PFSA and BaFin - Comparison of Institutional Framework in Dynamic Financial Markets

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At present, theoretical debate in academic communities is ongoing concerning the structures and aims of the centralised supervisory offices. There are some arguments in favour of mergers of individual sector supervisors to create mega institutions and there are also some against it. The article presented below adds to this debate by presenting a more empirical approach aimed at comparing two super-supervisors the Polish PFSA and the German BaFin. The goal of this work is to compare and contrast both institutions and note any differences between, seemingly similar supervisory structures. The article begins with a theoretical explanation of most important terms and concepts related to the subject of financial supervision. Next, we describe the present day structure, aims and economic environment of the Polish PFSA and German BaFin. The following section is dedicated to comparison and contrast of peripheral supervisors' activities. The final section is dedicated to drawing final conclusions.

THE IDEA OF SUPERVISION

Definition of Supervision

Supervision from an objective viewpoint it means a group of activities assuring effectiveness of this process, and, from a subject-organisational viewpoint – an organisation, an office, a team of people exercising authority on something, or inspecting somebody or something or indicating aims of performing supervision[2].

Supervision in a public administration consists of potentially imperious intervention in the activity of the supervised institution. Supervisors may call responsible persons to account for lapses and demand to rectify all these errors. They may impose sanctions and fines if recommendations and injunctions are not fulfilled. The law should specify when and in what scope supervision may be conducted as well as methods and possible consequences. It has to be emphasised that the supervisor is responsible for the activity of supervised entity.

Control vs. Supervision

The essence of control is an examination of compatibility of an actual state with a postulated one, an identification of scope and reasons of the discrepancies and presentation of reasons of this situation.[3] That means that a controller observes and analyses a situation and presents outcomes of their observation to an overriding authority but it is not responsible for outcomes of the activity of the controlled entity.

Unlike control, supervision includes also a part which pertains to responsibility. A supervisor makes some observations and assessments but also takes part in management or administration and, in this way, is responsible for outcomes of an activity of the controlled. It must be admitted that this responsibility is limited to an area in which the supervisor disposes an efficient means of pressure. Therefore, supervision always includes control, while performing of control, does not have to be connected with the use of means of supervision. Use of means of supervision results in that the supervisor may imperiously enter into an activity of the entity under supervision. It has to be emphasized that such intervention is allowable only in a mode and a scope prescribed by the law.[4]

Control as an element of supervision consists of four stages. At first obligatory phase, the state prescribed by law must be established. Then, an actual state in a controlled entity must be described. In the third stage, the two above mentioned states are compared and mutual consistencies and inconsistencies are determined. The last stage serves to identify reasons of existing inconsistencies between the actual state and the obligatory state and then drawing of conclusions.[2] Control and supervision consist, accordingly, of a lot of activities which are conducted in accordance with appropriate procedures.

It is very desirable, from a viewpoint of supervised entities and the environment in which they run, that supervisor's actions do not confine to orthodox (standard) supervision, but they also have educational and supportive elements. The supervisor might help in upgrading knowledge and providing solutions from experience in the best practices. This would be an invaluable contribution in an effective and an efficient work of these entities.

Typically, individual financial institutions are subject to both official supervision and private control. The official supervision of individual entities takes place along two dimensions: prudential and conduct-of-business. The purpose of prudential supervision is to promote the safety and soundness of financial institutions by systemically evaluating the risk-profile and risk-bearing capacity of the supervised entities in order to ensure their solvency. The conduct-of-business supervision, whereas aims at protecting investors and consumers alike by promoting a fair and transparent market process.[5] Apart from the official supervision, financial institutions are also subject to different forms of control, for instance, through audits, ratings, and internal controls.

Some economists have argued that the role of official supervision should be to create an environment conducive to effective private control, generally referred to as a market discipline, by ensuring, in accurate form, information disclosure by financial institutions.[5]

Integration of Supervisions

In the last two decades many countries have reformed the structure of their financial supervision. In increasing number of countries, a trend toward a certain degree of consolidation of powers can be noticed, these forces which in several cases, have resulted in the establishment of unified supervisory authorities. These single authorities supervising the entire financial systems are often different from national central banks.

The single supervisor regime may seem to be a "natural" and best answer to the challenges posed by financial market integration. If, in the long run, the expected financial structure is perfectly integrated and single market results, the best design for the supervisory architecture would seem to be a single / unified authority. But the answer is apparently not that simple.[6] It should be emphasised that changing the institutional structure of supervision cannot guarantee in itself an effective supervision.

Several reasons have been put forward to justify the integration of supervision at the national level. The arguments that have been often advanced in favour of unification are as follows:[7]

1. Supervision of financial conglomerates

   One of the leading reasons is related to the emergence of financial conglomerates. The rise of financial conglomerates, which operate diverse groups of financial institutions domestically or internationally, has increased the need for the sectoral supervisors to cooperate and coordinate their actions in an aim to ensure comprehensive supervision. Fragmented supervision may raise concerns about the ability to ensure that supervision is seamless and free of gaps and overall risk is assessed. There are also group-wide risks[1] that may not be adequately addressed by sectoral supervisors who oversight only a part of a conglomerate.

2. Competitive neutrality

   As financial systems have evolved and matured, the division lines between products and institutions have blurred. This may lead to a situation, where financial institutions offering similar products or services, are supervised by different sectoral supervisory agencies. Differences in their regulations and associated cost of achieving compliance may give certain institutions a competitive advantage in offering a particular product or service.

   The existence of more than one supervisory authority poses the risk of supervisory arbitrage. There is a possibility that a particular service or product is placed in that part of a financial conglomerate where the supervisory oversight is the least intensive or supervisory costs are the lowest.

   Unified supervision is better able to iron out differences and inconsistencies and deal with all mentioned above problems.

   Complete regulatory neutrality should not be a primary objective of supervision. It is proper to supervise the same operations differently depending on the nature (and thus systemic importance) of the institution in which it is carried out.

3. Regulatory flexibility

   The unified approach to supervision may allow for development of regulatory arrangements that are more flexible, especially when a new type of financial product or institution emerges, which was not covered by the original legislation. A status for the unified supervisory agency has to be drafted with adequate flexibility to permit it to rapidly respond to market innovations.

4. Regulatory efficiency

   There are areas where supervisory unification may lead to cost savings and economies of scale. The unification may permit cost savings on the basis of shared infrastructure[2], administration and support systems. That may diminish the burdens of financial institution under supervision. Unification may help to minimize wasteful overlap and duplication of oversight, research and data collection, thus lay the basis, for a more efficient reporting system[3]. Unification may also permit the acquisition and taking advantage of information technologies which become cost-effective only beyond a certain scale of operations.

5. Developing a body of professional staff

   Effective supervision requires a skilled professional staff, so the supervising authority should be able to attract, retain and develop such staff. Unification can assist this process. Unified supervisory agency would be able to offer its staff a more varied and challenging career, tailored training programs and through these enable its employees to be developed to their greatest potential.

6. Improved accountability

   The existence of one unified supervisory agency instead of multiple agencies, perhaps with overlapping responsibilities and areas of jurisdiction, should prevent a moral hazard which can occur in case of sectoral supervisors blaming each other if something goes wrong. The advantage of one supervision is that by creating a single management structure, it should be clear to the market who should be held accountable for particular actions.[4]

The integration of supervisions has not only its fervent advocates. There are also opponents of this idea. Among arguments against supervision's unification are following:[7]

1. Unclear objectives

   Integrated supervision may have considerable difficulty in striking an appropriate balance between the different objectives of regulation. The difficulty of designing a single set of objectives may result in a vague or an ill-defined statutory responsibilities, which may cause problems of holding the supervision accountable for its activities.

2. Diseconomies of scale

Unified supervision may suffer from some diseconomies of scale. Some inefficiencies[5] are usually associated with monopolies and an integrated supervision is a such monopoly. Another source of diseconomies of scale is a tendency to assign to a unified supervision, the new responsibilities which are beyond its already broad scope.

3. Limited synergies

   Some economists claim that economies of scope are likely to be much less significant than economies of scale. The cultures, styles, focus and skills of supervisors from different sectoral supervisory agencies vary markedly which mirrors their distinctive approaches and performances of oversight. The problem is that these differences remain in an unified agency. Even internal organization not assuaged the difficulty as it very often has separate departments reflecting traditional institutional line – i.e. banking, securities, insurance. To some extent the difficulty has been compounded – or at least not assuaged – by the fact that the internal organization of these agencies has tended to mirror traditional institutional lines – e.g. most have been established with separate departments for banking, securities and insurance regulation.

4. Moral hazard

   The public may have a tendency to assume that all creditors of institutions supervised by a unified supervision will receive equal protection.[6] This is a serious but obviously an informational problem and thus integrated supervision should as soon as possible clarify the rules of the game.

Different review essays have shown advantages and disadvantages of different architectures of financial supervision and demonstrated that there are not any strong theoretical arguments in favour of any particular model[8]. It is clear that there is no such thing as an optimal supervisory structure.

Regulatory and Supervisory Powers of Unified Agencies

To fulfil their supervisory duties, the supervisors have an access to various supervisory powers. Integrated agencies may have various powers. The basic[7] supervisory and regulatory powers that an integrated agency with wide authority in the financial sector is expected to have, are:[9]

1. Conduct of on-site examinations.
2. Conduct of off-site examinations.
3. Imposition of sanctions and fines for non-compliance with rules and regulations.
4. Issuance and change of prudential regulations on credit, market, operational and liquidity risks.
5. Modification of accounting and disclosure rules.
6. Setting of minimum capital requirements and, if deemed appropriate, requiring intermediaries to comply with higher requirements or grant them temporary suspension (regulatory forbearance).
7. Issuance and change of rules on the composition of capital.
8. Setting of general licensing requirements.
9. Approval / revocation of a license of an intermediary.
10. Resolution of issues related to consumer protection.

The powers of the unified agencies are concentrated around core supervisory functions, such as the power to conduct on-site and off-site examinations, as well as the power to impose sanctions and fines on financial institutions for non-compliance with existing laws and regulations. If the unified agencies have few regulatory and supervisory powers, it means that other institutions, such as the Ministry of Finance and/or the central bank, continue to have important regulatory and supervisory powers in the country.[9]

NATURE OF FINANCIAL SUPERVISORY SYSTEM IN POLAND

Origin and Institutional Place of the PFSA

The Polish Financial Supervision Authority (PFSA) initiated its activities on September 19, 2006, i.e. the date when the Act on Financial Market Supervision of July 21, 2006[10] came into force. In the first phase of the merger of financial supervision in Poland, the new supervisory body took over the duties of the Insurance and Pension Funds Supervision Commission and the Polish Securities and Exchange Commission, which were abolished by the said Act. In the second phase (January 1, 2008), the PFSA took over the tasks of the Commission for Banking Supervision together with its Office – the General Inspectorate of Banking Supervision. The President of the Council of Ministers appointed on September 29, 2006[11] the first Chairperson of the Polish Financial Supervision Authority, Stanisław Kluza. The Chairperson of the PFSA shall perform his functions for five years.

The PFSA is an independent, separated agency functioning outside of the central bank or the ministry of finance. Supervision over the financial market includes:

1) banking supervision,
2) pension supervision,
3) insurance supervision,
4) capital market supervision,
5) supervision over electronic money institutions,
6) complementary supervision.

The Polish Financial Supervision Authority's activity is supervised by the President of the Council of Ministers.

Funding of the PFSA

The Polish Financial Supervision Authority Office is a budgetary entity. The level of expenses on its activities is specified in an annual budget act. According to the legal doctrine, a PFSA Office's income comes from obligatory fees levied upon the regulated institutions. „In 2009, the PFSA reported a budget revenue of PLN 224,986.6 thousand on an accrual basis and PLN 148,035.7 thousand on a cash basis. The cash revenue derived mainly from fees paid by the industry to cover the costs of supervision of PLN 143,209.4 thousand. The fines incurred and paid by the industry and proceeds other than revenues designated to cover the costs of supervision amounted to PLN 4,826.3 thousand."[12] The level of these fees is calculated based on separate legal acts governing this specific matter.

Organizational Structure of the PFSA

The PFSA has been headed by Stanislaw Kluza since 2006. The Chairperson should have two Vice-Chairpersons. At present he has only one – Leslaw Gajek. The members of the PFSA are:[13]

1) the minister competent for financial institutions or such minister's representative (representative of the Minister of Finance - Dariusz Daniluk),
2) the minister competent for social security or such minister's representative (representative of the Minister of Labour and Social Policy - Marek Bucior),
3) president of the National Bank of Poland or Vice-President delegated by him or her (Vice President of the National Bank of Poland - Witold Koziński),
4) a representative of the President of the Republic of Poland (Danuta Wawrzynkiewicz).

The Commission performs its duties with the assistance of its office – the PFSA Office.

The PFSA Office is divided into seven branches[14]. The first three are charged with supervisory activities: Capital Market Supervision (managed by Director Marek Szuszkiewicz[15]), Insurance and Pension Supervision (headed by Director Dagmara Wieczorek-Bartczak[15]) and Banking Supervision (governed by Director Andrzej Stopczynski[15]). Each of them is charged with supervisory responsibilities in its own area, because the PFSA, although being a single supervision authority regulating the entire financial market, performs its duties based on separate regulations specified in acts pertaining to individual sectors of the financial market[12].

The next very important branch concerns inspection of the entire financial market and is managed by Acting Director Pawel Sawicki[20]. This part emerged in a process of an organisational integration of inspection activities and procedures carried out by the PFSA and unification of the inspection methodologies within the PFSA. A stand-alone Inspection branch, responsible for all the sectors, was created as legal regulations governing the inspection activities are relatively similar across all regulated sectors of the market.[12]

The fifth branch, headed by Director Adam Plocinski[15], is Financial Market Development and Cross-sector Policy. It performs task with a view to develop financial market and its competitiveness and supervise financial conglomerates[16]. This branch is dedicated i.e. to education, public relation and international cooperation.

Law and Legislation - the sixth branch, governed by Director Marek Wedrychowski[15], coordinates preparation of legislative projects (concerning supervision over the financial market in the PFSA Office) and performs tasks concerning the legal services.[16]

The final branch, Administration, is managed by Stanislaw Soltys[15]. Its basic issues are related to human resources, security and IT, but also administrative and financial matters[14].

The Polish Financial Supervision Authority Office besides above mentioned seven branches also has in its structure an Office of the Commission (a PFSA Cabinet) headed by Director Marzena Borowiec[15], Numerous Plenipotentiaries for Internal Audit and Plenipotentiary for Classified Information Protection.[14]

An organisational chart of the Polish Financial Supervision Authority Office is shown in Figure 1.

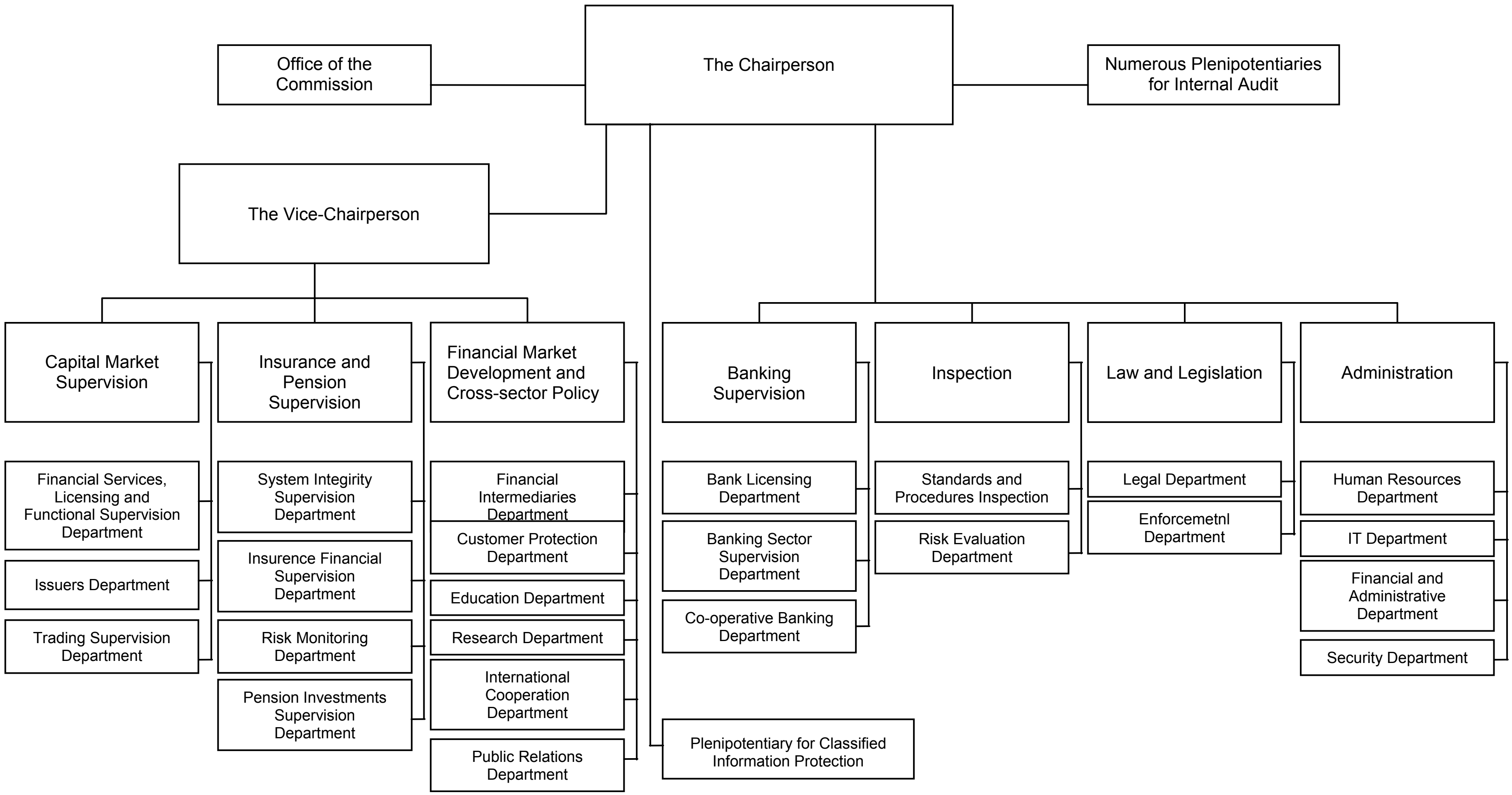
The head office of the PFSA Office is in Warsaw (the capital of Poland). In addition Banking Supervision branch has 16 local entities in 13 main Polish cities [16].

To fulfill tasks imposed by law, the Polish Financial Supervision Authority Office makes efforts to gain highly qualified staff and maintain its high merit quality. At the end of 2008 employment in the PFSA Office amounted to 827 full-time positions and grew fast. Thanks to that the average employment in 2009 reached 891 full-time positions. Most people have worked in Banking Supervision branch – 357.4 full-time positions.[16]

To raise a level of knowledge and cater to the needs resulting from changes in areas connected to supervision, as well as to prepare numerous groups of employees for work in the inspection area, the PFSA Office realizes a lot of trainings. In 2009, subjects of these trainings concentrated on different types of risk, IAS/IRFS[8], analysis of financial statements and internal audit. In 2009, per one employee fell an average of 5.2 trainings, which meant 8.7 days of trainings.[16]

All these actions are aimed at supporting present and attracting new employees, who are crucial to meet the challenges appearing in supervision over incessantly changing financial market.

FIGURE 1
THE STRUCTURE OF POLISH FINANCIAL SUPERVISION AUTHORITY OFFICE



Source: based on PFSA webside, Organisational chart of PFSA, http://www.knf.gov.pl/en/Images/organisational_chart_pfsa_tcm81-8078.pdf, accessed 1 September 2010.

Supervisory Aims, Tasks and Functions

The PFSA is responsible for an integrated supervision of Polish financial market. At the end of 2009 Polish supervisory office regulated, inter alia, 643 banks conducting operations (including 49 commercial banks, 18 branches of credit institutions, 576 cooperative banks)[17], 14 open-end pension funds, 1099 employee pension programs, 668 insurance companies, 46 brokerage houses and 13 banks conducting brokerage activities as well as 13 custodian banks.[16]

The primary objective of the Polish Financial Supervision Authority is „to ensure regular operation of the financial market, its stability, security and transparency, a confidence in the financial market, as well as to ensure the protection of interests of these market actors"[10]. To achieve this aim the PFSA fulfill the following tasks:[10]

1) supervising of the financial market (that is banking supervision, capital market supervision, insurance supervision, pension scheme supervision and supervision of electronic money institutions),
2) undertaking measures aimed at ensuring regular operation of the financial market,
3) undertaking measures aimed at development of financial market and its competitiveness,
4) undertaking educational and informational measures related to financial market operation,
5) participating in the drafting of legal acts related to financial market supervision,
6) creating the opportunities for amicable and conciliatory settlement of disputes which may arise between financial market actors, in particular disputes resulting from contractual relations between entities covered by the PFSA supervision and recipients of services provided by those entities,
7) carrying out other activities provided for by acts of law.

Furthermore, on March 31, 2008 the Conciliatory Court at the PFSA began to function. In February 2009, in response to the situation on the financial market, it extended its scope of operations to include mediation.[12]

Every year the Polish Financial Supervision Authority presents to the President of the Council of Ministers report on its activities.

Interrelations Between Supervisory Office and the Financial System

The Polish Financial Supervision Authority tries not to be introvert and inaccessible, but takes action in aim to make, improve and strengthen contacts with financial market participants. The PFSA carries out i.e. educational initiatives, "Market Meetings" and cooperates with international organisations.

In 2009 the PFSA launched the CEDUR brand (Educational Centre for Market Participants) under which cyclical educational activities are carried out. The PFSA's educational activities are targeted at:[12]

1) professional financial market participants,
2) the judiciary, prosecutors and law enforcement officers,
3) local and regional consumer advocates,
4) members of the media,
5) scholars and academic communities,
6) consumers of financial services.

The CEDUR initiative conducts activities such as organising training seminars for both professional and non-professional financial market participants. The seminars offer an opportunity to share unique knowledge and experience in an easily understood form. A relevant advantage of the seminars is the opportunity to exchange views directly with the supervision's representatives. In 2009, the PFSA has organised 39 CEDUR seminars, which enjoyed high popularity and attracted about 2,600 participants.[12] Included in the scope of CEDUR activities is an operating of the ManyMany.info website[9]. This educational website, designed and launched in 2009, is addressed to secondary school and academic students. The website, thanks to its user-friendly design, explains in a simple way the mechanisms of household budgeting, pensions, credit cards and other financial products.[12]

The next project is “Market Meetings”, which main purpose is to improve the standards of communication and cooperation with the market organisations. The PFSA’s senior personnel and heads of financial trade organisations meet regularly in four thematic groups: banking sector, pension market, insurance and capital market to discuss the most recent problems of the market. In 2009, 16 rounds of “Market Meetings” were organised.[12]

Apart from national activities, the Polish Financial Supervision Authority cooperates with international organisations. Engagement in international projects enables the PFSA to discuss new regulatory and supervisory concepts, but also to exchange information which then may be used to better perform analytical and supervisory tasks.[12] In 2009, representatives of the PFSA participated in the following initiatives:[18][10]

1) European Union
   a. the Level 3 Committees (CESR[11], CEIOPS[12], CEBS[13]),
   b. public consultations[14],
   c. EU regulations and related documents,
   d. EU funded projects[15],
2) internationals organizations
   a. IOSCO[16],
   b. IAIS[17]
   c. IOPS[18],
3) memoranda of understanding,
4) BSCEE[19],
5) TIFS[20].

The Polish Financial Supervision Authority also cooperates with the National Bank of Poland – the Polish central bank. Both institutions signed document concerning mutual cooperation and information exchange[16]. Effective flow of information is important both during calm periods as well as in emergency situations.

NATURE OF FINANCIAL SUPERVISORY SYSTEM IN GERMANY

Origin and Institutional Place of BaFin

The German Federal Financial Supervisory Office under a German name of Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin), in its current form, was created on May 1, 2002 as a result of merger between Federal Banking Supervisory Office, Federal Securities Supervisory Office and Federal Insurance Supervisory Office. First two of these institutions have their beginnings before World War II while the latter originated much later in the 1990s. The reason for an establishment of comprehensive German supervisory authority is the growing integration of financial intermediaries on one hand, which no longer specialize in single financial product, but these days more often sell an extensive range of them[19]. On the other hand, businesses are growing larger and more powerful and so they demand a variety of products – there are easier to provide by one organization then by a number of individual providers[19]. Additional reasons in favor of a centralized supervisory authority is the move from publicly provided social security systems e.g. pension plans to privately financed ones by investment companies as well as the economies of scale and scope[19]. Thus, as these financial market changes have taken place over last five decades, subsequent changes have began to be implemented by their supervisors.

The legal bases for operation of BaFin are its By-Laws which govern the following: (1) structure and organization, (2) rights and obligations, (3) functions and powers and its Administrative Council and (4) details of budget preparation and control. Although both financial and technical control over BaFin’s activities is performed by the German Federal Ministry of Finance, in terms of budgetary income the supervisory is independent.

Funding of BaFin

The supervisory office of BaFin is a non-profit organization. Its funding is regulated by a German act which established the Federal Financial Supervisory Authority. According to the legal doctrine, BaFin's income comes from three sources – fees levied upon the regulated institutions[20], separate reimbursements demanded for services provided[20] as well as other contributions[20]. The level of fees and contributions is calculated based on separate legal acts governing this particular matter especially i.e. Ordinance on the Imposition of Fees and Allocation of Costs Pursuant to the FinDAG.

However, expenses of the BaFin come from three main sources: Firstly, the imposition of penalties and fines on supervised institutions results in costs being incurred by the regulator. Secondly, the BaFin as a separate legal entity must maintain accounting documents and disclose all pertinent data which results in administrative costs. Thirdly, expenses are incurred by BaFin due to their regular operational activities.

Organizational Structure BaFin

The main body of BaFin is its Administrative Council whose main role is an oversight of the supervisory authority's management as well as an advisory role as part of various advisory councils. It is also responsible for acceptance of the authority's annual budget.

BaFin itself is divided into five branches. The first branch is the office of the President as of 2002 headed by Jochen Sanio [21]. It is divided into two parts: The first one is composed of the President's office, internal audit and public relations, while the second part consists of a Department INT subdivided into six sections charged with technical cooperation, cross-sectoral multilateral activities, bilateral activities, and supervision of three supervisory branches.

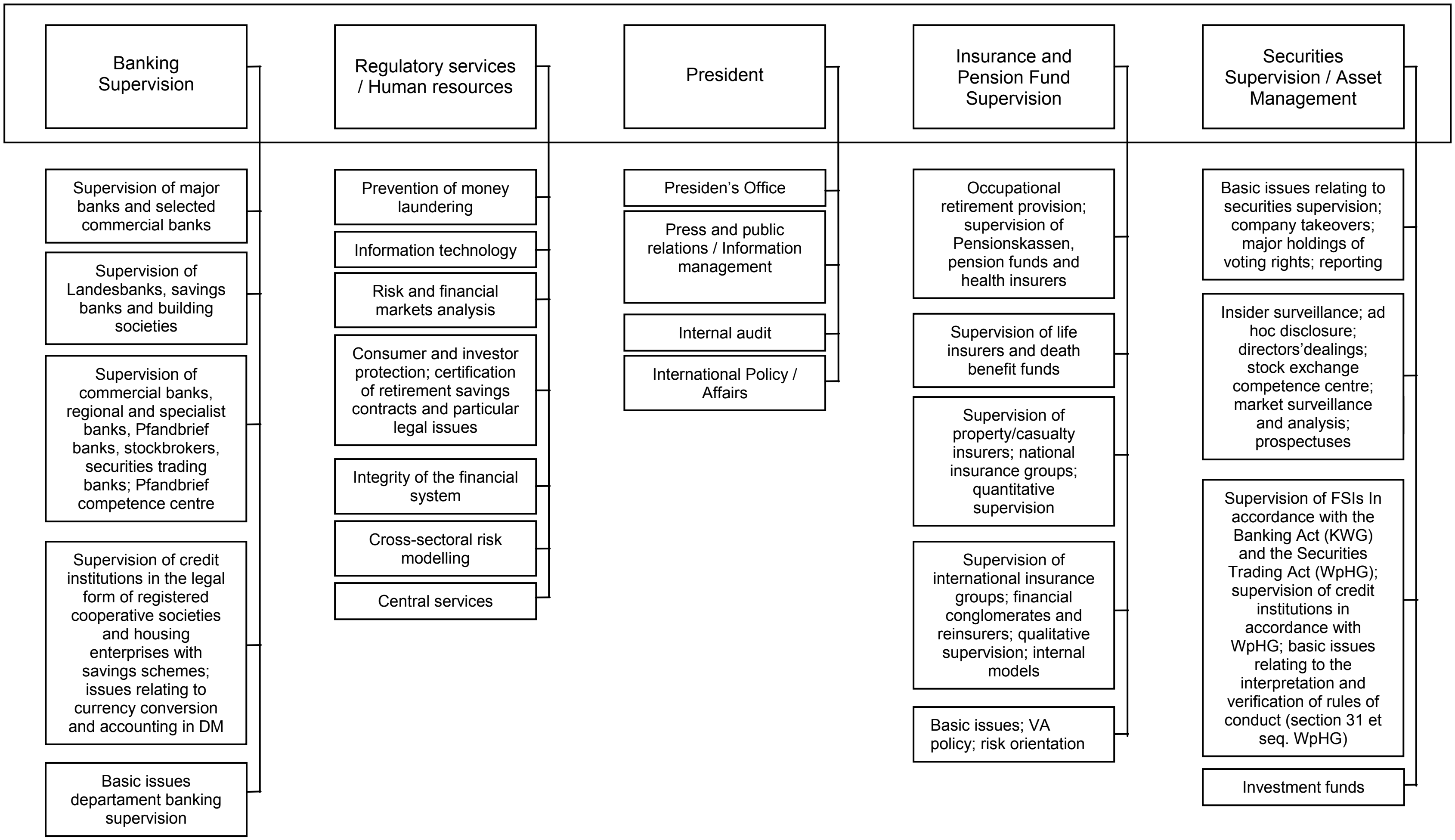
The second branch consists of regulatory services and human resource management and it is headed by Chief Executive Director Michael Sell[21]. This part of BaFin is divided into four departmental units: Department Q1 is dedicated to risk and financial markets analysis, Department Q2 – to consumer and investor protection, Department Q3 – to integrity of the financial system, Department QRM – to cross-sectoral risk modeling and Department Z to central services. This branch also includes GW Group for prevention of money laundering and IT Group for information technology management.

The next three branches are directly charged with supervisory responsibilities. The first one – Banking Supervision, managed by Sabine Lautenschläger-Peiter[21], has five departments: Department BA1 for supervision of major banking and selected commercial banks, Department BA2 – supervision of Landesbanks, savings banks and building societies, Department BA3 – supervision of commercial banks, regional banks and specialist banks, Department BA4 – supervision of credit institutions and housing enterprises and Department BA5 – dedicated to basic issues.

Insurance and Pension Fund Supervision branch with five departments is governed by Thomas Steffen[21]. Department VA1 is primarily charged with occupational retirement provisions, Department VA2 with supervision of life insurance and death benefit funds, Department VA3 with supervision of property/casualty insurers, national insurance groups and quantitative supervision, Department VA4 with supervision of international insurance groups, financial conglomerates and reinsurers as well as their quantitative supervision and internal models and Department VA5 is responsible for basic issues, VA for policy and risk orientation.

The final Securities Supervision and Asset Management branch, managed by Karl Burjhard Caspari[21], includes four departments. That is, Department WA1 – basic issues related to securities supervision, company takeovers, major holdings of voting rights and reporting, Department WA2 for among others, insider surveillance and market surveillance and analysis, Department WA3 basic issues related to supervision of securities and Department WA4 dedicated to investment funds. Below we have presented the onanigram of Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin):

FIGURE 2
THE STRUCTURE OF BUNDESANSTALT FÜR FINANZDIENSTLEISTUNGSAUFSICHT (BaFin)



Source: based on BaFin website, Organisation chart of the Federal Financial Supervisory Authority (pdf/906 KB), http://www.bafin.de/cln_179/nn_720486/EN/BaFin/Organisation/organisation__node.html?__nnn=true, accessed 15 August 2010.

To fulfill all abovementioned tasks BaFin employs, as of April 2008, about 1 700[22][21] persons of which approximately two-thirds are civil servants at three levels – basic/middle, upper and higher – and one-third are regular employees. Most of them i.e. approximately 68% work in the main BaFin's location in Bonn, 20% work in Frankfurt am Main and the remaining 10-12% work in national or international authorities and institutions or are on temporary leaves. While majority of the employees work in three main branches of Banking Supervision, Insurance and Pension Fund Supervision and Securities Supervision and Asset Management, around 300 people work in two remaining branches charged with administrative and coordinative duties[22].

The supervisory authority also utilizes trainees in order to fill in temporary posts as well as to train junior level workers to become part of higher and upper tier of workforce in the future. The training program is set up to provide a continuous education for all members of BaFin. This occurs by the means of clear career paths and targeted training syllabuses both inside (in-house trainings) and outside (external trainings) the organization. As of April of 2008, BaFin had 62 candidates for an entry from junior to upper Civil Service being trained in any of the following areas: administration, information technology, office communication, and media and information services[22]. Together with Bundesbank, BaFin also offers training practices for university students.

The demographic characteristics of its employees show a high degree of tolerance and appreciation of variety. Almost half of its workforce consists of women who recognize family-friendly working conditions as well as good professional opportunities. More than 75% of BaFin's team is in the middle age category that is between 30 and 44 years of age and they come from various educational backgrounds including law, economics, public administration, computer science and mathematics. All these are necessary to adequately tackle problems faced by the supervisory office[22].

Supervisory Aims, Tasks and Functions

As it has been mentioned previously, BaFin is responsible for integrated financial supervision of German financial market which means an authority over supervising financial service providers, credit institutions, investment and insurance companies as well as some issues related to securities trading. BaFin's primary objective of financial supervision is "to ensure the proper functioning, stability and integrity of the German financial market"[22]. As of May 2010, German supervisory office regulated 2 000 banks, 710 financial service providers, about 620 insurance companies, 28 pension funds, approximately 6 000 domestic investment funds and 73 asset management companies[22]. As part of BaFin's solvency supervision, the office checks whether financial institutions are able to meet their obligations at all times, yet through its market supervision, it enforces fairness and transparency in the market[22].

Pertinent to all supervisory functions, the aim consists of ensuring that "only authorized companies offer their services on the market and that" their management meets "professional qualifications" as well as "that institutions comply with the statutory and regulatory principles for the banking business"[22]. In particular for the insurance business, BaFin must assure that interests of policyholders are protected in a long-term horizon, taking into account the longevity of these contracts. Moreover, it ensures that capital from policies is invested safely and profitably. For the purposes of asset management supervision, it enforces financial reporting rules and guarantees that market conditions are fair and transparent[22].

The supervisor also performs an investor protection function as it accepts complaints from financial market consumers and tries to resolve them by verifying if organizations follow statutory rules and rulings. BaFin also cooperates with other EU financial market bodies to create a uniform regulatory environment and to originate and improve on regulatory laws. Finally, it performs a representative role of a Germany as a European financial centre[22].

While maintaining highest quality standards, BaFin's legal responsibility is based upon six pillars[23][22]:

1. Risk-based resource allocation: Due to scare resources, BaFin supervises undertakings that have a highest probability of occurrence as well as whose size of loss is high. In other words, BaFin does not supervise all financial market activities.

2. Made-to-measure supervision with a sense of proportion: BaFin is a believer in a common-sense, market-oriented and coordinated financial market and so it supervises institutions using these principles depending on the size and scope of financial undertakings.
3. Responsibility for Europe: BaFin cooperates with other EU member authorities based on standard of mutual trust and upholds harmonized European Union supervisory practices to ensure stability of EU market.
4. Closeness to practical realities: BaFin's role is to maintain an open dialogue with supervised institutions in order to promote self-regulation and draw up new laws in cooperation with all stakeholders.
5. Objectivity and transparency: All institutions are treated equally by the supervisory office, while applicable laws are made to be readily understandable by all. Breaches of the rules are punishable firmly, objectively and with BaFin's tasks in mind.
6. Cost-consciousness: Since BaFin is funded by organizations it supervises, it is charged with being cost effective and thus at maintaining tight cost control.

Interrelations Between Supervisory Office and the Financial System

BaFin as one of its primary activities sees a cooperation between itself and other supervisory institutions of the EU member countries to create a single common European market. At the European level, the organization participates in three sector-specific committees – a banking supervisory committee (CEBS), an insurance and occupational pension supervisory committee (CEIOPS) and a securities regulation committee (CESR) – the same ones in which the Polish Supervisory Office holds seats. At an international level, alike PFSA, BaFin is engaged with three regulatory bodies: an insurance supervision (IAIS), securities regulation (IOSCO) and the Basel Committee on Banking Supervision. Besides these, the German regulator is present in other cross-sector organizations such as Financial Stability Board and the Joint Forum.

BaFin is deeply devoted to cooperation with the German central bank – the Bundesbank. Both institutions have prepared a common document, a "Memorandum of Understanding", to outline each other's duties and relationship between them. Deutsche Bundesbank has also prepared and issued, yet based on joint discussions with BaFin, a document entitled "Guideline on the execution and quality assurance of the ongoing supervision of credit and financial services institutions by the Deutsche Bundesbank".

REALIZATION OF SECONDARY AIMS

Sharing Knowledge

Sharing knowledge pertains to a communication and an exchange of information among supervisory offices and the stakeholders such as consumers, supervised institutions and the government. The German and Polish supervisors organize conferences and seminars to achieve various aims. BaFin is targeted at arranging events of general market interest, where specially formed task forces work on solving problems. An example of that is a Financial Action Taskforce on Money Laundering (FATF) which has worked in 2008 on identifying legal loopholes in prevention and resolution of money laundering[24]. Thus, BaFin carries every day work in groups dedicated to solving precisely outlined problems. Large conferences, as for instance, the "Islamic Finance Conference" held in English on 29 October 2009 in Frankfurt, Germany[23] are aimed at attracting various branches of financial sector and presenting a topic to a wider audience. This year up to October 2010, BaFin also prepared two other conferences, one dedicated to "Enabling Microinsurance Markets" in May of 2010 and "IOSCO Annual Conference 2010" in June.

The Polish supervisor – the PFSA – applies a different strategy to raise awareness about financial market and solve problems arising in it. It operates an educatory CEDUR – as it was mentioned in part II of this paper –, a centre whose aim is to (a) organize conferences and seminars, (b) propagate primary, secondary and higher level of education regarding financial markets and (c) maintain an educational platform. The conferences and seminars that CEDUR conducts pertain primarily to four financial sectors that is capital, insurance, pension and banking. These are dedicated to various consumer groups, including Poland's administration of city, municipal, vovoidship and country levels.[25] However, by looking at the topics[24] most of them are rather dedicated to increasing knowledge about current rules adopted by the Polish banking sector or up-to-date problems facing the market, than on a long-term perspective on the market developments and ways to improve financial market conditions.

Polish supervisory office also in 2009 implemented a so-called Teaching Initiative for Financial Sector – TIFS. The aim of this organization is to prepare seminars on current financial market topics, exchange information with EU supervisory counterparts as well as to help implement best practices in Poland from the EU market. As it is quite a new initiative, so far it conducted only three seminars that is (1) "Financing the Real Estate Market - in the context of the financial crisis" in October of 2009, (2) "SREP-process and risk management. Investment market case" in April of 2010, and (3) "Insurers' investments activity - new challenges for supervisory institutions" in October of 2010[25].

Given that, the German supervisor uses a different approach than its polish counterpart. While German's BaFin concentrates on resolving current problems in smaller groups i.e. task forces whose work results in special recommendations to BaFin's governmental authorities, the PFSA prefers to prepare solutions individually within departments – there appears to be "a grey zone" image on how the decisions are made and then to increase the awareness about solutions to wide groups of market participants. Likely, these approaches are different as a result of longevity of the supervisors and of varying needs of developed and developing financial markets.

Consulting with the Market

Polish supervisor conducts weekly meetings between managers of the PFSA and the managers of financial institutions as well as financial intermediaries. These meetings are divided into four groups – banking, capital markets, insurance and pension – and they are aiming at increasing market communication between the supervisory and the consumers and also at accessing their satisfaction from being a part of the market. As a result of each meeting an announcement is published including the minutes and recommendations. However, it should be once again emphasized that these groups focus on current issues, rather than longer-term solutions.

On the contrary, BaFin does not provide open market meetings or at least no information on it is available to the public. Some forms of consultations are likely, yet it seems like they are conducted at hoc, not on regular basis. Moreover, both supervisory offices utlise a computerised method for registering complaints from the market. The German supervisory authority has a widespread system of complaints regarding the supervised bodies. On its website, BaFin advises consumers how to process with complaints regarding the financial markets – it provides information on the content of complaint as well as appropriate addresses for filing them with BaFin[26]. It also has a database of companies which can be utilized to access data on German financial intermediaries.

The Polish counterpart also provides the information on supervised financial companies but rather in a table format. In addition, it accepts complaints from the public at its website through a special form[27] as well as in the form of a written letter of complaint or in person at its Warsaw office. The PFSA's website is somewhat deficient in comparison to BaFin because the latter provides answers to most frequent questions asked by consumers and gives an advice on how to proceed with a complaint starting with a company itself and treating the supervisory office as a last resort. Even though, it is important to point out that both institutions are visibly interested in communication with its stakeholders and, in case of any problems, available to help.

Contributing into Law Formation

Preparing a new law for future improvement of regulation of financial market is an aim of both authorities. The PFSA over the 2008-2010 initiated about five legal acts, fifteen resolutions and opinionated numerous legal acts of which most are, unfortunately, short-term oriented and pertain to current business matters. Only few are longer-term solutions such as e.g. „A legal act project regarding a public offer and conditions on implementation of financial instruments to public exchange as well as regarding public companies and legal act pertaining to financial instruments exchange" filed with Polish Ministry of Finance in December of 2009. Although this is a very important part of the PFSA activities, this could be a place for preparation of legal fundamental institutional changes. Instead, it seems like it is a place to fix shortcomings of Polish present legal framework.

In Germany on the converse, while the BaFin also takes care of closing legal loopholes such as, for example, as a result of the BVerwG ruling, the Act on the Continuing Development of Pfandbrief Law, whose aim was to strengthen customer protection in the Cover Pool schemes. But it has also began much greater changes, for example when on May 18, 2010 issued decrees "prohibiting (i) naked short-sales of eurozone government bonds, (ii) naked short-sales of 10 German financial stocks, and (iii) entering into uncovered credit default swaps linked to Euro zone government debt[28].

In summary, these secondary areas of supervisory activities are very important, especially in light of turbulent financial markets and changing economic conditions. It is essential that these institutions stay in close contact with their customers and supervised companies as well as all other stakeholders in order to not only successfully resolve short-term dilemmas but also to prepare for and later address long-term strategic and institutional fundamentals of financial markets. It seems like the Polish supervisory authority is still not fully ready to fulfill this objective, although as can be seen by their current work, it tries to develop its internal structures to account for this target as well.

CONCLUSION

The aim of the paper provided above was to conduct a comparative analysis of two supervisory offices – the Polish Financial Supervisory Authority and the German Federal Financial Supervisory Office – which were relatively recently organized as a result of merger of cross-sectoral supervisory offices. While at first sight, these seem quite alike, and at second look, they are not completely so. Both of them possess organizations and tools necessary to conduct daily supervisory routines and to solve current problems in the financial market. Both emphasize the importance of highly qualified and dedicated workforces and spend a lot of time and effort to increase competences of their employees through trainings and seminars. In both offices, communication with key stakeholders is essential although here the most important difference is already visible. While Polish FSA is aimed at communicating about current issues, the BaFin is more focused on long-term strategic information exchange. This is, for example, visible in the kinds of workshops, seminars and conferences organized by these two contrasted institutions. The former being more oriented toward present with a numerous brief seminars to increase financial awareness or solve current problems in comparison to the latter focused on organizing few large conferences per year in order to attract highly specialized individuals to find answers to long-term strategic problems. As it was mentioned in the article, the reason for this dialectic may come from the nature of Polish versus German financial markets in which the first is still developing and the second is already well developed. However, this should be a warning sign to the Polish authorities since as the Polish market develops, the PFSA will need to re-sharpen its focus on more institutional aspects to help their market compete with other European financial markets rather than just to aid the market in its smooth functioning within the Polish market.

ENDNOTES

1. Among these risks are whether the group as a whole has an adequate capital and whether it has adequate systems and controls for managing its risks.
2. For example in data collection and processing and personnel administration.
3. There are important synergies between the data required for banking supervision and monetary policy purposes which may outweigh the synergies between the data necessary for banking supervision and for other financial intermediaries' supervision.
4. The fundamental consideration should be clarity of supervisory objectives rather than the number of agencies involved in the regulation. A unified supervisory agency with ill-defined objectives might be more difficult to hold to account than sectoral supervisory agencies with clearly specified objectives.

5. For instance more inflexibility and bureaucracy. This issue, however, is more likely to depend on quality of the organization, management and staff.
2. For example, if depositors are protected from a loss in the event of bank failure, then the clients of all other financial institutions may expect to be treated in an equal manner.
3. Naturally, agency may have many other powers that are not reflected in this list.
4. IAS – International Accounting Standards, IFRS – International Financial Reporting Standards.
5. www.manymany.info
6. http://www.knf.gov.pl/en/About_us/International_Cooperation/index.html, accessed 9 September 2010.
7. The Committee of European Securities Regulators.
8. The Committee of European Insurance and Occupational Pensions Supervisors.
9. Committee of European Banking Supervisors.
10. To fulfil Lamfalussy procedure's requirements CESR, CEIOPS and CEBS hold open, public hearings on draft documents. The open hearings are published on committees' webpage with deadline for commenting on the drafts.
11. The PFSA participates in the implementation of the assistance projects.
12. The International Organization of Securities Commissions.
13. The International Association of Insurance Supervisors.
14. The International Organisation of Pension Supervisors.
15. Banking Supervisors from Central and Eastern Europe.
16. The Training Initiative for Financial Supervision was established by the PFSA in 2009. It is a training centre for supervisors of all sectors of the financial market (banking, capital market, pension and insurance) from European countries.
17. As of May 2010, the source BaFin website, BaFin – About us (pdf/174 KB), http://www.bafin.de/cln_171/nn_721302/EN/BaFin/Functions/functions__node.html?__nnn=true, accessed 15 August 2010, provides a number of employees as 1900, however, without any further details.
18. These are a part of BaFin's mission statement.
19. For more information visit the BaFin's website at: http://www.bafin.de/cln_171/nn_720790/SharedDocs/Veranstaltungen/EN/2009/islamic__finance__conference.html.
20. One can view the topics of conferences and seminars for the period 2007-2009 at CEDER webpage at http://www.knf.gov.pl/dla_rynku/edukacja_cedur/cedur/cedur.html#1.
21. For more information visit the TIFS' website at: http://www.knf.gov.pl/o_nas/wspolpraca_miedzynarodowa/tifs/tifs.html.
22. For more information visit BaFin's website at http://www.bafin.de/cln_179/nn_721994/EN/Consumers/Complaintscontacts/ComplaintoBaFin/complaintobafin__node.html?__nnn=true.
23. To view the list of possible forms depending on the subject one should visit PFSA's website at http://www.knf.gov.pl/lista_formularzy.jsf.
24. Client Briefing, (28 May 2010), BaFin bans naked short-selling and uncovered sovereign CDS trading / new draft law proposes further restrictions including currency derivates - Update 2, p. 1.

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