

# Problems and Opinions



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## Resolution model for insurance sector

### Abstract

Work is underway to adopt the IRR Directive, which will establish a crisis management system in the insurance sector in the European Union. These solutions will have to be implemented in all Member States. Preparations for this task have already been undertaken in Poland, with the Bank Guarantee Fund (BFG) entrusting the main role in this respect. The aim of the article is to analyze the main problem areas accompanying the creation of a resolution system for insurers in Poland. The article was prepared on the basis of practical analyzes and considerations conducted in the course of BFG's work in the field of building competence in the resolution of the insurance sector.

**Key words:** resolution, insurance, bankruptcy, crisis management

**JEL Codes:** G22, H12

### Introduction

Since 2021, the European Union (EU) has been working on creating a crisis management framework for insurance companies. On 20 December 2022, representatives of the member states of the Council of the European Union agreed on a negotiating mandate on the proposal for a directive in this area (Insurance Resolution and Recovery

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Directive, IRRD or IRR Directive)<sup>1</sup> authorising further work on the act (EU Council 2022). The European Parliament's work on adopting its position on the Directive is scheduled for February 2023. The last stage of work are trilogues. Probably, each member state will have 18 months to implement the directive into national legislation. It can therefore be expected that resolution<sup>2</sup> of insurance companies and reinsurance companies based on IRRD, will be possible in EU countries from 2025.

In Poland, the Bank Guarantee Fund (BFG) received a mandate to act as a resolution body for the insurance market. The mandate was granted by the Financial Stability Committee at its meeting in December 2021 (BFG 2022). It is worth emphasizing that in Europe there is no single coherent solution as to the location of both the insurance supervisory authority and the resolution authority (OECD 2018, p. 29–33)<sup>3</sup>. Much depends on the specifics of local markets. There are countries where the central bank has supervisory function and those where a separate office supervises. There is also no harmonisation of guarantee funds in Europe, which means that the level of protection of policyholders in the event of the failure of an insurance company varies from country to country (Di Girolamo and oth., p. 2). Therefore, when preparing for insurance resolution, it is crucial that the resolution body is created in accordance with the specificity of the local market and in such a way that its location and shape protect insurance market customers in the best possible way. The resolution body must also not duplicate supervisory functions, and its ecosystem must be cost-effective.

The aim of the article is to analyze the main problem areas accompanying the creation of a resolution system for insurers in Poland. The basis for the preparation of the article is a critical analysis of the practical conditions for creating a resolution system of insurers in Poland. Therefore, the presented considerations result from practical implementation work carried out in Poland from 2021, when the draft IRR directive was published. In the following points of the article, reference is made to further practical problem areas for creating a crisis management system in the insurance sector in Poland. The article concludes the summary.

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<sup>1</sup> Proposal for a Directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of insurance and reinsurance undertakings and amending Directives 2002/47/WE, 2004/25/WE, 2009/138/WE, (UE) 2017/1132 and regulation (UE) no 1094/2010 and (UE) no 648/2012, COM(2021) 582 final, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52021PC0582> (accessed: 25.01.2023).

<sup>2</sup> In Poland, in the banking sector, the legislation uses the term “resolution”. In this article, all these terms will be used interchangeably.

<sup>3</sup> A similar situation also applies to, for example, the banking sector. For more information on this, see e.g. Kozińska (2021, p. 94, 102–104).

## 1. Location of the resolution body in Poland

The basic dilemma occurring during the creation of the resolution system is the issue of locating competences in this area within the existing safety network (Kozińska 2018, p. 52–56). In Poland, three institutions were initially considered as possible resolution bodies for insurers. These were the BFG, as well as the Polish Financial Supervision Authority (KNF) and the Insurance Guarantee Fund (UFG). The circumstances that were relevant to the final decision were as follows:

- a. optimisation of organisation and operations,
- b. consideration of the public interest and macroeconomic issues,
- c. knowledge and experience in the insurance market, but also mechanisms related to resolution.

In Poland, the role of the supervisory authority (in relation to banks, insurers, capital market entities, pensions, payment and loan services) is performed by the KNF. At the same time, the resolution body for financial institutions from the banking and capital markets is the BFG<sup>4</sup>. The following arguments were behind the decision to separate the role of day-to-day supervision from the resolution body:

- a. avoiding potential conflicts of interest between supervision and resolution,
- b. ensuring the operational independence of the insurance authority,
- c. taking a different perspective on going concern and crisis situations,
- d. minimising the risk that supervisors may delay the decision to place an undertaking under resolution as this may be considered by external observers as a failure supervisory responsibilities,
- e. operational capacity to use appropriate restructuring tools, including the need to take decisions regarding the creation of a bridge undertaking and the appointment of its management and supervisory board.

As far as the UFG is concerned, the statutory tasks of this institution are very important from the point of view of customers (Wanat-Połeć, Sordyl 2013, p. 585, 600), On the other hand, they differ from the catalogue of activities provided for in resolution. The UFG primarily:

- a. is responsible in special cases for the payment of compensation and benefits for the insured and injured parties, but only in relation to a narrow list of products (primarily TPL of motor vehicle owners) (UFG 2023a),
- b. is also responsible for non-insurance sectors (tourism (UFG 2023b), real estate sector (UFG 2023c)).

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<sup>4</sup> Act of 10 June 2016 on the Bank Guarantee Fund, deposit guarantee scheme and resolution (Dz.U. z 2022 r. poz. 2253). The proposed amendments to the act will extend the subjective scope of the CCP Act (See: Act amending the act on bonds and certain other acts, project 27 October 2022 r., published on the website rcl.gov.pl).

The UFG does not focus on maintaining the stability of the insurance sector<sup>5</sup>, therefore, as part of the current operations of the UFG, the necessary competences in the area of preparation and implementation of resolution processes on the financial market are not developed. The UFG manages the funds of insurance companies and the Fund's Council, apart from the representative of the KNF and the representative of the minister competent for financial institutions, consists of representatives of insurance companies<sup>6</sup>. Therefore, placing the resolution body directly in the structures of the UFG would cause a conflict of interest, a.o. because the Fund's Board is composed of representatives of entities to which forced restructuring would apply, meaning that decisions on the restructuring of the entity are made by its competitors<sup>7</sup>. Of course, as the experience of other countries shows, it is possible to locate the resolution body in which the conflict of interest will be removed.

The final decision to place the resolution body for insurers within the BFG was made after taking into account the following arguments:

- a. the BFG's experience in resolving the banking market (resolution on the banking market has been carried out four times in Poland so far (BFG 2023)). Therefore, the resolution for insurance companies complements the competences that the BFG already has in relation to banks,
- b. experience of the BFG in assessing the macroeconomic perspective of financial market entities (risk of contagion, impact on the real economy),
- c. competence of the BFG in the collection and management of the bank resolution fund,
- d. no need to duplicate administration and infrastructure – only a special department dealing with insurance resolution had to be created, while functions such as legal, IT, human resources, accounting or administrative functions already exist within the BFG.

The above means that BFG can build competences in the field of insurance resolution based on proven solutions. Of course, banking solutions should be used taking into account the specificity of the insurance market (Kozłowska 2022) and the proposed resolution framework takes this into account (EIOPA 2022, p. 7).

The resolution of insurance companies involves a number of tasks that go beyond day-to-day supervision. However, both the preparation and the implementation of the resolution must take place in close cooperation between the supervisory authority and the resolution authority.

So far, the cooperation between the BFG and the KNF in the field of resolution for insurers has covered the following aspects:

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<sup>5</sup> Although its activity supports the stability of the insurance market, it is not the main duty (Czechowska 2012, p. 26–27).

<sup>6</sup> Act of 22 May 2003 on compulsory insurance, the Insurance Guarantee Fund and the Polish Motor Insurers' Bureau (Dz.U. z 2022 r. poz. 2277).

<sup>7</sup> This argument was the reason for eliminating representatives of the banking sector from the BFG Council at an earlier stage of the BFG operation.

- a. personnel (i.e. the Chairman of the KNF is a member of the BFG Council),
- b. substantive support of the BFG in the initial phase of building insurance competences,
- c. substantive consultations of representatives of the BFG and the KNF in the field of initiatives at the EU level,
- d. work on creating a framework for the exchange of data on insurance market entities between the KNF and the BFG.

In this way, resolution-specific competences are supplemented with substantive knowledge about the insurance market, which leads to the improvement of the resolution area of insurance companies.

## 2. The concept of work on the resolution model for the insurance market within the BGF

The BFG is part of the financial safety net in Poland (Szustak 2018, p. 83–88), and the President of the management board of the BFG is a member of the Financial Stability Committee<sup>8</sup>, responsible for macro-prudential oversight and crisis management in the financial system (Ochwat 2018, p. 110). Thanks to this location, the BFG is a natural partner for national and European institutions in the area of work on the IRR Directive and accompanying acts. Locally, the BFG closely cooperates with other members of the Financial Stability Committee, i.e. the Ministry of Finance, the National Bank of Poland and the Polish Financial Supervision Authority, as well as industry and market organizations. Thanks to this cooperation, BFG can both educate the market in the IRRD area and discuss with representatives of the industry environment the local specificity of the insurance sector (e.g. the specificity of mutual insurance companies). The experience exchanged with representatives of the industry makes it possible to take into account local specificity in the work on the directive or its subsequent implementation.

In order to effectively implement work on the restructuring model for the insurance market, the assumed end result of which is to be readiness for operational operation of the BFG at the moment of entry into force of the provisions of the IRR Directive, implemented by Polish regulations, a design department was established in the BFG, responsible for creating an operational resolution framework for the insurance market.

Work on resolution within the BGF takes place in three main streams:

- a) regulatory,
- b) operational,
- c) the merits.

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<sup>8</sup> Act of 5 August 2015 on macroprudential supervision over the financial system and crisis management in the financial system (Dz.U. z 2022 r. poz. 2536).

The regulatory stream, which also includes the area of legislation, includes primarily a conceptual study on the resolution framework in Poland. In the process of creating and then implementing the IRR Directive, it is necessary to take into account the already existing regulations related to both the insurance market and, for example, the bankruptcy law. The BFG uses its insurance knowledge by preparing a.o. substantive positions for the Ministry of Finance and organizing meetings with:

- EU institutions, bodies and agencies (e.g. EIOPA),
- equivalents of Polish authorities in other EU Member States,
- national organisations and bodies creating the insurance market

in order to exchange views and share practical experiences from resolution processes with them.

The operational work stream focuses on ongoing cooperation with national institutions. These are primarily:

- The Ministry of Finance,
- National Bank Polish,
- Polish Financial Supervision Authority,
- Insurance Guarantee Fund.

The substantive stream is a pilot approach to methodologies for the efficient functioning of the resolution mechanism, i.e.:

- developing the "opt-in, opt-out" formula, i.e. including and excluding insurance companies from the scope of resolution planning,
- modelling of the target level of resolution fund for insurance undertakings,
- development of a methodology for determining critical functions in insurance companies,
- development of an early warning system and creation of a watch list of insurers that may be the subject of resolution proceedings in the future,
- analysis of the macroeconomic environment and its impact on the insurance market (e.g. inflation or interest rates),
- comparative studies on resolution solutions in other countries.

One of the first analyses carried out at the BFG was an analysis of the possibility of orderly termination of the activity of an entity from the insurance market and a review of available tools that would allow such action. Solutions from other countries were analysed. There are currently three countries in the EU (ESRB 2017, p. 32; EIOPA 2022, p. 8), which, despite continuous work on the IRR directive, have already implemented local resolution mechanisms for the insurance market, created on the basis of other local regulations.

The local resolution framework was created by Romania, the Netherlands and France. From the point of view of creating a resolution mechanism in Poland, information on regulations in other countries is necessary. It should be realized that the final shape of the resolution system in each EU country must take into account the characteristics of the guarantee system of the country and other existing aid mechanisms.

The department responsible for insurance resolution created within the organizational structures of the BGF is a project unit with a structure implementing the assumed work streams using specific insurance competences. The Department was created in such a way that the competences of its employees correspond to the specific challenges arising during the creation of the resolution mechanism, in particular legal, normative, actuarial and analytical challenges. As a consequence, the BGF has already developed competences in the field of:

- insurance audit and reporting,
- knowledge of the principles of insurance supervision,
- spreading knowledge and building support for new legal solutions,
- activities of international insurance institutions,
- actuarial

even before formal responsibility for conducting resolution in the insurance sector was established by law. Thanks to this, when the necessary legal framework is created in Poland (as part of the implementation of the IRR Directive), the BFG will be immediately operationally ready to perform its functions.

However, the creation of these strands of work in the area of resolution of insurance companies in Poland has not yet been completed. The areas that should be further developed within the BGF include:

- knowledge of business models of insurance companies and the risks associated with them,
- knowledge in M&A area,
- ability to translate macroeconomic phenomena into the activities of insurance companies,
- insurance risk analysis,
- EU regulation and transposition into national laws.

### **3. Institutional challenges in building a resolution system**

Resolution in insurance is a supplement to the system of financial stability of the entire financial system, and consequently also of the country. For this complement to be possible, it is necessary to have a good understanding of the role of each institution in the financial market. It is necessary a.o.:

- analysing existing local guarantee schemes and potential interactions with the resolution of insurance companies, including in the financial sphere,
- a comprehensive look at the existing legislative tasks of supervisory and resolution authorities and the Insurance Guarantee Fund and implementation of the model of forced restructuring of the insurance sector in Poland in a complete, effective and mitigating legal risks,
- non-duplication of reporting, supervisory and financial obligations of the insurance sector.

In Poland, we have implemented the Solvency II directive, so the supervisory authority is equipped with the tools of standard and intensified supervision, including the so-called supervisory ladder, i.e. step-by-step escalation of supervisory activities when own funds fall below the Solvency Capital Requirement (SCR). Therefore, it is crucial to have a thorough understanding of the role of institutions in the Polish financial market, as well as to analyze existing local guarantee schemes and potential interactions with the resolution process. A holistic approach to the division of powers between supervisors and resolution authorities is crucial that the resolution only deals with resolution planning and execution and does not duplicate the functions already carried out by other safety net authorities. Of course, this does not exclude proactive and constant cooperation between members of the safety network, as well as the UFG.

#### 4. Challenges in the area of financing the resolution mechanism

Another challenge is the creation of a resolution fund. The draft IRRD, both as presented by the European Commission and the Council, leaves member states free to choose how they finance the resolution system. The European Commission's version does not take up the subject of financing. The Council in Article 77a indicates certain general assumptions for financing (Council of the EU 2023), e.g.:

- Member States should ensure that the resolution authority has adequate resources in the form of ex-ante or ex-post contributions or a combination thereof,
- Funds should be collected from insurance and reinsurance undertakings authorised in that Member State and from branches of Union third-country undertakings located in the territory of that Member State,
- The purpose of the fundraising shall be to cover at least the payment of the difference to shareholders, insured, beneficiaries, claimants or other creditors, as well as other costs related to the use of resolution tools, where the use of financing arrangements is necessary to achieve the resolution objectives.

At the same time, in the absence of harmonisation of financing arrangements, the Council pointed to the need to notify the European Commission and EIOPA of the financing arrangements agreed.

Therefore, the BFG is facing work on determining the level and horizon for collecting these funds. Looking at the stability of the insurance sector in the long term, it is important not to delay the start of raising funds, this is extremely important in terms of achieving an equilibrium between the optimal level of security of the sector, in particular its customers, and the financial condition of the sector (countercyclical measures). Achieving the minimum level of the fund will allow to restructure the company that has fallen into financial problems, ensure the continuity of insurance cover, as well as protect public funds and avoid the need to use government assistance. The costs of creating and managing the resolution system will have to be borne by the insurance market. Nevertheless, it is a cost that



is worth incurring. Resolution is a cost significantly lower than the uncontrolled bankruptcy of a financial institution. Uncontrolled bankruptcy is not only more expensive (in financial terms, for the financial safety net and entities from the sector), but also has a much greater impact (in terms of image/reputation) on healthy and well-managed entities that are participants in the financial market. As part of preparations for the implementation of the resolution system in the insurance sector, the BFG project department is currently analysing the financing and contribution model in the banking system, but these solutions cannot be automatically duplicated in relation to insurance companies. It is necessary to adapt the basis and the amount of the premium to the specificity of the insurance sector. Analyses indicate that the optimal approach is ex ante financing, possibly hybrid financing (combining ex-ante and ex-post approaches). A commitment to payment mechanism in the banking sector would also be possible. However, the experience in its use so far means that this issue should be analysed in detail.

## 5. Organizational challenges at the stage of creating a resolution body

Another challenge faced by the BFG design department is to provide the resolution authority with adequate access to insurance data. For this to happen, it is necessary:

- creating a legal basis for the exchange of data with the supervisory authority, so as not to burden insurance companies with duplication of supervisory and financial reporting already submitted to the KNF,
- obtain access to all information required to comply with the obligations arising from the recovery and resolution framework,
- developing a working process, regular and structured transfer of good quality data from the supervisor to the resolution authority.

Access to data allows the resolution authority to anticipate and understand changes in the insurance market in advance. It also gives enough time to:

- building resolution plans,
- identifying and addressing potential impediments to the resolution process.

As indicated above, access to data should not imply duplication of supervisory and financial reporting for insurance undertakings. Some of the data that the resolution authority needs to analyse is publicly available, others are regularly reported to the supervisory authority or collected on an ad hoc basis. Examples of data sent to supervisors regularly are:

- financial statements of various types (based on Polish accounting standards or IAS, as well as on the basis of Solvency II together with the auditor's report and additional information),
- assessment of own risk and solvency of insurance and reinsurance undertakings (ORSA report),

- results of stress tests carried out,
- financial plans and dividend policy.

Examples of data provided to the ad hoc supervisory authority are information on:

- rozpoczęciu działalności gospodarczej,
- the proposed merger or transfer of the portfolio,
- acquisition of shares,
- cessation of operations,
- organisation and management of an insurance undertaking,
- implementation of recommendations and decisions issued by the supervisory authority.

The insurance resolution authority must have access to all information required to perform its obligations under the resolution, which entails developing a regular, structured, good quality model for the transfer of data from the supervisor to the resolution authority.

The last challenge currently faced by the BFG is to complete the building (recruitment and retention) of a highly competent and specialized team with knowledge and experience in the insurance sector. From an operational point of view, it is necessary to continue to acquire qualified, professional insurance practitioners who understand the functioning of insurance companies in various areas, such as business models and processes, risk management, actuarial reporting, financial and solvency of insurance companies, etc.

## 6. Banking experience and resolution in insurance

At the end of September 2022, one of the largest resolution processes in the EU took place in Poland. We are talking about a retail bank, which was the 10th bank on the local market, but for years recorded losses and did not meet the capital requirements (BFG 2022b). After exhausting the supervisory and ownership instruments, a decision was made to launch the resolution process. The solution was to create a bridge bank belonging to the BFG and a consortium of 8 commercial banks operating in Poland. The cost of forced restructuring amounted to PLN 10.4 billion (including PLN 6.87 billion of subsidies paid by the BFG and PLN 3.47 billion by a consortium of 8 Polish banks) (BGF 2022b), while the potential uncontrolled cost of bankruptcy would amount to PLN 36 billion (size of deposits covered by guarantees) (BGF 2022b). This experience also offers a conclusion for the insurance market that the resolution process may be cheaper than bankruptcy.

In addition, efficiently conducted resolution has almost no impact on customers (the continuity of key services is maintained), the stability of the financial market and the economy.

In the current legal system, it is not possible to carry out resolution in the insurance sector in Poland. Problems with the solvency of insurance companies must be solved

using existing solutions that are significantly limited in relation to resolution. In 2019, the supervisory authority revoked the license of one of the companies, a.o. due to insufficient capital in relation to the risk profile of the insurance business and violations of the regulations on the management system (KNF 2022). Currently, the company cannot operate but only administer the existing portfolio. However, the current supervisory tools (including the Solvency II supervisory ladder) do not ensure continuity of insurance coverage. The company continues to administer the portfolio only until the assets exceed the liabilities, for example, until the first significant damage. In addition, the products offered by this insurer are not covered by the current insurance guarantee scheme.

## Conclusions/Summary

Resolution responds to existing gaps in the legal system, ensuring the continuity of insurance cover, stability of the financial system and protecting the real economy from the impact of the insurer's bankruptcy, giving the possibility of an orderly liquidation of a company that has fallen into financial problems.

The work done so far allows the following conclusions to be drawn:

- resolution frameworks must be adapted to local market specificities,
- resolution should not duplicate supervision and complement the security system, the resolution ecosystem does not have to be costly,
- crisis prevention (including resolution planning) is more effective than crisis management.

It should be emphasized that resolution addresses the disadvantages that accompany the standard bankruptcy procedure. They allow to limit the negative effects on customers and other market participants. First of all, resolution allows to maintain the continuity of insurance cover, as well as minimizes the costs of crises and should become the target model of crisis management in the insurance sector, in particular with regard to critical entities. This direction is also followed by proposals for the development of crisis management systems in the EU for the banking sector, the aim of which is to use mechanisms on a larger scale (e.g. support for the sale of a bank by a deposit guarantor after its bankruptcy), the economic effect of which is similar to resolution (Costa et al. 2022, p. 4–5).

In 2023, the BFG will continue its work on preparing the BFG to act as a resolution body, focusing on four key strategic trends:

- legislative work,
- testing the applicability of resolution tools using insurance company models,
- developing international cooperation,
- developing analytical capacity and working on the quality of available data.

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