

**MEMORANDUM OF UNDERSTANDING**  
**concerning cooperation in conducting banking supervision**

Between:

The Commission for Banking Supervision of the Republic of Poland, represented by the President of the National Bank of Poland, acting as the Chairperson of the Commission for Banking Supervision (hereinafter referred to as the "CBS"),

and

The Commission bancaire and the Comité des établissements de crédit et des entreprises d'investissement of the French Republic (hereinafter referred to respectively as the "CB" and the "CECEI"), represented by the Governor of the Banque de France, acting as their Chairman,

having regard to the fact that, on the basis of the legal framework applicable in the European Union and the national laws and regulations, the CBS and the French authorities (hereinafter referred to as the Authorities) pursue the supervision of banks operating in the territory under their jurisdiction, the Authorities

- recognise the need for a mutual exchange of information, and
- set hereby the terms of their cooperation in the field of banking supervision of cross-border establishments based on the principle of mutual recognition of authorisations and regulations in compliance, in particular, with the provisions of Directive 2000/12/EC of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions.

**I General Provisions**

**Article 1**

For the purposes of this memorandum,

- (1) 'bank' is a credit institution according to Article 1 p 1. a) of the Directive 2000/12/EC,
- (2) 'subsidiary bank' is a bank which meets the criteria for the subsidiary stipulated in Article 1 (p 13) of the Directive 2000/12/EC,
- (3) 'branch' is a legally dependent unit of a bank pursuant to Article 1 (p 3) of the Directive 2000/12/EC which has its seat in the territory of one of the Authorities and is established in the territory of the other Authority,
- (4) 'cross-border establishment' is a subsidiary bank, operating in the territory of one of the Authorities, which is owned by a bank which has its seat in the territory of the other authority or a branch,
- (5) 'home country' is the country in which the bank's seat is located,
- (6) 'host country' is the country in which a cross-border establishment is located.

*cr*

## **II Exchange of Information**

### **Article 2**

1 The Authorities declare their willingness to exchange information concerning the activities of cross-border establishments and of banks which own such establishments, in particular, to the extent necessary for the effective execution of supervision on a consolidated basis.

The information shall comprehend all relevant facts pertaining to :

- (a) the process of authorisations for establishing banking business and acquisition of shares in a bank, and in particular cases, the ownership structure of the shareholding enterprise itself
- (b) supervision over the current activities of the banks, including evaluation of financial situation of a subsidiary bank and a bank which owns it,
- (c) situations raising banking supervisory concerns.

- 2 Information referred to in paragraph 1 may be transmitted provided that effective steps are taken to ensure that the information obtained will be used exclusively for the purposes of banking supervision, subject to paragraph 3.
- 3 The Authorities acknowledge that compliance with the obligation of professional secrecy and confidentiality by all employees currently or previously employed who receive confidential information from the other authority in the course of their activities is a necessary condition for successful cooperation between the Authorities. The Authorities agree that any confidential information shared by virtue of these arrangements shall be used only for lawful supervisory purposes. The Authorities will, to the extent permitted by law, maintain the confidentiality of all the information received from each other by virtue of these arrangements and shall not disclose any such information other than as necessary to carry out their supervisory responsibilities without obtaining the prior written consent of the other Authority and then only in accordance with the conditions (if any) attached by the Authority providing information. Each Authority shall, if it receives any legally enforceable demand for information received from the other Authority or acquired in the course of an on-site examination in the other Authority's jurisdiction pursuant to which it is obliged by law to disclose such information (notwithstanding any other provision of this Memorandum of Understanding), promptly notify the other Authority and will cooperate in seeking to preserve, as far as is legally possible, the confidentiality of such information.
- 4 The materials provided pursuant to this Memorandum of Understanding and containing information covered by professional secrecy shall be marked solely with the words 'Covered by professional secrecy'.

## **III Notifications of intention to exercise the freedom to provide services or to establish a branch**

### **Article 3**

Pursuant to article 21 of Directive 2000/12/EC, the competent authority to be notified by any French (Polish) credit institution wishing to exercise the freedom to provide services

by carrying on its activities in Poland (France) for the first time is the CECEI (CBS).

#### Article 4

- 1 Pursuant to article 20 of the Directive 2000/12/EC, the competent authority to be notified by any French (Polish) credit institution wishing to establish a branch in Poland (France) for the first time is the CECEI (CBS).
- 2 An institution that has established a branch in the host country will be free to open further "places of business" in the host country. The opening of another place of business in the host country, irrespective of whether it is to report to the head office directly or to a branch inside or outside the host country, would require no further notification. It does not exclude any possible obligation resulting from the host country regulations making it necessary for the institution to inform the host country authority about opening or closure of further "places of business" in that country. The CECEI (CBS) will ensure that an institution with several places of business established in Poland (France) designates one place of business as the head branch, the managers of which would have to answer to the CBS (CECEI).
- 3 In case a notice refers to a change in the management of the branch, the CBS and the CECEI will use the one-month interim period between the notice and the occurrence of the change provided for in Article 20 (6) of the Directive 2000/12/EC to exchange information of which they are aware, on the fitness and properness of the designated manager of the branch.

#### IV Granting authorisations for opening a subsidiary

##### Article 5

- 1 In the granting of authorisations for opening a subsidiary bank, the Authorities agree to the following:
  - (a) The host Authority shall immediately inform the home Authority on receiving an application for granting the authorisation,
  - (b) the home Authority shall inform the host Authority as to whether a bank which has submitted the aforementioned application has to obtain the approval of the banking supervision agency of the home country for the opening of a subsidiary,
  - (c) upon request by the host Authority, the home Authority shall transmit information facilitating the consideration of the aforementioned application
- 2 The procedure described in the above paragraph shall be applied accordingly in the granting an authorisation for acquiring shares in a bank by a bank which has its seat under the jurisdiction of the other Authority.

##### Article 6

If, at a subsidiary bank operating in the territory of the host country, there have been changes regarding:

- activity for which a subsidiary bank is to be authorised,
- seat of a subsidiary bank,

position of a president of the management board of a subsidiary bank, the host Authority shall promptly inform the home Authority of these changes.

## V Ongoing supervision over cross-borders establishments

### Article 7

The Authorities shall exchange information and perform supervision over branches according to the appropriate provisions of art. 17- 19, 22, 26 - 29 of the Directive 2000/12/EC.

According to these provisions, the prudential supervision of the branches located in the other Member State is the sole responsibility of the home country authority, except for the supervision over the liquidity of credit institutions and the compliance of institutions with the rules of conduct and money laundering provisions.

### Article 8

Subsidiary banks are supervised on a solo basis by the host Authority and on a consolidated basis by the home Authority. The Authorities agree that cooperation is particularly useful in assisting each other for the purposes of consolidated supervision and, more specifically, in carrying out on-site examination of subsidiary banks.

## VI On-site examinations and audits of cross-border establishments

### Article 9

- 1 The Authorities intend to carry out on-site inspections in cross-border establishments, either by their own staff or through commissioned auditors. In the case of inspections of branches, the host country authority may assist the home country inspector to the extend reasonable. At the discretion of the host Authority and in accordance with the applicable laws in each jurisdiction, on-site examinations of subsidiaries may be carried out independently or jointly with the host Authority.
- 2 The home country Authority shall inform the host country authority in advance of any inspection/audit. In the case of subsidiaries, the home Authority will use its best efforts to ensure that information on a planned on-site examination or/and request for participation in the examination is conveyed to the host Authority usually two months before the envisaged date of the visit.
- 3 The notification shall comprise the following information:
  - scope of the examination;
  - name of the branch and/or subsidiary;
  - name of the inspectors/auditors;
  - for subsidiaries, request for participation if the case may be
  - expected starting date and duration of the examination
- 4 The home Authority would inform the host Authority at the conclusion of an examination and provide, to the extend reasonable, information on the results of the review relevant to the operations of the cross-border establishment.

### **Article 10**

With regard to the supervision over systemically relevant cross-border establishments, the host Authority informs the home Authority of its specific interest and supervisory concerns. The home Authority will discuss these concerns with the host Authority for the purpose of finding the best solution. The Authorities may agree on either ordinary or special measures to solve the supervisory problem. On a case-by-case basis and after due consideration, the home Authority may request the host Authority to accompany the home Authority or their commissioned examiners during a targeted on-site examination of the relevant parent institution if and to the extent this examination covers a specific area directly related to the supervision over the cross-border establishments in the host country.

## **VII Cooperation concerning other specific areas**

### **Article 11**

#### **Financial crime**

The Authorities will cooperate closely while they identify financial crime activities in supervised institutions. For the purposes of this agreement, 'financial crimes' are, in particular, money laundering and all violations of law on financial markets. This includes unauthorised banking business. The Authorities shall share their information on financial crime concerning the relevant institutions which carry out cross-border activities under the other jurisdiction, or which might affect the other jurisdiction to the extent allowed under their laws. They may pass on received information, with the prior consent obtained from the other authority, for regulatory or law enforcement purposes, to other such authorities under the national jurisdiction. Article 2 paragraph 3 of this memorandum shall be observed.

### **Article 12**

#### **Crisis situation**

The Authorities shall inform each other immediately if they learn of an incipient crisis such as serious financial difficulties which might have a material adverse impact on operations relating to any institution, supervised by either Authority, which has cross-border establishments or to the cross-border establishments.

## **VIII Final Provisions**

### **Article 13**

Unless this MoU or later agreements provide otherwise, the Authorities will exchange notifications and information in the language of their country, however, written communications may be accompanied by an English translation. As for meetings and other occasions the proper language will be chosen from case to case.

The Authorities will exchange a list of contact persons and also designate a person who will be contacted in cases there is no special designated contact person in relation to the matter of consult. The information concerning this particular person will be brought up-to-date regularly.

cn

**Article 14**

This memorandum shall become void:

1. pursuant to a decision, taken jointly by the Authorities,

2. if one of the Authorities notifies the other Authority of the termination of the memorandum six months prior to the date of termination.

3. Notwithstanding the dissolution of the memorandum, those activities undertaken in the binding period of the memorandum shall be continued until their completion.

**Article 15**

The memorandum shall become effective on the day on which it is signed by the Parties.

IN WITNESS WHEREOF, the Undersigned, being duly authorised, have signed this agreement.

Done at Paris, in 6 exemplars, this 13 of June 2006, in the French, Polish and English languages, each text being equally authentic, and at Warszawa, this 2-06 of 2006.

For  
the Commission for Banking Supervision  
President of the National Bank of Poland  
acting as the Chairperson of the  
Commission for Banking Supervision

For the Commission bancaire and the Comité  
des établissements de credit et des entreprises  
d'investissement, represented by the  
Governor of the Banque de France, acting as  
their Chairman

Leszek Balcerowicz



Christian Noyer

