

Warsaw, 23 December 2015

Mr
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European Systemic Risk Board

Acting in accordance with relevant national and European Union legal acts please find notifications regarding:

1. The exemption of micro, small and medium-sized investment firms from the requirement to maintain a capital conservation buffer

On the basis of Article 20(2) of the Act of 5 August 2015 on macro-prudential supervision over financial system and crisis management (hereinafter 'Act') the Financial Stability Committee (hereinafter 'FSC') informs that pursuant to Article 20(1) of the Act (implementing Article 129(2) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC – hereinafter the CRDIV) micro, small and medium-sized investment firms shall be exempted from the requirement to maintain the capital conservation buffer.

2. The exemption of micro, small and medium-sized investment firms from the requirement to maintain an institution-specific countercyclical capital buffer

On the basis of to Article 22(2) of the Act the FSC informs that pursuant to Article 22(1) of the Act (implementing Article 130(2) of the CRDIV) micro, small and medium-sized investment firms shall be exempted from the requirement to maintain an institution-specific countercyclical capital buffer.

3. Shorter transitional periods for institution-specific countercyclical capital buffer

With reference to Article 160(6) of the CRDIV the FSC informs that pursuant to Article 83 of the Act the countercyclical capital buffer rate is set at 0 %. This rate shall be applicable till the day preceding the day since an institution will be obliged to apply the rate indicated in the regulation of the Minister of Finance. Thereby, the Minister of Finance may set countercyclical buffer rate at higher rate than rates indicated in Article 160(2-4) of the CRDIV.

4. The countercyclical capital buffer rate in the Republic of Poland set at 0 % of the total risk exposure with effect from 1 January 2016

On the basis of Article 25(2) of the Act (implementing Article 136(7) of the CRDIV) the FSC informs that pursuant to Article 83 in conjunction with Article 96 of the Act, institutions shall maintain as of 1 January 2016 a countercyclical capital buffer at 0 % of the total risk exposure till the day preceding the day since which an institution will be obliged to apply the rate determined by the regulation of the Minister of Finance.

5. Shorter transitional periods for capital conservation buffer according to Article 84 of the Act

Pursuant to Article 160(6) of the CRDIV the FSC informs that according to Article 84 of the Act the transitional period for capital conservation buffer has been waived. Pursuant to Article 84 of the Act the capital conservation buffer shall be applied by institutions as follows:

- a) between 1 January 2016 and 31 December 2017 – **1,25 %**;
- b) between 1 January 2018 and 31 December 2018 – **1,875 %**;

According to Article 19(1) of the Act as of 1 January 2019 institutions shall apply capital conservation buffer rate at **2,5 %**.

Justification

The exemption of micro, small and medium-sized investment firms from the requirement to maintain a capital conservation buffer:

According to Article 20(1) of the Act micro, small and medium-sized entrepreneurs shall be determined under Articles 104-106 of the Freedom of Economic Activity Act¹. Pursuant to above-mentioned provisions micro, small and medium-sized investment firms² therefore shall be:

- I. “a **'microenterprise'** shall mean an enterprise which met, within at least one of the past two fiscal years, the following conditions:
 - 1) employed, on average, less than 10 employees in a year, and
 - 2) generated the annual net turnover from sales of products, goods and services and financial operations of less than the equivalent of EUR 2 million expressed in PLN, or if the balance sheet total value of assets as at the end of one of these two years was less than the equivalent of EUR 2 million expressed in PLN.

¹ Definition is in line with Commission Recommendation 2003/361/EC.

² Definition of investment firms is consistent with Article 4(1) point 2) of the CRR.

II. a '**small enterprise**' shall mean an enterprise which met, within at least one of the past two fiscal years, the following conditions :

1) employed, on average, less than 50 employees in a year, and

2) generated the annual net turnover from sales of products, goods and services and financial operations of less than the equivalent of EUR 10 million expressed in PLN, or if the balance sheet total value of assets as at the end of one of these two years was less than the equivalent of EUR 10 million expressed in PLN.

III. a '**medium-sized enterprise**' shall mean an enterprise which met, within at least one of the past two fiscal years, the following conditions:

1) employed, on average, less than 250 employees in a year, and

2) generated the annual net turnover from the sales of products, goods and services and financial operations of less than the equivalent of EUR 50 million expressed in PLN, or if the balance sheet total value of assets as at the end of one of these two years was less than the equivalent of EUR 43 million expressed in PLN”.

Due to the size of these investment firms and their limited scope of permitted activities there is no risk that the exemption would threaten the stability of the financial system in the Republic of Poland.

The exemption of micro, small and medium-sized investment firms from the requirement to maintain an institution-specific countercyclical capital buffer:

According to Article 130(1) of the CRDIV credit institutions shall maintain an institution-specific countercyclical capital buffer. Article 130(2) of the CRDIV provides that Member States may exempt small and medium-sized investment firms from the above mentioned requirement. According to Article 22(1) of the Act such exemption *de iure* applies to micro, small and medium-sized investment firms in the Republic of Poland.

According to Article 22(1) of the Act micro, small and medium-sized entrepreneurs shall be determined under Articles 104-106 of the Freedom of Economic Activity Act (see paragraph above).

Due to the size of these investment firms and their limited scope of permitted activities there is no risk that the exemption would threaten the stability of the financial system in the Republic of Poland.

Shorter transitional periods for capital conservation buffer and institution-specific countercyclical capital buffer:

According to Article 160(1-4) of the CRDIV institutions shall maintain a capital conservation buffer and institution-specific countercyclical capital buffer at levels determined for transitional periods specified therein.

Where a Member State imposes a shorter transitional period (by applying a national discretion), according to Article 160(6) of the CRDIV, it shall inform the European Commission, ESRB, EBA and the relevant supervisory colleges.

a. institution-specific countercyclical capital buffer:

According to Article 24(1) of the Act the countercyclical capital buffer (for the institution-specific countercyclical capital buffer) shall be between 0 % and 2,5 % of the total risk exposure calibrated in steps of 0,25 percentage points or multiples of 0,25 percentage points. Pursuant to Article 83 of the Act institutions shall maintain as of 1 January 2016 a countercyclical capital buffer at 0 % of the total risk exposure till the day preceding the day since which an institution will be obliged to apply the rate indicated in the regulation of the Minister of Finance.

The Act does not envisage the upper limit of the countercyclical buffer rate and institution-specific countercyclical capital buffer rate and does not apply any transitional period. Thereby, obliged institutions shall maintain this buffer at the level specified in the regulation of the Minister of Finance (until this day the countercyclical capital buffer rate shall be 0 %) disregarding transitional periods indicated in Article 160(2-4) of the CRDIV.

b. capital conservation buffer:

According to Article 84(1) of the Act the capital conservation buffer required from the institutions shall be 1,25 % for the period from 1 January 2016 until 31 December 2017. Therefore, the transitional period envisaged in the CRDIV will be shorter in the Republic of Poland for the period from 1 January 2016 until 31 December 2016³.

Chairman of the Financial Stability Committee
(macro-prudential authority)

Marek Belka
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³ According to Article 160(2)(a) of the CRDIV the capital conservation buffer shall consist of Common Equity Tier 1 capital equal to 0,625% of the total of the risk weighted exposure for the period from 1 January 2016 until 31 December 2016.