

NATIONAL AND EU REGULATIONS IN THE AREA OF THE REMUNERATION OF BOARD MEMBERS OF THE BANK GOSPODARSTWA KRAJOWEGO. THE CURRENT SITUATION AND AUTHOR'S PROPOSAL FOR AMENDMENTS

Abstract:

Remuneration shaping in the social, political and economic context occurring in the economy, is of particular importance in the employment relationship. The author takes into account the specificities of the Bank Gospodarstwa Krajowego activities in the context of the remuneration of its board members in respect of the national and community regulation. The Bank Gospodarstwa Krajowego was appointed by the state to fulfill the public service mission, in particular by the financial support of the economic policy of the Council of Ministers. In the present article, the author focuses mainly on the issue of the *Law&Economics* in the area of remuneration of the management board members of the Bank Gospodarstwa Krajowego. The purpose of this article is an attempt to give application value conducted by studies i.e. preparing a draft project of legal solutions.

Keywords: the Bank Gospodarstwa Krajowego, *Law&Economics*, remuneration of board members, pay policy.

Introduction

Remuneration is a part of the employment relationship, which is shaped in the social, political and economic context occurring in the economy. Pay is of a global dimension primarily due to its two main functions, i.e. motivation and cost as they constitute an important factor of competitiveness as the main tool of motivation to work more efficiently as well as the major factor in the cost of labour [Nyk, 2012]. Remuneration is a compensation and at the same time a reward for the job done. The motivational function of pay is visible here. It is the instrument for shaping the desired attitudes and behavior of employees. The meaning of

the efficiency of pay is based on associating interests (expectations) of employees and on who motivates them. The employee achieves benefits in exchange for the implementation of the tasks set by the organization in line with expectations of the organization employing them [Polańska, 1999; Nyk, 2012].

The regulations of the Act of 26 June 1974 – the Labour Code determine pay between the employee and employer, mainly as a regulator of relations on the issues of employment and working conditions and remuneration to a lesser extent. The role of the state does not constitute detailed solutions in the form of regulations or laws in the area of pay policy [Stachowska, 2007]. The construction of a free market economy, the need for economic recovery and the dynamic efficiency generate challenges for all levels of business entities, including remuneration policy. The role of the state in the remuneration policy amounts to determining the regulation of the Act of 10 October 2002 on minimal remuneration for work and of 3 March 2000 on remuneration of persons managing certain legal entities (“the Salary Cap Act”). The Bank Gospodarstwa Krajowego also applies the Salary Cap Act in practice.

In the present article, the author focuses mainly on the issue of the *Law&Economics* in the area of remuneration of the management board members of the Bank Gospodarstwa Krajowego. The purpose of this article is an attempt to give application value conducted by studies i.e. preparing a draft project of legal solutions.

The *Law&Economics* as an academic discipline is placed between economics and legal science using the tools of economic science indicating the directions of activities of the state in the area of legislation. The positive and normative trend can be distinguished in the above discipline. A positive economic analysis of law focuses on predicting the effects of regulation for the functioning of the economy, through analysis and efficiency in the economic terms of the current regulation. The achievements of the *Law&Economics* is used for studies with the aid of economic methods and effects of legal solutions prior to introducing regulations (*ex ante*) and after introducing regulations (*ex post*). However, the normative economic analysis of law, based on economic principles provides recommendations for activities carried out in the legislation. Putting forward proposals for amendments affects the state authorities with a view to creating more favorable regulations for economic and/or social entities.

To quote Professor Jerzy Stelmach, the current trend of the economic efficiency of the *Law&Economics* can be represented as [Drywa, 2015]:

- 1) the maximization of social welfare (Posner); the law with a view to its effectiveness should allow for selecting a solution that maximizes social welfare (social benefit);
- 2) improvement (refinement) of the economic position of at least one entity, while retaining the status of the others (Pareto);
- 3) achievement of “greater benefits” (Kaldor-Hicks); the legal solution is economically effective, the adoption of which means that benefits for certain entities as a result of this solution are higher than the losses of entities affected admittedly as a result of the change;

- 4) increasing or decreasing marginal costs in terms of a marginal analysis of the legal solution is cost-effective when implementing some kind of desirable objective only to a level in which the marginal social cost of achieving this objective and marginal social benefits resulting from the implementation of this objective are aligned.

1. The Activity of the Bank Gospodarstwa Krajowego

The Bank Gospodarstwa Krajowego was appointed by the state to fulfill the public service mission, in particular by the financial support of the economic policy of the Council of Ministers and refers in this respect to their pre-war tradition. According to the current the Article 4 of the Act of 14 March 2003 on the Bank Gospodarstwa Krajowego, the underlying purpose of the Bank's activities, to the extent permitted by law and other regulations, should be supported by the Economic Policy of the Council of Ministers, the government socio-economic and local government programmes as well as regional developments, including project drafts in particular:

- 1) those implemented using resources from the European Union funds and international financial institutions within the meaning of the Article 4 item 1 point 3 of the Act of 29 August 1997 – the Banking Law,
- 2) infrastructural,
- 3) related to the development of small and medium-sized enterprises – including those implemented by using public funds.

Although the Bank Gospodarstwa Krajowego may also run missionary market activities, it should be noted that the basic business objectives of the Bank Gospodarstwa Krajowego are set out in the Act on the Bank Gospodarstwa Krajowego and refer to supporting the activities of the Council of Ministers. Indeed the legislator decided that these objectives are “essential”, which conversely means that other objectives pursued by the Bank Gospodarstwa Krajowego do not have such a character. The public service mission of the Bank Gospodarstwa Krajowego was carried out for mutual relations and the missionary market activities referred also to the justification to the draft project Act on the Bank Gospodarstwa Krajowego, according to which „ *the Bank Gospodarstwa Krajowego combines full commercial activities in the field of domestic and foreign trade with the mission in terms of financial support for socio-economic projects of the state. The commercial activity, however, serves to increase the efficiency of implementation of the tasks assigned and the expansion and strengthening the infrastructure and resources of the Bank, which are used to carry out the work by public administration authorities*”. This is also confirmed by the defined mission of the Bank Gospodarstwa Krajowego as follows: „ *The mission of the Bank Gospodarstwa Krajowego is the efficient and cost-effective implementation of the activities commissioned by the state and supplemented by the development of an attractive offer of its own activities for selected market segments in which the bank can use its natural advantages.*” [Justification for the draft act on the Bank Gospodarstwa Krajowego, 2002].

During the drafting the Accession Treaty, the concept of placing the Bank Gospodarstwa Krajowego on the list of credit institutions was adopted – in which the EU rules on the issue of banking do not apply (i.e. under the then applicable Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 on credit institutions taking up and conducting business). This position was, among others, conditioned by the facts that during negotiations prior to the Treaty [Olszówka and Skuza, 2003]:

- 1) the Bank Gospodarstwa Krajowego primarily act as a state financial policy instrument, and focuses primarily on the implementation of tasks assigned by the Council of Ministers;
- 2) due to the nature and scope of business, the Bank Gospodarstwa Krajowego was not in competition for its remaining entities;
- 3) the Bank Gospodarstwa Krajowego was not classified in the public finance sector, however it fulfills the function of the institutions supporting the implementation of the economic policy of the Council of Ministers by market methods;
- 4) the main tasks assigned by the Council of Ministers is to manage funds established by the way of legislation;
- 5) in the future, the Bank Gospodarstwa Krajowego would remain as a state bank;
- 6) tasks related to financing specific government programmes have been implemented in accordance with accepted principles of the European Union promoting economic development;
- 7) exclusion would enable using the Bank Gospodarstwa Krajowego to pursue general economic and general social tasks outlined by the state (e.g. the promotion of exports, the implementation of the state policy towards selected sectors of the economy, supporting large investment projects).

The consequence of above suggestions, in accordance with the Article 2(5) (18) of the Directive of the European Parliament and of the Council 2013/36/EU of 26 June 2013 on the conditions of admission of credit institutions to activities and the prudential supervision of credit institutions and investment firms amending the Directive 2002/87/EC and repealing the Directive 2006/48/EC and 2006/49/EC („the CRDIV Directive”), is the subjective exclusion of the Bank Gospodarstwa Krajowego from the application of this Directive. The Bank Gospodarstwa Krajowego by reference to the provisions of the Directive mentioned above is also excluded from obligation to comply with standards and regulations set forth by the European Parliament and of the Council (EU) no. 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending the Regulation (EU) No 648/2012 (“the CRR”) without having to implement into the national law.

As already pointed out, the business activity of the Bank Gospodarstwa Krajowego is to support the economic policy of the Council of Ministers by carrying out tasks related to the management of funds and government programmes

and the EU created, assigned or transferred to the Bank Gospodarstwa Krajowego under separate acts or agreements, in particular:

- 1) the Thermo-modernization Fund,
- 2) the Technology Credit Fund,
- 3) the National Road Fund,
- 4) the Railway Fund,
- 5) the Inland Waterways Fund and Reserve Fund,
- 6) the Student Loan Fund,
- 7) the Social rental building programme (TBS Programme),
- 8) the Loan subsidy programme for residential flats for young people,
- 9) the Social housing support programme funded by subsidy funds,
- 10) the Programme of Financial Support for Export,
- 11) the Programme financing urban projects in the form of repayable financial instruments under the JESSICA initiative,
- 12) the Programme financing social economy companies,

as well as guarantees and sureties in government programmes.

In addition, the Bank creates and invests in investment funds, among others.:

- 1) the Rental housing fund;
- 2) the Polish Fund of the Growth Fund.

The Bank's activity is also the service of:

- 1) bank accounts of the state budget,
- 2) local government unit budgets,
- 3) voivodships budgets for efficient distribution of EU funds,
- 4) state or local government accounts, legal entities established under separate acts for the execution of public tasks.

Table 1. The scale and main areas of activity of the Bank Gospodarstwa Krajowego

Management		
Ownership structure	State-owned bank	
The mission of the Bank Gospodarstwa Krajowego	Specified by the Act of 14 March 2003 on the Bank Gospodarstwa Krajowego	
Strategy of the Bank Gospodarstwa Krajowego	Long term development programme – Strategy of the Bank Gospodarstwa Krajowego for 2014-2017	
Financial results	2013	2014
Results from banking operations	1,174.3 mln PLN	795.1 mln PLN
Operating expenses and depreciation	248.3 mln PLN	267.5 mln PLN
Difference between provisions and revaluation	86.0 mln PLN	70.6 mln PLN
Gross result	841.7 mln PLN	472.2 mln PLN

Net result	740.3 mln PLN	434.6 mln PLN
Gross loans	13,636.0 mln PLN	17,971.5 mln PLN
Customer deposits	26,348.1 mln PLN	30,238.0 mln PLN
Basic funds	7,269.8 mln PLN	8,376.1 mln PLN
Balance sheet total	43,848.8 mln PLN	51,231.4 mln PLN

Place of work

Headcount as 31 December	1,275.9 job time	1,288.4 job time
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Business development and enterprise

The value of repayable assistance granted under the JEREMIE initiative	1,269.0 mln PLN	1,050.0 mln PLN
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Value of guarantees granted by the Bank Gospodarstwa Krajowego under OP DEP for SMEs	133.9 mln PLN	184.0 mln PLN
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Value of loans granted under OP DEP for SMEs	114.8 mln PLN	229.0 mln PLN
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The amount of investment agreements concluded under the JESSICA initiative	372.5 mln PLN	156.0 mln PLN
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Value of export credits covered by DOKE agreements	144.0 mln EUR and 590.0 mln NOK	630.0 mln DKK and 1,345.0 mln NOK
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Value of guarantees/warranties on an individual basis granted under the Enterprise Support Programme	24.9 mln PLN	0.2 mln PLN
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Value of the portfolio of guarantees granted under the Enterprise Support Programme	7,277.5 mln PLN	9,744.6 mln PLN
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The amount of subsidies for interest on student loans	59.2 mln PLN	42.6 mln PLN
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Financing infrastructure projects

The total amount of transactions within the Polish Investment Programme	5,346.7 mln PLN	14,876.8 mln PLN
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Environmental Protection

The number of thermo-modernization, renovation and compensation bonuses	1,348	3,398
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The value of thermo-modernization, renovation and compensation bonuses	85.0 mln PLN	185.5 mln PLN
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Housing infrastructure

The amount of paid support under the social housing programme	56.9 mln PLN	62.3 mln PLN
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Social commitment

Donation to the JK Steczkowski BGK Foundation, which implements programmes of social engagement in areas such as equal educational opportunities, the development of social capital and voluntary work	1.3 mln PLN	3.5 mln PLN
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Source: the Bank Gospodarstwa Krajowego

2. Application of the Act of 3 March 2000 on remuneration of persons managing certain legal entities for the Bank Gospodarstwa Krajowego

Despite current practice, it is legitimate to state that it is impossible to point to a clear legal basis for the position according to which the scope of this Salary Cap Act; the rules for determining the remuneration of members of the Management Board of the Bank Gospodarstwa Krajowego have been included.

The idea mentioned above can be proved in a view of the fact that its scope specified in Article 1 and Article 2 of the Salary Cap Act does not cover state-owned banks. At the same time the provisions of the Act include an exhaustive list of employment entities as well as an exhaustive list of persons employed in entities to which the provisions of the Salary Cap Act apply. This list includes state-owned enterprises and state entities with legal personality that are not yet public agencies, research institutes and are not higher education institutes.

In accordance with the Article 14 item 3 of the Act of 29 August 1997 – the Banking Law, the Bank Gospodarstwa Krajowego operating as a state bank is not state-owned company within the meaning of the Article 4 item 2 point 1 of the Act of 25 September 1981 on state-owned enterprises. At the same time the Act of 29 August 1997 – the Banking Law clearly indicates that the state bank is not subject to entry in the state enterprise register. There is therefore no doubt that the Bank Gospodarstwa Krajowego is not directly a state-owned bank subjectively covered by the disposition of the Article 1 item 1 point 1 of the Salary Cap Act, which provides its application to state-owned enterprises.

As is apparent from the Article 1 item 1 point 2 of the Salary Cap Act, state entities with legal personality are also obliged to apply its use. The concept of the state-owned organization in the present state of the law does not have a legal definition. Thus, in order to determine the status of the entity as a state-owned organization, it is necessary to refer to the rules governing legal-organizational form of its activities. The legal and organizational activities of banks are set out in the Act of 29 August 1997 – the Banking Law. An exhaustive list of legal and organizational forms in which banking activities can be carried out are set out in the Article 12 of the Act of 29 August 1997 – the Banking Law. This list includes state-owned banks and cooperative banks operating as joint stock companies. At the same time the Act of 29 August 1997 – the Banking Law, as a systemic legal act regulating the operation of banks, does not indicate that the state-owned bank was a state organizational unit. Indicating such solution, it does not contain other legislation governing the operation of the Bank Gospodarstwa Krajowego. The

Act on the Bank Gospodarstwa Krajowego, as well as the Statute of the Bank Gospodarstwa Krajowego attributed by the Regulation of the Minister of the Treasury of 11 May 2010 on the Statute of the Bank Gospodarstwa Krajowego, do not indicate that the Bank Gospodarstwa Krajowego was a state organizational entity.

By accepting the principle of rationality of the legislators it should be assumed that if its will was to define the Bank Gospodarstwa Krajowego as a state-owned organization, in the absence of universal legal definition of this term, the relevant provision would be included in the Act of on the Bank Gospodarstwa Krajowego, i.e. its own legal complex and core business of the Bank Gospodarstwa Krajowego specific to other acts. This solution is supported by legislative practice. It should be noted that the legislator assigning the status of a particular state-owned organization states this fact directly in the provision of the statutory rank. Such descriptions can be found for example in the Act of 20 December 1996 on the Polish Institute of International Affairs, Act of 14 June 1991 on the National School of Public Administration, the Act of 8 August 1996 on the Council of Ministers, under which the Government Legislation Centre was established, the Act of 8 July 2005 on the General Prosecutor's Office, as well as in the Article 96 item 1 of the Act of 27 August 2004 on healthcare services financed from public funds and the Article 66 of the Act of 13 October 1998 on the social insurance system. Provisions of those laws clearly indicate that the entities established thereunder are state organizational entities.

It is also necessary to indicate that the provisions of the Salary Cap Act introduce an exception under the Labour Code Act in respect of the principle of freedom to shape the content of the employment relationship in the area of employee remuneration. Therefore, the scope of the provisions of the Salary Cap Act cannot be interpreted broadly. So if the list of entities obliged to apply the Salary Cap Act does not mention state-owned banks, it must be assumed that the principles of remuneration of members of the Management Board of the Bank Gospodarstwa Krajowego should be determined on a general basis, under the provisions of the Labour Code Act.

The different position occupied by the Ministry of the Treasury indicating the Bank Gospodarstwa Krajowego as a state organizational entity with legal personality which – within the meaning of the Ministry of the Treasury - determines the nature of the organization, and is conducted by the activity of the Bank Gospodarstwa Krajowego [the Letter from the Capital Markets Department, 2013]. It should be noted, however, that by accepting this argument there would be no need to mention a very broad list of entities in the Article 1 of the Salary Cap Act as most entities would meet the conditions to qualify for state organizational units with legal personality. In addition, assuming the rationality, legislators should pay attention to the fact that the Act of 21 August 1997 on the limitation of economic activity by persons performing public functions and thus the Act and that earlier case defined in the Article 2 point 7 refers directly to selected employees of the state-owned bank.

In accordance with the Article 8 point 1 of the Salary Cap Act the maximum amount of monthly remuneration in state organizational entities with legal

personality cannot exceed six times the average monthly salary in the enterprise sector excluding payments from profit in the fourth quarter of the previous year, as announced by the Central Statistical Office (pursuant to the Article 29f of the above-mentioned Salary Cap Act, the average salary was frozen in 2009).

On the basis of the Article 9 of the Salary Cap Act, the Prime Minister has the right by regulation to specify a list of entities in which the maximum salary cap could be increased by 50%. To date, no such regulation has been issued.

3. EU Banking regulations relating to the remuneration

The Bank Gospodarstwa Krajowego is a Polish development bank, acting as a state bank, pursuing a public mission to support socio-economic policies of the government. At the European level the Bank Gospodarstwa Krajowego has been excluded from the CRDIV/CRR package subjectively under the Article 2(5) (18) of the CRDIV Directive but at the national level the Bank Gospodarstwa Krajowego is governed by the banking and supervision by the Polish Financial Supervision Authority and as such must abide by the same rules as commercial banks, with minor exceptions. This kind of legal arrangement means that the Bank Gospodarstwa Krajowego (and those European public banks for which similar solutions are used) come under an essential part of the requirements that are consequences of the CRDIV Directive and the complementary legislation regarding remuneration policy under the guidance of the European Banking Authority.

Currently, the Bank Gospodarstwa Krajowego principles adhere to the guidelines of the Committee of European Banking Supervisors (“the CEBS”), implemented into national law by the Polish Financial Supervision Authority resolution No. 258/2011 of 4 October 2011, taking into account the neutralization of certain provisions which are impossible to implement due to the specificity of the bank (business model/structure of ownership), which the CEBS guidelines permitted.

On the other hand, the provisions of CRDIV (implemented into the Act of 29 August 1997 – the Banking Law) treat the Bank Gospodarstwa Krajowego as a commercial bank by imposing, among others, the following remuneration requirements:

- 1) the requirement in the Article 94(1)(m) of the CRDIV Directive to defer payment of at least 40% of the variable remuneration.
- 2) the requirement in the Article 94(1)(l) of the CRDIV Directive that at least 50% of variable remuneration to be paid out in instruments so as to maintain the balance of the shares and the corresponding interests of ownership, subject to the legal structure of the institution or instruments linked to shares or other non-financial instruments and where possible with other instruments properly representing the credit quality of the institution over a long period of time.
- 3) the requirement in the Article 94(1)(n) of the CRDIV Directive that 100% of the variable remuneration is reduced or there is revocation of pay.

As a state-owned entity the Bank Gospodarstwa Krajowego is in practice a subject to the Salary Cap Act. According to this regulation, the maximum monthly salary of members of the Management Board of the Bank Gospodarstwa Krajowego may not exceed six times the average monthly salary in the enterprise sector (currently approx. 1 thousand Euros). The Act also limits the maximum amount of variable annual remuneration for board members to three times the monthly salary.

In a state bank, in the absence of capital, it is not in practice possible to use solutions which assumes payment of a part of the variable remuneration in financial instruments with shares. It is also possible to create other instruments based on the value of the company at the time (of capital instruments qualifying as core capital), which could be paid to private individuals – employees of the bank, and then transferred for trading by them on the secondary market.

Table 2. The remuneration of board members of selected public European development banks in 2013.

Bank	Country	General principles for the remuneration of the Board/Principles concerning the allocation of variable remuneration components	Remuneration of the CEO	Remuneration of the members of the Management Board
KfW	Germany	The bonus for the President is awarded on the basis of an agreement defining the objectives (50% quantitative and 50% qualitative) for the year; it is indicated in the upper cap for the bonus.	Fixed remuneration components: 699,000 Euros. Variable remuneration components: 260,000 Euros. Others: 82,000 Euros. Total: 1,041,000 Euros.	From 550 to 590 thousand Euros in total.
CDP	Italy	The annual variable bonus is paid at the request of the remuneration Committee based on: 1) 50% of annual achievement of quality objectives (assessed by the Management Board);	Remuneration of Chairman of the Board of Directors. Fixed/variable ratio remuneration components: 80/20. Fixed remuneration due to the	Remuneration of Chairman of the Board of Directors. Fixed/variable ratio remuneration components: 74/26. Fixed remuneration due to the

		2) 50% of the quantitative targets for profit group. In addition, „three-year incentive element” is paid out if both qualitative and quantitative were achieved in the following three years.	function: 70,000 Euros. The remuneration for the risks involved: 166,305 Euros. Annual bonus: 39,130 Euros. Three-year incentive element: 19,565 Euros. Total: 295,000 Euros.	function: 35,000 Euros. The remuneration for the risks involved: 572,025 Euros. Annual bonus: 190,675 Euros. Three-year incentive element: 25,425 Euros. Total: 823,125 Euros.
Bpifrance	France	According to the decision of the Administrative Council of 12 July 2013, a ceiling for annual remuneration of the President of EUR 450 thousand gross Euros was implemented.	188,888.87 Euros of fixed remuneration paid for 2013 (calculated from 12 July 2013 - from the moment of entry into office of the current President).	No data.
ICO	Spain	The basic remuneration defined in the Royal Decree no. 451 of 5 March 2012 which establishes that for a core group of managers (max. 15 persons in the institution) the basic remuneration may not exceed 105,000 Euros per year. Variable remuneration components may not exceed the amount of the annual base salary.	The Board total (5 people): Fixed remuneration components: 538,000 Euros. Variable components of remuneration: 70,000 Euros. Others: 2,000 Euros. Total: 610,000 Euros.	

Source: the International Cooperation Office of the Bank Gospodarstwa Krajowego on the basis of the annual reports

4. Conclusion and author's proposals for solutions

For both the presented legal regulations as well as the statement of earnings of the board members of European state development banks there is an inclination to take action on remuneration policy changes for the top management of the Bank Gospodarstwa Krajowego. In conclusion, the author proposes the following solutions:

- 1) in the area of national legislation there are two alternative solutions:
 - a) exemption from the Salary Cap Act,
 - b) issue a regulation under the Salary Cap Act;
- 2) EU legislation in the area of exemption from certain provisions of the CRDIV Directive.

Ad. 1a.

The author proposes the introduction of a provision which clearly implies that the remuneration of the Bank Gospodarstwa Krajowego, i.e. the Supervisory Board and the Management Board, do not apply the Salary Cap Act. A similar provision is contained in the Article 14 item 1 of the Act of 7 September 2007 on preparation of the final tournament of the UEFA European Football Championship EURO 2012, not applying the above Act to a special purpose company responsible for the preparation of EURO 2012.

Changes in the Article 10 of the Act of 14 March 2003 on the Bank Gospodarstwa Krajowego are also suggested by adding items 9 and 10. These provisions indicate the remuneration of members of the Management Board of the Bank Gospodarstwa Krajowego, which would consist of basic remuneration and a discretionary bonus (defined by resolution of the Supervisory Board). The Bank Gospodarstwa Krajowego, specializing in serving the public finance sector is an important player in the domestic financial system, which provides cost-effective and efficient support of the state socio-economic programmes and local government regional development programmes.

The following are proposals for provisions of the Act on the Bank Gospodarstwa Krajowego:

Article 1. The Act of 14 March 2003 relating to the Bank Gospodarstwa Krajowego (the Journal of Law of 2014, item 510, as amended) is amended as follows:

1) in the Article 3 after item 2 the following item 2a is inserted:

2a. For the remuneration of the persons referred to in the Article 10 of the Act of 3 March 2000 on remuneration of persons managing certain legal entities (the Journal of Law of 2013, item 254, as amended) does not apply.

2) in the Article 10 after item 8 the following items 9 and 10 are inserted:

9. The remuneration of persons referred to in item 2, consists of a basic salary and a discretionary bonus.

10. The basic remuneration of persons referred to in the item 2, and the rules and the amount of the award of discretionary bonuses determined by the Supervisory Board by way of resolution.

Ad. 1b.

In accordance with the Article 9 of the Salary Cap Act of the Prime Minister, by ordinance, establishing a list of entities of special importance for the state, taking into account in particular:

- 1) the type of service or the subject of production;
- 2) operating range of the entity;
- 3) the turnover of the entity;
- 4) the number of staff employed in the entity.

The Bank Gospodarstwa Krajowego as a state-owned bank within the meaning of the Act of 29 August 1997 – the Banking Law, is a part of the entity of special importance for the state. Evidenced by the fact of advisability of the main business activity of the Bank by supporting government socio-economic programmes and local government and regional development programmes, as well as functional activity in the area of economic development. It should be noted that the type of the Bank service is an important component of the national economy.

Table 1 unquestionably shows that the Bank Gospodarstwa Krajowego meets the guidelines set out in the Article 9 point 1-4 of the Salary Cap Act by what should be included in the ordinance. It is not without significance that the process of privatization has reduced the number of entities subject to the Salary Cap Act. In addition, the question of the lack of opportunities for the outsourcing risk management by banks should also be stressed, as defined in the Article 6a item 3 of the Banking Law Act. In the case of commercial law entities other than banks, there is a possibility of business management under civil law contracts relating to remuneration under employment law (i.e. management contract), resulting in a lack of application of the Salary Cap Act.

The following are provisions of proposals of the Prime Minister Ordinance on the list of entities of special importance for the state:

Pursuant to the Article 9 of the Act of 3 of March 2000 on the remuneration of persons managing certain legal entities (the Journal of Law of 2013, item 254, as amended) is hereby ordered as follows:

§ 1. Establishing a list of entities of special importance for the country annexed to the Ordinance.

§ 2. The Ordinance shall enter into force after 14 days from the date of announcement.

*Annex to the Ordinance of the Prime Minister
of ... 2016*

LIST OF ENTITIES HAVING A SPECIAL MEANING FOR THE STATE

1) Bank Gospodarstwa Krajowego.

Ad. 2.

In the area of remuneration policy (on the basis of the implementation of the CRDIV Directive) the Act of 29 August 1997 – the Banking Law treats the Bank Gospodarstwa Krajowego as a typical commercial bank. With regard to the CRDIV Directive, it proposed to exclude it due to the nature of the Bank Gospodarstwa Krajowego as a state-owned development bank. An appropriate solution

seems to be the institution of a *lex specialis* in the Act on the Bank Gospodarstwa Krajowego exempting provisions of the Act of 29 August 1997 – the Banking Law implementing the CRDIV provisions on remuneration policy.

The following are proposition provisions of the Act of 14 March 2003 on Bank Gospodarstwa Krajowego:

Article 1. In the Act of 14 March 2003 on Bank Gospodarstwa Krajowego (the Journal of Law of 2014 item 510, as amended) in the Article 3 after item 1e the following item 1f is inserted:

1f. The BGK provisions of the Article 9ca, the Article 1 item 2 point 1 and point 2, and the Article 9f, item 1 point 1 and point 2 of the Act of 29 August 1997 - the Banking Law does not apply.

Bibliography

- Dyrwa A. 2015. Referat nt. *Efektywność wartością procedury dochodzenia odškodowania za wydanie niezgodnej z prawem decyzji podatkowej?*. International Conference on Challenges of Finance Law. Karlskrona. Sweden.
- Nyk M. 2012. Efektywnościowy system wynagrodzeń w przedsiębiorstwie. *Zarządzanie i Finanse/Journal of Management and Finance*, no. 1/2012, pt. 3. Uniwersytet Gdański. Gdańsk. Poland.
- Olszówka T., Skuza S. 2003. Ustawa o Banku Gospodarstwa Krajowego. *Prawo Bankowe* nr 9/2003. Poland.
- Polańska A. 1999. *Zarządzanie personelem. Zasady, zadania i wymagania stawiane menedżerom*. Wydawnictwo Uniwersytetu Gdańskiego. Gdańsk. Poland.
- Stachowska S. 2007. *Wynagrodzenie w strategicznym zarządzaniu przedsiębiorstwem*. Dom Organizatora. Toruń. Poland.
- The Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the access to and pursuit of the business of credit institutions. The Official Journal Office L 126 of 26 May 2000, p. 1, as amended.
- The Directive of the European Parliament and of the Council 2013/36/EU of 26 June 2013 on the conditions of admission of credit institutions to the business and the prudential supervision of credit institutions and investment firms and amending the Directive 2002/87/EC and repealing the Directive 2006/48/EC and 2006/49/EC. The Official Journal Office EU L 176 of 27 June 2013, p. 338, as amended.
- The Letter of Capital Markets Department of the Ministry of the Treasury of 31 January 2013.
- The Ordinance of the Minister of State Treasury of 11 May 2010 on the Statute of Bank Gospodarstwa Krajowego. The Official Journal of Law No. 81, item 535, as amended.
- The Regulation of the European Parliament and of the Council (EU) No 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012. the Official Journal Office EU L 176 of 27 June 2013, p. 1, as amended.
- The Resolution No. 258/2011 of the Polish Financial Supervision Authority dated 4 October 2011 on detailed principles of functioning of the risk management system and internal control system and the specific conditions of assessing banks'

internal capital and reviewing the process of assessing and maintaining internal capital and the rules for determining variable remuneration components policy of people holding managerial positions in the bank. the Official Journal of the Polish Financial Supervisory Authority, No. 11, item 42, as amended.

- The Act of 26 June 1974. The Labour Code. The Journal of Law of 2014, item 1502, as amended.
- The Act of 25 September 1981 on state-owned enterprises. The Journal of Law of 2002, No. 112, item 981, as amended.
- The Act of 14 June 1991 on the National School of Public Administration. The Journal of Law No. 63, item 266, as amended.
- Act of 8 August 1996 on the Council of Ministers. The Journal of Law of 2012 item 392, as amended.
- The Act of 20 December 1996 on the Polish Institute of International Affairs. The Journal of Law No. 156, item 777, as amended.
- The Act of 21 August 1997 on the limitation of economic activity by persons performing public functions. The Journal of Law of 2006, No. 216, item 1584, as amended.
- The Act of 29 August 1997. Banking Law. The Journal of Law of 2015, item 128, as amended.
- The Act of 13 October 1998 on social insurance system. The Journal of Law of 2015, item 121, as amended.
- Act of 3 March 2000 on remuneration of persons managing certain legal entities. The Journal of Law of 2013, item 254, as amended.
- The Act of 10 October 2002 on the minimum wage. The Journal of Law No. 200, item 1679, as amended.
- The Act of 14 March 2003 on the Bank Gospodarstwa Krajowego. The Journal of Law of 2014, item 510, as amended.
- The Act of 27 August 2004 on health care services financed from public funds. The Journal of Law of 2015, item 581, as amended.
- The Act of 8 July 2005 on General Prosecutor's Office. The Journal of Law of 2013 item 1150, as amended.
- The Act of 7 September 2007 on the preparation of the final tournament of the UEFA European Football Championship EURO 2012. The Journal of Law of 2010 No. 26, item 133, as amended.
- Justification for the draft Act on the Bank Gospodarstwa Krajowego of 2002.

KRAJOWE I EUROPEJSKIE REGULACJE W OBSZARZE WYNAGRODZEŃ CZŁONKÓW ZARZĄDU BANKU GOSPODARSTWA KRAJOWEGO. STAN OBECNY I AUTORSKIE PROPOZYCJE ZMIAN

Streszczenie:

Wynagrodzenia kształtowane w kontekście społecznym, gospodarczym i politycznym, występujące w gospodarce, mają szczególne znaczenie w stosunku pracy. Autor bierze pod uwagę specyfikę działalności Banku Gospodarstwa Krajowego w kontekście wynagrodzeń członków zarządu w odniesieniu do prawa krajowego oraz europejskiego. Bank Gospodarstwa Krajowego został powołany przez państwo do wypełniania misji publicznej, w szczególności poprzez finansowe wspieranie polityki gospodarczej Rady Ministrów. W przedmiotowym artykule autor koncentruje się głównie na zagadnieniu ekonomicznej analizy prawa (*Law&Economics*) w obszarze otoczenia regulacyjnego Banku Gospodarstwa Krajowego w zakresie wynagrodzeń członków zarządu Banku Gospodarstwa Krajowego. Celem artykułu jest również próba nadania waloru aplikacyjnego prowadzonym badaniom, tj. przygotowanie projektu rozwiązań prawnych.

Słowa kluczowe: Bank Gospodarstwa Krajowego, *Law&Economics*, wynagrodzenia członków zarządu, polityka płac.