

## Introduction

Bank Gospodarstwa Krajowego is a particularly important institution in the domestic financial system as regards state economic policy, as it was established with this intention in 1924. In the period of the Polish People's Republic, the importance of Bank Gospodarstwa Krajowego was marginal, its role being confined solely to activities in the area of continuing the proceedings of some of the financial institutions abolished during that period.<sup>1</sup> After 1989, the institution once again began to take on a more systemic relevance. The scope of tasks entrusted to Bank Gospodarstwa Krajowego, including by way of a legislative instrument, as well as in the process of Poland's integration with the European Union, resulted in the legislator's decision to regulate certain matters relating to its functioning by way of a separate act, introducing solutions of a *lex specialis* nature in relation to banks operating on commercial terms.

The Author's research to date has focused significantly on the functioning of Bank Gospodarstwa Krajowego. The Author's works dealing with this issue include a monograph and seventeen chapters in monographs and scientific articles (listed in the bibliography).<sup>2</sup> The research was carried out mostly in the scientific field of economics and finance, with a particular emphasis on issues related to the economic analysis of the law (*Law & Economics*). The Author's research shows that there is a research gap with regard to the legal system of Bank Gospodarstwa Krajowego. A review of the literature reveals monographs and articles dealing exclusively with economic or general history issues (e.g. by Zbigniew Landau (1998) or Bronisław Hynowski and Mateusz Wierzbicki

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<sup>1</sup> E.g. in connection with the regulations of the Decree of 25 October 1948 on the Principles and Procedure of Liquidation of Certain Long-Term Credit Institutions (Journal of Laws No. 52, item 411, as amended).

<sup>2</sup> The Author cites in the bibliography a body of work in the area of research into the institutions of Bank Gospodarstwa Krajowego, but nevertheless its use in this work is negligible.

(2014)), as well as publications of a review nature, which present programmes or undertakings implemented by Bank Gospodarstwa Krajowego. The Author's review of the database of topics of scientific papers at <https://nauka-polska.pl> also confirms the lack of interest of researchers in the issues concerning the legal status of Bank Gospodarstwa Krajowego. On the other hand, an analysis of the content of databases related to legal regulations (LEX, Legalis) revealed the absence of publications being a standalone commentary on the Act of 14 March 2003 on Bank Gospodarstwa Krajowego. It can be observed that the topic of Bank Gospodarstwa Krajowego is raised only occasionally in the passages of commentaries relating to the functioning of state-owned banks under the provisions of the Banking Act of 29 August 1997<sup>3</sup> (hereinafter the Banking Act). According to the author, such a situation is due to the fact that, since 2000, Bank Gospodarstwa Krajowego has been the only entity conducting banking activities as a state-owned bank.

The issues indicated above justify, in the Author's opinion, the advisability of attempting to fill the identified research gap. To quote Szymon Nowak (2011), "As prof. dr hab. Tadeusz Rawski used to say: *when you can't find a book that interests you, there is a remedy for that – write it yourself*". This publication aims to present the domestic legal solutions outlined in the Act on Bank Gospodarstwa Krajowego, analyse them, and assess their legitimacy in the context of *lex specialis*, as well as in the aspect of foreign solutions.

The reference literature and legal acts provide various definitions of institutions carrying out activities similar to those of Bank Gospodarstwa Krajowego. Given the above, in the publication, the Author proposed to use the broadest possible definition, i.e. a public development finance institution, regardless of the business profile on which its activity is focused (e.g. granting credits, supporting export) or the legal form under which it is operated. Public development finance institutions are directly or indirectly affected by certain regulations of European Union law. For example, a package of EU measures in the area of capital requirements, i.e. Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC<sup>4</sup> (hereinafter the CRD IV) and Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012<sup>5</sup> (hereinafter

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<sup>3</sup> Journal of Laws of 2021, item 2439, as amended.

<sup>4</sup> OJ EU L 176 of 27 June 2013, p. 338, as amended.

<sup>5</sup> OJ EU L 176 of 26 June 2013, p. 1, as amended.

the CRR), or the Communication from the Commission to the European Parliament and the Council Working together for jobs and growth: The role of National Promotional Banks (NPBs) in supporting the Investment Plan for Europe<sup>6</sup> (hereinafter the European Commission Communication). It is important to note that the functioning of public development finance institutions in EU states is a common phenomenon. For example, the most recognisable institutions of this type are the German Kreditanstalt für Wiederaufbau, the French Caisse des Dépôts et Consignations, the Italian Cassa Depositi e Prestiti or the Spanish Instituto de Crédito Oficial.

The aforementioned *lex specialis* rule results from a comparison of the scopes of the regulations, which leads to a conclusion whether the scope of the regulation or the application of one of the regulations is narrower, and thus more precisely defined, or whether one regulation is an exception compared to another. This rule may change the meaning of the *lex posterior* rule and determine exceptions to the use of the *lex superior* rule. The rule *lex specialis derogat legi generali* provides that a more specific norm will prevail over a more general norm, provided that it is not a norm of a lower order. In such a case, the principle of hierarchy is decisive. This rule is also sometimes referred to as the horizontal subordination rule, as it regulates the force of a legal norm within the same level of normative acts (Leszczyński, 2004; Kaleta & Kotowski, 2019).

The Author intends to analyse the legal regulations of the Act of 14 March 2003 on Bank Gospodarstwa Krajowego<sup>7</sup> (hereinafter: the BGK Act) of *lex specialis* nature from the point of view of the grounds of their functioning. The Author intends to carry out the analysis with reference to other generally applicable provisions of domestic law, in particular the Banking Act, as well as legal solutions functioning at the level of the European Union and the domestic law of selected member states of the European Union.

The Author intends to analyse *lex specialis* solutions in the following areas:

- 1) those existing in the BGK Act – justified from the point of view of the functioning of a public development finance institution (in the current wording or requiring amendment);
- 2) those existing in the BGK Act – not justified from the point of view of the functioning of a public development finance institution;
- 3) those not present in the BGK Act – justified from the point of view of the functioning of a public development finance institution.

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<sup>6</sup> COM/2015/0361 of 22 July 2015.

<sup>7</sup> Journal of Laws of 2003, No. 65, item 594; i.e. Journal of Laws of 2022, item 2153.

A *lex specialis* provision may be included both in a single piece of legislation of a *lex generalis* nature or be included in a separate normative act (Kaleta & Kotowski, 2019). As regards Bank Gospodarstwa Krajowego, the most important is the regulation of the inclusion of certain areas of its activities in a separate legal act (i.e. the BGK Act). The Author's considerations as to solutions of such *lex specialis* nature will mainly refer to regulations of *lex generalis* nature included in domestic, foreign and European laws on banking. It should be noted that *lex specialis* provisions concerning Bank Gospodarstwa Krajowego can also be found outside the BGK Act. For example, a direct reference to Bank Gospodarstwa Krajowego can be found in the Act of 5 August 2015 on Macro-Prudential Oversight of the Financial System and Crisis Management in the Financial System<sup>8</sup> and the Act of 10 June 2016 on the Bank Guarantee Fund, Deposit Guarantee Scheme and Forced Restructuring.<sup>9</sup> The solutions pertaining to the activities of Bank Gospodarstwa Krajowego contained therein, are of an exclusionary nature as regards the application of certain regulations, which, in the Author's opinion, is substantively justified. In this publication, the Author intends to focus exclusively on issues relating to the BGK Act. The starting point for the research conducted are the regulations of the BGK Act as at 1 October 2022.<sup>10</sup>

The scope of the subject matter of the publication in the context of the area of the included research, as well as the methodology of conducting it, justifies, in the Author's opinion, posing research questions rather than formulating a thesis or hypotheses. Therefore, in this publication the Author attempts to answer the following research question:

**What *lex specialis* solutions should be included in the BGK Act in the context of ensuring that Bank Gospodarstwa Krajowego can function as a public development finance institution, with minimum derogations from *lex generalis* solutions?**

This publication primarily uses the legal-dogmatic method and comparative legal research. The research process consisted mainly of an analysis of legal acts in force in Poland and in other legal systems, as well as historical legal sources.

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<sup>8</sup> Journal of Laws of 2022, item 963, 1488.

<sup>9</sup> Journal of Laws of 2022, item 793, 872, 1692.

<sup>10</sup> Text of the announcement of the Marshal of the Sejm of the Republic of Poland of 21 December 2021 on the announcement of the consolidated text of the Act on Bank Gospodarstwa Krajowego (Journal of Laws of 2022, item 100), and of 7 April 2022 on amending the Act on Mortgage Bonds and Mortgage Banks and Certain Other Acts (Journal of Laws of 2022, item 872).

The Author also intends that the publication has an application quality. The Author's efforts will focus on the ground of normative legal analysis. The Author aims to create law, not just to apply and interpret the law already in force. A review of the current legal regulations as a comparative analysis of the provisions originally establishing Bank Gospodarstwa Krajowego, as well as other examples of the functioning of public development finance institutions in selected countries and with legal solutions in force at the European Union level, should make it possible to prepare the Author's draft act on Bank Gospodarstwa Krajowego.

As already outlined in the research question posed above, the Author intends to conduct research on the solutions of *lex specialis* nature, assuming the necessity to provide only minimal solutions of this nature in the Banking Act, enabling Bank Gospodarstwa Krajowego to perform the function of a public development finance institution. The Author assumes that it is unjustified to have in place and propose *lex specialis* solutions favouring the expansion of Bank Gospodarstwa Krajowego activities by limiting the application of supervisory standards or even not applying them as part of domestic law.

The publication consists of an introduction, five chapters and a conclusion. The chapters are divided into two parts. The first is devoted to the regulations of European Union law and the domestic law of selected Member States, while the second relates to the area of the legal status of Bank Gospodarstwa Krajowego.

In the first chapter, the Author intends to introduce the issue of the essence of the functioning of public development finance institutions. The Author reviews the European Union legislation in this area, seeking legal solutions that define and characterise public development finance institutions. In the second chapter, the Author provides examples of the functioning of public development finance institutions in the European Union member states from Central and Eastern Europe. The Author decided to base his research on a research sample of such institutions operating in the post-communist bloc countries, which were forced to move from a command economy to a market economy, i.e. Bulgaria, Croatia, the Czech Republic, Lithuania, Latvia, Slovakia, Slovenia and Hungary. The sample selection is therefore deliberate. In the Author's opinion, the research sample, both in terms of the number of solutions studied and the fact of a similar starting point and economic development, is suitable for conducting comparative analysis and formulating *de lege ferenda* conclusions for Bank Gospodarstwa Krajowego. The third chapter is an analysis of the current provisions of the Banking Act, together with their interpretation in relation to the operation of state-owned banks. In the Author's opinion, it is justified to present the specificity of legal solutions

concerning the state-owned bank in the context of adopting such a legal form for the activities of Bank Gospodarstwa Krajowego. The fourth chapter presents the legal regulations under which Bank Gospodarstwa Krajowego was established and operated before the Second World War. The fifth chapter is an attempt to find a constitutional basis for the functioning of public development finance institutions in Poland. The Author focuses in particular on analysing the meaning of the term “social market economy”. The chapter also contains the Author’s analysis of the existing provisions of the BGK Act in the context of the legitimacy of *lex specialis* regulations, both positive (confirming legitimacy) and negative (unjustified to be maintained), and also requiring, in the Author’s opinion, amendment or even introduction. Each chapter of the publication contains a brief section with a summary and conclusions. The conclusions of the research will be presented in a summary conclusion. As already indicated, the Author intends that the publication has an application quality. Therefore, in Appendix 1, the Author presents a draft act on Bank Gospodarstwa Krajowego, prepared on the basis of own research carried out using the method of observation, analysis of legal solutions in the context of Bank Gospodarstwa Krajowego (current and no longer in force), as well as those in force in selected European Union states and at the level of the European Union (both generally applicable law and soft law).

As mentioned, the Author notes that in the commentaries of the Banking Act, one can find references to Bank Gospodarstwa Krajowego as a state-owned bank, whereas he does not find publications in the area of legal sciences concerning the systemically extremely important public development finance institutions, which Bank Gospodarstwa Krajowego undoubtedly is. The scarcity of literature on the functioning of Bank Gospodarstwa Krajowego made it necessary for the Author to base his research mainly on analysing the legal acts. In the area of literature, the Author primarily used pieces related to the analysis of the provisions of the Banking Act.

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The views expressed in the publication are the author's personal views and do not express the official position of the institution where he is employed.