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EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 13 November 2007

at the request of the President of Narodowy Bank Polski
on a draft resolution amending Resolution 15/2004 of the Management Board of Narodowy Bank Polski of 13 April 2004 on the rules and procedures for calculating and holding minimum reserves by banks

(CON/2007/34)

Introduction and legal basis

On 28 September 2007 the European Central Bank (ECB) received a request from the President of Narodowy Bank Polski (NBP) for an opinion on a draft resolution amending Resolution 15/2004 of the Management Board of Narodowy Bank Polski of 13 April 2004 on the rules and procedures for calculating and holding minimum reserves by banks[1] (hereinafter the 'draft resolution').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and Article 2(2) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions[2], as the draft resolution relates to an instrument of monetary policy of a non-participating Member State. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. Purpose of the draft resolution

1.1 The draft resolution complements NBP's current minimum reserves regime by providing for the treatment of minimum reserves held by a bank undergoing division (hereinafter the 'divided bank')[3]. The need for these rules stems from recent changes made to the Polish banking regime, which makes it possible for banks established in Poland in the form of a joint stock company to be divided. Under the applicable procedure, part of the divided bank's assets and liabilities are

1 Dz.Urz. NBP of 23 April 2004 No 3, Item 4, as amended.

2 OJ L 189, 3.7.1998, p. 42.

3 Credit institutions registered in Poland are legally referred to as 'banks' (this definition does not cover the Polish version of credit unions, operating pursuant to the Law of 14 December 1995 on cooperative savings and loan associations (Dz.U. of 4 January 1996 No 1, Item 2, as amended)). The term 'credit institutions' under Polish law only relates to European Economic Area (EEA) credit institutions from outside Poland. Non-EEA credit institutions are referred to under Polish law as 'foreign banks' (Article 2, Article 4(1), Article 4(3) and Articles 4(17) to (20) of the Law on banking of 29 August 1997 (consolidated text: Dz.U. of 12 June 2002 No 72, Item 665, as amended, hereinafter, the 'Law on banking')).

transferred to another existing or newly established entity or entities, i.e. the divided bank continues to operate after the division, retaining part of its original assets[4]. The recipient entities can be any EEA credit institution that obtains necessary supervisory approval[5].

1.2 The draft resolution provides the following rules for calculating minimum reserves in relation to a divided bank and the banks receiving the assets and liabilities of the divided bank (hereinafter the 'recipient banks'):

(i) In the reserve maintenance period in which the division takes effect, the divided bank's minimum reserve obligations are allocated to the banks participating in the division (the recipient bank(s) and the divided bank), in proportion to the part of the original reserve base of the divided bank that is allocated to each of them; if a recipient bank already exists, such newly allocated minimum reserves obligations increase the amount of its own minimum reserve requirements for that period.

(ii) In the following maintenance periods, each bank participating in the division continues to bear its (additional) minimum reserve obligations in proportion to the part of the reserve base allocated to it as a result of the division, until such time as such bank submits complete reporting data regarding its total updated reserve base figures[6].

2. The ECB's comments

2.1 The draft resolution provisions are similar to the ECB's own minimum reserve rules that apply when a credit institution is subject to division[7]. The ECB welcomes this approach as it takes into account the need for the gradual adaptation of the Polish legislative framework in view of the future adoption of euro[8]. However, the following elements of the draft resolution should be further clarified:

(i) paragraph 9(3a) should specify that the maintenance period referred to in that provision is the maintenance period in which the division takes effect, rather than generally referring to the maintenance period in which a bank is 'subject to division' (which could be interpreted

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4 Article 124c of the Law on banking, as added by the Article 1(3) of the amending law of 18 October 2006 (Dz.U. of 19 October 2006 No 190, Item 1401), together with Article 529(1)(4) of the Commercial Companies Code of 15 September 2000 (Dz.U. of 8 November 2000, No 94, Item 1037, as amended). The ECB commented on the early version of the above referred amendments to the Law on banking in ECB Opinion CON/2006/31 of 20 June 2006 at the request of the Polish Minister of Finance on a draft law amending the Law on banking.

5 Article 124c(2) of the Law on banking. Supervisory approval for a proposed division may be denied under certain circumstances.

6 Paragraph 9(3a) and (3b) of Resolution 15/2004, as added by the paragraph 1 of the draft resolution.

7 See Article 13(3) and (4) of Regulation ECB/2003/9 of 12 September 2003 on the application of minimum reserves (OJ L 250, 2.10.2003, p. 10) together with Article 19 of the Statute of the European System of Central Banks and of the European Central Bank. The ECB's concept of 'division' as regards a credit institution differs from the one that applies under the draft resolution in that the ECB rules assume that all assets and liabilities of a divided credit institution are acquired by the recipient entities, i.e. the divided credit institution ceases to exist after the division (Article 1 of Regulation ECB/2003/9).

8 See also paragraph 5 of ECB Opinion CON/2005/14 of 31 May 2005 at the request of the Magyar Nemzeti Bank on a draft regulation on the calculation, method of allocation and placement of minimum reserves.

as potentially spanning over several maintenance periods in which activities preceding the legally defined date of division take place). In this context, the draft resolution may refer to the maintenance period in which the legally defined 'date of division' occurs (as specified in Article 530(2) of the Commercial Companies Code);

(ii) the draft resolution should specify the way in which current account holdings[9] held by a divided bank from the start of the maintenance period in which the division takes effect until the day the division takes effect are to be allocated between the banks participating in the division;

(iii) the draft resolution should expressly state the manner in which the banks participating in a division apply the general lump sum allowance provisions of NBP's minimum reserves regime (a fixed amount which an institution deducts in the calculation of its reserve requirement) in the maintenance period in which the division takes effect and the maintenance period immediately following the maintenance period in which the division takes effect[10]. Such express regulation of the required treatment of the lump sum allowance in the case of the division of a credit institution is contained in the ECB's minimum reserve regime, which may be used as a model in this regard[11].

2.2 The ECB limits its comments in this opinion to NBP's minimum reserve regime as it relates to the division of banks. It notes, however, that parallel minimum reserve provisions relating to bank acquisitions and mergers should be harmonised with the draft resolution provisions[12]. This is particularly relevant to corporate restructurings involving interlinked merger and division operations affecting the same group of banks. In such situations, the applicable rules should ensure consistent treatment of the affected banks' minimum reserve holdings throughout the restructuring process.

This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 13 November 2007.

[signed]

The President of the ECB

Jean-Claude TRICHET

9 Funds held by the credit institution in its reserve account at the central bank.

10 Paragraph 4(1) of Resolution 15/2004 together with the Article 39a of the Law on Narodowy Bank Polski of 29 August 1997 (consolidated text: Dz.U. of 1 April 2005 No 1, Item 2, as amended).

11 See Article 13(3), last sentence and Article 13(4), last sentence of Regulation ECB/2003/9.

12 See paragraphs 9(1) to (3) of Resolution 15/2004. See also Article 13(1) and (2) of the Regulation ECB/2003/9.