

# **MEMORANDUM OF UNDERSTANDING**

## **relating to cooperation in conducting banking supervision**

concluded on 20 December 2004 in Warsaw between

- 1 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

- 2 the Bundesanstalt für Finanzdienstleistungsaufsicht (hereinafter referred to as the BaFin),**

having regard to the fact that, on the basis of the existing legal regulations, the CBS and the BaFin (hereinafter referred to as the Authorities) pursue the supervision of banks operating in the territory comprising their jurisdiction, the Authorities

- recognise the need for a mutual exchange of information,

and

- express their readiness to create conditions for improving, to the extent defined herein and on a mutual basis, the supervision of banks which have cross-border establishments in the territories of the two countries.

The Authorities set forth the following.

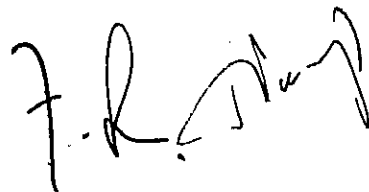


## **I General Provisions**

### **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) 'representative office' is an organisational unit of a bank, other than a branch, which has its seat in the territory of one of the Authorities and is established in the territory of the other authority,
- (5) '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, a branch or a representative office,
- (6) 'home country' is the country in which the bank's seat is located,
- (7) 'host country' is the country in which a cross-border establishment is located.



## **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 the following areas
  - (a) process of licensing and issuing authorisations for the pursuit of banking business,
  - (b) supervision of their current activities,
  - (c) situations raising banking supervisory concerns.

The Authorities shall exchange the above information in particular to the extent necessary for the effective execution of supervision on a consolidated basis.

- 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 who receive confidential information from the other authority in the course of their activities is a necessary condition for successful cooperation between the Authorities. Observance of the professional secrecy obligation, and in particular banking secrecy and regulations concerning the protection of personal data, by all employees who –in course of performing their responsibilities- receive confidential information from the employees of the other authority is a necessary condition for the co-operation between banking supervision agencies. The Authorities shall ensure that all persons who are currently employed or were employed in the past by the banking supervision agencies and who have or had access to confidential information submitted to them by the employees of the other authority, are obliged to observe professional secrecy, and, in particular, banking secrecy. 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 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 providing authority. 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. The BaFin will pass on the information received from the CBS to the Deutsche Bundesbank to the extent that such information is necessary for the performance of the functions of the Deutsche Bundesbank as defined in Section 7 of the German Banking Act, on the condition that the Deutsche Bundesbank shall use the information only for lawful supervisory purposes and shall not disclose the information to any other person without the prior written consent of the CBS.

4 On the basis of paragraph 1 and in accordance with the conditions specified under paragraphs 2 and 3, the following information in particular may be exchanged

(a) in the process of licensing and issuing authorisations:

- information on a bank which intends to open a cross-border establishment, information concerning
  - the extent and size of its operations,
  - compliance with legal regulations, including prudential regulations,
  - organisational structure and internal control system for ensuring the proper activity of cross-border establishments,
  - financial condition.
- information on governing bodies and shareholders which own at least 10% of the shares in the bank intending to open a cross-border establishment,
- information on candidates for the governing bodies of a subsidiary bank or branch, with a special consideration of whether these persons have not been deprived by a court of law of the right to pursue their own business or to act as a representative or a proxy of an entrepreneur, a member of supervisory board or board of audit of a joint stock company, limited liability company or a cooperative,



(b) In the supervision of current activities:

- information concerning the condition and development of the respective banking sectors, prudential regulations and other requirements of banking supervision as well as information on significant changes thereof,
- a summary evaluation of the financial situation of cross-border establishments and banks which own them,
- information on recommendations issued on the basis of the performed on-site examination.

(c) In situations raising banking supervision concerns:

- information on subsidiary banks or banks which own these subsidiary banks, which are suffering a net loss or threatened with insolvency,
- information on a branch in which a situation has occurred that may lead to the insolvency of the whole bank.

5 The Authorities shall provide each other with information referred to above under (c) immediately after the circumstances referred to in that paragraph occur.

6 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'.

### **Article 3**

#### **Financial crime**

The Authorities will cooperate closely when 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 information on financial crime concerning the relevant institutions which carry out cross-border activities in the other jurisdiction, or which might affect the other jurisdiction to the extent allowed under their laws. They may pass on this information, with the prior consent obtained from the other authority, for regulatory or law enforcement purposes, to other such authorities in the national jurisdiction. Article 2 paragraph 3 of this memorandum shall be observed.



#### **Article 4**

##### **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 in the other country. The Deutsche Bundesbank shall be included in the exchange of such information.

#### **Article 5**

If necessary, the Authorities shall organise meetings of banking supervisory authority managers or banking supervisory experts to discuss issues which are of interest to both parties, including issues connected with improving objectives and methodologies in the performance of banking supervision. Such meetings shall be organised on the basis of a separate, prior written arrangement. The Deutsche Bundesbank shall attend these meetings.

### **III Granting authorisations for opening a cross-border establishment**

#### **Article 6**

- 1 In the granting of authorisations for opening a subsidiary bank and representative office, the Authorities agree the following.
  - (a) The host-country authority shall immediately inform the home-country authority on receiving a petition for granting the authorisation,
  - (b) the home-country authority shall inform the host-country authority as to whether a bank which has submitted the aforementioned petition has to obtain the approval of the banking supervision agency of the home country for the opening of a subsidiary bank and representative office,
  - (c) upon request by the supervision agency of the host country, the supervision agency of the home country shall transmit information facilitating the consideration of the aforementioned petition, in particular, information referred to in Article 2 paragraph 4(a).



- 2 The procedure described in the above paragraph shall be applied accordingly in the granting an authorisation for acquiring shares in a bank which has its seat under the jurisdiction of one authority by a bank which has its seat under the jurisdiction of the other authority.

#### **Article 7**

If, at a subsidiary bank operating on the territory of the host country, there have been changes related to

- a type of banking operation for which a subsidiary bank is to be authorised,
- a seat of a subsidiary bank,
- the position of a president of the management board of a subsidiary bank,

the banking supervision agency of the host country shall immediately inform the banking supervision agencies of the home country of these changes.

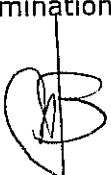
### **IV Ongoing supervision, on-site inspections and audits**

#### **Article 8**

Branches are supervised according to Articles 22 and 27 to 33 of Directive 2000/12/EC. Subsidiary banks and representative offices are supervised by the host-country authority in accordance with the law of the host country. In addition, cross-border establishments are subject to the consolidated supervision of the home-country authority. The Authorities agree to take joint measures for the supervision of cross-border establishments wherever possible.

#### **Article 9**

- 1 The Authorities agree that cooperation is particularly useful in assisting each other in carrying out on-site inspection of cross-border establishments. The BaFin or examiners commissioned by BaFin are allowed to conduct on-site inspections of cross-border establishments of German banks in Poland. Such inspections will be conducted as joint on-site examinations. In return, the CBS is allowed to conduct on-site inspection of cross-border establishments of Polish banks in Germany. The right to initiate such inspections lies with the CBS and the BaFin. Neither authority has the right to veto an on-site inspection or limit the scope of such an examination.



- 2 In the case of on-site examination of cross-border establishments initiated by the home-country authority, the home-country authority shall notify the host-country authority, usually two months in advance, of the inspection giving details of the names of the examiners, the purpose of the audit and its expected duration. The host-country authority shall then invite the home-country authority or auditors commissioned by the home-country authority to participate in the joint examination.
- 3 The Authorities shall cover the costs of examination.

#### **Article 10**

With regard to the supervision of systemically relevant cross-border establishments, the host-country authority informs the home-country authority of its specific interest and supervisory concerns. The home-country authority will discuss these concerns with the host-country authority for the purpose of finding the best solution. The Authorities may agree on either ordinary or special measures to solve the supervisory problem, not excluding additional on-site verification of the information. On a case-by-case basis and after due consideration, the home-country authority may request the host-country authority to accompany the home-country 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 of the subsidiary or branch in the host country.

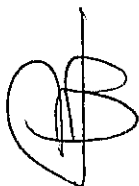
#### **Article 11**

The Authorities declare that visits by the representatives of the home-country banking supervisors to cross-border establishments, which are not related to examination, shall be carried out after prior notification of the supervision authorities of the host country.

### **V Final Provisions**

#### **Article 12**

- 1 This memorandum shall become void
  - pursuant to a decision, taken jointly by the Authorities, that the memorandum does not meet objectives for which it was concluded,
  - if one of the Authorities notifies the other authority of the termination of the memorandum six months prior to the date of termination.





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

### **Article 13**

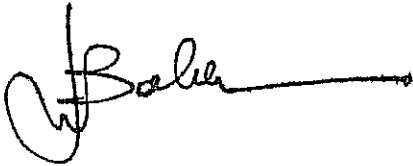
Six copies of the memorandum have been prepared – two copies in Polish, two copies in German and two copies in English. Each party has received three copies – one copy in Polish, one copy in German and one copy in English. The English version of the memorandum shall prevail in any case of doubt concerning its interpretation.

### **Article 14**

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

**Commission for Banking Supervision**

**Bundesanstalt für  
Finanzdienstleistungsaufsicht**



**Leszek Balcerowicz**  
President of the National Bank of Poland  
Acting as the Chairperson of the  
Commission for Banking Supervision



**Jochen Sanio**  
President of the BaFin

*Practical Guidelines for Cooperation  
between  
the Bundesanstalt für Finanzdienstleistungsaufsicht  
and Komisja Nadzoru Finansowego*

The undersigned Institutions declare, that they agree as to the text of the revised version of the *Practical Guidelines for Cooperation between the BaFin and the Polish FSA*.

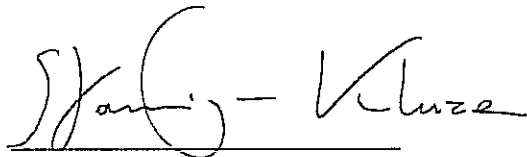
Both Institutions confirm their willingness to comply with the principles of cooperation between the Polish FSA and German banking supervisors, that is BaFin and Deutsche Bundesbank.

This Letter of Acceptance is signed in two original copies in English language, both being equally authentic. The *Practical Guidelines* are attached to both copies of the Letter.

Warsaw, 21 October 2008

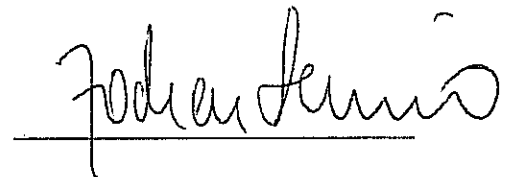
Signed on behalf of:

Polish Financial Supervision Authority



Stanisław Kluza  
Chairman

Bundesanstalt für  
Finanzdienstleistungsaufsicht



Jochen Sanio  
President

21. 10. 2008

Date

**PRACTICAL GUIDELINES FOR COOPERATION BETWEEN  
THE BAFIN (*BUNDESANSTALT FÜR FINANZDIENSTLEISTUNGSAUFSICHT*)  
AND THE POLISH FSA (*KOMISJA NADZORU FINANSOWEGO*)**

*21 October 2008*

1. The cooperation between the Polish FSA and the BaFin is based on the Directive 2006/48/EC and the Memorandum of Understanding (MoU) validated by the two Authorities in April 2008 in its form previously agreed and signed by the Commission for Banking Supervision (CBS) – now Polish FSA – and the BaFin on December 20, 2004. Both, Polish FSA and BaFin express their willingness to have practical working guidelines in place in order to specify and clarify aspects of their cooperation. These guidelines shall also cover the cooperation between the Polish FSA and Deutsche Bundesbank. BaFin and Deutsche Bundesbank are hereinafter referred to as “German banking supervisors”.
2. Notwithstanding the above mentioned regulations, the cooperation will be driven by the principle of proportionality and flexibility.
3. The Polish FSA and the German banking supervisors have agreed on a list of banks that are considered as significant for the purpose of their cooperation. The agreed list of such banks is enclosed as Annex 1a and may be changed if necessary. Other banks outside this list (Annex 1b) shall be considered as non-significant for the purpose of the cooperation. As a principle, non-significant banks should be generally subjected to distance cooperation, i.e. letters, phone calls, e-mails. Only in exceptional circumstances, upon the request of either party, joint on-site visits or joint inspections might take place in such non-significant banks.
4. The information on the contact details of analysts/line supervisors in charge of the respective banks and their subsidiaries or branches will be part of this document (Annex 2).
5. In case of significant banks, the German banking supervisors and the Polish FSA will agree on a case by case basis which form of cooperation would be appropriate for a particular bank. As a principle, joint on-site inspections referred to in the Article 9 of the MoU, as the most resource consuming form of cooperation, would be applied upon an initiative of either party and only to significant banks. Joint on-site inspections of parent institutions carried out on basis of the Article 10 of the MoU would be limited to parent institutions of significant banks.
6. Annual visits and/or multilateral supervisory colleges concerning significant banks licensed in Poland that are subsidiaries of German banks, will be held at the agreed time and place with the participation of supervisors in charge of particular parent and subsidiary banks. Such visits should be accompanied by exchange of information relative to the overall situation of the banking sector and changes in law and regulations in both countries. The annual visit may include the elements described in the Article 2.4.b) of the validated MoU between the two Authorities.
7. An example of the program of a supervisory annual visit and the type of the information exchanged are enclosed (Annex 3).
8. The Polish FSA and the German banking supervisors agree on the annual review of the Guidelines if this is proposed by any party.