

March 31st, 2023

Position of the FSA's addressed to banks in the form of a joint stock company on compliance with the requirements for assessing the adequacy of internal regulations on the functioning and effectiveness of the supervisory board resulting from Recommendation Z by the FSA on the principles of internal governance in banks

According to Recommendation 8.9 in *Recommendation Z* by the FSA on the internal governance rules in banks (hereinafter: "Recommendation Z"): "The adequacy of internal regulations concerning the functioning of the supervisory board and the management board and the effectiveness of the functioning of these bodies should be subject to regular self-assessment, as well as assessment: by the supervisory board - as regards the management board, and by the general meeting (...) - as regards the supervisory board. The assessment may be carried out with the support of external consultants."

In view of:

- 1) the different approaches of banks observed by the Financial Supervision Authority (hereinafter: the "FSA") to the manner of implementation by their general meetings of the obligations arising from Recommendation 8.9 in Recommendation Z with regard to assessing the adequacy of internal regulations for the functioning of the supervisory board and the effectiveness of its operations,
- 2) inquiries received by the FSA regarding the proper implementation of the above-mentioned obligations, particularly in light of the fact that bank shareholders may not have access to all internal regulations regarding the functioning of the supervisory board and the effectiveness of its operations due to corporate secrecy under Article 428 § 2 of the Commercial Companies Code,

The FSA presents the following position on the manner of correct fulfilment of the requirements indicated in Recommendation 8.9 in Recommendation Z.

In accordance with the recommendation in question:

- 1) as a first step, the bank's supervisory board should conduct a self-assessment of the adequacy of internal regulations for its functioning and the effectiveness of its operations,
- 2) then the bank's general meeting should conduct an assessment of the adequacy of internal regulations for the functioning of the supervisory board and the effectiveness of its operation.

The board's self-assessment does not replace the assessment carried out by the general meeting, and the assessment carried out by the general meeting does not exempt the supervisory board from carrying out the self-assessment.

The self-assessment by the supervisory board and the assessment by the general meeting should take the form of the respective resolutions of these bodies on self-assessment by the supervisory board and assessment by the general meeting.

The general meeting's consideration or approval of the report on the supervisory board's

activities (even if relevant resolutions are adopted in this regard), as well as the general meeting's acknowledgment (even in the form of a resolution) of information on the results of the supervisory board's self-assessment, does not fulfill the requirement of Recommendation Z, as it does not demonstrate the general meeting's assessment of the adequacy of internal regulations regarding the functioning of the supervisory board and the effectiveness of its operations.

The FSA is aware that bank shareholders may not have access to all internal regulations and documents relating to the functioning of the supervisory board and its effectiveness, due, for example, to restrictions on access to these documents due to corporate secrecy under Article 428 § 2 of the Commercial Companies Code. However, this does not justify waiving the general meeting's assessment of the adequacy of internal regulations for the functioning of the supervisory board and the effectiveness of its operations. This assessment should be carried out on the basis and scope of all information and documents that can be made available to the general assembly, in particular:

- 1) resolutions of the supervisory board on the self-assessment of the adequacy of internal regulations on the functioning of the supervisory board and the effectiveness of its operations;
- 2) list of the bank's internal regulations on the functioning of the supervisory board;
- 3) the content of the bank's internal regulations on the functioning of the supervisory board, which, in the opinion of the bank's management, can be made available to the general meeting;
- 4) expert reports, audit reports or opinions relating to the bank's internal regulations on the functioning of the supervisory board and the effectiveness of its operations, prepared by external advisors on behalf of the bank, with the necessary principles of confidentiality and for the purposes of evaluation by the general meeting.

It should be the responsibility of the bank's management to gather and make available to the general meeting the documents necessary for the assessment. The use of the expert opinions, audit reports or opinions referred to in point 4) above should be a standard good practice, applicable in cases where the bank does not make available to the general meeting all internal regulations or other documents relating to the functioning of the supervisory board.

The resolution of the general meeting on the assessment of adequacy of internal regulations concerning the functioning of the supervisory board and its effectiveness should clearly indicate on the basis of which information the general meeting made the assessment.

This position applies accordingly to the assessment of the adequacy of internal regulations concerning the functioning of the supervisory board and the effectiveness of its operation at cooperative banks. The FSA kindly requests that this position be communicated by the association banks to the associated cooperative banks.