



## POLISH BANK ASSOCIATION

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Warsaw, 7 Oct. 2014

**Ref. Polish Bank Association response on "Draft Guidelines for common procedures and methodologies for the supervisory review and evaluation process under Article 107 (3) of Directive 2013/36/EU":**

The PBA welcomes the opportunity to express the view of the Polish banking industry on the EBA consultation paper on Guidelines for common procedures and methodologies for the supervisory review and evaluation process under Article 107 (3) of Directive 2013/36/EU.

In response to EBA/CP/2014/14 on July 7, 2014 Polish Bank Association pass the following remarks to this draft Guidelines.

At the beginning it is necessary to notice that Directive 2013/36/EU (hereinafter „CRD IV”) hasn't been implemented to the Polish legal system yet and it's difficult to state how it will be implemented. For this reason it is not possible to unequivocally refer to submitted material and give opinion to its content.

1. In reference to Point 44 of title 3 “Monitoring of key indicators” of the Guidelines document: It is not specified whether the indicators and their thresholds will be given to the public (supervised institutions)? Will Banks be aware by which indicators will their condition be examined and more what thresholds were set for these indicators?
2. Chapter 5.4 Organisation and functioning of the management body, point 85:
  - a) letter b – the reason for doubts is term „independence”– the content of EBA Guidelines (Guidelines on the assessment of the suitability of management body members...), CRD IV provisions, as well as project of the present document, do not state unequivocally if the requirement regarding independence should refer to supervisory boards and to management boards members or only to supervisory boards members. Moreover it is also not clear how independence requirement should be understood – if it refers only to independence meaning lack of any links which could significantly influence on ability of members to take independent decisions (i.e. for example lack of



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personal, professional relations of a person with bodies members, shareholders etc.), or if it means also independence as ability to take decisions, independence in thinking (point 11.3. of above mentioned Guidelines), independence of judgment, needed to effectively evaluate and question decisions of management at higher level (CRD IV),

- b) letter f – what should be understood by “sufficient time” and how fulfillment of this requirement will be evaluated? At this moment there are no guidelines in this scope (according to 91 section 12 CRD IV by the 31.12.2015 EBA should issue guideline
3. Chapter 5.5 Remuneration policies and practices, point 86, letter c – this point refers to Regulation 604/2014 on technical regulatory standards regarding qualitative and quantitative criteria for setting categories of employees whose professional activity has significant influence on institution’s risk profile. Here it is necessary to notice that project of Polish banking law, which will be transposition of CRD IV Directive to Polish law, does not include references to above mentioned Regulation. However identification of persons holding managerial posts in the bank is based on KNF Resolution No. 258/2011 currently applicable in Poland.

Moreover due to the fact that Regulation is legal act binding entirely and directly applicable in all UE member states without need of implementation in the national law, and due to lack of transitional provisions, significant issue is clarifying the date from which criteria specified in the Regulation apply. It is not clear if, after identifying by bank employees, whose professional activity has significant influence on institution’s risk profile, prior to entering into force the Regulation, i.e. without using criteria mentioned in this Regulation, it is necessary to conduct re-identification in compliance with Regulation provision? Or in this case, due to the fact that obligation of identifying above mentioned persons was fulfilled by bank, Regulation provisions should be applied to identification of employees whose professional activity has significant influence on institution’s risk profile in the next year?,

4. In reference to Point 88 of chapter 5.6.1 of the Guidelines document: should the financial/capital plan also be understood as the risk appetite statement and be communicated to the staff of the supervised institution?



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5. We would like to note that in the whole document there is no compliance risk definition. While Chapter 6.5 Assessment of operational risk, point 230 letter g as one of elements which should be taken into consideration in supervisory evaluation indicates lack of compliance with applicable generally binding laws and internal regulations of institution – in order to ensure transparency and unequivocalness of drafted EBA Guidelines provisions it seems justifiable to define also compliance risk.

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