DETERMINANTS, PRINCIPLES AND PERSPECTIVES OF COOPERATION BETWEEN THE POLISH FINANCIAL SUPERVISION AUTHORITY AND THE POLICE IN ECONOMIC SECURITY AND PREVENTION OF ECONOMIC CRIME — A QUEST FOR SYNERGIES

Introduction

In recent years, new legislation has been passed both at national and EU levels, introducing new solutions and arrangements in prevention and combating organised crime, with a particular focus on economic crime. In this regard, the tasks and powers are vested in an increasing number

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of institutions, national and EU bodies and special services. The measures taken in this regard by the legislative authority are the consequence of a change in the structure of actual crimes committed. One could argue that criminals are moving from the streets of cities and towns to the cyberspace, becoming more and more active in the financial market, both in the regulated market and outside it or on the edges of the activities supervised by The Polish Financial Supervision Authority. Police statistics confirm this argument. The recorded economic offences increased from 60,393 (in 1999) to 187,367 (in 2019). Over the same period, the number of documented criminal offences declined by half, from 1,020,654 to 507,183. As shown by the above-mentioned data, economic crime is a fast-growing area of criminal activity. In this context, it appears appropriate to conduct studies on cooperation arrangements concerning institutions responsible for, on the one hand, ensuring the orderly functioning, stability, security and transparency of and the confidence in the financial market, as well as protection of the interests of market participants, and, on the other hand, the institutions fighting economic crime.

The thesis adopted for these reflections is the proposition that the dynamic of the institutional/legal and socioeconomic environments triggers the need to implement effective, efficient and fast arrangements for the exchange of information between the key institutions responsible for the economic security of the Polish State. In fact, in recent years, we have seen a declining trend in the number of so-called ‘petty offences’ and an increase in economic offences. There is no doubt that the KNF is the key institution ensuring the protection of financial market participants. However, due to its original mandate, the institution has no powers in the areas assigned to uniformed services, special services or law enforcement authorities. At the same time, we have identified a high level of social expectations as to the engagement of the financial supervisor in the prevention of economic crime, especially crime in financial markets, both those supervised and those not supervised by the KNF.

For the above reason, the statements and questions in this paper follow two directions. On the one hand, we stress the importance of close cooperation between the financial supervisor and institutions responsible for state security, particularly the police. On the other hand, we would like to initiate a discussion about the evolution of social expectations for financial supervision, especially in terms of economic crime prevention. The debate should start with the question of whether such development should change the public perception of the mandate of the supervisory authority (and consequently, the operating tools the authority should have at its disposal), or whether the traditional perception of the supervisor’s mandate should be maintained, and the response to the changing

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challenges should be sought only through properly arranging the cooperation between the financial supervisor and other state services.

The conceptualisation of the term the state’s economic security

Security, similarly to many other theoretic categories in social sciences, has no single consistent definition. Instead, the doctrine and case law offer a number of definitions from various research perspectives. The authors intend not to provide a full overview of the literature and judicature but rather highlight the most pressing concerns and quote certain definitions. In any case, it is essential to consider the background of different notions of security. According to Stanisław Sulowski, security may be explored on many levels, considering various research perspectives. The simplest model considers security in a negative or positive sense. From a different perspective, security may be understood in an objective or subjective sense. The author also points out that the term security must be more specific, at least in relation to its object or subject. Starting with the above assumption, the scope of a state’s economic security can be analysed since the relationship between economics and security appears unquestionable.

When analysing the term economics as an aspect of security, Katarzyna Żurkowska stresses that economic security means that the state’s policy creates conditions for harmonious development, which helps ensure sustainable prosperity of the nationals of the state. She believes that the term comprises energy security, provisions and reserves, availability of funds for military expenses, the state’s social security.

According to another definition, economic security is ‘the undisturbed functioning of economies and maintaining a comparative balance with the economies of other countries’. Therefore, economic security assessment

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9  Ibid., p. 13.


consists of analysing basic development indices, such as national income, national income per capita, purchasing power at an unchanged or higher level and share in global purchasing power.

Edward Halizak links the term ‘state’s economic security’ to the term ‘threat to the security of national economy’, i.e. a situation where the economy cannot ‘grow, generate profits and savings to be allocated for investment or where external threats cause disruptions in the functioning of the economy, which expose the citizens and business to a risk of loss, or might even threaten the continued physical existence of the state’.  

Stanisław Michałowski believes that economic security is ‘an idea of real or potential economic threats to a country, formed by the country’s general economic relations which are defined by the degree of efficiency of external economic integration in the country’s domestic economic growth, the defensive capacity and the stability of its sociopolitical system’. From that perspective, economic security means the degree of exposure of a state to the economy, transferring politically motivated actions. Eric Marshall Green stresses that economic security is the lack of risk of losing economic wealth.

When analysing the status of the state’s economic security, Małgorzata Leszczyńska argues that the term should be understood mainly as the condition of the economy. The state’s economic security status is determined by the condition of public finance, including public debt and the tendencies in the national economy measured with macro- and microeconomic indicators. However, the state’s economic security is increasingly associated with society. From that perspective, the state’s economic security is defined as a situation where not only economic conditions necessary for the continued existence and orderly functioning of state institutions are secured but so are the conditions necessary for the development of the society living in that state. According to Krzysztof M. Księżopolski, the assessment of economic security consists of analysing basic development indices, such as national income, national income per capita, purchasing power at an unchanged or higher level and share in global purchasing power. The financial dimension is one of the four dimensions of economic security. The other three include access to raw materials and energy, food and clean water. Andrzej Misiuk rightly says that the globalisation of economic, social and political life has brought about global

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13 Ibid.
14 Ibid.
15 Ibid. p. 292.
16 Ibid.
threats. As a result, security, including economic security, has become an international issue.

The institutional position and tasks of the KNF in financial market security

The institutional position and legal form of the KNF

The Polish Financial Supervision Authority (KNF) was established through the combination of the Polish Commission for Banking Supervision (Polish: Komisja Nadzoru Bankowego), the Polish Securities and Exchange Commission (Polish: Komisja Papierów Wartościowych i Giełd) and the Insurance and Pension Funds Supervisory Commission (Polish: Komisja Nadzoru Ubezpieczeń i Funduszy Emerytalnych). The legal basis was provided by the Act of 21 July 2006 on financial market supervision. The said Act implemented the policy objectives of the Council of Ministers in the area of financial market supervision. As emphasised in the statement of reasons for the said Act, its purpose was to carry out an organisational integration of authorities competent for financial market supervision, thus introducing the model of ‘integrated supervision’ of that market. The process of establishing a single supervisory authority, the KNF we know today, was carried out in two stages. During the first stage, related to the entry into force of the Act on financial market supervision, the KNF took over the powers of the Securities and Exchange Commission and the Insurance and Pension Funds Supervisory Commission. During the second stage of the reform, the KNF took over the powers of the Commission for Banking Supervision. Furthermore, significant changes related to the legal framework for financial supervision were made through the Act of 9 November 2018 amending certain laws to strengthen financial market supervision and investor protection (hereinafter: Act on strengthening supervision), which represented the first so profound reform of financial supervision introduced more than ten years after its formal integration.

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22 Act of 9 November 2018 amending certain laws to strengthen financial market supervision and investor protection, Dz.U., 2018, item 2243.
Act has changed the legal framework of The Office of the Polish Financial Supervision Authority by establishing it as a state legal person responsible for providing support and assistance to the KNF and the Chair of the KNF (Article 3(1) of the Act on financial market supervision). The bodies of the UKNF include the KNF, which is competent for financial market supervision, and the Chair of the KNF, who manages the activities of the UKNF and represents the UKNF externally (Article 3(4) of the Act on financial market supervision). In addition to the change of the legal framework of the UKNF, the Act on strengthening supervision also introduced major changes to the composition of the KNF and the rules allowing for exchanging information between the KNF and other state institutions. However, these issues will be explained in more detail in the following parts of this paper.

The KNF is one of the bodies of the widely defined public administration. However, the literature does not provide any consistent view on the legal nature of the KNF. Some authors classify the KNF into ‘central administration bodies, while others point out that the KNF has no status of a government administration body’. The Constitutional Tribunal has analysed the institutional status of the KNF. In the Constitutional Tribunal’s view, the status of the KNF is characterised by a significant degree of self-reliance and independence, greater than in the case of regulatory bodies defined in the statutory law as central government administration bodies. Furthermore, the Tribunal has emphasised that ‘the analysis of the statutory tasks of, and the legal forms of activity that are available to, the KNF, including a broad mandate to issue administrative decisions, has shown that the body in question is an element of the executive. In the light of the provisions of the Constitution, the Act on financial market supervision and other laws, it should be concluded that The Polish Financial Supervision Authority is a special public (state) administration body, however located outside the structure of the government administration’.


26 Ibid.
Remit, objectives and tasks of the KNF

By establishing the KNF, the Polish legislator applied the concept of integrated financial supervision (covering bank supervision, insurance supervision and capital market supervision) located outside a central bank. The integration of financial supervision and the location of the bank supervisor embedded in or outside the central bank have been addressed in a relatively large number of statements made to identify the advantages and disadvantages of each institutional solution.\footnote{Cf.: e.g. Wojno B, [in:] Wierzbowski 2018, 3rd ed., comments No. IV.1. and IV.4. on Article 1, Legalis; Oziębało W, Współczesne tendencje kształtowania się modelu nadzoru bankowego. Nadzór makro i mikroostrożnościowy Warsaw, 2020. See also: Address by Jacek Jastrzębski. Electronic source: http://pubdocs.worldbank.org/en/555461560353318728/Session-6-Jacek-Jastrzebski-Chair-of-the-Board-PFSA.pdf, accessed: 15 October 2020.} A more detailed analysis of these issues goes beyond the scope of this paper. However, for further considerations, it should be noted that the KNF has been provided with a wide range of powers. Article 3(4)(1) of the Act on financial market supervision stipulates that The Polish Financial Supervision Authority is competent for financial market supervision. Under Article 1(2) of the Act on financial market supervision, financial market supervision includes banking supervision (exercised in accordance with the provisions indicated in Article 1(2)(1) of the Act), pension supervision (exercised in accordance with the provisions indicated in Article 1(2)(2) of the Act), insurance supervision (exercised in accordance with the provisions indicated in Article 1(2)(3) of the Act), capital market supervision (exercised in accordance with the provisions indicated in Article 1(2)(4) of the Act), supervision of payment institutions and other entities in the payment sector (exercised in accordance with the provisions indicated in Article 1(2)(5) of the Act), supervision of credit rating agencies (exercised in accordance with the provisions indicated in Article 1(2) point 5a of the Act), supplementary supervision — in other words: supervision of financial conglomerates (exercised in accordance with the provisions indicated in Article 1(2)(6) of the Act), supervision of credit unions and the National Association of Credit Unions (Article 1(2) (7) of the Act), supervision of mortgage credit intermediaries and their agents (Article 1(2)(8) of the Act), as well as supervision as provided for in the Benchmark Regulation (Article 1(2)(9) of the Act) and supervision of securitisation (exercised in accordance with the Regulation indicated in Article 1(2)(10) of the Act). The provisions referred to in the subdivisions of Article 1(2) of the Act on financial market supervision are hereinafter jointly referred to as ‘sectoral Acts’.

The detailed description of the scope of financial supervision exercised by the KNF shows not only the scale but also the diversity of types of activities and entities whose operation is monitored by the KNF. Naturally, the nature of supervision can vary considerably for particular entities and their activities. The specifics and scope of bank supervision imply that traditionally
the supervisor’s attention has been focused on the security of the funds deposited by depositors in banks and, consequently, supervision consisted mostly of prudential supervision focused on the stability of all entities, in particular, their capital and liquidity status. Different types of supervision are required for the capital market, for example, concerning public offerings of securities or the performance of disclosure obligations of issuers of instruments listed on the regulated market. Likewise, the KNF’s activities will also be different towards groups of entities for which supervision is minimal and covers mostly keeping a register and exercising relatively limited supervision of the entities’ operations. Such broad scope of financial supervision already means that the KNF’s activities falling within its statutory mandate are characterised by significant diversity, depending on the focus of the supervisory authority on the specific group of entities or their activities, as determined in the sectoral provisions, i.e. the provisions indicated in the relevant point of Article 1(2) of the Act on financial supervision.

Article 2 of the Act on financial market supervision defines the objectives of financial market supervision, including, in particular, ensuring the proper functioning, stability, security and transparency of, and confidence in, the financial market, as well as ensuring the protection of the interests of market participants, including through the provision of reliable information concerning its functioning, which is to be achieved through the implementation of the objectives defined in the sectoral regulations. Importantly, so defined supervisory objectives are the ‘main values the KNF should seek to protect when performing its tasks’. In other words, the supervisory objectives defined in Article 2 of the Act on financial market supervision should be considered by the KNF when performing its tasks using the instruments provided for by legislation. However, those objectives do not represent any empowering basis from which a power or duty to undertake specific actions may be derived. Moreover, the method of achieving those objectives must also consider the systemic position of the KNF as a financial supervisory authority, not as a body appointed to settle disputes between financial market participants or to act as a spokesman of some of them. This means, for example, that the formulation of an objective to protect the interest of market participants does not make the KNF a body authorised or obliged to review individual cases of market participants but requires that the KNF when performing its statutory tasks using the legal tools it has at its disposal should take into account the objective to protect the interest of market participants as an essential element of the integrity and proper functioning of the financial market. Therefore, the interest of financial market participants should be protected using the specific instruments assigned to the KNF, particularly through appropriate supervisory measures applied towards supervised entities.

Moreover, regardless of the broad perspective on the scope of financial supervision in Article 1(2) of the Act on financial market supervision and the formulation of the supervisory objectives in Article 2 of the Act on financial market supervision, financial market supervision *per se* is not the only task of the KNF. In fact, Article 4(1) of the Act on financial market supervision specifies the tasks of the KNF by listing — in addition to financial market supervision under Article 1(2) of the Act on financial market supervision (Article 4(1)(1) of the Act on financial market supervision) — also a number of other tasks of the KNF (cf.: Article 4(1)(2—7) of the Act on financial market supervision).\(^30\) It is indicated that the tasks defined in Article 4(1) of the Act on financial market supervision allow the definition of the following functions of the KNF: the licensing, regulatory, control/supervisory, guiding functions and the policing function (imposing penalties and verification of compliance with formal requirements for persons seeking entry in a register).\(^31\) The broad scope of the tasks of the KNF — regardless of the broad scope of supervision — leads some authors to the conclusion that the scope of the tasks of the KNF indicates that — contrary to the title of the Act, the name of the body and its remit defined in Article 3(2) of the Act on financial supervision — the role of the supervisory authority goes far beyond supervision within the meaning of the term adopted in the science of administrative law.\(^32\) In particular, Article 4(1)(3a) of the Act on financial market supervision establishes a pro-development mandate of financial supervision by adding to the tasks of the KNF undertaking measures to promote the development of the financial market and its competitiveness.\(^33\) In addition, more recently, Article 4(3a) of the Act on financial market supervision has added the task of undertaking measures to promote the development of innovation in the financial market.

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\(^{30}\) The literature points to the distinction between the ‘supervisory tasks’ (Article 4 of the Act on financial market supervision) and the ‘supervisory objectives’ (Article 2 of the Act on financial market supervision) — ‘the supervisory objectives are the values the supervisory authority seeks to protect through its activities’, while ‘the tasks of the KNF […] are generally set out policies aimed at achieving the statutory supervisory objectives.’ On the other hand, the tools available as part of the tasks are the concrete legal instruments assigned to the KNF under the laws (cf.: Wojno B, Wierzbowski 2018, 3rd ed., Article 4(1) of the Act on financial market supervision).


From the perspective of this paper, the main focus is on the tasks of the KNF defined in Article 4(1)(2) and Article 4(1)(4) of the Act on financial market supervision. The first of those provisions sets out the task of the financial supervisory authority to undertake measures to support the proper functioning of the financial market. The proper functioning of the market is understood as its functioning in accordance with the laws and the requirements laid down in general clauses, such as ‘the principles of fair trading’ or ‘the interest’ of a certain group of entities (e.g. unit-holders in an investment fund).  

Prima facie, it could seem that a task so defined is carried out by the KNF precisely by supervising the financial market as referred to in Article 4(1)(1) of the Act on financial market supervision. However, such interpretation would lead to the conclusion of redundancy and needlessness of the regulation provided in Article 4(1)(2) of the Act on financial market supervision, and that in turn would be contrary to the underlying assumption of the rationality of the legislator, which assumption opposes interpretations that could lead to the conclusion of redundancy of legal provisions. According to that principle, the literature indicates that there must be such activities aimed at ensuring the proper functioning of the financial market (Article 4(1)(2) of the Act on financial market supervision), which are different from the activity of exercising supervision (within the meaning of Article 4(1)(1) in conjunction with Article 1(2) of the Act). It is, therefore, indicated that Article 4(1)(1) of the Act on financial market supervision applies to well-defined supervision (i.e. the instruments for exercising power to take measures in relation to supervised entities in accordance with the traditional precise meaning of the concept of ‘supervision’ in administrative law), while Article 4(1)(2) of the Act on financial market supervision covers other supervisory and non-supervisory measures aimed at ensuring the proper functioning of the market which are not included in the concept of supervision, even if they — like powers of the KNF or Chair of the KNF — are firmly rooted in the legislation. For our further reflections, it is important to state that the instruments used to complete that task include, for example, the right of the Chair of the KNF to act as prosecutor in criminal cases, which right arises from Article 6(2) of the Act on financial market supervision. We believe that the task also involves cooperation with law enforcement authorities and the services responsible for national security. The Act on strengthening supervision has provided better grounds for that (see below). The submission by the UKNF of notifications of a suspected criminal offence — being a legal duty under Article 304(2) of the Criminal Procedure Code (hereinafter: CPC) — is in line with the task of undertaking measures aimed at ensuring the proper functioning of the market. Certain

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36 Ibid.
37 Ibid.
practical aspects of cooperation between the UKNF and law enforcement authorities and notification of a suspected criminal offence will be further discussed.

The other provision of law laying down the tasks of the KNF which are relevant for this paper includes in such tasks the undertaking of educational and awareness-raising activities concerning the functioning of, the threats to, and the entities operating in, the financial market to protect the legitimate interests of financial market participants (Article 4(2)(4) of the Act on financial market supervision). The instruments to be used to complete that task are specified as, in particular, the powers prescribed in Article 6b of the Act on financial market supervision. Said provision represents, in particular, the basis for the KNF to publish information on having submitted notification of a suspected criminal offence included on the statutory list of criminal offences (Article 6b(1) of the Act on financial market supervision) or information that the Chair of the KNF joined proceedings initiated by a notification made by another entity, pursuant to Article 6(2) of the Act on financial market supervision (Article 6b(2) of the Act on financial market supervision). Such information is also published by posting it on a dedicated KNF website under the name ‘List of KNF public warnings’ (Article 6b(4) of the Act on financial market supervision). Therefore, the task of warning or providing information to financial market participants is closely related to any possible procedural activity of the KNF in criminal proceedings or actions preceding the institution of such proceedings, particularly submission of notification of a suspected criminal offence. The practical aspects of implementing such tasks will be discussed further in this paper.

The KNF and criminality in financial markets

As briefly mentioned in the introduction, we have recently seen a pronounced increase in the expectations for the KNF in relation to the broader prevention of crime in financial markets. There are probably several reasons behind that, related to both the criminality in financial markets and the competency profile of the UKNF.

Firstly, it may be caused by the major financial scandals, in which — due to the insolvency of non-supervised entities, especially those that were not authorised to conduct deposit-related activities but were accepting funds from customers — a big group of individuals have lost significant sums of money. Where activities of an entity are not subject to supervision or where an entity engages in activities that require authorisation without actually being authorised, the KNF has no strictly construed supervisory power over such entity. Such cases call for instruments to undertake procedural acts against the entity (notification of a suspected criminal offence) or issue information/warning to potential customers (entry in the

list of public warnings). The application of such instruments may be preceded by the exercise of statutory rights of the KNF (preliminary investigation, Article 18 et seq. of the Act on financial market supervision). Still, including such an option in the statutory law would require changes to meet the current needs in terms of financial supervision. The social expectation regarding better efficiency of the KNF’s instruments in such cases is understandable.

Secondly, the progressive development of technology — especially the Internet — and the growing popularity of social media allow relatively small firms to reach a vast group of potential customers. Naturally, the concept of a pyramid scheme or similar schemes is not the novelty of recent years. However, the development of electronic media and the related peculiar egalitarianism of access to mass media has undoubtedly increased the possibilities of reaching potential customers also for business owners who do not have so significant marketing and sales resources compared to the leading supervised entities in the financial market. One example could be intensive campaigns on social media to present offers of attractive investments or opportunities for investment funds etc. It does not mean, though, that each of such offers is necessarily affected by irregularities. However, with the application of modern technologies and the development of electronic media, the impact of potential criminal activity based on the use of new technologies has increased immeasurably.

Thirdly, the universal use of modern technologies in providing access to banking services and other financial services and the broad use of mobile applications and all kinds of channels of remote access to financial services has resulted in increased social confidence in the credibility and safety of such channels. This phenomenon per se is undoubt-edly positive, and it is of key importance for creating a society whose functioning will be based on the broad use of technology. The same increase in social confidence should also be seen as a good thing in terms of human civilisation, such as reducing transaction costs, which represent the economic consequence of such an increase. However, the negative effect of that phenomenon is the increased vulnerability of the population to fraudulent practices based on the exploitation of others’ trust or lack of awareness about risks. In practice, the KNF deals with many cases where criminals exploit their victims’ trust or lack of awareness, e.g. by using remote access channels and stealing access data and bank account details.

Fourthly, the vulnerability of market users to financial crime may result from the insufficient level of financial literacy of society. Customers do not always see promises of extremely high rates of return as obvious red flags raising questions about the investment risk, the non-supervised nature of the business run by the firm offering such products or services or the lack of a guarantee under the Bank Guarantee Fund, which protects the depositors of banks and credit unions. Much work is still needed

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in financial education and raising awareness about the natural and economically evident relation between profitability and investment risk.

Fifthly, the tendency to seek higher returns — not always accompanied by appropriate reflection on the risks and often without any awareness about the relationship between the return and the risk — becomes particularly strong in the low interest rate environment, which restricts the rate of return on bank deposits, pushing customers towards alternative investments, including investments offered by non-supervised entities.\(^40\)

Sixthly, as mentioned in the introduction, crime is moving from the streets to the world of technology. Financial markets and their outskirts represent a potentially attractive area for such activity, even for the reasons explained above. Thus, economic crime, \textit{e.g.} in financial markets, crowds out the ‘traditional’ minor offences. The criminal strategies used in financial markets vary considerably in their levels of sophistication and complexity. Some are crudely simple but exploit the trust the majority of society have in banks, insurers and other supervised financial institutions. Criminals can pose as employees of such institutions, \textit{e.g.} to steal data. There have also been cases of impersonation of the UKNF employees. At the same time, other criminal acts show a substantial degree of complexity, which aims to conceal the illegal nature of the business or to enable the transfer of the funds obtained through such business out of the jurisdiction of the Polish law enforcement. A good example is a widely identified risk of using crypto-assets, especially ones whose structure is based on distributed ledger technology (DLT), commonly referred to as blockchain technology. It can be a potentially useful tool to hide the cash flow from criminal activity, prevent identification of beneficial owners or launder money. Such fraudulent practices can be facilitated by the anonymity of transfers made using crypto-assets. In each of those cases, the institutional position of the KNF and the remit of UKNF employees make the financial supervisory authority ideal for being actively involved in the prevention of crime in financial markets by taking actions to both prosecute perpetrators and reduce the vulnerability of the population to criminal practices.

\textbf{Measures available to the KNF concerning economic crime: law and practice}

As already mentioned, although the prevention and combating of economic crime remains outside the traditional mandate of the KNF, it is understandable — for the above-mentioned reasons — that the society expects more activity and better effectiveness from the KNF and the UKNF in this area. However, as we have stated, the basis for undertaking such activities may be provided by the tools assigned to the KNF to ensure the proper functioning of the financial market. In this part of the paper,

\(^{40}\) Press releases on alternative investments amid low interest rates, Rafał Mikusiński, etc.
we would like to describe the specific tools and forms of activity of the UKNF for which their practical application poses challenges for the financial supervisory authority when it endeavours to meet the expectations outside of its traditional mandate. The conventional perception of the KNF’s mandate has resulted from the formulation of laws that define the role of the UKNF not as a law enforcement authority or authority appointed to carry out operational activities but primarily as an institution providing expert support to law enforcement authorities or services responsible for state security. Notwithstanding the need to ensure expert support of the UKNF for those services, we believe that certain traditional instruments used by the UKNF may require revision or modification so that the UKNF can better meet the expectations and the challenges resulting from the tendencies described in the previous parts of this paper. In order to support that thesis and explain the transformations in the functioning of the UKNF in relation to crime in financial markets, we will use concrete examples of legal instruments that have already been granted to the UKNF and those which, in our view, should be considered for the future.

(a) As a state administration body, the KNF is an addressee of the legal obligation under Article 304(2) of the Criminal Procedure Code, according to which state institutions which, in the conduct of their activities, have become aware of a criminal offence prosecuted ex officio, must immediately notify the prosecutor and/or the police and take the necessary measures until the arrival of the prosecution body or until the prosecution body issues an appropriate order to prevent effacement of traces and removal of evidence of a crime. It should be stressed that Article 304(2) of the Criminal Procedure Code applies to any criminal offence prosecuted ex officio, the commission of which has become known to a public institution in connection with the institution’s activity. Therefore, it is worth confronting so formulated obligation with the relevant provisions of the Act on financial market supervision.

The KNF, as any other state institution, is legally obliged to notify the prosecutor or the police of each case in which the UKNF learnt, in connection with its activities, of the commission of a criminal offence prosecuted ex officio. It is appropriate to look into the practical aspects of the performance of that obligation. A substantial part of the information collected by the UKNF in the supervision of the financial market is protected under the provisions referred to in Article 16(1) of the Act on financial market supervision, laying down the rules for handling protected information collected in the performance of the KNF’s tasks.

Article 16(5) of the Act on financial market supervision stipulates that no actual breach of the obligations referred to in paragraphs 1 and 4, including the obligation of professional secrecy concerning information which constitutes a banking secret, shall occur as a result of notification of a suspected criminal offence specified in the acts referred to in Article 1(2) of the Act on financial market supervision, or as a result of the submission of any further information supplementing such notification. The application of that provision gives rise to a practical issue since the
provision only applies to the notification of a suspected criminal offence specified in the sectoral Acts, a full list of which is contained in Article 1(2) of the Act on financial market supervision. Therefore, if the UKNF — in the performance of the legal obligation under Article 304(2) of the Criminal Procedure Code — submits a notification of a suspected common offence (e.g. punishable under Article 286 of the Penal Code), which, however, does not show features of any of the acts punishable under the sectoral Acts, then Article 16(5) of the Act on financial market supervision does not provide grounds for the exemption from the obligation of secrecy under Article 16(1) of the Act on financial market supervision. If such notification were to relate to non-supervised entities and were not based on information obtained in the exercise of, for example, banking or capital market supervision, then the practical value of this topic would be questionable. However, in practice, there are cases where the notification is to relate to, e.g. (a) the activities of a non-supervised entity but the information being the grounds for the notification includes information protected by law (relating to, e.g. the fact that in its activities, the entity uses bank accounts and the UKNF may hold such information in connection with exercising banking supervision) or (b) the activities of individuals who are workers of supervised entities (e.g. investment firms and/or banks) and whose conduct shows features of common offences (e.g. Article 286 of the Penal Code), and not necessarily the offences specified in the sectoral Acts. In such cases, there may be issues related to the inability to submit, under Article 16(5) of the Act on financial market supervision, full information required for notification of a suspected criminal offence, as that provision provides for the disclosure of legally protected secret information only in the notification of a suspected criminal offence specified in the sectoral Acts. However, solutions could be found in a new provision on the access to confidential information (Article 17ca(1) of the Act on financial market supervision), which was added under the Act on strengthening supervision. The said provision stipulates that the Chair of the KNF must submit to, among others, the Commander-in-Chief of the Police41 the documents and information, including documents and information protected under separate laws, as necessary for the performance of the statutory tasks of that institution (a similar solution has been prescribed in that provision in relation to, among others, the Head of the Internal Security Agency (ABW) and the Head of the Central Anti-Corruption Bureau (CBA). Therefore, the provision represents the basis for submitting information, including legally protected secret information, regardless of any notification of a suspected criminal offence. The defects of Article 16(5) of the Act on financial market supervision may be removed through the application of the provision on the access to confidential information under Article

41 As well as to the Head of the Internal Security Agency, Head of the Central Anti-Corruption Bureau, Head of the National Revenue Administration, and the President of the Office of Competition and Consumer Protection, cf.: Article 17ca(1) of the Act on financial market supervision.
17ca(1) of the Act on financial market supervision in such a manner that in the event of submission of a notification of a suspected criminal offence other than the offences specified in the sectoral Acts (e.g. offences punishable under Article 286 of the Penal Code), the legally protected secret information would be submitted to the Commander-in-Chief of the Police. Such a solution enables the KNF to submit information to be used in criminal proceedings but has certain organisational flaws, especially where the notification of a suspected criminal offence is submitted to the prosecutor’s office, not to the police. It would be appropriate to expand the options for submitting such information already in the notification of a suspected criminal offence or the supplement thereto as part of cooperation with the body to which the notification is addressed. Therefore, it is advisable to expand the provision of Article 16(5) of the Act on financial market supervision so that the provision covers, in addition to the offences specified in the sectoral Acts, any other offences related to acts against the interests of market participants committed in connection with the activities of entities conducting business in the market, using wording similar to the wording used in Article 6(2)(2) of the Act on financial market supervision.

(b) The provision on the access to confidential information in Article 17ca(1) of the Act on financial market supervision represents a fundamental positive change introduced by the Act on strengthening supervision. The operationalisation of the exchange of information is to be supported by agreements concluded by the Chair of the KNF and the heads of the institutions referred to in that provision (cf: Article 17ca(3) of the Act on financial market supervision). This topic — in relation to the Commander-in-Chief of Police — will be discussed further in this paper. However, an issue that may require further analysis — not addressed in this paper but still relevant for the role of the KNF in combating economic crime — is the purposefulness of expanding the provision on the access to confidential information under Article 17ca(1) of the Act on financial market supervision by applying that provision to the relevant prosecutor’s office. Such a solution could mitigate some of the shortcomings of the current legal regime regarding, for example, the legal effects of submission of the notification of a suspected criminal offence.

(c) This thread leads us to matters related to the KNF’s List of public warnings, as referred to in Article 6b of the Act on financial market supervision (hereinafter ‘List of public warnings’ or ‘LoPW’). This instrument supports the performance of the task of undertaking information activities concerning the functioning of the financial market, the risks to that market and the market participants to protect the legitimate interests of financial market participants. However, the current approach to it and its application practice have revealed a number of shortcomings which, unless removed, will continue to limit the effectiveness of the instrument and the efficiency of operation of the UKNF and the bodies responsible for combating economic crimes. Firstly, the capacity to put an entity on the list of public warnings involves only notification of a suspected criminal offence specified in the provisions indicated in Article 6b(1) of the Act on financial market
supervision. There may be cases where a business that threatens the interests of financial market participants does not provide grounds for notification of a suspected criminal offence specified in the provisions indicated in Article 6b(1) of the Act on financial market supervision, but it still poses a material threat to market participants. If this is the case, there are no grounds for putting the entity on the LoPW.

Secondly, the inclusion of an entity on the LoPW takes place only after actual submission of the notification of a suspected criminal offence and represents — for the crimes specified in the provisions indicated in Article 6b(1) of the Act on financial market supervision — an obligatory consequence of such submission. Such a mechanistic relationship might also lead to inefficiency.

In fact, on the one hand, at the stage of collecting material providing the grounds for notification of a suspected criminal offence, it is too early for the UKNF to issue a public warning, even if the UKNF has identified a significant threat to market participants. However, this defect could be remedied by introducing a ‘grey’ list of entities whose business does raise serious concerns according to the UKNF but does not provide grounds (for the time being) for notification of a suspected criminal offence. Such a solution would, of course, need to be introduced by appropriate regulations on the responsibility for including an entity on such a list so that the related tasks could be performed at the right level of legal security.

On the other hand, the submission of the notification results in the obligatory inclusion of the entity on the list of public warnings, which, in turn, might negate or restrict the operational or procedural activities. In this context, it should be noted that as a rule, the UKNF — as an addressee of the legal obligation under Article 304(2) of the Criminal Procedure Code — must not delay the submission of the notification of a suspected criminal offence for reasons such as the smooth progress of preparatory proceedings or the efficiency of operational tasks of other services. Yet, insofar the provision on the access to confidential information in Article 17ca(1) of the Act on financial market supervision allows the UKNF to provide information to services responsible for operational tasks, and no similar basis can be found in said Article in relation to the prosecutor’s office. With respect to the information protected by law, the prosecutor’s office may only be notified by the UKNF under Article 304 § 2 of the Criminal Procedure Code (cf. Article 16(5) of the Act on financial market supervision). On the one hand, this may be relatively late (e.g. since the UKNF needs to collect sufficient material for notification of a suspected criminal offence — with limited possibilities of the UKNF for obtaining information from non-supervised entities, cf. point (d) below). Bringing forward the notification of a suspected criminal offence too quickly gives rise to the risk that the competent authority will refuse to institute proceedings due to insufficient material. On the other hand — the submission of the notification (for the offences specified in the provisions referred to in Article 6b(1) of the Act on financial market supervision) gives rise to the obligation to put the entity on the list of public warnings, possibly to the detriment to the procedural activities to be carried out by the prosecutor’s office following the
notification. This could also be a potential argument against bringing forward the notification too quickly. Importantly — as already mentioned — as a rule, in the light of Article 304(2) of the Criminal Procedure Code, the UKNF has no legal grounds for delaying such notification, for example, for the sake of future criminal proceedings.

A possible remedy to at least some of the above-mentioned practical challenges could be creating an appropriate arrangement for exchanging information between the UKNF and the prosecutor’s office at the stage preceding the submission of the notification of a suspected criminal offence. Such a procedure could allow the exchange of information for procedural purposes without formal notification of a suspected criminal offence (with the consequence being the entry on the LoPW). It would be then appropriate to create a mechanism that would provide legal protection for the UKNF and the UKNF employees in cases where for the above reasons, the notification of a suspected criminal offence has not been submitted under Article 304(2) of the Criminal Procedure Code, but there was an exchange of information between the UKNF and the competent prosecutor’s office to facilitate the smooth course of the future criminal proceedings. In the current legal situation, the above-mentioned drawbacks of statutory solutions could be — although not completely — mitigated by the activities carried out, for example, in cooperation with the police under the provision on the access to confidential information in Article 17ca(1) of the Act on financial market supervision and under the agreement referred to in Article 17ca(3) of the Act on financial market supervision (see below).

(d) We have mentioned that some barriers that weaken the UKNF’s efforts to combat economic crime are the deficiencies in the procedure for the UKNF to obtain information about the operations of non-supervised entities, including their services, business model etc. This matter is regulated in Chapter 2A of the Act on financial market supervision, governing preliminary investigation. Article 18a(1) of the Act on financial market supervision stipulates that in order to determine whether there are grounds for submitting the notification of a suspected criminal offence specified in the laws referred to in Article 1(2) or for instituting an administrative procedure in respect of an infringement of law falling within the area of competence of the KNF, the Chair of the KNF may order the preliminary investigation. Moreover, unless stipulated otherwise in Chapter 2A of the Act on financial supervision, the provisions of the Act of 14 June 1960 — the Administrative Procedure Code do not apply to the procedure.

Although the exclusion from the application of the Administrative Procedure Code should be assessed as a positive thing that sets the right direction for the UKNF also for the future, the formation of the preliminary investigation in Chapter 2A of the Act on financial market supervision undermines, to some extent, the effects of that exclusion, reducing the efficiency of said instrument. A particularly problematic pressure point is the obligation of the UKNF to notify the entity of the institution of a preliminary investigation, in particular of the subject matter and scope thereof (cf.: e.g. Article 18c(7) of the Act on financial market supervision).
The preliminary investigation itself, if properly formed, may be a useful tool supporting the UKNF’s activities for the prevention of economic crime. Under Article 18i(2) of the Act on financial market supervision, upon completion of the proceedings, the Chair of the KNF must file a notification of a suspected criminal offence, initiate administrative proceedings or order that such proceedings be closed. If the notification of a suspected criminal offence is submitted, it must be accompanied by the file of the proceedings, including any information which is subject to banking secrecy (and — as it should be assumed, in particular considering Article 16(5) of the Act on financial market supervision — to any other type of secret information protected by law, if any such information is present in the case). Therefore, if the provisions on the preliminary investigation make it an effective tool for obtaining information and documents by the specialised employees of the UKNF who have the necessary expertise, such a solution could provide crucial support for the law enforcement authorities.

(e) Obtaining information about the activities of non-supervised entities — in particular, information about their offer and business model to assess whether there are indications that the offences specified in the provisions indicated in Article 1(2) of the Act on financial market supervision might have been committed — involves one more practically and procedurally essential issue. The possibility of obtaining information about the products and/or services offered by such entities is increasingly determined by the registration on the entity’s website, which requires entering personal and contact details (e.g. e-mail), and the access to the offer is given only to the individuals registered and logged in to the website. This means that the UKNF employees — when collecting information about the entity, acting ex officio, or in response to signals from the market — would need to give their personal and contact details on the website, which naturally raises doubts as to the effectiveness and rationality of such action. To create a possibility for collecting such data and using them for proceedings, it is necessary to consider the development of a safe formula for using artificial identity, for example, employing mechanisms such as virtual mystery shoppers. Such initiatives have recently been the object of legislative work following the identification of the purposefulness of wider use of such tools by employees of the Office of Competition and Consumer Protection.42

We would see the need for considering in the further work the issue of coming up with optimum parameters of such a tool also in relation to the UKNF employees, taking into account proper prevention of potential misuse, but also ensuring legal security of individuals performing such operations and the possibility for using the collected material in proceedings. The efficiency

increase in information collection could also be achieved by providing the possibility of masking IP addresses of computers used by the UKNF employees to collect information about the activities of such entities.

**Synthesis of considerations on legal issues**

In conclusion, the scope and nature of measures available to the KNF in the area of prevention of economic crime are determined by the institutional position of the KNF, which has not been established as a law enforcement authority or a uniformed or special service but rather an institution involved in the fight against economic crime by providing expertise, supporting other state services specialised in this field. Notwithstanding such division of tasks, we believe that certain changes in the structure of the remit of the KNF and UKNF could significantly increase the efficiency of those bodies in the area in question — both as regards the tasks performed by the KNF and UKNF independently and in the context of ensuring better support for law enforcement authorities or providing them with arrangements which could be a starting point for their respective operational and procedural activities. Such improvements would represent a crucial addition to the traditional mandate and set of instruments of the financial supervisor, which also meet the reasonable social expectations and the evolving challenges related to the developments in the financial market and its environment. This could involve the need to go beyond the traditional mandate of the financial supervisor and confer the powers usually associated with other state institutions.

At the same time, the above observations do not prejudice the significance of the efficient, extensive cooperation between the UKNF and the bodies appointed to combat crime, particularly the police. In our view, the key is that such collaboration must not be limited to relations between the institutions’ management; it should also involve, as far as possible, working and operational activities carried out at both institutions by individuals responsible for day-to-day tasks. The following parts of this article provide a closer perspective on such cooperation’s formal and organisational framework and discuss its examples.

**A quest for synergies — areas of potential cooperation between the KNF and the police**

The police, as a service obliged under statutory law to, inter alia, initiate and organise actions (i) to prevent the commission of criminal offences and misdemeanours and criminogenic phenomena, (ii) to ensure cooperation in this regard with state bodies, local governments and civil society organisations, (iii) to detect offences and misdemeanours and (iv) to prosecute perpetrators\(^{43}\), represents an essential element of the system.

\(^{43}\) Act of 6 April 1990 on the police, consolidated text in Dz.U., 2020, item 360 (hereinafter: ‘Act on the police’).
for prevention and fight against economic crime. The responsibility of this state force is substantially secured through special statutory rights in this respect. A good example of such solutions is Article 19 of the Act on the police, providing the basis for application where other measures have turned out to be ineffective or will be inadequate, after completion of a statutory procedure, operational control in the case of operational and exploratory activities undertaken to prevent, detect and identify perpetrators and to obtain and secure evidence of the following criminal offences:

— crimes specified in Article 296(1–3), Article 296a(1, 2 and 4), Article 299(1–6) and Article 310(1, 2 and 4) of the Penal Code;
— crimes specified in Articles 178–183 of the Act of 29 July 2005 on trading in financial instruments (Dz.U., 2017, item 1768) and Articles 99–100 of the Act of 29 July 2005 on public offering, conditions governing the introduction of financial instruments to organised trading, and public companies (Dz.U., 2016, item 1639; and 2017, items 452, 724, 791 and 1089),
— crimes against economic activity specified in Articles 296–306 of the Penal Code, causing material damage or crimes against property, if the amount of loss or the value of the property is more than fifty times the amount of the lowest remuneration for work determined pursuant to separate provisions of law,
— fiscal crimes, if the value of the object of the criminal act or the reduction of a public law receivable is more than fifty times the amount of the lowest remuneration for work determined pursuant to separate provisions of fiscal law referred to in Article 107(1) of the Fiscal Penal Code.

In addition to operational control in cases regarding the above-mentioned crimes, the police are authorised to run ‘an undercover test purchase sting’ and ‘bribery sting’. Furthermore, for tasks related to the prevention of economic crimes, special police units were set up, such as the Unit for the Fight against Economic Crimes at the Criminal Bureau of the National Police Headquarters; the Unit’s tasks include, in particular:

— identifying, monitoring, analysing and providing forecasts concerning the areas exposed to economic crime and assessing the country’s state of exposure to economic crime;
— preparing and implementing strategies and methods for effective recognition, prevention and disclosure of economic crimes;
— inspiring, coordinating and supervising the operational, exploratory and investigative activities within the scope of the Unit’s competence;
— providing support and direct assistance to organisational units of the police fighting economic crime in the performance of operational, exploratory and investigative activities;

44 Cf.: Article 19 of the Act on the police.
45 Cf.: Article 19a of the Act on the police.
— engaging in national cooperation with law enforcement and judicial authorities, public administration bodies, civil society organisations and representatives of other entities in the area of prevention and fight against economic crime;
— engaging in international cooperation with authorised entities in the performance of tasks aimed at combating economic crime;
— collecting from and submitting to provincial police headquarters and the Warsaw Metropolitan Police information about economic crimes;
— participating in the review of draft legal acts on economic crime;
— providing opinions on requests for classified material concerning the operational working methods used by police units fighting economic crime;
— participating in national and international meetings of international working groups, task forces and points of contact;
— participating in conferences, training courses and workshops promoting the knowledge about prevention and fight against economic crime;
— organising and participating in professional training of police officers in subjects falling within the Unit’s competence;
— conducting operational and exploratory activities falling within the Unit’s competence.46

Accordingly, units for the fight against economic crimes exist at provincial, municipal and district police headquarters.47 A special role in fighting economic crime is played by the Central Investigation Bureau of the Police, which — as a police unit appointed to recognise, prevent and combat organised crime48 composed of units responsible for fighting against organised economic crime49 — handles the most complex cases. It should be stressed that the state’s economic security is determined not only by economic crimes but also by common crimes. Examples include fraud in cyberspace and ATM attacks.50 Therefore, it should be concluded that all units and entities of criminal services perform the tasks to ensure the state’s economic security. The fight against economic crime requires

48 Cf: Article 5a of the Act on the police.
49 Order No. 54 of the Commander-in-Chief of the Police of 7 October 2014 on the organisation, material and territorial scope of activity and rules for cooperation between the Central Investigation Bureau of the Police and other police units, Official Journal of the National Police Headquarters of 9 October 2014, item 121.
50 ATM — automatic teller machine.
an integrated approach of all bodies in the broadly defined state security system. According to the Programme for prevention of and fight against economic crime for the years 2015–2020, an ‘integrated approach’ in relation to subjects means reinforced cooperation between services, authorities and institutions engaged in the prevention and fight against crime.\footnote{Programme for prevention of and fight against economic crime for the years 2015–2020 introduced by Resolution No. 181 of the Council of Ministers of 6 October 2015, Official Journal of the Republic of Poland of 4 November 2015, item 1069.} In view of the foregoing and of the potential of legal determinants and possible synergies for the KNF (and broadly the UKNF) and the police units, the heads of both institutions have decided to enter into an agreement laying down the rules for the exchange of documents and information and the cooperation between the UKNF and the National Police Headquarters. The legal basis for concluding the agreement is Article 17ca of the Act on financial market supervision.

The said provision stipulates that the Chair of the KNF must submit to the heads of the Internal Security Agency (ABW), Central Anti-Corruption Bureau (CBA) and National Revenue Administration (KAS), the Commander-in-Chief of the Police and the President of the Office of Competition and Consumer Protection documents and information, including those protected under separate laws, to the extent necessary for the performance by those institutions their statutory tasks. The obligation of the heads of the above-mentioned institutions to submit to the Chair of the KNF information necessary for the performance of the KNF’s tasks is introduced in paragraph 2 of the provision in question. The rules for cooperation and the technical aspects of exchanging documents and information are laid down by way of an agreement.

It is essential to note that the precise legal basis for an efficient exchange of information was introduced by Act of 9 November 2018 amending certain laws to strengthen financial market supervision and investor protection, following the so-called ‘Getback scandal’. One of the purposes of the project was to ‘ensure better coordination of the national policy on the financial market and to early detect threats related to its functioning, resulting in a better protection of investors’.\footnote{Russel P, Ocena skutków regulacji zawartych w rządowym projekcie ustawy o zmianie niektórych ustaw w związku ze wzmocnieniem nadzoru oraz ochrony inwestorów na rynku finansowym (Sejm paper No. 2812), Warsaw, 24 September 2018. Electronic source: http://www.sejm.gov.pl/Sejm8.nsf/opinie-BAS.xsp?nr=2812, accessed: 13 October 2020.} In the amendment of November 2018, the legislator also decided to expand the composition of the KNF to include representatives of the President of the Council of Ministers, the Bank Guarantee Fund, the President of the Office of Competition and Consumer Protection and the Minister-Member of the Council of Ministers/Special Services Coordinator. Notably, the right to vote was conferred only on the representative of the Prime Minister;
the other representatives are members of the KNF and act as advisers. According to Anna Szelągowska, the expansion of the composition of the KNF should have a positive effect on the transparency and pace of measure implementation, primarily where irregularities are found in the market. Moreover, the expanded composition of the KNF will help identify better systemic risk in the financial system and its environment and identify events that might threaten or result in a threat to the best interest of retail investors, thus in a loss of confidence in the State. In the statement of reasons for the government’s draft of the Act, it was explained that the new provision would allow for an effective exchange of information (including information protected under statutory law) between the KNF and the Internal Security Agency (ABW), the Central Anti-Corruption Bureau (CBA), the National Revenue Administration (KAS), the police and the President of the Office of Competition and Consumer Protection. Additionally — in accordance with the will of the legislator — members of the KNF will acquire the right to disclose information obtained as a result of their participation in the activities of the KNF to their employees to the extent necessary to prepare opinions or positions directly related to the activities of the KNF, which will allow for effective cooperation within the KNF. The cooperation agreement was signed on 22 January 2020. It lays down the rules for exchanging information and documents between the Chair of the KNF and the Commander-in-Chief of the Police. Under Article 2 of the agreement, the exchange of information takes place upon a written request of either party to the agreement or on own initiative if, in the opinion of either institution, certain information may be useful in the performance of the statutory tasks of the other institution. Importantly, all information exchanged between the institutions may be used solely to perform the statutory tasks of the KNF and the police. Neither of the signatories to the agreement has the right to disclose such information to other bodies without the consent of the originator and holder of such information. Exceptions are situations specified in the special legislation, e.g. in the Criminal Procedure Code.


Taking into account the expanded structure and the scope of activities of police units, and the specialisation of each division of the UKNF, a decision was made to expand the list of persons authorised to implement the agreement. On the police side, the agreement is implemented by the Commander-in-Chief of the Police and his deputies, provincial commanders and the Commander-in-Chief of the Warsaw Metropolitan Police, Commander of the Central Investigation Bureau of the Police and Commander of the Office of Internal Affairs of the Police. On the KNF side, the agreement is implemented by the Chair of the KNF, Director General of the UKNF, managing directors of divisions, and directors and deputy directors of departments. The above-mentioned persons have also acquired the right to authorise their employees (the right of sub-delegation of authority). Establishing a broad catalogue of persons appointed to implement the agreement was to ensure effective channels of communication. The agreement also provides for the appointment of permanent and temporary working teams.

Without prejudice to the obligations indicated in Article 17ca of the Act, the Chair of the KNF and the Commander-in-Chief of the Police have undertaken to ensure broader cooperation for the purpose of disclosure, fight against and prevention of infringements of law connected with running a business in the financial market. Such collaboration may consist of, in particular, providing technical and analytical assistance, improving methodologies for the performance of official tasks and operations, organising joint conferences, meetings and training courses as part of professional training of employees and officers, arranging an exchange of lecturers and educational material and providing training databases and specialised training rooms.

The agreement also provides joint initiatives regarding the events or entities of interest to both institutions. Such a possibility is to secure the interests of the Polish State. In fact, one could imagine a situation where the police are conducting operations related to entities of interest to the KNF. The outcome of the findings made by the UKNF may be the submission of a notification to the prosecutor’s office under Article 304(2) of the Criminal Procedure Code, resulting in the entry of the entity on the KNF’s List of Public Warnings. In consequence, such entry

57 Under Article 6b(1) of the Act of 21 July 2006 on financial market supervision (Dz.U., 2019, item 298 as amended), the KNF publishes information on submission of a notification of suspected criminal offence specified in Articles 215 and 216 of the Act of 28 August 1997 on the organisation and operation of pension funds, Article 171(1–3) of the Banking Law, Articles 56a and 57 of the Act of 26 October 2000 on commodity exchanges, Article 430 of the Act on the business of insurance and reinsurance, Articles 89 and 90 of the Act of 15 December 2017 on insurance distribution, Article 50(1) and (2) of the Act of 20 April 2004 on occupational pension schemes, Article 40 of the Act of 20 April 2004 on individual retirement accounts and individual retirement protection
might prevent police units from conducting the scheduled operations concerning the entity or specific persons of interest to the police. There were 338 entities entered on the List of Public Warning as of 14 October 2020.\textsuperscript{58}

\textbf{Examples of joint actions of the Polish Financial Supervision Authority and the police}

As mentioned in the introduction to this paper, the coronavirus pandemic and the dynamic development of the Internet have contributed to the changes in the \textit{modi operandi} of criminals. One of the areas of active cooperation is the joint campaign to raise awareness about the activities of individuals claiming to be supervised by the KNF in relation to the crypto-currency exchange transactions they offer. According to the communication from the KNF, consumers are contacted by phone and induced to sell or buy crypto-currencies. They are told the transaction will comply with the KNF requirements on the recording of transactions conducted by phone, which supposedly means desktop sharing. The callers also claim that a UKNF employee will be presented during the operation to monitor the proper conduct of the transaction.\textsuperscript{59} It should be stressed that the KNF supervision never involves the direct participation of the UKNF employees in direct dealings with customers or individual financial transactions. Therefore, a claim that any transaction of acquisition or disposal of crypto-currencies would involve the participation of the KNF, the UKNF employees or any person authorised by the supervisory authority is completely unfounded and is most likely evidence of attempted fraud. It should also be noted that fraudsters might use the data obtained during such operations to commit identity theft or steal money.

accounts, Articles 287 and 290–296 of the Act on investment funds, Article 178 of the Act of 29 July 2005 on trading in financial instruments, Articles 99 and 99a of the Act of 29 July 2005 on public offering, conditions governing the introduction of financial instruments to organised trading, and public companies, and/or Articles 150 and 151 of the Act of 19 August 2011 on payment services. Under Article 6b(6) of the Act of 21 July 2006 on financial market supervision, the KNF also reports on criminal proceedings conducted \textit{ex officio} or following notification by an entity other than the KNF where the Chair of the KNF exercised his right of the aggrieved party in criminal proceedings.


In recent years, the distribution of and access to money have been largely automated. Significant developments have been made in the system of cash distribution using ATMs. This could be why the number of bank robberies has fallen: only 11 were reported in 2019. Unfortunately, criminals have moved their activities to a different field: they started to execute physical attacks on cash machines to gain unauthorised and unlawful access to the banknotes inside. As a result, 165 incidents of this kind were reported in 2019, and the total amount of losses related to them was at least PLN 6.1 million.\(^6\) Such crimes occur in Poland and spread quickly throughout Europe, which is confirmed by the total loss due to ATM attacks amounting to EUR 36 million in 2018.\(^6\) Through its activities, the UKNF ensures the performance of a vital function in terms of state security, which is to supervise the financial market to ensure its proper functioning, stability, security, transparency and market confidence. It is equally important to provide the protection of the interests of financial market participants, both professional (such as banks) and non-professional (i.e. retail customers of banks). The completion of the above-listed tasks requires a holistic approach to the requirements of the modern state security system. Being aware of that necessity, the UKNF


does not limit itself to the narrowly understood supervision of the financial sector. The UKNF seeks to recognise various threats in this area and undertake the necessary remedial actions, including cooperation with other state institutions. To that end, permanent collaboration is maintained with financial sector entities and entities of the broader security system of the state, such as the police, the Internal Security Agency and the Central Anti-Corruption Bureau. With those actions, the above-mentioned ATM attacks have been identified as harmful to the security of the banking sector and public security and requiring inter-institutional response and cooperation to ensure that their occurrence can be effectively counteracted.

The analysis of this types of crimes and threats generated by them has allowed to draw some crucial (in the UKNF’s view) conclusions on this matter: (1) the attacks on ATMs are a serious threat not only to financial security but also to public security because perpetrators use explosives to blow up the ATM; (2) the most effective method of fighting the attacks on cash machines is to develop and implement a system of technical protection measures which prevent the stolen means of payment from being used and put into circulation — such protection may include marking of banknotes; (3) the enhancement of the physical security of the banking sector and the ATM infrastructure requires introduction of systemic solutions such as legal regulations and respective technical solutions that can be used by entities in the banking system; and (4) an effective and efficient response to the identified threats requires a coordinated cooperation between many institutions, both financial institutions and institutions responsible for state security.

In view of the foregoing, by decision of the Chair of the KNF, a working group for the physical security of the banking sector and ATMs has been appointed at the UKNF. The group’s tasks include:
— developing effective cooperation rules for institutions engaged in ensuring the security of the banking sector and ATMs;
— carrying out ongoing analysis of the existing and proposed legal solutions or solutions being the object of legislative work concerning the physical security of the banking sector and ATMs;
— formulating the assumptions for new legal solutions in the area of security of the banking sector and ATMs;
— identifying the nature of phenomena and events that negatively affect the broadly defined security of the banking sector and ATMs;
— monitoring the physical security of the banking sector and ATMs on an ongoing basis;
— drawing up proposals for measures aimed at enhancing the physical security of the banking sector and ATMs.

The participants in the project are the representatives of the Minister of the Interior and Administration, the National Police Headquarters, the National Bank of Poland, the Ministry of Finance, the Polish Bank Association, and the security units of entities from the commercial banking
sector and other financial entities. The meetings are held in cycles or on an *ad hoc* basis — where it is necessary to agree on a joint position statement.\(^6^2\) The implementation of the conclusions from the analysis of ATM attacks takes place through active participation of the Group in the legislative work on the Regulation of the Minister of the Interior and Administration amending the Regulation on the requirements for the protection of monetary values stored and transported by entrepreneurs and other organisational units.

The Group’s activities have allowed the identification of new areas (in addition to ATM attacks) which require the well-organised and coordinated action of entities engaged in the state’s economic security, such as the need to improve supervision of cash distribution with an amendment to the Act of 22 August 1997 on the protection of persons and property\(^6^3\) and the need to render more specific the statutory powers in this regard or to prepare a single risk analysis methodology in relation to location, the existing forms of protection of ATMs and the related list of good practices. The Group’s activities also facilitate the ongoing exchange of information and coordination of tasks in the area of security of the financial market, entities operating in this market and retail customers. Another area of cooperation between the UKNF and the police is the performance of joint projects to improve the professional qualifications of the UKNF employees and police officers. To that end, cooperation has been established between the UKNF and the Police Academy in Szczytno to prepare special development programmes for selected groups of employees and officers. The classes will be conducted by both theoreticians and practitioners, which will undoubtedly enhance the quality of classes and improve the skills of the participants in the following areas:

— criminal analysis, OSINT analysis and cybersecurity in the financial sector;
— prevention and combating economic crime in the financial sector (banking, capital, insurance sectors);
— physical security of the financial sector (crisis management and topics related to the protection of persons and property in entities and facilities of the financial sector);
— public communication in the area of financial market security.

Such cooperation aims to undertake joint research and training projects that will raise the level of preparedness of the entities responsible for the security of the broader financial sector for the performance of statutory tasks by building expert competences of the employees and officers. An essential aspect of the proposed actions will be the consolidation of the


\(^{63}\) Act of 22 August 1997 on the protection of persons and property (consolidated text in Dz.U., 2020, item 838).
whole environment and, consequently, the improvement in the efficiency of cooperation of the entities engaged in the broadly defined financial security of the state. This objective will be achieved through the organisation of conferences, training courses, joint post-graduate programmes, as well as research and implementation projects, using the teaching staff consisting of specialists representing not only both institutions (the UKNF and the police) but also other entities engaged in the areas in question. The project’s outcome will consist of sharing the expertise gleaned in each institution with other entities. The detailed method and scope of activity will be defined by the appointed coordinators responsible for respective areas at the police and the UKNF.

Conclusions

To sum up the considerations in this paper, it should be concluded that the legislative activities enabling the ongoing exchange of information between the KNF, the UKNF and the police deserve approval. The existing provisions of the law have prevented the institutions from responding swiftly to irregularities in the financial market based on an efficient exchange of information. On the positive side, the rules for cooperation have been specified in the formal agreement signed by the Chair of the KNF and the Commander-in-Chief of the Police. The above-mentioned document provides for the implementation of joint educational activities and scientific/research and implementation projects. Creating effective arrangements for exchanging information may facilitate the detection and eradication of illegal forms of conduct and practices, thus ensuring better protection of non-professional participants in financial markets, both supervised by the KNF and the non-supervised ones.

Another idea worth considering is creating shared IT tools that can improve the efficiency of the exchange of information. It is a challenge for the Polish State and EU institutions on a wider scale in the systemic dimension. The negative phenomena related to, for example, money laundering generate high risk for the security of financial sectors in many states. It is crucial to undertake joint initiatives and projects at the international and inter-institutional levels to prevent such practices. Certainly, another important task is designing mechanisms to evaluate the current legislative solutions and develop the best way forward. The rapid growth of and the new phenomena in the financial market and a steadily greater degree of complexity of the existing financial market instruments simply force such an approach. Changes in financial markets are sometimes challenging to capture. Still, it is possible to analyse certain trends and phenomena together, share the related information and take actions to prevent malpractices and infringements of law, for example, in cooperation with the police. To achieve the effect of synergy, it is also necessary to put in place effective tools for monitoring the trends and changes in the environment.
References


7. Order No. 54 of the Commander-in-Chief of the Police of 7 October 2014 on the organisation, material and territorial scope of activity and rules for cooperation between the Central Investigation Bureau of the Police and other police units, Dz.U. KGP, 9 October 2014, item 121.


33. Porozumienie w sprawie zasad współpracy pomiędzy UKNF i KGP. Electronic source: https://www.knf.gov.pl/dla_mediow/galeria?articleId=68620&p_id=18
The Polish Financial Supervision Authority (hereinafter: KNF) is the key element of the economic security system of the Polish State. By establishing the KNF, the Polish legislator applied the concept of integrated financial supervision (covering bank supervision, insurance supervision and capital market supervision) located outside the central bank. The KNF has been vested with a broad mandate, including powers to supervise authorised entities. However, the scope and nature of measures available to the KNF in the prevention of economic crime are determined by the institutional position of the KNF, which has not been established as a law enforcement authority or a uniformed or special service but rather an institution engaged in the fight against economic crime by providing expertise, supporting other state services specialised in this area. The KNF and the Office of the Polish Financial Supervision Authority (hereinafter: UKNF) actively support, among others, the police units that fight crime in the financial market and work to increase the economic security of the Polish State. Therefore, it is imperative to ensure broad and efficient cooperation between the police and the KNF. However, such collaboration must not be limited to relations between the institutions' management; it should also involve, as far as possible, working and operational activities carried out at both institutions by individuals responsible for day-to-day tasks. This paper provides a closer perspective on the formal and organisational framework of said cooperation and discusses its examples.