

INSURANCE SUPERVISION SCHEME IN LITHUANIA: ADMINISTRATIVE LEGAL VIEW ON THE INSTITUTIONAL ACCOUNTABILITY ASPECT

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This article is aimed at revealing the concept and main aspects of accountability of financial market supervision institutions for their activities. The subject of the present article covers the key aspects of accountability for the supervision of activities of the insurance market in the Republic of Lithuania. As widely known the supervision model of the financial market in the Republic of Lithuania has been changed – specialised financial market supervision was replaced by the consolidated market supervision. The article identifies the major problems of accountability for the supervision of insurance activities under different supervision activity models.

Keywords: accountability, financial supervision, insurance supervision.

In modern financial markets, there is no absolute model of legal regulation of supervision, which could be considered to be the benchmark. Therefore, one could fully agree with the opinion that the belief that an ideal financial market supervision system exists is an illusion [8].

However, such position does not negate the necessity to assess the existing models of legal regulation of financial market supervision because that is the only way to substantiate scientifically the adequacy of one of the models or elements thereof for a particular legal system.

Thus, the legal institute of accountability for performed supervision activities is one of the instruments that enable to assess not only the efficiency of performed supervision activities but also the advantages and disadvantages of a particular supervision model as well.

When the financial market supervision model changed in the Republic of Lithuania in 2012, the

procedure of accountability for performed supervision activities was revised as well. The present study is aimed at assessing scientifically the changes in accountability for the supervision activity and the existing major problems in the field of insurance supervision and offering solutions to these problems.

The study of such nature could be helpful in resolving the issues related to accountability of other public administration entities for the activities performed by them as well.

Concept of accountability for financial market supervision

Accountability is a process where the entity is obliged, having regard to certain criteria, to account to another person for performed activities and adopted decisions and to assume responsibility for any mistakes made and damage caused [5, p. 167]. The traditional concept of accountability is comprised of the following two elements: the inspection of an accountable entity's activities and the implementation of this entity's accountability for improper activities, for which it is held liable.

It has been commonly agreed that accountability has the following four functions: 1) ensures public supervision of activities; 2) ensures the legitimacy of activities; 3) ensures fairness in public sector administration; 4) improves the performance of supervision activities [10, p. 15].

The accountability of a financial market supervisory institution may be divided into different types according to whom this institution is accountable, what it is accountable for, and

what kind of accountability procedure is applicable.

In a narrow sense, the accountability of an institution is perceived as reporting for performed activities to the entity, which appoints members of that institution [13, p. 53]. The general rule is that the entity, which appoints and dismisses the members of the supervisory institution, is the person which needs accountability most in order to adopt one or another decision. However, this function is often implemented in respect of other entities as well. Accountability could be divided into different types according to the entity, to which a financial market supervisory institution must report [11]:

1. Accountability to the parliament.

As, in the majority of countries, parliaments not only determine the objectives and limits of activities of a supervisory institution but also participate in establishing the supervisory institution, the supervisory institution must report to this branch of government for all actions performed. Since the time that the legislative branch has started to formulate objectives for supervisory institutions, the need has arisen to report to the parliament for works performed. In most countries, where a supervisory institution is accountable to the parliament, the accountability procedure is implemented through parliamentary committees. Accountability to the parliament also provides appropriate preconditions for changing the legal regulation. Accountability to the parliament may manifest itself in the following ways: 1) submission of regular reports; 2) replying to ad hoc enquiries by the parliament members; 3) submission of proposals regarding new legal acts; 4)

submission of information on the use of funds; 5) submission of an audit report;

2. Accountability to the executive branch. Supervisory institutions often operate within the jurisdiction of the executive branch because this branch is usually responsible for the implementation of financial market policy; therefore, the existence of accountability of a supervisory institution to the executive branch is a prerequisite for ensuring efficient supervision. In some countries, the ministry of finance is assigned the duty to carry out the supervision of the supervisory institution. In some cases, the representative of the executive branch, usually, the minister of finance is a non-standing member of the financial supervisory institution. However, it is believed that such form of accountability should be limited because the supervisory institution may lose its independence. Besides, the executive branch usually participates in the appointment of members of the supervisory institution. Accountability to the executive branch may manifest itself in the following ways: 1) submission of regular activity reports; 2) submission of information on market development; 3) submission of proposals regarding the adoption of new legal acts of the Government;

3. Accountability to the judiciary. The possibility of persons to lodge complaints against actions of public administration institutions must be ensured in each and every democratic state. Thus, courts evaluate the validity and conformity of the decisions adopted by the institution to the set objectives;

4. Accountability to market participants and the public. This is done by submitting periodic reports on performed

activities and market status. In addition, before implementing particular legal regulation, the market participants are consulted as well. Accountability to market participants usually manifests itself in the following ways: 1) consultations regarding the adoption of new legal acts; 2) provision of information on the website; 3) submission of annual market reviews; 4) preparation of press conferences, etc. Accountability to consumers manifests itself through: 1) drafting of annual reports on the market situation; 2) consumer education on the insurance services; 3) handling of consumer complaints and disputes with financial market participants.

In procedural terms, accountability may be carried out before or during the performance of actions or after the performance of actions or the adoption of decisions [5, p. 169]:

1. Accountability before the performance of actions (*a priori* or *ex ante*). It manifests itself through the procedure for the appointment of members of the supervisory institution, participation in the preparation of draft laws, initiating discussions related to the legal regulation, etc.;

2. Accountability after the performance of actions or the adoption of decisions (*a posteriori* or *ex post*) manifests itself through submission of statements and reports on performed activities.

The limits of accountability of the institution are defined by the objectives established for this institution. The objectives established for the institution provide an answer to the question what the institution is accountable for. Therefore, the objectives must be clear and adequately disclosed.

Accountability itself presupposes that there exist certain standards or objectives that allow for the assessment of performed activities or adopted decisions. In other words, accountability means the duty to comply with certain requirements. The more complex the activities are, the harder it is to determine clear requirements on the conduct and results [5, p. 168]. Accountability can be assessed only by linking it to the objectives set for the institution that are clearly disclosed. If accountability is not linked with the objectives set for the institution, it manifests itself in practice only as the description of the process (the number of completed inspections and applied sanctions, etc.) [3, p. 162].

Meanwhile, specifically for the supervision of insurance activities, L. Savage distinguishes two main objectives [12, p. 10]. First of all, the supervision of insurance activities is aimed at ensuring that insurers have funds to pay out the required benefits. And it is also sought to supervise the treatment of policyholders and insured persons by insurers, which are a stronger party to the insurance contract. In S. K. Mathur's opinion, the main objective of market supervision is to promote competition on the market and increase market efficiency [9].

It is claimed in the documents released by the International Association of Insurance Supervisors that reliable insurance activities are necessary in order to maintain an effective, secure, fair and stable insurance market and promote competition and market growth [4]. The Organisation for Economic Cooperation and Development (OECD) indicate that the main objectives of the

supervision of insurance activities are ensuring the stability of the insurance market and the protection of consumer interests and the economic stability of the whole country [16].

Having evaluated the legislation of the majority of the OECD countries, J. Vollbrecht [17, p. 9] stated that the most common objective set for the supervision of insurance activities is the protection of insured persons.

M. Bagheri and C. Nakajima claim that the objectives of the supervision of insurance activities are often similar, and the largest differences occur in the scope, nature, quality and structure of the regulation [1, p. 510].

In the opinion of others, the objectives of the majority of financial supervisory institutions are, in principle, inadequately formulated; therefore, it is difficult to evaluate the implementation thereof and thus, the problem of accountability is faced. Ch. A. E. Goodhart proposes to establish the following three main objectives of financial market supervision: to protect the market against collapse, to promote competitiveness and market efficiency, and to ensure consumer protection [3, p. 153–154].

Thus, it is noteworthy that the variety of objectives set for the supervision of insurance activity is broad. However, only those objectives set for the supervisory institution that are clearly defined can influence the efficient accountability procedure of the supervisory institution. And, on the contrary, general objectives such as «insurance market efficiency» of the system, if there is no disclosure of the contents thereof, make the accountability procedure very complicated because it is hard to evaluate whether

the institution has reached the objectives set for it. In this case, an accounting object is unable to properly account for performed activities and the entity, to which it must account, does not have any clear criteria on how to assess these activities.

Implementation of accountability for the supervision of insurance activities in the Republic of Lithuania

The European Union directives do not regulate all issues related to the supervision of insurance activities. There are certain fields of the regulation of supervision, such as the organisation of supervision activities, the regulation of which is exclusively a matter of internal affairs of a Member State.

Until 2012, the supervision of insurance activities in the Republic of Lithuania had been performed by the Insurance Supervisory Commission formed by the Government. The main objective set for the supervision of insurance activities performed by the Insurance Supervisory Commission was to ensure the credibility, efficiency, security and stability of the insurance system and the protection of the interests and rights of policyholders, insured persons, beneficiaries and injured third persons, for the implementation of which the Insurance Supervisory Commission had to account to the Government [6].

The accountability of the institution was implemented by submitting, twice a year, a report on the implementation of the main objective, the performance of the functions, and the status of the insurance system [6].

The problem of accountability for the supervision of insurance activities

became particularly relevant after the unexpected bankruptcy of one insurance undertaking in 2005, when the Government was not duly informed about the pending risk of insolvency of one of the market participants.

It was admitted that the main reason for inadequate accountability was the fact that the applicable legal acts had not provided for urgent submission of information on the status of the insurance system. Therefore, the legal regulation was revised [6].

Furthermore, the amendments to the legal acts proposing to legalise the participation of the Seimas in the formation of the Insurance Supervisory Commission and establish the accountability of the Supervisory Commission to the Seimas, i.e. the entity which establishes the objectives of the activities of this supervisory institution, were initiated at the Seimas [2]. Such initiative was determined by the importance of the insurance market for Lithuania's economy and the fact that the Statute of the Seimas did not provide for any procedure of accountability to the Seimas for institutions, in the formation of which the Seimas was not involved [14].

Meanwhile, having regard to the criteria of adequate accountability of financial market supervisory institutions formulated in scientific studies, the deficiencies in accountability for the supervision of insurance activities in Lithuania could have been the following: 1) the absence of accountability to the Seimas; 2) the absence of a specialised court, to which decisions of the Insurance Supervisory Commission could be complained against; 3) the absence of specialised judges who would

handle only the issues related to the legality of decisions of the Insurance Supervisory Commission; 4) the absence of legalised regular discussions with the minister of finance about the status of supervision; 5) the absence of preliminary discussion of new legal acts with market participants; 6) the absence of discussion of the provisions of new legal acts with the public [11, p. 105–107].

However, the problem related to the implementation of accountability mentioned in subsequent studies that the objectives established for insurance supervision in the legislation were indefinite and their contents were not disclosed [18].

The Supreme Administrative Court of Lithuania has noted the importance of the implementation of the objectives established for the supervision of insurance activities, which are sought in performing accountability as well [15]. When evaluating the aforementioned case of the bankruptcy of one insurance undertaking, it was stated that the annual report of the Insurance Supervisory Commission did not contain any insurance market analysis, the disclosure of problems and evaluation of potential outcomes of such problems. The court concluded that the duty to submit information on the status of the insurance system assigned to the Chairman of the Insurance Supervisory Commission is one of the measures to achieve the objectives provided in the Law on Insurance as well. Therefore, a proper report on the status of the insurance system should include not only information about the intervention measures applied to a particular undertaking engaged in insurance activities but also a detailed analysis of

the status of the entire insurance system. An analysis should be carried out in order to perform the functions of the Insurance Supervisory Commission, i.e. to ensure the credibility, efficiency, security and stability of the insurance system. The current status of the insurance system during a particular period can be assessed only on the basis of a detailed analysis.

Moreover, in its ruling [15], the Supreme Administrative Court of Lithuania also revealed such category of the objective established for the supervision of insurance activities as the “status of the insurance system”, which had not been entrenched in the provisions of the legal acts and this hampered the proper implementation of accountability as the achievement of the objectives set for the institution.

Thus, the legal regulation applicable in Lithuania until 2012 provided for the objectives of the supervision of insurance activities but they were not clearly defined. As there were no clear guidelines as to what the institution has to be accountable for, accountability could have been treated only as a simple description of the supervisory activity, for the assessment of which there were no distinct criteria set.

Meanwhile, the cases where the evaluation of insurance activities and the disclosure of the objectives set for supervision take place only in court proceedings should be evaluated negatively because accountability is, first of all, implemented before the entity, which forms a supervisory institution or sets objectives for it.

It is noteworthy that some of the problems related to accountability for

the supervision of insurance activities were dealt with in 2012, when the new, consolidated financial market supervision model was legalised and the performance of all financial market supervision functions was assigned to the Bank of Lithuania [7].

Currently, the applicable legal acts provide that the Seimas appoints, for a term of five years, and dismisses, before the end of the term, the Chairman of the Board of Directors of the Bank of Lithuania, upon the proposal of the President of the Republic. The Chairman of the Board of Directors of the Bank of Lithuania submits, twice a year, reports on the implementation of the main objective, the status of the financial market and the performance of functions [7] to the Seimas.

These amendments to the legal acts, under which accountability for financial market supervision is performed to the Seimas, improved the accountability procedure, where reports are submitted to the entity, which forms a supervisory institution and is authorised to establish the objectives for the activities of an accountable entity and influence the limits of its competence in carrying out the supervisory activities.

However, when amending the applicable legal acts, the objectives that were previously set for the supervision of insurance activities were eliminated, and this hampers even more the implementation of accountability for the supervision of insurance activities.

At present, the applicable legal acts provide that the main objective of the Bank of Lithuania is to maintain price stability. Meanwhile, one of the functions of the Bank of Lithuania, which

helps focussing on the achievement of the main objective of the Bank of Lithuania, is the performance of financial market supervision [7].

It is obvious that such legal regulation, which establishes objectives, intended for financial market (including the insurance market) supervision only abstractly and indirectly, is insufficient and does not provide any preconditions for the proper implementation of accountability for financial market supervision. At present, the Bank of Lithuania does not have any clear guidelines as to the direction in which the supervision activity should be carried out, which would allow for subsequent initiation of potential deficiencies of the legal regulation. Besides, this hinders the work of the entity which is entrusted with the evaluation of supervisory activities (in the given case – the Seimas), and may lead to subjective and politically motivated evaluations of performed supervisory activities, which can encumber the implementation of the main objective set for the Bank of Lithuania as well.

Thus, the regulation of the supervision of the insurance market as one of the financial markets applicable since 2012, where the objectives set for this specific supervisory activity are not defined, does not provide adequate preconditions for the implementation of accountability for performed supervisory activities.

It should be additionally noted that the wording of the Law on Insurance, which will enter into force in 2014, will entrench the objective of the supervision of insurance activities that fully conforms to the objective entrenched in the wording of the Law effective until

2012, which was deemed to be indefinite, i.e. to ensure the reliability, efficiency, security and stability of the insurance system and the protection of the interests and rights of policyholders, insured persons, beneficiaries and insured third persons [6].

Such legal regulation, where the objective set for the supervision of insurance activities disappears from and reappears in the provisions of the applicable legal acts during a short-term period from 2012 until 2014 should be deemed as the instability of the legislature, which directly and negatively influences not only the performance of the supervision of insurance activities but also the process of accountability for these activities.

To sum up the conducted study, it should be concluded that the basic precondition for the proper implementation of accountability for the supervision of insurance activities is the legal regulation, which not only determines the entity, to which the institutions accounts to for performed activities, or the reporting procedures but also the detailed objectives set for the supervision of insurance activities by disclosing the content of these objectives.

Conclusions

1. The objectives set for the supervisory institution, which are clearly defined, cause the accountability procedure to be efficient. And, on the contrary, general objectives such as the efficiency of the system, without the disclosure of contents, tend to make the accountability procedure very complicated because it is hard to assess whether the institution has already achieved the set objectives.

2. The legal regulation, which had been applicable in Lithuania until 2012, provided for the objectives of the supervision of insurance activities but they were not clearly defined. In the absence of clear guidelines on what the institution should account for, accountability could be treated only as a simple description of the supervisory activity, for the assessment of which there had been no distinct criteria set.

3. The regulation determining the supervision of the insurance market as one of the financial markets since 2012, where the objectives set for this specific supervisory activity are not defined, does not provide adequate preconditions for the implementation of accountability for performed supervisory activities.

4. Such legal regulation, where the objective set for the supervision of insurance activities disappears from and reappears in the provisions of the applicable legal acts during a short-term period from 2012 until 2014 should be deemed as the instability of the legislature, which directly and negatively influences not only the performance of the supervision of insurance activities but also the process of accountability for these activities.

5. The basic precondition for the proper implementation of accountability for the supervision of insurance activities is the legal regulation, which not only determines the entity, to which the institutions accounts to for performed activities, or the reporting procedures but also the detailed objectives set for the supervision of insurance activities by disclosing the content of these objectives.

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Жілінскас Т., Девятніковайте Є. Страховий нагляд у Литві: адміністративно-правовий погляд на аспект інституційної відповідальності.

Цю статтю спрямовано на визначення концепції та основних аспектів відповідальності наглядових інституцій фінансового ринку за свою діяльність. Предметом статті обрано ключові аспекти відповідальності за нагляд за діяльністю на страховому ринку в Литовській Республіці. Загальновідомо, що в Литовській Республіці модель нагляду за фінансовим ринком було змінено: спеціальний нагляд за фінансовим ринком було замінено консолідованим ринковим наглядом. Стаття визначає головні проблеми відповідальності за здійснення нагляду за страховою діяльністю відповідно до різних моделей нагляду.

Ключові слова: відповідальність, фінансовий нагляд, страховий нагляд.

Жилинскас Т., Девятниковайте Е. Страховой надзор в Литве: административно-правовой взгляд на аспект институциональной ответственности.

Эта статья направлена на определение концепции и основных аспектов ответственности надзорных институций финансового рынка за свою деятельность. Предметом статьи избраны ключевые аспекты ответственности за надзор за деятельностью на страховом рынке в Литовской Республике. Общеизвестно, что в Литовской Республике модель надзора за финансовым рынком была изменена: специальный надзор за финансовым рынком был заменен консолидированным рыночным надзором. Статья определяет главные проблемы ответственности за осуществление надзора за страховой деятельностью в соответствии с различными моделями надзора.

Ключевые слова: ответственность, финансовый надзор, страховой надзор.

Стаття надійшла до редакції 07.06.2013