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## Practical problems associated with the implementation of Solvency II and the new Insurance and Reinsurance Activity Act on the example of the Article 172 of this act

*Author of this paper discusses, first and foremost, Article 172 of the Insurance and Reinsurance Activity Act of 11 September 2015, which lays down the principles related to the withdrawal of a permission to carry out insurance or reinsurance activity granted to a domestic insurance or reinsurance establishment. Apart from the above-mentioned issue, the author also reviews the correctness of recently introduced amendments in light of certain provisions of EU law and points to a major error made during the legislation process. The error in question relates to the supervisory authority's power to issue a decision prohibiting or limiting the right to freely dispose the assets of a domestic reinsurance establishment and to assume obligations by such an establishment as well as the power to issue a decision to transfer the administration of property of a domestic reinsurance establishment.*

**Keywords:** Solvency II, insurance and reinsurance activity, Polish Financial Supervision Authority, withdrawal of a permission to carry out an insurance activity, withdrawal of a permission to carry out reinsurance activity.

### Introduction

On 1 January 2016, the new Insurance and Reinsurance Activity Act<sup>1</sup> (the "Act") came into force. It repeals, *inter alia*, the Insurance Activity Act of 22 May 2003<sup>2</sup>. The main purpose of this new enactment was to implement Directive 2009/138/EC of the European Parliament and of the Council

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1. Journal of Laws (J.L.) of 2015, item 1844, as amended. The English translation of the Act used in this article comes from "The Polish Law Collection", a legal database published by Translegis.
  2. J.L. 2015, item 1206, as amended (consolidated text).

of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance<sup>3</sup> (“Solvency II”). One of the key effects of Solvency II and, consequently, of the Act, is the strengthening of the position of the Polish Financial Supervision Authority [“PFSA” or the “supervisory authority”<sup>4</sup>].

Chapter 6 of the Act is entitled “The carrying out of insurance and reinsurance activity by domestic insurance establishments and the carrying out of reinsurance activity by domestic reinsurance establishments”<sup>5</sup>. The Chapter provides a regulatory framework for the pursuance of insurance or reinsurance business. It contains a number of key provisions: Article 162, which determines the requirements for a permission to carry out insurance (and/or reinsurance) activity (the “permission”); Article 165, which describes the content of the permission; Article 168, which sets out the preliminary permission<sup>6</sup> to carry out insurance activity; Article 170, which lists impediments to the issuance of the permission; and Article 172, which defines the terms of withdrawal of permission to carry out (re)insurance activity issued to a domestic (re)insurance company. The above provisions are, without doubt, crucial for the domestic insurance market as they provide the legal basis for regulatory decisions governing the actual existence of all (re)insurance companies. Remarks lead to the conclusion that the relevant regulations must be introduced in accordance with the highest legislative standards for potential consequences of an error committed during this process might have an immense impact on the insurance market and the safety of customers. This conclusion, in turn, begs the argument that Article 172 needs to be thoroughly analysed as it may serve as grounds for the limitation of a (re)insurance company’s capacity to dispose of its assets or even be a measure applied to close down a (re)insurance company’s business.

## 1. Article 172: structural analysis

The analysis of Article 172 will be performed in accordance with the following structural division of this regulation proposed by the author for the purposes of this paper.

Arguably, Article 172 comprises five elements:

- 1) Description of factual circumstances in which the PFSA *is obliged* to withdraw the permission (paragraphs 1 and 4).
- 2) Description of factual circumstances in which the PFSA *may* withdraw the permission (paragraphs 2 and 3).
- 3) Rules of imposing limitations on the disposal of assets belonging to a (re)insurance company (paragraphs 5–6).
- 4) Description of the legal consequences of disqualification of a (re)insurance company’s governing bodies (paragraphs 7–11).
- 5) Formal rules applicable to decisions issued to impose the above measures (e.g. immediate enforceability) (paragraphs 12–15).

The following remarks will follow the above division.

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3. EU Official Journal [O.J.] L 335, 17.12.2009, p. 1.

4. This is the term used in legislation in reference to the PFSA.

5. In this paper, insurance and reinsurance establishments will be referred to as “insurance companies” and “reinsurance companies”, respectively. When referring to both types of establishments, the author uses the term “(re)insurance companies”.

6. Known as “*promesa*” [literally, a “promise”].

## 2. Obligatory withdrawal of PFSA permission (Article 172 paras. 1 and 4)

In the first part of Article 172, the lawmaker describes all the situations in which the PFSA is obliged to withdraw the permission granted to a (re)insurance company. Most importantly, the wording used [“The supervisory authority **shall withdraw**<sup>7</sup>...<sup>8</sup>”] clearly indicates that the PFSA has no discretionary leeway in this respect, i.e., if a (re)insurance company's conduct satisfies the criteria set forth in the Article, the supervisory authority has no other option but to withdraw the permission. In other words, if a (re)insurance company fails to meet the minimum capital requirement and secure the supervisory authority's approval of its short-term financial plan; or if a (re)insurance company fails to implement the short-term financial plan within three months of the day when the failure to meet the minimum capital requirement was ascertained, the PFSA *must* withdraw the permission. This rule applies to domestic insurance and reinsurance establishments.<sup>9</sup> According to Article 172, the permission may cover one or more classes of insurance or one of the two types of reinsurance.<sup>10</sup>

Importantly, the above regulation is not the only basis for a withdrawal of the permission. According to the paragraph 4 of Article 172, “The supervisory authority **shall withdraw** the permission to carry out insurance activity with regard to the insurance products referred to in Section II, Class 10 of the Annex to the Act, excluding carrier's civil liability insurance, if the supervisory authority finds that [an insurance establishment has] no claims representative in a Member State of the European Union.” In other words, if an insurance company has no appropriate claims representation (does not have a claims representative within the meaning of Article 3 paragraph 1 [36] of the Act<sup>11</sup>) the PFSA is *obliged* to revoke or appropriately amend the permission issued for the insurance company.

7. Each bolded or other emphasis in the quoted language of legal provisions is added by the author to indicate the crucial elements of a given provision.

8. Article 172, para. 1 of the Act.

9. Article 3 (items 18 and 19) of the Act presents definitions of:

A domestic insurance establishment: an entrepreneur within the meaning of the Freedom of Economic Activity Act of 2 July 2004, having its registered seat in the territory of the Republic of Poland, which was granted a permission to carry out insurance activity in the territory of the Republic of Poland; and

A domestic reinsurance establishment: an entrepreneur within the meaning of the Freedom of Economic Activity Act of 2 July 2004, having its registered seat in the territory of the Republic of Poland, which was granted a permission to carry out reinsurance activity in the territory of the Republic of Poland.

10. For a more exhaustive description, see “Appendix to the Insurance and Reinsurance Activity Act: Classification of risks according to the classes, groups and types of insurance”.

11. “A claims representative – an attorney of an insurance establishment carrying the business of civil liability insurance of owners of motor vehicles in the territory of the Republic of Poland or another Member State of the European Union, to the exclusion of carrier's civil liability insurance, who is authorized, in a Member State of the European Union other than the Member State of the European Union in which this insurance establishment has its registered seat, in compliance with the law of the country where they have been appointed, to represent the insurance establishment and to investigate and settle claims on behalf of and for the insurance establishment they represent.”

### 3. PFSA's administrative discretion as to the withdrawal of a permission (Article 172 paras. 2 and 3)

The main difference between the measures described in paragraphs 2 and 3 and those mentioned in the first two paragraphs is the character of the PFSA's decision. Here, the lawmaker points to the situations in which the "supervisory authority **may withdraw**, in a decision, the permission to carry out insurance activity...". In other words, if an insurance company does comply with the criteria set forth in this provision, the PFSA will not "automatically" withdraw the permission. The decision-making process is controlled by the supervisory authority, which means that administrative discretion is allowed by law. It must be emphasized that, according to these paragraphs of Article 172, the PFSA's verdict is a product of administrative discretion, which should be understood as an administrative body's right to undertake a decision based on its own judgement. However, under no circumstances, the body is allowed to make a decision based on facultative judgement.<sup>12</sup> Some of the situations described in the discussed provisions of Article 172 are rather obvious (e.g. when a (re)insurance company files the application for the withdrawal of the permission)<sup>13</sup> but there are also circumstances in which the PFSA's judgment must be preceded by an in-depth analysis of the legal situation of a given entity (e.g. the PFSA must decide whether the "close links" between a (re)insurance company and its shareholders may impede the supervisory authority's exercise of its supervisory powers<sup>14</sup>). In practice, the supervisory authority may apply means much less severe and far-reaching than the withdrawal of permission, which is mandatory (i.e. subject to no evaluation except for an assessment of its compliance with the formal criteria) in the situations described in paragraphs 1 and 4.

Also paragraph 3 of Article 172 contains regulations that are based on the concept of administrative discretion. This paragraph specifies conditions for the issuance of the decision to withdraw the permission mentioned in paragraph 2, subparagraph 1(e). In other words, if an insurance company does not commence its business within a specified time-limit (12 months<sup>15</sup>) the PFSA is allowed (but not obliged) to withdraw the permission "...with respect to the classes of insurance in which insurance activity has not been commenced...". The above rule applies *mutatis mutandis* to reinsurance companies.

#### 3.1. The limitations on the disposal of assets of insurance companies (paragraph 5)

This element of Article 172 is crucial for the discussion presented in this paper.

Notwithstanding the foregoing conclusions based on the restrictions specified in the two preceding parts of Article 172: paragraphs 1 and 4, which refer to the obligatory withdrawal of PFSA permission, and paragraphs 2 and 3, which refer to PFSA's administrative discretion as to the withdrawal of the permission; paragraphs 5 and 6 set forth further possible consequences of such a withdrawal.

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12. For an additional discussion on this issue, see M. Jaśkowska, *Rozdział IV. Uznanie administracyjne a inne formy władzy dyskrecyjnej administracji publicznej* [in:] *Instytucje prawa administracyjnego. System Prawa Administracyjnego Tom 1*, ed. R. Hauser, A. Wróbel, Z. Niewiadomski, Legalis 2015, No. 152.

13. Article 172 paragraph 2{1}(d) of the Act.

14. Article 172, para. 2 subpara. 3 of the Act.

15. Cf. Article 171, para. 1 of the Act.

Paragraph 5 reads as follows: “**Where a permission** to carry out insurance activity with respect to one or more classes of insurance is **withdrawn**, the supervisory authority may deprive a domestic insurance establishment of the right to freely dispose of the establishment’s assets and contract obligations or may restrict this right, indicating the scope of the deprivation or restriction, or may transfer the administration of assets of the insurance establishment to an appointed person.”

The above means that if the PFSA recognizes that a withdrawal of the permission is not sufficient to prevent an insurance company from carrying out unlawful activities, the PFSA is entitled to prohibit or restrict the disposal of the insurance company’s assets or revoke or restrict the company’s right to assume contractual obligations. It should be noted that the imposition of the above-mentioned prohibitive measures does not require a withdrawal of the permission with regard to all types of the insurance company’s activity, which means that if the permission is withdrawn for a single class of insurance, the supervisory authority is still allowed to impose a prohibitive measure. Moreover, the scope of a restriction or prohibition must be precisely specified in the relevant decision issued. Notwithstanding the foregoing, it is necessary to stress that any resolution made by the PFSA in this context should take into account an important constitutional directive, namely the principle of proportionality<sup>16</sup>. In other words, the measures applied in a decision should be as severe and far-reaching as the circumstances require, but not more than it is necessary in order to obtain the desired results. As a consequence, the PFSA should precisely and diligently determine all relevant facts in order to issue a decision that imposes a proper and proportional measure. The other option the PFSA has is to transfer the administration of the assets of an insurance company to an appointed person. This issue will be discussed elsewhere in this paper.

From the purely formal point of view (which still has certain practical significance), the wording of paragraphs 1–4 and 5–6 of Article 172 appears to suggest that both types of PFSA decisions (the withdrawal of a permission, laid down in paragraphs 1–4, and the imposition of restrictions, described in paragraphs 5–6) must be issued in two different proceedings. In other words, even if the supervisory authority decides to use both measures against an insurance company, the PFSA should issue each of the two decisions after having conducted two separate proceedings. The above conclusion is based on a two-pronged argument: first, a decision imposing restrictions is of a special and accessory nature (i.e. it cannot exist without having been preceded by the validly issued first decision) and second, a joint “prohibitive procedure” would deprive an insurance establishment of its right to challenge the other sanction in separate proceedings. Moreover, since Article 1 of the Code of Administrative Procedure<sup>17</sup> (the “CAP”) states the rule that an administrative matter has an individualised character (is both case- and subject-specific), the proceedings in question must concern a specific factual situation and affect a specific subject of administrative law<sup>18</sup>.

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16. For a further discussion on this issue, see P. Tuleja [in:] *Konstytucja RP. Tom I. Komentarz do art. 1–86*, eds. M. Safjan, L. Bosek, Warszawa 2016, Legalis, commentary on Article 2 of the Constitution, side ref. no. 46.

17. Journal of Laws of 2016, item 23, as amended (consolidated text). The English translation of the Code used in this paper comes from “Legalis”, a legal database published by C.H. Beck.

18. For a further discussion on this issue, see P. Gołaszewski, K. Wąsowski [in:] *Kodeks postępowania administracyjnego. Komentarz*, ed. M. Wierzbowski, R. Hauser, Wyd. 3, Warszawa 2017, Legalis, commentary on Article 1 of the CoAP, side ref. no. 13.

### 3.2. The limitations on the disposal of assets of reinsurance companies (paragraph 6)

The wording of paragraph 6 is almost identical to that of the preceding paragraph; the only difference is that the former regulation applies to reinsurance companies and not insurance companies. This assumption seems logical and obvious, given the wording of paragraph 5. It seems that paragraph 6 was designed for reinsurance companies and meant to have the same role as the preceding paragraph but the above conclusion does not result directly from its wording.

Article 172 paragraph 6 reads: “Where a permission to carry out reinsurance activity with respect to one or both types of reinsurance is withdrawn, the supervisory authority may deprive a **domestic insurance establishment** of the right to freely dispose of the establishment’s assets and contract obligations or may restrict this right, indicating the scope of the deprivation or restriction, or may transfer the administration of assets of the insurance establishment to an appointed person.”

Even a very superficial analysis of the above regulation leads to the conclusion that paragraph 5 is not the only provision that allows the PFSA to impose prohibitive measures on a domestic insurance establishment (insurance company). Also under paragraph 6, the PFSA is entitled to take the same measures against the same kind of establishment. Obviously, the company targeted with a sanction under paragraph 6 is not an insurance company but a reinsurance company; this is due to the fact that the latter is the only type of establishment that may be affected by the consequences of the withdrawal of a permission to carry out reinsurance activity.

This seemingly irrelevant and obvious mistake of the lawmaker has profound consequences. One of the basic principles enshrined in the Constitution of the Republic of Poland (the “Constitution”)<sup>19</sup> is the rule of law principle expressed in the Constitution’s Article 7<sup>20</sup>. Article 7 of the Constitution reads: “Public authorities shall act on the basis of, and within the limits of, the law.” Also, the CAP reads, in Article 6, that “Public administration authorities shall act on the basis of provisions of law.” Since there is no doubt that the PFSA satisfies the criteria of, and is a model example of, a public administration authority<sup>21</sup>, it is obvious that the PFSA is bound by the above-mentioned principles. In light of the above, all acts (a decision, ruling, order, etc.) performed by a public administration authority must be based on a specific legal provision. Consequently, it must be acknowledged that **no decision restricting the right to dispose of assets may be issued against a reinsurance company under the current version** of the Act due to the fact that the Act provides no legal basis for this measure. This problem, however, affects not only paragraph 6 but also other legal provisions expressed in Article 172. For instance, under paragraph 7 of this Article, which applies to the transfer of the administration of assets of a reinsurance company, the right to represent the reinsurance company will not pass to an appointed person since there is no legal basis for the transfer of the administration of assets of the reinsurance company (see the conclusion regarding paragraph 6).

19. Journal of Laws of 1997, No. 78, item 483, as amended.

20. For a further discussion on this issue, see P. Tuleja [in:] *Konstytucja*, op. cit., commentary on Article 7 of the Constitution, side ref. no. 3 and seq.

21. For a further discussion on this issue, see B. Wojno, *Ustawa o nadzorze nad rynkiem finansowym* [in:] *Prawo rynku kapitałowego. Komentarz*, eds. M. Wierzbowski, L. Sobolewski, P. Wajda, Wyd. 2, Warszawa 2014, Legalis, commentary on Article 3; and the Judgment of the Supreme Administrative Court (NSA) of 21 February 2012 [case no. II GSK 67/11].

The same is true of the suspension of the powers of a reinsurance company's bodies set forth in paragraph 8 of Article 172.

The situation described above is damaging to the whole legal system and put all market participants at risk because the supervisory authority is deprived of one of its basic regulatory measures. Moreover, the above-mentioned legislative error results in non-compliance with the general rule set forth in Article 34(1) of Solvency II, according to which "Member States shall ensure that the supervisory authorities have the power to take preventive and corrective measures to ensure that insurance and reinsurance undertakings comply with the laws, regulations and administrative provisions with which they have to comply in each Member State." The discussed loophole also violates the rule expressed in Article 140 of Solvency II, a provision referring to the prohibition of the free disposal of assets that reads "Member States shall take the measures necessary to be able, in accordance with national law, to prohibit the free disposal of assets located within their territory at the request, in the cases provided for in Articles 137 to 139 and Article 144(2) of the undertaking's home Member State, which shall designate the assets to be covered by such measures."

In the face of the above problem, the lawmaker should urgently rectify the incorrect wording of paragraph 6 by amending the expression "... the supervisory authority may deprive a domestic **insurance** establishment..." with the expression "... the supervisory authority may deprive a domestic **reinsurance** establishment (...)". This simple modification solves the above problems and guarantees that the provision in question fully reflects its purpose assumed by the drafters of the Act and follows all respective guidelines included in Solvency II.

#### 4. Consequences of depriving an undertaking's governing bodies of their powers (paragraphs 7–11)

Apart from the problems described above, one should carefully analyse the consequences of the revocation of powers exercisable by the governing bodies of insurance and reinsurance<sup>22</sup> companies. As the current (incorrect) wording of Article 172 paragraph 6 is universally applicable law at the moment of writing this paper, for avoidance of doubt the author will refer only to insurance companies.

According to paragraph 7 of Article 172, "... the right to represent a domestic insurance establishment or domestic reinsurance establishment with respect to the rights and obligations relating to the assets of the domestic insurance establishment or domestic reinsurance establishment shall pass to an appointed person."

The above means that if the PFSA decides to apply the measure under paragraph 5, that is to "... transfer the administration of assets<sup>23</sup> of an insurance establishment to an appointed person",<sup>24</sup> the governing bodies of the insurance company are no longer able to exercise their rights in the company's assets. The "appointed person" specified in the Act assumes the control of all assets, which

22. Provided that the necessary amendment becomes universally binding law. Otherwise the measure remains inapplicable to reinsurance establishments.

23. For further discussion on the previous statutory regulation of insurance activity, see J. Kruczałak-Jankowska [in:] *Komentarz do ustawy o działalności ubezpieczeniowej*, [in:] *Prawo ubezpieczeń gospodarczych. Tom I, Komentarz*, ed. M. Glicz, wyd. II, LEX, 2010, commentary on article 189 [available at: <https://sip.lex.pl/#/komentarz/587263015/60455>].

24. Article 172 paragraph 5 of the Act.

means that only this person has the right to make decisions to dispose of the insurance company. Any action taken by the company's actual governing bodies after the date of transfer will be illegal due to the fact that these bodies are no longer entitled to exercise the rights related to the company's assets.

The rule established in paragraph 8 of Article 172 may be deemed a consequence and continuation of the rule stated in the preceding paragraph. Pursuant to paragraph 8, at the transfer date (when the appointed person begins to act instead of the governing bodies), the powers of the governing bodies "with respect to the rights and obligations relating to the assets... shall be **suspended** until the day when the period of the administration of assets by the appointed person lapses."<sup>25</sup>

This "change of control" results directly from the Act and as such does not require any additional actions or decisions of a public authority. The legal basis for the above process is the PFSA's decision on the transfer of the administration of assets issued under Article 5 (or a "corrected" version of Article 6, if such a version is enacted).

The PFSA is obliged to specify terms applicable to the transfer. According to Article 172 paragraph 11 of the Act, the public authority must determine, in its decision: 1) the person to whom the administration ... is transferred; 2) the period for which the administration ... is in force; 3) detailed objectives of asset management...; 4) the manner of exercising the administration...; and 5) the remuneration for the administration of assets. All of the above elements are mandatory and must be included in every decision on the transfer of the administration of assets issued by the supervisory authority. Should any of these elements be omitted, the decision will be declared invalid and removed from legal circulation pursuant to Article 156 paragraph 1 (2) of the Code of Administrative Procedure for the reasons of a gross infringement of law. Such invalidity will affect, for instance, a decision that fails to indicate the period for which the administration of assets is established, an element required to be precisely specified in the relevant decision.

Deprivation of powers is obviously a temporary measure intended to rectify the situation in a company and protect all market participants rather than to permanently assume the control over a private entity. However, it must be underlined that the lawmaker has neither specified a time limit for such a deprivation nor clearly described its extent of application.<sup>26</sup> There is a logical explanation for that. It would be unwise to determine a precise period of time given that the main purpose of this measure is to protect the market from any negative consequences of the irresponsible governance of an insurance company. All actions undertaken by the supervisory authority should cease immediately after the company reacquires the ability to carry out its activities in a responsible way. On the other hand, it must be stressed that the principle of proportionality should be a significant guideline for the supervisory authority, especially where there are no legal limitations for the measures put in place.

Paragraphs 9 and 10 describe the legal status of an "appointed person". All the details regarding this person's remuneration (as determined by the PFSA) and their unpaid leave are set forth therein.

Moreover, according to the wording of paragraph 9, the costs of the transfer of the administration of an insurance company's assets should be paid by the insurance company.

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25. Article 172 paragraph 8 of the Act.

26. For a further discussion on this issue, see M. Szaraniec, *Ochrona konsumenta usługi ubezpieczeniowej. Publicznoprawne instrumenty ochrony konsumenta usługi ubezpieczeniowej. 2. Nadzór ubezpieczeniowy*. [in:] *Ochrona konsumenta usług finansowych. Wybrane zagadnienia prawne*, ed. B. Gnela, Wolters Kluwer Warszawa 2007, LEX, available at: <https://sip.lex.pl/#/monografia/369156823/66> – a commentary on the previous statutory regulation of insurance activity which remains valid in respect of the discussed issue.



## 5. Formalities regarding the decision (paragraphs 12–15)

Paragraphs 12–15 of Article 172 refer to the enforceability of decisions issued under paragraphs 1, 2, 5 and 6, as well as to the PFSA's disclosure obligations concerning the issuance of some of the above-mentioned decisions.

Pursuant to paragraph 12, all decisions described there are immediately enforceable. In order to understand the notion of immediate enforceability and the legal consequences of this regulation, a reference should be made to certain provisions of the Code of Administrative Procedure. Article 130 section 1 of the CAP establishes the following general rule:<sup>27</sup> “Before the end of the time-limit for the submission of an appeal a decision shall not be enforceable.” The provision of Article 172 paragraph 12 of the Act is an exception to the principle set forth in Article 130 of the CAP. As a consequence, **the relevant decision issued by the PFSA becomes effective on the day when it is delivered to its recipient** without any “waiting period” ending at the lapse of time-limit for the submission of an appeal. In the discussed situation, where a motion for reconsideration of the matter is submitted to the PFSA by a dissatisfied party to the proceedings, such a motion does not result in the suspension of the issued decision's enforceability (which is a consequence of the decision's exceptional nature). It is possible to suspend immediate enforceability but only under the procedure set forth in Article 135 of the CAP, which grants a public authority the right to stay the enforcement of a given decision in “justified cases”. The decision in this regard is discretionary, which results from the wording of the Article (“... the appellate authority may suspend the immediate enforcement of a decision”). The above means that even if a “justified case”<sup>28</sup> is shown, the PFSA is not obliged to exercise its right to suspend the enforceability of a decision.

In order to attain the key objective of Article 172 of the Act (i.e. to protect all entities operating on the insurance market) any decision taken by the public authority under this Article should be made publicly known and widely accessible. One of the means for attaining this objective is the PFSA's disclosure obligations established in Article 172 paragraphs 13-15.

The supervisory authority is obliged to make three notifications of a withdrawal of an insurance company's permission to carry out insurance activity. Such notifications must be published in “a daily newspaper of the nationwide circulation”<sup>29</sup>; the first one must be published within seven days from the actual withdrawal and the remaining two “at intervals of at least seven days and no more than 14 days.”<sup>30</sup>

As regards disclosure obligations vis-a-vis other public authorities, paragraph 14 reads as follows: “The supervisory authority shall provide the competent registration court with the copy of the decisions...” regarding any of the above-mentioned withdrawals of a permission (paragraphs 1–4). Additionally, paragraph 15 specifies the PFSA's obligation to notify such withdrawals to the PFSA's counterparts in other EU Member States.

27. For a further discussion on this issue, see B. Adamiak, J. Borkowski, *Kodeks postępowania administracyjnego. Komentarz*. Wyd. 14, Warszawa 2016, Legalis, commentary on Article 130, side ref. no. 1.

28. Determination whether a given case is “justified” is a purely discretionary exercise and the decision in this regard depends entirely on the public authority.

29. Article 172 paragraph 13 of the Act.

30. *Ibidem*.

## Conclusions

Article 172 of the new Insurance and Reinsurance Activity Act is undoubtedly one of the most important regulations of the Act. This provision is crucial not only because it significantly affects the safety of the insurance market but also because of its consequences for the professional participants in this market. The above-mentioned decisions may have a material impact on the existence of a company and also on its commercial image, which is a critical factor for an institution whose market position is based on reliability. Given the above, it must be emphasised that a regulation of such importance must satisfy the highest legislative standards. Even a seemingly less relevant provision introduced in a careless or negligent way should be deemed unacceptable in such a high-impact statutory enactment, not to mention a regulation created in order to allow a public authority to impose far-reaching restrictions and prohibitions such as those specified in the discussed article. Therefore, it is absolutely crucial that the incorrect paragraph 6 of Article 172 is amended as soon as possible as its current wording prevent the supervisory authority from applying its powers as and when necessary. Such a situation should be considered unacceptable in a democratic state ruled by law.

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## Legal acts

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The Code of Administrative Procedure of 14 June 1960, Journal of Laws of 2016, item 23

## **Praktyczne problemy związane z implementacją dyrektywy Solvency II oraz nową ustawą o działalności ubezpieczeniowej i reasekuracyjnej na przykładzie art. 172 tej ustawy**

*Autor niniejszego artykułu skupia się na analizie postanowień artykułu 172 ustawy z dnia 11 września 2015 r. o działalności ubezpieczeniowej i reasekuracyjnej, który reguluje zasady związane z instytucją cofnięcia zezwolenia na wykonywanie działalności ubezpieczeniowej lub reasekuracyjnej prowadzonej przez krajowe zakłady ubezpieczeń oraz krajowe zakłady reasekuracji. Niezależnie od przeprowadzonej analizy przedmiotowych przepisów, autor rozważa również kwestię prawidłowości ostatnio wprowadzonych zmian w świetle niektórych przepisów prawa unijnego oraz zwraca uwagę na istotny błąd popełniony podczas procesu legislacyjnego dotyczący uprawnień Komisji Nadzoru Finansowego w zakresie możliwości wydania decyzji zakazującej lub ograniczającej swobodne dysponowanie aktywami oraz zaciąganie zobowiązań przez krajowe zakłady reasekuracji, jak również w kwestii przekazania zarządu majątkiem takiego podmiotu.*

**Słowa kluczowe:** Solvency II, działalność ubezpieczeniowa i reasekuracyjna, Komisja Nadzoru Finansowego, cofnięcie zezwolenia na wykonywanie działalności ubezpieczeniowej, cofnięcie zezwolenia na wykonywanie działalności reasekuracyjnej.

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