



MINISTRY OF FINANCE
Department of Financial Institutions

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Mr **David Deacon**
Head of Unit
Retail issues and payment
The European Commission
Internal Market and Services DG
107 Avenue de Cortenbergh
Brussels

Dear Mr Deacon,

With reference to the last meeting of the Payment Systems Government Experts Group on 14th November 2005, I would like to present Polish comment on the 'Consultative Document to contribute to the Preparation of a report on the Application of Regulation (EC) No 2560/2001 on Cross-border Payments in euro'.

According to the last sentence on page 29 of the Consultative Document Poland have not established a specific sanctions procedure for observance of the Regulation. In fact, on the ground of the Regulation, Poland applies the same general sanction procedure, which is applied to the banks:

Article 131 para. 1 of The Banking Law Act of August 29, 1997

The activity of banks, branches and representative offices of foreign banks, as well as of branches and representative offices of credit institutions, shall be subject to supervision exercised by the Commission for Banking Supervision, the scope and principles of such supervision being set out in the present Act and the Act on the National Bank of Poland of August 29, 1997.

At the same time according to **article 138 para. 3**

Where it is determined that a bank is failing to comply with the recommendations provided for under para. 1 above, or with the orders referred to in para. 2, or where the bank's activity is in contravention of the law or its articles, or is endangering the interests of accountholders, the Commission for Banking Supervision may, after first cautioning the bank in writing:

- 1) apply to the appropriate directing body of the bank for the recall of the president, vice president or other member of the management board directly responsible for the irregularities noted,
- 2) suspend from office the members of the management board referred to in subpara. 1 above pending the adoption of a resolution on the application for their recall at the next meeting of the supervisory board; suspension from office shall involve such persons being excluded from participation in decisions of the bank in respect of its financial rights and obligations,
- 3) restrict the scope of the bank's activity,

- 3a) impose on the bank a financial penalty of up to 1,000,000 zloty; the provisions of Art. 141, paras. 4 and 5, shall be duly applicable in this respect,
- 4) revoke authorisation to establish the bank and order the bank's liquidation; the provisions of Art. 147, para. 3, and Articles 153-156 shall be duly applicable in this respect.

For your convenience I would like to present below other provisions mentioned in above articles:

Article 141

- 1. In the event of a bank failing to comply with recommendations issued in response to its conduct of activity in contravention of legislation or the bank's articles, or of a refusal to furnish the explanations and information referred to in Art. 139, or in the event of a bank failing to fulfil the requirements specified in Title 11b, the Commission for Banking Supervision may impose financial penalties on members of the management board up to the equivalent of three months gross remuneration of the person so penalised, calculated with reference to that person's remuneration in the last three months prior to imposition of the penalty.
- 2. Such penalties shall not be imposed where over six months have elapsed since banking supervision became aware of the deed described in para. 1 above, or over two years have elapsed since the deed took place.
- 3. The imposition of a financial penalty shall not impede application of other measures provided for under this Title.
- 4. The Commission for Banking Supervision shall forward sums received from financial penalties to the Bank Guarantee Fund.
- 5. The penalties referred to in para. 1 shall be subject to enforced collection pursuant to the procedures envisaged in the regulations on administrative debt collection.

Article 147.

1. Where, six months following an extraordinary general meeting of shareholders convened in accordance with the procedure specified in Art. 143, para. 1, subpara. 3, the losses incurred by the bank exceed half of its capital base, the Commission for Banking Supervision may:

- 1) order the bank to be taken over by another bank, with the agreement of the acquiring bank,
- 2) repeal an authorization to create a bank or to liquidate it,
- 3) in the case of a state bank — apply to the Council of Ministers for the bank to be put into liquidation.

2. The Commission for Banking Supervision may also issue an order for a bank to be taken over by another bank or liquidated within a period of time other than that specified in para. 1 above where circumstances indicate that the bank is threatened with insolvency or that its capital base may decrease to such an extent that it would no longer meet the regulatory requirements for authorisation.

3. Within seven days from delivery of the order referred to in paras. 1 and 2, the bank's supervisory board may petition the Chief Administrative Court to set aside the order. Filing such a petition shall not stay performance of the order, although disposal of the assets of a bank put into liquidation shall not be commenced prior to the court hearing the petition, nor shall the acquiring bank in a takeover commence taking possession of the said assets. The provisions of Art. 127 §3 of the Code of Administrative Procedure shall not apply.

Article 153

1. Administration of the assets of a bank under liquidation shall be assumed by a liquidator appointed by the Commission for Banking Supervision, who shall assume the powers reserved for the bank's directing bodies under the present Act and the bank's articles of association. The liquidator shall represent the bank under liquidation both in and out of court.
2. As of the day the administration of the assets of the bank under liquidation is assumed by the liquidator:
 - 1) the bank's management board shall be dissolved and its members' mandates shall be rescinded ex lege,
 - 2) decision-making powers of the supervisory board shall be suspended, subject to the provision of Article 147, para. 3.

Article 154

The liquidation of a bank shall be carried out according to the principles applicable to the liquidation of commercial companies or cooperatives, or pursuant to the regulations referred to in Art. 14, subject to the following:

- 1) no dividend payment nor cooperative interest payment shall be performed during the liquidation proceedings,
- 2) the opening balance sheet at the commencement of liquidation proceedings, programme of liquidation and financial statement of the liquidation performed shall require the approval of the Commission for Banking Supervision,
- 3) the liquidator shall report to the Commission for Banking Supervision and to the bank's creditors on the course of liquidation proceedings at intervals of no less than one month,
- 4) the distribution to shareholders (or cooperative members) of the assets remaining after the claims of creditors have been satisfied or secured shall be performed no earlier than one year after final notice is given of commencement of the liquidation.

Article 155.

1. The liquidator shall be entitled to demand an alteration to the substance of the obligations referred to in Art. 152. The liquidator may deduct liabilities in respect of bank accounts, albeit not yet outstanding, from the claims held by the bank under liquidation.
2. On completion of liquidation proceedings, the liquidator shall draw up a report of liquidation and submit this to the Commission for Banking Supervision and to the court of registration, filing for the bank to be deleted from the register.

Article 156

The detailed conditions and procedure for the takeover or liquidation and the appointment of the liquidator shall be stipulated in the order referred to in Art. 147, para. 1.

Yours faithfully,

Iwona Duda
Director

