

31 March 2023

The KNF's guidance addressed to banks operating as joint stock companies on compliance with requirements for assessing the adequacy of internal regulations concerning their supervisory boards operations and its effectiveness arising from the KNF's Recommendation Z on internal governance in banks

The KNF's Recommendation Z on internal governance in banks no. 8.9 reads as follows: *“The adequacy of internal regulations on supervisory and management board operations as well as effectiveness of these bodies should be subject to regular self-assessment and assessment by the supervisory board in relation to the management board and by the general meeting in relation to the supervisory board. (...) The assessment can be made with the support of external advisors.”*

Bearing in mind:

- 1) that the KNF Office has observed different approach employed by banks to discharging the obligations arising from Recommendation Z no. 8.9 by their general meetings with regard to assessing the adequacy of internal regulations on supervisory board's operations and its effectiveness,
- 2) queries that the KNF has received with regard to proper discharge of these obligations, in particular the fact that shareholders might have no access to all internal regulations concerning the supervisory board's operations and its effectiveness given the trade secrecy arising from Article 428(2) of the Commercial Companies Code,

the KNF's presents hereby the following guidance with regard to proper discharge of the requirements laid down in Recommendation Z no. 8.9.

In accordance with the said recommendation:

- 1) the bank's supervisory board should self-assess the adequacy of the internal regulations concerning its operations and effectiveness,
- 2) then the general meeting should assess the adequacy of the internal regulations concerning the supervisory board's operations and its effectiveness.

The self-assessment made by the supervisory board does not replace the assessment made by the general meeting, whilst the assessment made by the general meeting does not waive the supervisory board's obligation to make the self-assessment.

The self-assessment made by the supervisory board and the assessment made by the general meeting should be reflected in relevant resolutions of these bodies with regard to making the self-assessment and assessment, respectively.

The fact that the general meeting considers or approves the report on the supervisory board

activities (even if relevant resolutions are adopted) or acknowledges (even in the form of a resolution) the results of the self-assessment made by the supervisory board does not mean that the said requirement of Recommendation Z is met as it does not provide evidence that the general meeting assessed the adequacy of internal regulations on the supervisory board's operations and its effectiveness.

The KNF is aware that bank shareholders may happen to have no access to all internal regulations and documents concerning the supervisory board operations and its effectiveness given, e.g. limited access to such documents in view of the trade secrecy arising from Article 428(2) of the Commercial Companies Code. This, however, cannot be a reason for the general meeting for not assessing the adequacy of the internal regulations concerning the supervisory board's operations and effectiveness. This assessment should be made based on all information and documents that can be disclosed to the general meeting, including in particular:

- 1) resolution of the supervisory board with regard to self-assessment of the adequacy of the internal regulations concerning the supervisory board's operations and its effectiveness;
- 2) list of the bank's internal regulations concerning the supervisory board's operations;
- 3) texts of the bank's internal regulations concerning the supervisory board's operations which in the management board's opinion can be disclosed to the general meeting;
- 4) expert judgements, audit reports or opinions on internal regulations concerning the supervisory board's operations produced by external advisors in compliance with all confidentiality requirements at the bank's request for the needs of making the assessment by the general meeting.

It is the responsibility of the bank's management board to gather all documents required for making the assessment and make them available to the general meeting. The use of expert judgements, audit reports or opinions referred to in item 4 above should be a standard best practice applied in cases when the bank does not disclose to the general meeting all the internal regulations or other documents concerning the supervisory board's operations.

The general meeting's resolution with regard to assessing the adequacy of the internal regulations concerning the supervisory board's operations and its effectiveness should clearly indicate the information on the basis of which the assessment was made by the general meeting.

This guidance should also apply accordingly to the assessments made in co-operative banks. The KNF would appreciate if the associating banks circulated this letter to individual co-operative banks within their associations.