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Staff Country Reports

Republic of Poland: Technical Assistance Report—Macprudential Framework

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Monetary and Capital Markets Department



REPUBLIC OF POLAND

MACROPRUDENTIAL FRAMEWORK

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July 2012

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GLOSSARY

BCBS	Basel Committee on Banking Supervision
BGF	Bank Guarantee Fund
Board	Systemic Risk Board
CRD IV	Capital Requirements Directive IV
CSO	Central Statistical Office
D-SIBs	Domestic Systemically Important Banks
DTI	Debt-to-Income
EBA	European Banking Authority
ECB	European Central Bank
ECHR	European Convention of Human Rights
ESCB	European System of Central Banks
ESRB	European Systemic Risk Board
EU	European Union
FSC	Financial Stability Committee
FSB	Financial Stability Board
FSR	Financial Stability Report
FX	Foreign Exchange
GDP	Gross Domestic Product
G-SIFIs	Global Systemically Important Financial Institutions
IMF	International Monetary Fund
KNF	Financial Supervision Authority
LEG	Legal Department, IMF
LTV	Loan-to-Value
MCM	Monetary and Capital Markets Department, IMF
MoF	Ministry of Finance
MPC	Monetary Policy Council
NBP	National Bank of Poland
NOP	Net Open (Currency) Positions
Sejm	(Polish) lower chamber of Parliament
SKOK	Credit Union
TA	Technical Assistance
UK	United Kingdom

PREFACE

In response to a request from the National Bank of Poland (NBP), a Monetary and Capital Markets Department (MCM) technical assistance mission visited Warsaw, Poland, during the period of May 18–28, 2012. The authorities requested assistance to set up an institutional framework for macroprudential policy making. The mission was asked to review the initial legislative proposal prepared by the NBP and recommend ways of improving the effectiveness of the proposed framework, based on emerging international practices, the International Monetary Fund's (IMF's) own research, and discussions with relevant authorities.

The mission was led by Erlend Nier (MCM) and comprised Ms. Oana Nedelescu (MCM), Ms. Dinah Knight (LEG) and Mr. Carl-Johan Lindgren (MCM Consultant). Mr. Mark Allen, IMF Senior Representative in Poland participated in some discussions. The mission met with Mr. Marek Belka, President, Mr. Witold Kozinski, Deputy President, Mr. Andrzej Raczko, Board Member, and other staff from NBP; with Mr. Ludwik Kotecki, Councilor General, and staff at the Ministry of Finance (MoF); Mr. Andrzej Jakubiak, Chairman and Mr. Wojciech Kwaśniak, Vice-Chairman, and staff at the Financial Supervision Authority (KNF); Mr. Jerzy Pruski, President of the Management Board, and staff of the Bank Guarantee Fund (BGF); and Ms. Halina Dmochowska, Vice-President, and staff of the Central Statistical Office (CSO).

The mission would like to thank all officials and particularly those from NBP for their time and hospitality as well as their willingness to discuss all relevant issues with great frankness. Special thanks to Olga Szczepańska and her team for organizing the meetings, and the IMF representative office for their kind and effective assistance.

EXECUTIVE SUMMARY

At the invitation of the National Bank of Poland (NBP) the mission advised the authorities on the establishment of a macroprudential policy function in Poland. The NBP had prepared draft legislation that it shared with the mission and the relevant authorities ahead of the mission's arrival. The mission reviewed the draft proposals in light of potential legal constraints; recent international and European Union (EU) developments; and discussions of the proposals with those authorities that are meant to participate in the Systemic Risk Board (Board), including the NBP, the Financial Supervision Authority (KNF), the Ministry of Finance (MoF), the Bank Guarantee Fund (BGF), and the Central Statistical Office (CSO).

There was consensus among all authorities that a Systemic Risk Board should be set up. The authorities also agreed that the NBP should play a leading role. All agreed that the Board should be chaired by the President of the NBP and that the NBP should provide the secretariat for the Board. The mission team supported these decisions, noting that establishment of formal arrangements were important to mitigate systemic risk and that the central bank had the right expertise and incentives to ensure the effective pursuit of macroprudential policy.

There was discussion among the authorities and with the mission team on a number of further aspects. These included the precise objectives and tasks of the new body, in view of the existing legal and institutional framework; the strength of powers over policy tools that could be assigned to the Board; the appropriate access to information; as well as the composition, governance, and accountability arrangements of the new Board. Other issues, such as the need for cooperation and consultation, were largely understood among the authorities. The team's recommendations, summarized below and detailed in Table 1, stem in part from these discussions and also reflect IMF work and a review of emerging arrangements in the region. They are meant to facilitate the building of a consensus among the authorities on these remaining but important issues.

The team saw merit in further clarifying the objectives and tasks of the Systemic Risk Board. In line with the NBP's proposal the formulation of objectives could include a reference to macroeconomic, in particular external imbalances, such that the Systemic Risk Board could become a forum for policy coordination beyond prudential tools. However, the team noted that safeguards were needed to ensure clarity of responsibility and the autonomy of constitutional bodies, as well as to counter expectations for the Systemic Risk Board that cannot then be met. Such safeguards would need to be developed in the context of a precise description of tasks and policy tools assigned to the new body, as further discussed below.

The team recommended that the Systemic Risk Board should become the "designated authority" in the sense of the EU Capital Requirements Directive (CRD IV). This would enable the Board to become the authority responsible for determining the dynamic capital

buffer. It would also allow for the Board to use and calibrate a range of other macroprudential tools that the directive will open up for national authorities, including further systemic buffers and other options to tighten requirements beyond their EU wide minimum levels. The authorities agreed with this approach.

The team worked with the authorities to determine ways in which macroprudential tools could be made legally binding. This discussion took its starting point from the existence of constitutional constraints on the rulemaking powers of non-constitutional bodies. This led to consideration of two workable approaches. One is for the law to establish tightly described limits within which the Board could use its discretion to set parameters for macroprudential tools. The other is for the law to enable the MoF to issue regulations on macroprudential policy upon a recommendation of the Systemic Risk Board.

The team agreed with the authorities that recommendations could usefully be directed at the KNF. Such recommendations could provide welcome “cover” for the KNF when it wanted to make potentially unpopular decisions, such as to tighten Loan-to-Value ratios. However, the KNF cautioned, and the team agreed, that recommendations should not refer to individual firms or be overly specific. They should more generally tie in with the existing framework for supervision and enforcement.

The team noted that cooperation on the part of the MoF was essential for the macroprudential framework to function well. Tight constraints on the ability of non-constitutional bodies to issue binding normative acts mean that in Poland, cooperation by the MoF will be essential to ensure a firm legal basis for macroprudential policy, as the toolkit is developed over the coming years.

The team supported the use of a “comply or explain” mechanism for recommendations issued by the Board. This was an important mechanism to ensure transparency and follow-up in the face of potential political and other pressures which may otherwise delay implementation. Comply or explain would be appropriate for recommendations to the MoF, the KNF and other bodies represented on the Board, but may not be appropriate for any recommendations to the NBP in view of the need to respect its constitutional independence and the EU ban on instructions.

The team encouraged the introduction of additional “soft” policy tools, such as ‘opinions’ issued by the Systemic Risk Board. This was important to allow policy coordination beyond prudential tools. For example, opinions could be addressed to the council of ministers, when it is judged that the build-up of systemic risk is driven by macroeconomic imbalances.

The team urged a review of the provisions on access to statistical information. These provisions need to strike a better balance between the information needs of the Systemic Risk Board on the one hand and the need for statistical secrecy and the objectives of the CSO on

the other, which relied on respondents to its surveys to trust that individual information was not passed on to other parties.

The team broadly supported the proposals made by the NBP on the composition of the Systemic Risk Board. The team underlined the need to preserve a leading role for the NBP in the arrangements and cautioned against proposals to move the vice chairmanship towards the MoF. However, the team did not think that voting power over policy decision on the part of the CSO could be justified, and suggested to limit the role of the CSO to that of an observer.

The authorities may want to consider moving from simple majority voting to qualified majority voting for major policy decisions. This could include the determinations of buffers under the CRD IV as well as recommendations issued to the KNF and the MoF. Such voting arrangements would ensure that decisions have strong support, while not undermining unduly the need to avoid delay in decision making. By contrast, a requirement for unanimity was likely to impair and obstruct the effective working of the Board.

Accountability mechanisms should be strengthened. The initial proposals provided for few accountability mechanisms that would enhance the willingness to act on the part of the Board and its members. An annual presentation to the Sejm by the Chair of the Board was the only such requirement. The team suggested three important additions. One is for the law to require publication of a record of meetings that would indicate the issues discussed and clarify the votes cast by the constituent agencies on policy decisions taken by the Board. Another is an annual report that would be in written form and endorsed by the Board, before it would be laid before the Sejm. A third is the introduction of an additional communication tool that would, with time, enable the Systemic Risk Board to explain its policy strategy.

Accountability should also leverage the existing Financial Stability Report (FSR) as prepared by the NBP's Financial System Department. The FSR should continue to be endorsed by the NBP Board, rather than the Systemic Risk Board, so as to preserve a separate source of candid and credible analysis. Sufficient resources would need to be made available to the secretariat and the Financial System Department at the NBP to ensure that the functions and reporting duties of the Systemic Risk Board can be adequately supported.

Table 1. Poland: Key Recommendations of the Report

Recommendations	Paragraph Reference	Timeframe
Objectives and tasks		
1. Elaborate the concept of systemic risk, by including operational objectives for the Systemic Risk Board in both the time (cyclical) and structural dimensions.	16, 17	Short term
2. Ensure that the Systemic Risk Board becomes the “designated authority” in the sense of the forthcoming EU capital requirements directive (CRD IV)	18	Short to medium term
3. Ensure that the tasks of the Systemic Risk Board include developing the approach to address risks from systemically important institutions.	19	Short term
4. Ensure close cooperation and coordination with the European Systemic Risk Board.	21	Short term
Policy tools		
1. Assign direct calibration powers to the Systemic Risk Board, to the extent possible, when CRD IV is transposed into Polish legislation.	24	Short to medium term
2. Empower the Systemic Risk Board to make recommendations to other public bodies on the use of prudential measures to contain systemic risk.	25-30	Short term
3. Ensure that recommendations can be made to constituent authorities of the Systemic Risk Board (including the MoF, the KNF and the BGF) on actions within the scope of their legal powers.	26, 28, 30	Short term
4. Ensure that recommendations are public and coupled with a “comply or explain” mechanism.	25, 26, 28	Short term
5. Ensure that the constitutional independence of NBP is respected and that recommendations do not relate to individual institutions that are supervised by the KNF.	27, 30, 34	Short term
6. Empower the Systemic Risk Board to issue non-binding opinions, containing advice to other public bodies, including the Council of Ministers and Parliament.	33	Short term
7. Empower the Systemic Risk Board to make both public and confidential warnings, while avoiding an obligation to issue warnings.	32	Short term
8. Ensure that the Systemic Risk Board can initiate changes in legislation, as necessary for it to acquire new tools or change the regulatory perimeter, through recommendations made to the MoF.	29	Short term

Recommendations	Paragraph Reference	Timeframe
Access to information		
1. Ensure the Systemic Risk Board has broad power to acquire information directly from private entities, including unregulated financial firms and corporations.	36	Short term
2. Ensure access to statistical data needed for the monitoring of systemic risk and gathered by the CSO in a manner that protects statistical secrecy standards enshrined in Polish and EU law.	38	Short term
Composition and governance		
1. Maintain a leading role of the NBP, by assigning the NBP the chairmanship and vice-chairmanship of the Systemic Risk Board and entrust it with the secretariat.	44	Short term
2. Limit the role of the CSO on the Systemic Risk Board to that of an observer.	45	Short term
3. Avoid a requirement for unanimity and consider qualified (2/3) majority voting for major policy decisions.	47, 48	Short term
Accountability		
1. Require publication of a record of meetings that provides clarity on issues discussed and transparency on votes cast by individual members on the policy decisions by the Systemic Risk Board	53, 54	Short term
2. Enable the Systemic Risk Board to explain its evolving policy strategy by establishing an instrument of communication appropriate for this purpose.	55	Short term
3. Maintain the FSR as an independent publication that is endorsed by the NBP's Board, rather than the Systemic Risk Board.	56	Short term
4. Require a (written) annual report to the Sejm so as to ensure that ultimate accountability is to parliament.	57	Short term
5. Ensure that adequate resources are made available to the secretariat and Financial System Department to support accountability and the work of the Systemic Risk Board more broadly.	58	Short to medium term
Delineation of responsibilities and coordination		
1. Explore practical solutions to ensure that the duty to consult does not unduly constrain the operational autonomy of the KNF.	60	Short term

I. INTRODUCTION

1. **The Polish financial system has withstood the stresses of the global financial crisis relatively well, helped by a relatively mild economic downturn.** The banking system is profitable, well capitalized, and liquid; however the level of nonperforming loans remains elevated, even if a pick-up in loan growth has recently led to some decrease (Table 2). Despite a range of macroprudential actions taken by the authorities since 2006 (Table 3) foreign exchange mortgage lending continued (currently standing at 63 percent of total mortgage loans) posing credit and liquidity risks, and complicating monetary policy transmission in Poland.
2. **The Polish financial sector is dominated by banks, a high share of which is foreign-owned.** The banking sector accounts for about 70 percent of the total assets of financial institutions and is composed of 47 banks, 19 branches of foreign banks, and 573 credit cooperatives (Table 4). About 66 percent of banking sector assets belong to foreign financial institutions (mostly from the EU) while the rest of 34 percent are in domestic hands (state Treasury and private domestic investors). Other financial institutions are open-ended pension funds (13 percent of the financial sector assets), insurance companies (9 percent), investment funds (8 percent) and credit unions (SKOKs accounting for less than 1 percent). A number of further nonbank financial intermediaries operate in Poland, such as credit brokers, leasing companies and factoring firms, which are neither regulated nor supervised. Surveys conducted by the Central Statistical Office (CSOs) are currently the only source of public information on these firms.
3. **A number of authorities are involved in financial sector policies.** The National Bank of Poland (NBP) has the mandate to preserve price stability (under an inflation targeting regime established in 1998) and is tasked to contribute towards maintaining financial stability, including through its Financial Stability Report (FSR). The Polish Financial Supervision Authority (KNF) has financial stability among its objectives, and, with banking supervision transferred from the NBP in 2008, has become a unified supervisor charged with the supervision of all financial market segments. The Bank Guarantee Fund (BGF), established in 1995, provides comprehensive deposit insurance and collects ex ante fees from commercial and cooperative banks. The Ministry of Finance (MoF) also has financial regulatory functions and participates, together with the NBP and KNF, in the Financial Stability Committee, a consultative body established in 2008 to foster exchange of information and coordination among the authorities in crisis management.
4. **The authorities are keen to establish an institutional framework for macroprudential policy.** The NBP has taken the lead in preparing draft legislation to establish a Systemic Risk Board in Poland and invited an IMF mission to assess and discuss the draft proposals. This note summarizes the mission's recommendations on the draft law and the proposed new framework, that are made based on discussions with the authorities, an investigation of the Polish legal framework, and a review of emerging international practices.

5. **This note covers the following questions:**

- How to formulate the objectives and tasks of the new Systemic Risk Board?
- How to ensure that the Systemic Risk Board has adequate powers and mechanisms to activate an appropriate range of macroprudential policy tools?
- How to ensure that the Systemic Risk Board has access to all relevant information for effective policy making?
- How to ensure the Systemic Risk Board has the appropriate composition and governance (e.g., voting procedures)?
- How to ensure effective communication with the public and markets and strong accountability for macroprudential policy?
- How to ensure coordination and mutual consultation across the various authorities and bodies involved?

II. BACKGROUND AND VIEWS OF THE AUTHORITIES

Key elements of discussions

6. **A well-functioning institutional framework for macroprudential policy is essential for crisis prevention.** The global financial crisis has shown that, in addition to strong fiscal and monetary policy frameworks, a well-articulated macroprudential policy framework is essential to reduce the build-up of financial imbalances that can otherwise engender costly crises and severe reductions in economic growth. In small open economies in particular, these risks are not easily contained by traditional monetary policy but require more targeted prudential intervention that acts more directly to constrain excessive credit and leverage as well as overexposure to aggregate shocks, such as changes in exchange rates and asset prices. In Europe, establishment of the EU European Systemic Risk Board (ESRB) in early-2011 is a useful step towards establishing a macroprudential policy function across the EU. To function well the ESRB needs to be complemented by dedicated macroprudential frameworks at the national level.¹ And the ESRB has recommended for EU member states to establish such a framework by June 2013.

7. **All agreed that a Systemic Risk Board should be set up.** The authorities are aware that financial sector risks and macroeconomic developments interact strongly and that the sources and level of systemic risk are likely to evolve with time. In particular, the experience

¹ Nier and Tressel (2011)

in advanced countries has been that distribution of risks can shift quickly, not least in response to existing and static regulatory constraints. A Systemic Risk Board should bring together the agencies involved in financial sector policy and enable a structured dialogue on emerging risks, based on rigorous and forward looking analysis. It should also allow a discussion of policy options to contain these risks that brings together the perspectives and insights of the participating agencies.

8. **There was consensus that the NBP should play a leading role.** All agencies agreed that the Systemic Risk Board should be chaired by the President of the NBP and that the NBP should provide the secretariat of the new body. The team supported these decisions, noting that a leading role of the NBP is in line with ESRB recommendations for national frameworks and emerging best practice (IMF WP 11/250). A leading role can ensure that macroprudential policy draws on the NBP's expertise in the analysis of financial and macroeconomic developments and that it will harness the incentives of the NBP to ensure that macroprudential policy is pursued effectively. It also meshes with the NBP's membership of the ESRB, allowing for strong coordination between the Polish and the European Systemic Risk Board in mitigating risks.

9. **The KNF underlined synergies between its own objectives and those of the Systemic Risk Board.** It viewed the Systemic Risk Board as a natural ally in the formulation of macroprudential policy. In particular, the KNF welcomed the idea of receiving recommendations by the Systemic Risk Board. Recommendations by the Board could fortify against potential opposition from a range of quarters, including the financial industry, and could help when macroprudential measures needed to be defended at the European level. The KNF also saw the Systemic Risk Board as the natural place to bring together potentially complementary macro- and microprudential perspectives in formulating prudential policy. However, they cautioned that recommendations should not be too specific and not concern individual institutions.

10. **The MoF cautioned against a broad scope of activities of the new body.** The NBP proposed for the new body to be concerned with macroeconomic as well financial imbalances. The MoF was concerned that a broad scope might lead to a lack of clarity in view of existing responsibilities in macroeconomic policy. The team argued that the crisis had shown that macroeconomic, especially external, imbalances, were often a key driver of the build-up of financial sector risks. Since prudential policies alone may not be sufficiently strong to counter these underlying forces the need for policy coordination may go beyond prudential tools. However, the team conceded that safeguards were needed to protect against a conflict in competencies of various public bodies and to counter expectations for the Systemic Risk Board that cannot then be met.

International and European developments

11. **The macroprudential toolkit available in Poland is likely to be shaped in no small part by international and European developments.** International standards developed under the auspices of the Financial Stability Board (FSB) and Basel Committee on Banking Supervision (BCBS) and their implementation through EU directives and regulations can open the way for national application of new tools capable of addressing systemic risks that are developed at these levels (Appendix I).

12. **Implementation of Basel III through the forthcoming EU Capital Requirements Directive (CRD IV) and Regulation will play an important role.** The EU proposals require each member state to “designate” an authority or body, which will be responsible for setting the rate of the countercyclical buffer. At the same time, the proposed directive opens up the possibility of using further macroprudential tools that can be employed either by “designated” or “competent” (i.e., supervisory) authorities, including the capital conservation buffer and the systemic buffer. The directive creates additional room for instruments to tackle systemic risks, subject to control by the European institutions, allowing for tighter standards in a number of areas, including risk weights for residential and commercial property, liquidity requirements, and large exposures, which can again be determined by either the designated or the competent authority.

13. **International developments at the level of the FSB and the BCBS will also shape national approaches to contain the risks from domestic systemically important financial institutions (SIFIs).** This is likely to encompass the methodology for assessing the systemic importance of individual institutions, and the set of policy measures that should be considered to contain the risk posed by these institutions. With time, this may provide opportunities for involvement by macroprudential authorities (designated authorities) in the development of a national approach.

14. **National authorities can also use macroprudential tools that are outside the scope of international standards.** Important examples are dynamic provisioning and the Loan-to-Value and Debt-to-Income ratios that have already been used in Poland (Table 3). IMF research suggests that these tools can be effective in mitigating systemic risk, especially when used in combination with other macroprudential tools (Table 5).

Legal constraints on macroprudential policy in Poland

15. **In addition to policy and international considerations, the design of a macroprudential policy framework in Poland will be shaped by the legal environment.** Poland is a constitutional republic and, as highlighted above, has obligations as member of the EU. These features of the legal environment create a legal corridor that determines the viable options for establishing a macroprudential policy framework in Poland. In particular, the Polish Constitution constrains the ability of non-constitutional bodies, such as the

Systemic Risk Board, to issue binding normative acts. Moreover, constitutional autonomy protection for the NBP and the EU ban on instructions to central banks could potentially prohibit any influence by the Systemic Risk Board on tasks performed by the NBP and its organs (including establishing minimum reserve requirements and overseeing the payment systems) even if such influence would be desirable from a macroprudential policy perspective. These and other legal considerations, as summarized in Appendix II, informed the mission's recommendations as set forth below.

III. THE MISSION'S RECOMMENDATIONS

A. Objectives and Tasks

16. **The concept of systemic risk can be further elaborated in the law.** In line with the definition of macroprudential policy developed by the IMF, FSB and BIS, the draft Act defines the objective of “macroprudential supervision” as “to identify and contain systemic risk.” (Article 2).² The IMF also provided a definition of systemic risk in 2009 which was subsequently adopted by numerous other international bodies, including FSB and the BCBS.³ According to this definition, systemic risk is the “risk of widespread disruption to the provision of financial services that is caused by an impairment of all or parts of the financial system, with serious negative consequences for the real economy.” A variation of this definition (but with an add-on referring to macroeconomic imbalances) is reflected in the draft law (Article 3(2)). While this is a useful starting point for understanding the objectives of macroprudential oversight, the definition is abstract and can be further broken down.

17. **From the list of tasks (Article 5) the Systemic Risk Board is meant to address both the “time dimension” and the “structural dimension” of systemic risk.** It may then, following the example of the new framework in the United Kingdom, be useful for the law to anticipate this, by formulating two more operational objectives relating to these dimensions. Adapting this to the Polish case, the law could require the Systemic Risk Board to consider (i) systemic risks from “a build-up of unsustainable levels of leverage, debt or credit growth, including when these arise in the context of macroeconomic imbalances,” and (ii) systemic

² IMF (2011) and FSB, IMF and BIS (2011)

³ For example, following IMF (2009) the FSB has accepted “systemic risk” to be defined as “the risk of widespread disruptions to the provision of financial services that have serious negative consequences for the economy at large.” The draft CRD IV Directive (Article 98a) proposes the following definition: “risk of disruption in the financial system with the potential to have serious negative consequences for the financial system and the real economy.”

risks “attributable to structural features of financial markets or to the distribution of risks within the financial sector.”

18. The formulation of tasks should be updated to take account of recent European developments. The mission recommended, and the authorities agreed, that the Systemic Risk Board should become the designated authority under the capital requirements directive once the directive is enacted and can be transposed into Polish law. This would open the way for the Systemic Risk Board to be involved in the determination of not only the countercyclical capital buffer but of further macroprudential tools, as described above and in Appendix I. Given the time frames currently envisaged for the draft law to be enacted by Parliament, it is possible that the draft law will be enacted before CRD IV is brought into force through the European legislative process.⁴ In this case, and if the authorities wanted to avoid the need for changes to the draft law once adopted, the mission recommends that the task of the Systemic Risk Board include “performing tasks assigned to it under other laws.”

19. Measures to prevent the failure of systemically important individual institutions should be an integral part of macroprudential policy. However, particular issues arise since the supervision of individual institutions falls under the remit of the KNF, while resolution will rest with the BGF. On the other hand, it is clear that an integrated and multipronged approach is needed to effectively contain the risk from systemically important institutions. The Systemic Risk Board is well placed to develop this approach, in line with evolving international standards for Domestic Systemically Important Banks (D-SIBs). Accordingly, the law could task the Systemic Risk Board with developing this approach; potentially including the determination of a list of systemically important institutions (see further Appendix I).

20. The description of tasks of the Systemic Risk Board in risk identification could more clearly indicate that the Board will consider analysis provided by other bodies rather than conduct its own analysis. For example, the tasks could include that the Systemic Risk Board “considers and discusses analysis, risk assessments, and other information provided by members of the Systemic Risk Board relevant to the objectives of the Systemic Risk Board.” This would in practice include the report on macroeconomic imbalances that is planned by the NBP and the FSR already produced by the NBP but could also include analysis by other constituent agencies, such as the KNF and BGF.

21. Tasks related to cooperation with European Bodies could more clearly highlight the need for cooperation with the ESRB. In particular the Systemic Risk Board could be tasked with discussion of the ways in which warnings and recommendations received by the ESRB should be dealt with in Poland. In addition the law should refer to the need to notify

⁴ Timelines agreed by the BCBS imply that CRDIV should be in force by 1 January 2013. It may therefore be possible to enact the draft law including the designation when the draft law enters into force after that date.

the ESRB in advance of significant macroprudential action proposed by national authorities, in line with recommendations by the ESRB.

B. Policy Tools

22. **The policy tools established for the Systemic Risk Board are broadly in line with emerging international practice.** In particular its ability to issue “warnings” and “recommendations” draws on the ESRB framework and is in line also with the draft national frameworks for Germany and the United Kingdom. In addition, when the Systemic Risk Board functions as the designated authority under the CRD IV, its ability to use and calibrate further specific tools that flow from this directive can be established in the context of transposing this directive into Polish law.

23. **The mission is broadly supportive of the overall approach taken to ensure the Systemic Risk Board has an appropriate range of policy tools but recommends that the description of tools be further refined and adapted.** Policy tools need to ensure that macroprudential policy can be pursued effectively. They need to enable the Board to achieve policy coordination among the bodies represented on the Board, while respecting the autonomy of constitutional bodies, such as the NBP and the Council of Ministers. The description of policy tools needs also be mindful of the need to protect the integrity of the supervisory framework in Poland.

Direct powers

24. **When the Systemic Risk Board is the designated authority under the CRD IV, its decisions on the calibration of tools would ideally have direct legal force.** The Polish Constitution constrains the Systemic Risk Board’s ability to issue normative acts and prohibits it from issuing regulations, as discussed further in Appendix II. However, the NBP’s Legal Department has offered a preliminary opinion that calibration powers would be consistent with constitutional constraints on normative acts provided that the relevant law: (i) describes the instrument and determine rights and obligations that arise from it; (ii) indicates its recipients; (iii) provides circumstances when the instrument will apply; (iv) sets a scope of operation; and (v) vests the competence or obligation of calibration of the instrument in the Systemic Risk Board and provides a manner according to which it should be done. These constraints may not be met for all tools that will be available under the CRD IV or that would more generally be desirable for a macroprudential body to have. Accordingly, the Board will have to rely on the normative powers of the MoF as discussed further below and in Appendix II.

Recommendations

25. **Recommendations addressed to other public bodies are likely to be a fairly effective instrument.** An advantage of recommendations as an instrument is that it is broad

and can therefore be used flexibly to affect macroprudential action. Compliance and follow-up can be enhanced when the recommendation is made public and coupled with a comply or explain mechanism, as envisaged in the draft law (Article 16) as well as in the (draft) arrangements in Germany, the United Kingdom and at the European level. Such a mechanism can help strike a balance between the need to ensure that strong action is taken and the need to preserve the operational autonomy of the recipient agency (IMF, 2011, and IMF WP 11/250).⁵

26. Recommendations are a natural tool in particular to achieve policy coordination between the Systemic Risk Board and the KNF. Recommendations can counter biases in favor of inaction that otherwise plague prudential policy, as illustrated in many advanced countries before the crisis. For example, a supervisory agency might have shied away from taking risk-reducing action in anticipation of strong opposition from the financial industry. In the face of such opposition, a recommendation by the macroprudential body can provide “cover” and thus enable the supervisory agency to take unpopular decisions. Similarly, a recommendation issued by the macroprudential body can shield the supervisory agency from potential political pressure to delay action that may otherwise arise from the electoral cycle. Public recommendations, especially when coupled with a “comply or explain” mechanism are likely therefore to foster the de facto independence of regulatory policy.

27. Recommendations addressed to the KNF will require further safeguards. To protect the integrity of the supervisory framework, the law should specify, as does the framework in the United Kingdom, that recommendations should not be made with respect to individual institutions. In addition, it would be advisable for recommendations directed at the KNF to only require actions that fall within the scope of its legal powers.⁶ More generally, the Systemic Risk Board should take care that its recommendations to the KNF are of a general, rather than overly specific nature and do not conflict with supervisory objectives.

28. Recommendations to the MoF are necessary for the framework to function well. Since the MoF has normative powers, and is, in particular, the only member able to issue regulations in the field of financial policy (Appendix II) it will be important for the Systemic Risk Board to make recommendations to the MoF to issue regulations and resolutions that it is empowered to issue under the law. Since the MoF may be subject to political incentives

⁵ Recommendations coupled with a “comply or explain” mechanism also feature in the new arrangements in the United Kingdom, where the Financial Policy Committee can address those recommendations both to the new prudential authority and the new financial conduct authority. They are at the disposal also of the European Systemic Risk Board, who can make such recommendations to the European Banking Authority (EBA), among a range of other addressees.

⁶ The draft law empowers the Systemic Risk Board to set up working groups, and the mission believes it would be beneficial for a working group involving legal staff from the KNF to be involved in the formulation of recommendations on prudential measures that the KNF is expected to enforce.

not to act on recommendations received, or to act on them only with a delay, it is important to counter this risk by ensuring that recommendations can be made public and are subject to a formal comply or explain mechanism.⁷ In addition, and in the context of new tools that will be brought into the legal framework through transposition of the CRDIV, the enabling law could specify that the MoF can issue implementing regulations only “on the motion of” the Systemic Risk Board.⁸

29. Recommendations to the MoF are useful also to ensure that new macroprudential tools can be acquired and the regulatory perimeter adjusted. Since the tools for macroprudential supervision will evolve with time, in light of changes in the types of risks that need to be addressed, it will be important to establish dedicated procedures that enable the Systemic Risk Board to effectively *acquire* new tools in future, preferably under some form of “fast track” procedure. The team contemplates that this could be achieved by the Board making a recommendation to the MoF for the establishment of a new tool by initiating legislation in Parliament. The draft law could finally specify that recommendations will be made to the MoF to initiate the legislative process towards an expanded regulatory and supervisory perimeter. In order to ensure follow-up it would also seem appropriate for recommendations in these areas to be subject to a comply or explain mechanism. For recommendations to the MoF in other areas, such as on taxation and fiscal issues a comply or explain mechanism may well be viewed as less appropriate and “opinions” could be used instead (see further below).

30. Recommendations should be made to the constituent bodies in the first instance. The law could specify that recommendations can be to the agencies represented on the

⁷ There may be a concern as to whether recommendations coupled with “comply or explain” are too strong a tool when directed at the MoF. This concern could arise since, unlike the Systemic Risk Board (or the KNF), the MoF is, as part of the council of ministers, a constitutional body. However, a number of considerations weigh against this concern. First, as set out in the main text, cooperation by the MoF is essential for the framework to function well and a comply or explain mechanism is necessary to ensure follow-up. Second, the Constitutional Tribunal has already said that it is consistent with the constitution for a non-constitutional body to make a motion for a constitutional body to act, so long as the constitutional body retains the discretion to deny the motion. Third, legislation in other countries has judged it appropriate for a systemic risk board to make recommendations to constitutional bodies and for such recommendations also to be coupled with a comply or explain mechanism. One example is the ESRB, which is not mentioned in the EU Treaty and can make such recommendations to bodies that are constituted in the EU Treaty, including the European Commission. Another is the draft German law where the committee for financial stability can make such recommendations to the federal government (council of ministers).

⁸ The NBP’s legal department pointed the mission to this possibility. In contrast to some other jurisdictions where a law can provide the implementing authority with broad discretion to establish regulations to interpret the law, in Poland regulations may only be issued “on the basis of specific authorizations contained in, and for the purpose of, implementation of statutes”. The Parliament may choose to make such an authorization conditional on the motion of another body.

Systemic Risk Board (other than the NBP) and that these recommendations can also be subject to a comply or explain mechanism.⁹ For public bodies that are not represented on the Board, recommendations may also be possible, but it is less clear that a comply or explain mechanism is appropriate or necessary to ensure the proper effectiveness of macroprudential policy. For example, recommendations to Parliament or the President that require compliance or an explanation of their failure to comply with the recommendation would not seem appropriate.

31. **Recommendations could potentially also be issued to the market.**¹⁰ However, there can be no presumption that these recommendations will be enforced by the KNF. Instead, recommendations to the market should be seen as a tool of moral suasion. They should be used sparingly, since non-compliance can reduce the credibility of the Systemic Risk Board.

Warnings

32. **The law should be clear as to the potential addressees of risk warnings and avoid an obligation to issue warnings.** Warnings are most usefully addressed to the market or the public at large. By alerting private sector agents to the build-up of risks, a risk warning may lead to self-correcting changes in investor or borrower behavior that reduce the risk. However, such warnings may not always be effective. In particular, if warnings are not backed up by a credible plan to address the risks a warning may not induce sufficiently strong corrections, especially when market failures favor a continued build-up of risks. Risk warnings can even be counterproductive, since they may provoke market responses that precipitate a crisis. In this regard, a concern arises since Article 14 of the draft law appears to *oblige* the Systemic Risk Board to issue warnings “when factors of systemic risk are identified.” In addition, to public warnings, the Systemic Risk Board may benefit from an option to issue *confidential* warnings that it can address to other public bodies.

Opinions

33. **The team recommends for opinions to be introduced as an additional policy tool.** As set out above, warnings should be primarily addressed to the market rather than public bodies. Opinions may then be an appropriate additional tool to convey advice to other public bodies. The desire to give such advice may arise from the need to achieve policy coordination beyond prudential policy, perhaps including on specific aspects of the tax regime. It may also be useful when the Board believes that support is needed from other

⁹ In order to clarify that recommendations should not be addressed to the NBP, the law could contain a clause referring to the need to protect the independence of the NBP.

¹⁰ Such recommendations have already been used under the new framework in the United Kingdom.

public bodies to address emerging macroeconomic and external imbalances. An opinion could then be directed at the Council of Ministers. Opinions directed at the Parliament may be appropriate also, for example when the Systemic Risk Board wants to express concern related to specific pieces of draft legislation that are being debated by the Sejm.

34. **Opinions would need to be used with care.** Use of this tool needs to be mindful of the existing obligation on the part of the Monetary Policy Council (MPC) to issue opinions on the fiscal budget (Article 12 of the Act on the NBP). In addition, an opinion addressed to the NBP would need to respect its constitutional autonomy and the “ban on instructions” contained in Article 130 of the Treaty on the Functioning of the European Union (“EU Treaty”) and Article 7 of the Statute of the European System of Central Banks (“ESCB Statute”), as further discussed in Appendix II.

C. Access to Information

35. **Access to information by the Systemic Risk Board can build on strong existing data sharing arrangements among the authorities.** The NBP collects regular prudential and financial data from firms that are supervised by the KNF. Moreover, amendments to other acts that were made in the context of the establishment of the Financial Stability Committee in 2008 resulted in further improvements that enable the KNF to share firm-specific data and information including those obtained through onsite inspections. The draft proposal appropriately contains clauses that extend this framework to enable the authorities to share available information with members of the Systemic Risk Board.

36. **The Systemic Risk Board is given a broad “back-up power” to acquire information directly from public and private entities, necessary to perform its tasks (Article 12).** In this regard, it may be useful for the draft law to clarify that this is irrespective of whether the “private entities” are subject to formal supervision and regulation under the Banking Act, since the Systemic Risk Board may need to be able to collect information also from entities outside the regulatory perimeter (IMF, 2011). Under the draft law, the NBP serves as the secretariat to the Board, and thus would in practice collect and assess the necessary information. Information brought to the attention of the Systemic Risk Board is subject to appropriately strict confidentiality requirements for its members, including the proposed external experts, as well as NBP staff, and others involved in the work of the Systemic Risk Board.

37. **The draft act seeks to ensure strong access also to data collected by the CSO.** Access to data collected by the CSO on corporations and financial firms not subject to financial supervision and regulation will be useful to the Systemic Risk Board. However, by virtue of the proposed amendment to the Act on Official Statistics (Article 20 of the draft law), its access to information is intended to include individual (firm-specific) data on such entities. However, data on corporations and the relevant non-supervised financial entities is likely to be used primarily for analysis of time series risks, potentially including broad trends

in the funding structure of corporations and shifts in financial activity towards unregulated areas, analysis of which will not typically require data on individual firms. Indeed, the CSO already provides data at various levels of disaggregation to the NBP that would allow for an investigation of the distribution of these trends across classes of firms.

38. **The draft act should be amended to more strongly reflect the public policy objective associated with statistical data protection.** The CSO relies on the trust of those who respond to its data requests, who need to be assured that information will not be shared with other parties. Moreover, some of the data collected by the CSO is collected under the auspices of Eurostat and the clauses requiring the CSO to provide individual data would potentially require the CSO to deliver to the Systemic Risk Board information that is protected by the Eurostat rules governing statistical secrecy. In view also of the possibility to base collection of individual data on non-banks on the powers of the Systemic Risk Board a requirement for the CSO to provide data at greater levels of aggregation is likely to strike a better balance. Beyond the legal arrangements, data collection by the CSO and NBP should be mindful of the costs arising for both the public and private sector.

39. **More generally, the language governing access to data should be reviewed.** The draft law requires the NBP, MoF, KNF, the BGF, and the CSO to provide the Systemic Risk Board with the information necessary to assess systemic risk, including *data protected under other laws*.¹¹ Such language can run the risk of contravening personal privacy protections in place in the domestic constitution and at the EU level. The mission recommends that the draft law not contain a general provision that overrides data protections in other laws, but instead contains the specific changes to other laws that are necessary to ensure appropriate access to data.

D. Composition and Governance

40. **The effective working of the macroprudential policy framework requires appropriate governance procedures for the Systemic Risk Board.** The team raised and discussed a number of important aspects; including the composition of the Systemic risk Board, its voting procedures as well as the frequency of meetings.

Composition

41. **Under the initial proposals, the Systemic Risk Board is a nine-member Board.** The Board would be chaired by the President of the NBP and comprises the following: (i) a Vice President of the NBP, who would serve as the Deputy Chairperson; (ii) a member of the Management Board of the NBP designated by the President of the NBP (iii) the Minister of Finance or his designee; (3) the Chairperson of the KNF or his designee; (iv) The President

¹¹ Article 12(2) of the draft law. The 2008 law on the Financial Stability Committee contains a similar clause.

of the Management Board of the of the BGF or his designee; (v) the President of the CSO or his designee; and (vi) two experts specializing in the fields within the scope of the Board's tasks.¹²

42. The initial proposal appropriately provides for participation of the key agencies involved in financial sector policies. Given the objectives and tasks of the new body the team considers participation of the KNF and MoF as essential. While the focus of the objectives of the BGF is crisis resolution, rather than crisis prevention, its participation on the Systemic Risk Board is useful since assessments of whether the failure of financial institutions could be resolved effectively may have an impact on the need for additional macroprudential action to contain risks from systemically important institutions. The BGF also controls prudential fees levied on deposit-taking institutions and has strong analytical capacity and resources that can inform macroprudential policy.

43. The team also sees the benefits of external experts. One way of assuring that views developed in-house will not predominate is to appoint external experts that can provide an independent, complementary, and potentially contrarian perspective.¹³ In this regard, it may be important to ensure that, while experts are appointed by the President of the NBP, they are not currently employed as central bank officials, or as officials of other participating institutions. Consideration could be given for the two experts to be appointed by the NBP President in consultation with the KNF and the MoF, respectively. In addition, the appointment should be for a fixed term, so that experts cannot be replaced at will.

44. The team is not convinced that participation of the CSO is justified. Participation of statistical offices on macroprudential bodies is unusual in the evolving international practice. This reflects the experience that the core strength of such offices is the provision (generation) of data, rather than their economic analysis. The team found that Poland is no exception in this regard, with the resources allocated by the CSO to economic analysis dwarfed by those available at the NBP. The intention might have been to allow a degree of oversight on the part of the CSO over the use that is made of the data it provides to the Systemic Board. However, the appropriate access and use of information needs to be firmly described in law, rather than ensured through informal mechanisms. A further intention might have been to facilitate discussion of data needs on the part of the Systemic Risk Board. However, the assignment of voting powers to the CSO over macroprudential policies adopted by the Board is difficult to justify on these grounds. Consideration could be given to assigning the CSO an observer status. This would be sufficient to ensure that data needs on the part of the Systemic Risk Board can be brought to the attention of the CSO.

¹² Article 6 of the draft law.

¹³ See IMF WP 11/250. External experts also feature in the new arrangements in the United Kingdom, where they will also have voting powers.

45. **Some counterparts saw benefits in rebalancing the strong voting power of the NBP.** The KNF suggested that this could be done by reducing the NBP's presence from three to two voting members. The MoF suggested that it (the MoF) could be given the role of vice chair. The team cautioned against the latter proposal, since this was likely to create frictions and endanger the continuity of discussions on the Systemic Risk Board. In addition, were the MoF to be the vice-chair, this would compromise the independence of the NBP, since the staff of the secretariat would then be working towards the MoF. The team saw greater merit in reducing the NBPs presence to two voting members. This could be useful to ensure that views of the NBP do not come to dominate the discussions of the Systemic Risk Board. At the same time this solution maintains a leading role for the NBP, which is desirable for the reasons set out above (paragraph 8). A further advantage of this solution is that it would result in a smaller size of the Board, increasing effectiveness of discussions, as well as an odd number of seven voting members (presuming that CSO will not be assigned voting powers), facilitating decision-making. An alternative solution would go all the way to reducing the strength of the Board to five members, including only the relevant public agencies, but this solution would forgo the potential value of external and independent experts.

Voting arrangements

46. **The appropriate voting arrangements were under discussion among the authorities.** Under the initial NBP proposals the Board would make decisions based on a simple majority of votes, with the chairperson assigned a casting vote in the event of a tie. However, further discussion had led the authorities to consider alternatives, including unanimity and qualified majority.

47. **The team warned that unanimity would result in reduced effectiveness and delay of decisions.** While it is useful for the Systemic Risk Board to strive for consensus, a requirement for unanimity is likely to slow decision-making and reduce effectiveness of macroprudential policy. In particular, since under unanimity each member would be in a position to block any motion proposed by the chair, this runs the risk of obstructing the proper working of the Systemic Risk Board and could paralyze macroprudential policy. It was inadvisable in Poland, where the heads of institutions are appointed by different organs of the government, leading to a situation where any one new appointment could obstruct the proper working of the Board.

48. **The team saw greater merit in introducing qualified majority for major policy decisions taken by the Board,** following the example of the ESRB. In the case of the Polish Systemic Risk Board, such major policy decisions could potentially include the determination of macroprudential tools under the CRD IV, as well as recommendations to the MoF and KNF. This would ensure that such decisions have appropriately strong support among the members of the Board and can further protect against dominant views of one institution.

Frequency of meetings

49. **The minimum frequency of meetings is, at six months, lower than what is envisaged in comparator countries**, such as Germany and the United Kingdom. A low frequency poses the risk that the authorities take their eyes off the ball for a relatively long time. However, the NBP explained that it was important that the Minister (MoF) and other heads of institutions attended in person, making more frequent meetings difficult to schedule. In addition, the law provides that further meetings can be convened by the Chair at his own initiative or upon the request of other members of the Systemic Risk Board. On balance, the team concluded that while a more frequent schedule of meetings was desirable, a minimum frequency of six months may work in the case of Poland.

E. Communication and Accountability

50. **The policy tools assigned to the Systemic Risk Board should be complemented by an appropriate range of accountability mechanisms.** In contrast to policy tools, which are used by the Systemic Risk Board to influence the behavior of others, e.g., the financial markets, and other public authorities, the essence of accountability tools is that they can affect the behavior of the Systemic Risk Board and its members in appropriate ways.

51. **Accountability tools are useful to enhance the Systemic Risk Board's willingness to act.** In particular, they can help counter biases in favor of inaction or insufficiently forceful and timely action that are inherent in macroprudential policy and that can be further exacerbated by lobbying of the financial industry and political pressures. Appropriate accountability arrangements also and more broadly enable the public to understand the objectives of the Board and judge its performance against these objectives.

52. **The proposed arrangements provide only few such tools.** One is the NBP's FSR that will be provided to the Systemic Risk Board, and can therefore inform the Board's policy actions. The other is the requirement for the Chairman of the Board to present, by end-July each year, information to the Sejm on actions taken by the Board and progress on their implementation.

53. **The team encourages a legal requirement for publication of a record of meetings.** Publications of full minutes could be dangerous, when sensitive information is discussed and counterproductive when it impedes a frank exchange of views and leads to grandstanding. However, publication of a less detailed "record" of meetings is useful. It can provide clarity to the public as to the issues discussed and the major deliberations that led the Board to take or refrain from action. Where the meeting resulted in a vote and policy decision, the record can outline the main arguments advanced in favor and against the decision. A record of the meeting could be published with a delay and be agreed in written procedure.

54. **The law should require transparency as to the vote cast by each member on major policy decisions.** Whenever there is a motion to vote, the record of meetings should identify votes cast by each member. This is useful to put pressure on the members of the Systemic Risk Board and ensures that each member can be held to account by the public as to the reasons for their individual decisions. This is important in particular when decisions require more than a simple majority and instead call for qualified majority (or even unanimity). In this case it is critical to achieve clarity as to which of the members voted against the proposed policy action.

55. **Consideration should be given to a communication instrument that would allow the Board to explain its emerging policy strategy.** There is increasing recognition that this is a useful device to guide the public's expectations as to how and when the macroprudential body will use its policy tools and to achieve accountability for macroprudential policy.¹⁴ In principle, a policy strategy could cover both the time dimension and the structural dimension of systemic risk. It could assign policy tools to these dimensions of risk and give an indication under what conditions these policy tools would be used. While the detailed form of its policy strategy would need to be worked out by the Systemic Risk Board itself and development of such a strategy will take time, consideration could be given for the law to establish an instrument that could be used to communicate such a strategy.¹⁵ One option would be for the law to enable the Board to issue "communications" that could be listed alongside other "instruments" of macroprudential policy contained in Chapter 4 of the draft act.¹⁶ An alternative is to for the Systemic Risk Board to use the "opinion" to communicate its strategy. However this would blur the distinction between accountability mechanisms and policy tools.

56. **The accountability arrangements should leverage the NBP's existing FSR.** One option would involve an explicit endorsement of the FSR by the Systemic Risk Board, whereby the FSR is provided to the Systemic Risk Board prior to its publication. Another option that is favored by the team would be to keep the FSR as an independent publication of the NBP and for it to continue to be endorsed by the NBP Board. An advantage of the latter approach is that the FSR can be used to deliver analysis and messages to the Board in a frank and credible manner. There are additional operational advantages as this avoids potentially conflicting demands made by members of the Systemic Risk Board as regards the content of

¹⁴ Houben and others (2012)

¹⁵ The Monetary Policy Council of the NBP also issues guidelines on its policy strategy.

¹⁶ This section already contains the obligation on the part of the Chairperson of the Board to make an annual presentation to the Sejm. As an alternative the law could distinguish more strongly between policy instruments and accountability mechanisms and include a separate section for the latter.

the FSR. In either case, it would seem useful, with time, for the analysis of risk indicators presented in the FSR to link to the policy strategy developed by the Board.

57. **The team recommends for the law to require an annual report to the Sejm.** As drafted, the planned presentation to the Sejm would allow for an oral statement only. An annual report that would be published and presented to the Sejm would achieve greater public awareness of the activities of the Systemic Risk Board. The requirement for an annual report would also be in line with emerging best practice. For example, such a requirement is contained in the new (draft) framework for Germany and the existing legislation in Ireland and the United States. This report would be a report of the Systemic Risk Board and would therefore need to be endorsed by a decision taken by the Board. The law could further specify the minimum content of the report and require information on activities over the past period as well as plans and prospects for the future. These elements could draw on and summarize the content of existing public documents, such as the FSR and any other communications the Board might have made over the course of the year.

58. **The NBP will need to ensure that sufficient resources are allocated to support the new macroprudential policy framework.** Appropriate levels of staffing will be required for the unit fulfilling the functions of the secretariat within the NBP, which is expected to prepare draft recommendations and opinions for Board consideration, and handle most of the drafting related to the proposed records of Board meetings. In addition, production of an annual report will require support from and additional resources for the Financial System Department, and the preparation of policy documents will, likewise, require resources. It will be important to allocate appropriate additional staffing to these new functions in order to ensure that the new macroprudential policy framework can function well.

F. Delineation of Responsibilities and Coordination

59. **For a macroprudential policy framework to achieve its objectives, cooperation and mutual consultation is needed.** In particular, where more than one public body is assigned responsibilities in financial sector policy, including in prudential regulation, supervision, and resolution, the legal frameworks needs to ensure that there are no inconsistencies in the overall legal framework that would hinder the effectiveness of one or more public bodies. It also needs to provide a legal basis for coordination and mutual consultation.

60. **The draft law contains clauses that oblige participating agencies to consult the Systemic Risk Board on planned changes in the regulatory framework.** It contains a proposed duty for the KNF to consult on resolutions and recommendations (Article 22) and a proposed duty of the BGF to consult on its prudential fees (Article 19). In principle, such “duties to consult” can ensure that the regulatory framework as whole is consistent and conducive to the mitigation of systemic risk (IMF WP 11/250). In Poland, in particular, a duty to consult the Systemic Risk Board would be consistent with the existing objectives of

the KNF, which include financial stability. On the other hand, care needs to be taken not to constrain unduly the operational autonomy of the separate agencies through such provisions. In particular, since the Systemic Risk Board is only required to meet every six months, while many resolutions of the KNF will not have a strong bearing on financial stability, a pragmatic solution will need to be found that can strike the right balance. For example, the consultation could be carried out in written procedure and involve only the secretariat of the Systemic Risk Board in the first instance. The secretariat could then, by alerting the NBP president, initiate a meeting of the Systemic Risk Board to discuss those proposals that are thought likely to have a material impact on financial stability.

61. **The draft act also appropriately includes changes to the 2008 law on the FSC that clarify the boundary of responsibilities of the Systemic Risk Board and that of the FSC.** Article 24 confines the function of the FSC to crisis management, that is: “cooperation in maintaining the stability of the financial system when this stability is directly threatened”. The draft law also abolishes the role of the FSC role in producing assessments of risks, effectively transferring this role to the Systemic Risk Board. Both changes serve to reduce duplication and achieve clarity of responsibility, allowing the FSC to focus on the (i) “development and adoption of crisis management procedures”; and (ii) “coordination and exchange of information” in the face of “an immediate threat to financial stability.” These arrangements recognize that separate arrangements for crisis prevention and crisis management are generally desirable (IMF WP 11/250). At the same time, strong overlap in the composition of the two bodies should facilitate coordination between the two bodies should the need for coordination arise. While these arrangements appear reasonable, the delineation of the responsibilities of the Systemic Risk Board and the FSC may need to be evaluated more closely as the powers of the Systemic Risk Board, particularly with respect to systemically important financial institutions, are more clearly defined.

Table 2. Poland: Financial Soundness Indicators (2006–12)

	(In percent)						
	2006	2007	2008	2009	2010	2011	2012Q1
Capital adequacy							
Regulatory capital to risk-weighted assets	13.2	12.0	11.2	13.3	13.9	13.1	13.8
Regulatory Tier I capital to risk-weighted assets	12.9	11.8	10.1	12.0	12.5	11.8	12.4
NPLs net of provisions to capital	11.6	11.4	8.3	13.8	11.5	11.6	11.4
Bank capital to Assets	7.8	8.0	7.5	8.1	8.2	7.8	8.1
Asset composition and quality							
NPLs to gross loans (non-financial sector)	7.4	5.2	4.4	7.9	8.8	8.2	8.4
Sectoral distribution of loans to total loans							
Loans to households	56.7	59.3	62.0	65.3	68.3	67.1	66.7
Loans to non-financial corporations	43.0	40.3	37.6	34.3	31.2	32.3	32.7
Earnings and profitability							
Return on average assets (after-tax)	1.7	1.7	1.5	0.8	1.0	1.3	1.3
Return on average equity (after-tax) 1/	22.5	22.4	20.7	11.2	13.3	16.3	16.2
Interest margin to gross income	58.9	59.4	55.7	51.9	53.0	55.7	55.9
Noninterest expenses to gross income	69.6	68.7	58.4	58.5	56.0	54.7	54.4
Liquidity							
Liquid assets to total assets (liquid assets ratio)	20.1	17.1	17.0	20.3	20.8	19.5	19.2
Liquid assets to total short-term liabilities	28.1	24.2	25.3	29.8	31.2	28.8	28.7
Sensitivity to market risk							
Net open positions in FX to capital 1/	-0.1	0.6	0.0	2.7	0.3	-0.3	-0.1

Sources: National Bank of Poland; the Financial Supervision Authority; and IMF staff calculations.

Table 3. Poland: Macroprudential Measures

Year	Instrument/Measure	Scope	Authority Issuing and Legal Basis
2006	Tightened underwriting and risk management requirements for FX mortgages.	All banks (qualitative requirements).	Commission for Banking Supervision (KNB); Recommendation S (nonbinding).
2007	Higher risk weights for FX mortgages (75 percent compared to Basel requirement of 35 percent).	All banks except branches.	KNB; Resolution 1/2007, replaced by KNF; Resolution 380/2008, replaced by KNF; Resolution 76/2010 (binding according to Banking Act).
2009	Setting an additional capital buffer of 2 percent above minimum CAR.	All banks except branches.	Recommendation; banks have retained profits for 2008.
2010	Debt-to-income (DTI) ceilings of 50–65 percent, while using stress-tests for FX denominated loans. Stricter collateral valuation for FX loans. Ceiling of 50 percent for portfolio of FX mortgages in total mortgages.	All banks (qualitative + quantitative requirements).	KNF, Recommendation T (nonbinding).
2011	DTI cap for FX mortgages of 42 percent.	All banks.	KNF, Recommendation S (nonbinding).
	Higher risk weights for FX mortgages and retail credit exposures (100 percent compared to Basel requirement of 35 percent).	All banks except branches (effective as of June 2012).	KNF; amendment to Resolution 76/2010 (binding according to Banking Act).
2012	Recommend banks to retain profits.	All banks based on certain criteria established by KNF.	KNF; targeted supervisory action.
	Recommend banks to increase liquidity buffers.	Banks exposed through FX SWAPs.	KNF; targeted supervisory action.
	Impose restrictions on FX lending.	Banks exposed to FX credit and liquidity risks.	KNF; targeted supervisory action.

Table 4. Poland: Structural Indicators for the Banking Sector (2009–12)

	2009	2010	2011	2012 (Feb)
Number of banks and credit institutions				
Number of commercial banks	49	49	47	47
Number of cooperative banks	576	576	574	573
Number of branches of credit institutions	18	21	19	19
Ownership structure				
Number of banks owned by Treasury	4	4	4	4
Number of banks under private control	582	582	580	579
Number of banks under foreign control (including branches)	57	59	56	56
Market share				
Share of 5 largest banks in assets	44%	44%	44%	44%
Share of 5 largest banks in deposits	54%	47%	45%	44%
Share of 5 largest banks in receivables due from nonfinancial sector	43%	39%	39%	39%

Source: The Financial Supervision Authority.

Table 5. Effectiveness of Macroprudential Instruments
Panel Regression¹⁷
Statistically Significant (✓) or Not (✗)

Reductions in:	Procyclicality of		Interconnectedness	
	Credit	Leverage	Foreign funding	Wholesale funding
Caps on LTV	✓	✗		
Caps on DTI	✓	✓		
Limits on Credit Growth	✓	✓		
Limits on NOP			✓	✗
Limits on Maturity Mismatch			✗	✓
Reserve Requirements	✓	✓		
Time-varying/Dynamic Provisioning	✓	✓		
Countercyclical/Time-varying Capital Requirements	✗	✓		

Source: IMF Working Paper 11/238: *Macroprudential Policy: What Instruments and How to Use Them? Lessons from Country Experiences* (C. Lim et al, 2011).

Note: LTV—loan to value; DTI—debt to income; NOP—net open positions.

¹⁷ The regressions use data from 49 countries during a 10-year period from 2000 to 2010 collected in the IMF survey. Procyclicality is captured in this case by the respective correlation of growth in credit and leverage with GDP growth. This specification has the advantage of showing the effect of the instruments in both the expansionary and recessionary phases of the cycle without “timing” the cycle. In addition, the effects of the other two instruments on common exposure are estimated, using proxies for risks related to liquidity and capital flows, although the scope is limited by data availability. Dummy variables for factors such as the degree of economic development, the type of exchange regimes and the size of the financial sector are used to see if the instruments are effective across countries.

Appendix I. Macroprudential Policy and Emerging International Standards

62. **While noting that the international framework on the use of macroprudential instruments is still evolving, the Polish authorities should be mindful of ongoing European and international developments that could create opportunities for enriching the macroprudential policy toolkit.** These arise in the context of the adoption of the Basel III framework in the EU, as well as the evolving framework for domestic systemically important institutions.¹⁸

Macroprudential instruments that would emerge from the adoption of the Basel III framework in the European Union

63. **The Basel III implementation in the EU will take place under the principle of maximum harmonization (“European Single Rule Book”) of prudential standards applicable to all credit institutions and investment firms in the Single Market.**¹⁹ The application of the new prudential framework will in most cases fall under the responsibility of “competent authorities” (national supervisors), however some responsibilities could also be allocated to “designated authorities” (authorities responsible for setting the countercyclical buffer rate—i.e., macroprudential authorities).

64. **In line with the Basel III framework, the proposed EU regulation embeds instruments aimed at mitigating the pro-cyclical effects of prudential regulations and ensuring that credit institutions accumulate during periods of economic growth a sufficient capital base to absorb losses in stressed periods, as follows (Table 6):**

- a. **a requirement** for the introduction of a fixed Capital Conservation Buffer (phased in gradually by December 2018, with some national discretion on the buildup transition period which starts in 2016);
- b. **a requirement** to introduce a variable Countercyclical Capital Buffer (adjustment determined by national authorities based on guidelines to be issued by the ESRB; notably this requirement is already mentioned in the Polish draft law); and
- c. **an option** to introduce a Systemic Buffer (based on evidence of emerging systemic risks that are not covered by the EU regulation, that could be applied at system wide level or to a subset of credit institutions).

¹⁸ As regards implementation of Basel III in the EU this Appendix is based on the compromise text published by the EU Council following the ‘Danish Compromise’ reached on May 15, 2012.

¹⁹ To avoid divergence in the application of the prudential framework, the new requirements will be consolidated into a Regulation of the European Parliament and Council which will be directly applicable to credit and other financial institutions (i.e., without the need to transpose them into national legislation).

Table 6. Capital Buffers Under the Current CRD IV Draft

Capital Buffers Under the Current CRD IV Draft	Conservation Buffer	Countercyclical Capital Buffer	Systemic Buffer
Use	Permanent.	Judgment, based on ESRB guidelines.	Judgment (if needed).
Objective	Ensure a sufficient capital base to absorb losses during stressed periods.	Mitigate risks due to excessive credit growth.	Prevent and mitigate long term noncyclical systemic or macroprudential risks not covered by the regulation.
Level	2.5 percent (built gradually between 2016–18).	Up to 2.5 percent (but <i>higher</i> level can be decided by national authorities).	Up to 5 percent as follows: Up to 3 percent national discretion. 3-5 percent with opinion from EC.
Applicability	All banks.	All banks.	All banks or a subset.
Authority	Competent authority <i>or</i> designated authority.	Designated authority.	Competent authority <i>or</i> designated authority.

Source: Draft EU Commission CRD IV directive.

65. The provisions mentioned above would thus allow the Polish authorities to decide on:

- (i) the authority/authorities empowered to introduce the requirements stated above (which could be either the KNF or the Systemic Risk Board);
- (ii) the levels and build up of the conservation buffer and countercyclical capital buffer; and
- (iii) the opportunity to introduce a systemic risk buffer (and its level).

66. Furthermore, agreement has been reached on the need to allow for some flexibility on the part of member states to use a number of tools to prevent and mitigate systemic risks, justified by country specific circumstances. At present, the draft Capital

Requirements Directive (CRD IV) allows the member states to designate either a competent authority *or* a designated authority to apply stricter requirements in the following areas:

- (i) the level of own funds;
- (ii) the requirements for large exposures;
- (iii) the public disclosure requirements;
- (iv) the level of the conservation buffer;
- (v) liquidity requirements;
- (vi) risk weights for targeting asset bubbles in the residential and commercial property;
and
- (vii) intra financial sector exposures.

67. The setting these requirements, subject to appropriate control in order not to harm the function of the internal market, while also ensuring that the use of such tools are transparent and consistent, will also open the opportunity for considering a role for the Systemic Risk Board.

Requirements that would stem from the evolving framework for domestic systemically important financial institutions (D-SIFIs)

68. The FSB and the BCBS are in the process of preparing a framework for domestic systemically important banks (D-SIBs) that would essentially draw from the principles applicable to global systemically important financial institutions (see Box 1). While work is still pending in this area, the requirements could cover both the need for jurisdictions to develop both:

- a. **a methodology for assessing the systemic importance of domestic institutions** which should take into consideration the impact of a D-SIB's failure on the domestic economy (for example having regard to bank-specific factors such as size, interconnectedness, substitutability/financial institution infrastructure, complexity—including the additional complexities from cross-border activity); and
- b. **a set of policy tools** that national authorities could apply to contain the systemic risks posed by D-SIBs.

Box 1. Framework for G-SIFIs Approved by FSB in November 2011

Requirements for *resolvability assessments and for recovery and resolution planning* for global systemically important financial institutions, and for the development of institution-specific cross-border cooperation agreements so that home and host authorities of G-SIFIs are better prepared for dealing with crises and have clarity on how to cooperate in a crisis;

Requirements for banks determined to be globally systemically important to have *additional loss absorption capacity* tailored to the impact of their default, rising from 1 percent to 2.5 percent of risk-weighted assets (with an empty bucket of 3.5 percent to discourage further systemicness), to be met with common equity;

More intensive and effective supervision of all SIFIs, including through stronger supervisory mandates, resources and powers, and higher supervisory expectations for risk management functions, data aggregation capabilities, risk governance and internal controls.

69. Therefore, the evolving framework on D-SIBs could open the opportunity for the Systemic Risk Board to:

- (i) Establish a methodology for identifying domestic systemically important financial institutions and approve a specific list of entities (currently stated in Article 5 (6) of the draft law);
- (ii) Establish an approach for domestic systemically important institutions. While the overall approach would be established in the Systemic Risk Board, the latter could issue recommendations to the resolution authority (currently proposed to be the Deposit Guarantee Fund) or to the KNF regarding the implementation of the approach decided; and
- (iii) Possibly directly influence the level and composition of additional loss absorption instruments.

Appendix II. Legal Constraints on Macprudential Policy in Poland

70. **In addition to policy considerations, the design of a legal framework for macroprudential policy in Poland will be shaped by the legal environment.** Poland is a constitutional republic and has treaty obligations as a member of the EU. These features of the legal environment create a legal corridor that determines the viable options for establishing a macroprudential policy framework in Poland. In particular, the Polish Constitution enumerates and characterizes the sources of law in Poland, as well as the public bodies that are authorized to promulgate them. Doing so limits the rule-making authority of the KNF and the rule-making potential of the Systemic Risk Board. In addition, constitutional autonomy protection for the NBP and the EU ban on instructions to central banks could prohibit any influence by the Systemic Risk Board on task performed by the NBP (including establishing minimum reserve requirements and overseeing the payment systems) regardless of whether such influence would be important from a macroprudential policy perspective. Finally, macroprudential policy could potentially have an impact on fundamental rights such as property rights, thus it will be crucial for the legal framework to reflect the appropriate safeguards provided for under the Polish constitution.²⁰ These considerations, as summarized below, were developed through consultations with the authorities during the mission, including legal staff from the NBP, KNF, and BGF, and informed the formulation of the mission's recommendations contained in the body of the report.²¹

Sources of law

71. **The Polish Constitution distinguishes between universal law and internal law.**²² Universal law (comprising the Constitution, statutes, international agreements, regulations, and enactments of local law) is binding on all entities in the country. In contrast, internal law

²⁰ As signatory of the European Convention on Human Rights, Poland will also be subject to safeguards for the protection of individual rights embodied therein.

²¹ It is important to note, that besides the considerations mentioned in this Annex, EU law will have a significant influence on macroprudential policy making in Poland. For example, as discussed in the report, CRD IV will establish the parameters for the capital and liquidity requirements that will be applied in the context of macroprudential policy in Poland.

²² Chapter III of the Constitution (Articles 87-94) and The European Commission's summary of Legal Order in Poland available at: http://ec.europa.eu/civiljustice/legal_order/legal_order_pol_en.htm.

(comprising resolutions and orders) is binding only upon persons that are functionally subordinate to the issuing authority.²³

72. **Universal law may only be promulgated by public bodies explicitly authorized to do so under the Constitution.** Such legislative power is primarily vested in the Parliament, but other constitutional bodies also have limited authority to establish universally binding law. In particular, regulations may be issued by the President of the Republic of Poland, the Council of Ministers, and each Minister individually including the Prime Minister and the Minister of Finance.²⁴ An organ that is authorized to issue regulations may not delegate its competence to other bodies.²⁵ As a further check on the power to promulgate universal law, it is worth noting that the Council of Ministers, on the request of the Prime Minister, may repeal any regulation promulgated by an individual minister.²⁶

73. **The power to issue regulations is strictly circumscribed by the Constitution.** In contrast to some other jurisdictions where a law can provide the implementing authority with broad discretion to establish regulations to interpret the law, in Poland regulations may only be issued “on the basis of specific authorizations contained in, and for the purpose of, implementation of statutes.”

74. **Internal law, as interpreted by the Constitutional Tribunal, may be issued by any constitutional body, provided certain conditions are satisfied.** Internal law, such as resolutions, may be issued by any constitutional body to a person that is functionally subordinate to the constitutional body for the realization of its constitutional tasks. Thus, in contrast to regulations, the power to issue resolutions belongs to a broader set of public bodies. Where regulations can only be issued by constitutional bodies that have explicitly been assigned that power in the constitution, any constitutional body can issue a resolution. However, the target audience for a resolution is narrower than a regulation. Where regulations are universally binding, resolutions may only be binding on units functionally subordinate to the issuing body. This distinction ostensibly would allow the NBP, the President of the NBP, the MPC and the Board of the NBP to issue resolutions with respect their constitutional task (i.e., formulating and implementing monetary policy) even though

²³The precise wording in the Constitution is that internal law is binding on “units organizationally subordinate to the organ which issues such act.” Article 93 of the Constitution. The mission was informed that this provision has been interpreted to cover functional subordination.

²⁴ Articles 142, 146, 148 and 149 of the Constitution. Under Article 95 of the Constitution, the National Council of Radio and Broadcasting Television may also issue regulations.

²⁵ Article 92 of the Constitution.

²⁶ Article 149 of the Constitution.

they are not authorized to issue regulations.²⁷ Accordingly, the MPC sets the minimum ratio for the mandatory reserve requirements for banks.²⁸

Legal framework for microprudential supervision in Poland

75. Prudential standards for banks are established largely through binding resolutions and non-binding recommendations issued by the KNF. The KNF has offered its view that its powers to issue resolutions were inherited from the NBP, which had such powers with respect to banking supervision before the new Constitution was adopted in 1998 and in effect the powers were grandfathered.²⁹ The Banking Act prescribes the types of binding resolutions that can be issued by the KNF, which include: (i) detailed capital requirements for banks (Articles 127–128); (ii) the scope of information to be submitted with the notifications of the management Board changes and the list of information and documents to be submitted to obtain approval of members of the management Board (Article 137.1); (iii) the list of documents that the bank’s founders are required to founders during the licensing process (Article 137.2); (iv) mandatory standards for liquidity and other standards regulating permissible risks in the conduct of banking activities (Article 137.3.); (v) detailed principles for managing risk related to outsourced activities (Article 137.5.); and (vi) rules governing the permissible risks in banks’ activities (Article 128.8).³⁰

76. Under the Banking Act, the KNF has broad authority to issue non-binding recommendations. The KNF may issue recommendations that establish good practices for sound and prudent bank management and has in fact done so.³¹ Such recommendations either take the form of general guidelines for best practice (e.g., on the banks’ internal control and audit in banks (Recommendation H) or concerning the role of statutory auditors in the process of bank supervision (Recommendation L)) or of more prescriptive limitations on the risks incurred by banks (e.g., on foreign currency risk management (Recommendation I), on good practices in the management of exposures to credit financing secured by real estate and

²⁷ Article 227 of the Constitution.

²⁸ Article 12(2) of the NBP Act.

²⁹ In 2008, banking supervision was moved from the NBP to the KNF.

³⁰ The KNF has exercised its powers to issue binding resolutions in the following areas: capital adequacy and disclosure of qualitative and quantitative information on bank capital adequacy (Resolution no. 387/2008, Resolution no. 367/2010, Resolution no. 387/2008, Resolution no. 76/2010, Resolution no. 385/2008); concentration risk and large exposures (Resolution no. 208/2011, Resolution no. 384/2008); outsourcing (Resolution no. 379/2008); risk management, internal control, and internal capital estimation, review and maintenance (Resolution no. 258/2011); liquidity standards (Resolution no. 386/2008); and documents to be submitted by managers and founders of banks (Resolution no. 389/2008).

³¹ Article 137(5) of the Banking Act.

mortgages (Recommendation S), or on good practices in risk management of retail credit exposures (Recommendation T)).

77. The KNF and market participants have confirmed that there is a strong expectation of compliance with resolutions and recommendations issued by the KNF.³² This finding seems to result from a perception of strong enforcement powers on the part of the KNF.³³ Importantly, the enumeration of the sources of law in the Constitution does not preclude public bodies from issuing administrative orders to individual entities. Under the Banking Act, the KNF could, for example, issue an administrative order revoking the license of a bank based on the failure of the bank to apply sound and prudent management.³⁴ As noted above, principles of sound and prudent management are established by the soft law of the KNF. Since administrative decisions are subject to judicial review based on their lawfulness rather than on their merits, the judicial process could in effect strengthen the KNF's soft powers. Under the administrative laws in Poland, challenged administrative decisions become executable if they are confirmed in the first instance and become legally binding on appeal.

Impact on the legal framework for macroprudential supervision

78. Macroprudential supervision should be built upon a sound legal basis. In a recent BCP assessment, the assessors noted that the number of enforcement actions pursued by the KNF is relatively low, which implies that the legal basis for microprudential supervision has not fully been tested. When the EU Regulation implementing Basel III comes into effect, it will supersede many of the KNF's resolutions governing capital and liquidity requirements and resolve any doubts as to the grounds for the conduct of microprudential supervision. In the meantime, the mission explored various options for establishing a sound legal basis for macroprudential supervision.

79. Alternative structures for the Systemic Risk Board that would enable it to exercise a broader scope of direct powers (e.g., by issue regulations or resolutions) that would be consistent with the constitutional framework were considered. For example, there are views that macroprudential policy should be considered part of monetary policy. In that regard, macroprudential policy could be conducted by the NBP which is authorized to issue binding resolutions. Certain of the existing powers of MPC support this approach. In particular, under Article 46 of the NBP Act, the MPC may resolve to restrict the volume of

³² Based on the findings of the BCP ROSC of January 2012.

³³ Nonetheless, the mission was informed that some question whether the KNF's powers to issue resolutions are legally binding given the constitutional constraints on rule-making.

³⁴ Article 6d (4) of the Banking Act.

funds granted to borrowers of banks should the implementation of monetary policy be jeopardized. A stable financial system is a prerequisite for effective monetary policy transmission. However, given that the scope of the MPC's powers would need to be explicitly broadened in order to fully conduct macroprudential policy, it is not clear that this approach would reduce legal risks in the conduct of macroprudential policy. Furthermore, it is also not clear what role could be served by the other public bodies that should be represented on the Systemic Risk Board (e.g., the KNF) in light the autonomy of the MPC with respect to the conduct of monetary policy. In the end, there seemed to be no net benefit of pursuing this approach. The same was true of other approaches considered by the mission.³⁵

80. With this background, the mission has suggested that the Systemic Risk Board should rely heavily on the rule-making powers of the MoF as the best option for ensuring a sound legal basis for macroprudential supervision. The Accountancy Act already empowers the MoF to issue regulations and ordinances with respect to microprudential supervision³⁶ and doing so with respect to macroprudential supervision would be consistent with this approach. Since the Constitution would prohibit the law on macroprudential supervision from providing a blanket authorization for the MoF to issue regulations or resolution to implement the law, the law would need to authorize the MoF to do so with respect to each specific provision in the law that needs to be further defined. The ability of the Systemic Risk Board to influence the design and calibration of normative acts issued by the MoF should, to the extent possible, be secured by law in order to protect the regulatory process from political and industry interference. For example, the law on macroprudential supervision could require the MoF to consult with the Systemic Risk Board prior to issuing regulations or resolutions (and even legislation) pertaining to macroprudential supervision. In practice, or by law, this could entail the Systemic Risk Board preparing draft normative acts and then issuing a recommendation to the MoF that the normative act be adopted.

81. Importantly, the enumeration of the sources of law in the Constitution does not appear to preclude public bodies from taking the decisions in the form of resolutions

³⁵ The mission also explored establishing a committee with a President that serves as part of the Council of Ministers in accordance with Articles 147 and 149 of the Constitution. Such Presidents are authorized by the Constitution to issue regulations. We understand that this provision was used most recently for the Chairman of the Committee for European Integration (who served on the Council of Ministers until 2009) and the Chairman of the Committee for Scientific Research (who served on the Council of Ministers until 2006). While such a structure would provide clarity on the rule-making process for macroprudential policy and reduce the risk to political interference, this structure raises many legal questions. For example, could such a committee be established on a perpetual basis? Could the President of the NBP serve as the chair such a committee consistent with the autonomy of the NBP?

³⁶ So far, MOF has issued regulations pertaining to provisioning (Regulation of the MoF of December 16, 2008 on bank provisioning) and some accounting regulations.

that would be needed to calibrate macroprudential tools such as capital buffers. The NBP legal department has offered a preliminary opinion that calibration powers would be consistent with constitutional constraints on rule-making, subject to certain conditions. Namely, the act of the Parliament should: (i) describe the instrument and determine its legal nature (rights and obligations); (ii) indicate its recipients; (iii) provide circumstances when the instrument will apply; (iv) set a scope of operation; and (v) vest the competence or obligation of calibration of the instrument in the Systemic Risk Board and provide a manner according to which it should be done. A practical example of how this can be done is provided by the BGF Council setting the rate for banks' mandatory contributions to the BGF.

³⁷ When combined with the other powers recommended by the mission, they will contribute to an overall robust framework for macroprudential policy in Poland.

Autonomy of the National Bank of Poland

82. **The NBP's autonomy could prohibit interactions between the NBP and the Systemic Risk Board with respect to the exercise of specific tasks of the NBP.** Under the Polish constitution, the NBP has the exclusive right to formulate and implement monetary policy. In addition, under Article 130 of the Treaty on the Functioning of the European Union ("EU Treaty") and Article 7 of the Statute of the European System of Central Banks ("ESCB Statute") no national central bank (or member of its decision-making bodies) shall seek or take instructions from other bodies, including the Government, in the performance of tasks assigned to them by the EU Treaty and the ESCB Statute. In addition, the Government shall not seek to influence the members of the national central bank (or members of its decision-making bodies) in the performance of their tasks. The ban on instructions, under the EU Treaty, covers all national central bank tasks specified in Article 127 as well as those included in the ESCB Statute. This generally would include, for example, the formulation and implementation of monetary policy (including the establishment of minimum reserve requirements), promoting smooth operation of payment systems, and foreign exchange operations. The NBP should further explore the extent to which interactions between the Systemic Risk Board and the NBP on tasks assigned to the NBP would be appropriate in light of the NBP's autonomy.

Macroprudential policy and fundamental rights

83. **Macroprudential policy is a new policy function with far reaching powers.** For example, it may impose obligations on entities not ordinarily subject to supervision or require specific entities or classes of entities to adhere to heightened prudential standards. In jurisdictions such as Poland that recognize constitutional protections for property both under the domestic constitution and the ECHR, heightened scrutiny is applied to government

³⁷ Articles 7.1(5) and 13 of the BGF Act.

actions that negatively impact property rights. Actions taken by authorities that infringe on property rights would likely be required to be founded in law, serve a public interest, and fairly balance the public interest against individual rights. Authorities are likely to also be required to adhere to principles of due process that will ensure that property owners have sufficient notice and opportunities to challenge government actions that could impair their property rights. These principles have long-been incorporated into frameworks for microprudential supervision and it is important that they not be forgotten as a new framework for prudential supervision is adopted. Attempts to do so can be seen in recently adopted or pending frameworks for macroprudential supervision.³⁸

³⁸ Under the U.S. Dodd-Frank Act, for example, entities designated as systemically important nonbank financial companies are entitled to written notice of the proposed designation and an opportunity for a hearing. Another example is the draft U.K. Financial Services Bill draft pending in Parliament as of January 2012, which ensures proportionality in macroprudential supervision as required under the ECHR (see Sections 9E(3) and 9V(1)).

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