Gospodarczego 2000, no. 10, p. 5.

<sup>32</sup> For more, see: P. Szczęśniak, *Środki przymusowej restrukturyzacji banku*, Warszawa 2018, pp. 19 ff.

<sup>33</sup> Resolution of the Management board of the Bank Guarantee Fund No. 25/DPR/2020 of 15 January 2020. The resolution commenced upon serving the decision.



At the time of initiation of the resolution, PBS in Sanok was the second largest cooperative bank in Poland. It had approximately 2.5 billion deposits. The BGF's decision to restructure this bank cost a total of PLN 182 million, of which the cost of PLN 100 million was borne by holders of subordinated bonds, which were written down completely. It needs to be emphasized that the remaining cost, that is, PLN 82 million, was borne by local government units that had cash in bank accounts (they lost 43% of the funds kept in the bank) and larger entrepreneurs (they lost 43%, but of the funds that were an excess over EUR 100,000).

The resolution of PBS in Sanok raised various controversies, mainly because not only members' shares and subordinated bonds were written down, but also part of deposits of large companies and local governments, who lost a total of PLN 80 million. The losses of the Sanok bank were thus covered.

The resolution of PBS was finalized on 27 October 2021 because BGF sold 100% of the shares of Bank Nowy BGF S.A. By doing so, it retrieved the entire amount dedicated to the creation of the bridge institution. The shares of Bank Nowy BGF S.A. were purchased by Wielkopolski Bank Spółdzielczy.

It needs to be pointed out that in the documentation prepared for the needs of the resolution, the value of the LGUs' deposits was specified in Estimation Report 1. According to the financial information presented by the BGF, as at 28 February 2019, PBS's commitments towards entities of the central and local government sectors were more than PLN 203,671,656.15. Assuming that these commitments followed solely from a bank account contract and its parties were only LGUs, we need to conclude that the LGUs' deposits in PBS (as at 28 February 2019) were more than PLN 203 million.

#### **4. Effects of PBS's resolution on LGUs**

When describing the example of the first resolution carried out by the BGF, we may talk on the one hand about the protection of LGUs' funds kept in this bank. However, this protection was not comprehensive. Only about 57% of the total funds deposited in this bank were repaid to local governments from Podkarpackie Voivodship. The remainder was taken to cover PBS's losses as required by law. The president of the BGF explained this decision that covering the loss at the cost of owners and certain creditors is the condition for engaging BGF's funds and performing the resolution. It presented a great burden for local governments, mostly from communes and poviats near Sanok. Approximately 35 local governments could have had their

bank accounts in PBS in Sanok, and many of them were small communes for whom these losses would have been most severe. For example, we may look at the Lesko Commune, where there was talk about a loss of more than PLN 2.2 million, which, in consequence, meant that this commune could not implement certain previously planned investments.

However, we must point out here that due to the writing down, as a result of PBS's resolution, of part of the funds owned by LGUs, steps were taken to allow the execution of local government's responsibilities. For example:

- 1) the Ministry of Finance paid an education and balancing subsidy in the amount of close to PLN 76 million to LGUs to cover mainly the costs of running schools, including teachers' salaries;
- 2) on 4 February 2020, the Ministry of Finance paid out, before the due time, an instalment of part of the education subsidy in the amount of PLN 80.7 million to 31 LGUs whose funds kept in bank accounts maintained by PBS in Sanok were written down as a result of the bank's resolution;
- 3) Bank Gospodarstwa Krajowego presented an offer to local governments of repayable financial mechanisms on preferential terms which would ensure liquidity.

The earlier payment of the education subsidy allowed LGUs to maintain their liquidity and ensured funds to execute their tasks. LGUs kept mainly the following funds in PBS: parts of the general education subsidy, funds from subsidies to cover commissioned tasks such as the payment of 500+ benefits, and funds from external funding for investment, e.g. from the EU or the Local Government Roads Fund. Ensuring an adequate level of funds to implement these tasks was, therefore, in the interest of LGUs themselves and also in the interest of the Ministry of Finance.<sup>34</sup>

## Conclusions

When researching the subject specified in the title of this study, it is worth emphasizing that the Polish legislator honoured the requirements of the BRRD Directive. Its preamble clearly specifies the objective of this measure as minimization of the impact on the stability of the financial system, especially where public authorities have much easier access to credits than citizens. In other words, LGUs were included in the group of those entities that theoretically may incur greater losses than

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<sup>34</sup> Source material: <https://bip.brpo.gov.pl/pl/content/samorzady-bank-lokalny-tarapaty-BFG-RPO> [access: 14.09.2023].

trading participants, and this is all in the interest of the stability of the financial system. The funds that LGUs may potentially lose as a result of resolution will be used to cover the bank's losses. In a way, the BGF's actions as part of the resolution were dependent on it. The position expressed in the BRRD Directive also is supported by the European Banking Authority because it concludes that the exclusion of LGUs from the deposit guarantee scheme is justified by the possibility of the state ensuring other forms of protection of local authority deposits. When it comes to the insolvency of PBS and the LGUs losing part of their deposits, the state launched a "compensation mechanism." At the same time, it needs to be emphasized that it is in no way a formalized protective mechanism, but only an ad hoc action. The loss of part of LGUs' deposits, irrespective of any other steps, will always have an impact on the LGUs' financial situation and long-term standing. Even a short-term suspension of execution of investment by certain local governments in Podkarpackie Voivodship was an essential problem, also organizational, and could have negative, for example, legal, consequences.

When analysing the situation of these LGUs that felt the consequences of BGF's decisions in the case of the resolution of PBS, they should become a starting point for a discussion on a possible need to protect LGUs' funds kept in bank accounts. This discussion should also concern the terms for choosing a bank for the provision of financial services for the local government. We may ponder whether granting LGUs the status of a depositor is possible and necessary at all. It would be wise to point out that LGUs hold their bank accounts mainly in cooperative banks. Such conclusions are extremely important because an analysis of insolvency in the banking sector in Poland shows us that the lion's share of cases of insolvency was, in fact, in such cooperative banks. In 1989–2011, 138 banks declared insolvency, of which 132 were cooperative banks. The recent insolvencies include the 2015 insolvency of Spółdzielczy Bank Rzemiosła i Rolnictwa in Wołomin. Ząbki Commune, which deposited its funds there, lost more than PLN 2 million. In 2016, another bank declared its insolvency, namely Bank Spółdzielczy in Nadarzyn, which also handled bank accounts of the local commune.

In conclusion, we need to clearly state that *de lege ferenda* actions need to be taken at the stage of a bank selection to maintain a bank account for the LGU. Therefore, we need to think about whether local governments are able to check the financial condition of the bank before signing the contract and whether they should be afforded such an opportunity. The possibility of verifying the bank's financial reports and various indicators that result from reporting is also indicated. The information made available by some local governments shows that capital ratio is sometimes taken into account assuming a specific threshold, e.g. 15%, above which

the ratio must not sit when signing the contract and which cannot fall under this value during the term of the contract. Some local governments monitor this ratio. The city of Płock may be given as an example here. Under the contract, the bank has an obligation to send the city yearly information on the capital ratio and notify the city if it falls under 15%. If it stays below 15% for longer than three months, the city has the right to terminate the contract. Another example of “good practices” in the provision of banking services is Poznań. In the course of the bank selection procedure, Poznań officials verified, i.e., financial information available on the websites of individual banks. Additionally, the number of branches and their offer were also inspected. These examples lend themselves to the conclusion that price should not be the sole criterion for selecting the bank. When choosing a bank on terms specified in public procurement regulations, the price criterion cannot be the only factor in assessing the offers. The bank’s stability, measured by the amount of the initial capital, should be a necessary criterion.

We may postulate *de lege ferenda* that the legislator specified the rule for selecting a bank by reference to the financial situation of this institution, e.g. by stipulating proportionate calculation of the amount of the bank’s initial capital against the budget (expenses) of a given LGU. Without a doubt, the key is to specify correctly the parameters of a tender for the provision of financial services to LGUs. It may be concluded that LGUs should, at this stage, set requirements as to having and maintaining a specific financial standing. Perhaps we should assume that basic financial indicators will be examined every quarter to make sure that the bank is in good financial condition. Should selected indicators fall below set thresholds, the local government could have the right to terminate the contract and withdraw its funds. Certain doubts may arise on account of this concern about the correct verification of these indicators. A question arises as to who, on the LGU side, should verify them.

It needs to be emphasized at the same time that local governments have different needs when it comes to banking services and different preferences as to how they should be delivered. This diversity may be satisfied if the criteria for assessing the banks’ offer may be individually adjusted to the needs signalled. *De lege ferenda*, it might seem worth considering an expansion of the activity of Bank Gospodarstwa Krajowego so that it could offer to local governments not only credit and bond products, with no regard to their existing debt but also current banking services. Some scholars have already argued that Article 264 (1) of the Public Finances Act should be amended as follows: “Banking services for the budget of a local government unit shall be provided by Bank Gospodarstwa Krajowego or a bank selected on terms specified in public procurement regulations.”

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