



POLISH FINANCIAL SUPERVISION AUTHORITY

DLB-DLB2.7040.4.2018.MG

Warsaw, 29 January 2019

DECISION

Under Art. 481.2 of the Banking Law dated 29 August 1997 (consolidated text in Journal of Laws of 2018, item 2187, as amended, hereinafter referred to as the **Banking Law**) and Art. 104.1 of the Administrative Procedure Code dated 14 June 1960 (consolidated text in Journal of Laws of 2018, item 2096, as amended, hereinafter referred to as the **APC**) in connection with Art. 11.5 of the Act on Financial Market Supervision dated 21 July 2006 (consolidated text in Journal of Laws of 2018, item 621, as amended, hereinafter referred to as the **Act on Financial Market Supervision**),

given that the Polish Financial Supervision Authority received from the European Central Bank – as set out in Art. 4.1(b) of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions and Art. 481.1 of the Banking Law the notice that HSBC France with its registered office in Paris, a credit institution, intends to launch its operations in the territory of the Republic of Poland via a branch, the Polish Financial Supervision Authority

sets out the following terms and conditions of carrying on such operations

1. without prejudice to the information obligations set out in Art. 48o of the Banking Law, in connection with offering the banking services in the territory of the Republic of Poland via a branch HSBC France must, prior to entering into an agreement and at the latest at the time of making an offer, notify a client explicitly and with the client's confirmation of:
 - 1) the fact that HSBC France is an institution set up under the authorisation of the competent supervisory authorities of the home state and having its registered office in a Member State, operating in the territory of the Republic of Poland via a branch, supervised by the competent supervision authorities of its home state and not supervised by the Polish Financial Supervision Authority, subject to Art. 141a of the Banking Law dated 29 August 1997;
 - 2) the place and method of safekeeping the deposited funds, including the security measures applied;
 - 3) the principles of the cashier services allowing a client to withdraw the deposited funds on request or at maturity;
 - 4) the contact data allowing a client to have direct – physical contact with the personnel at the branch of HSBC France in Poland;

*At the bottom of each page the stamp in red ink reading "The Polish Financial Supervision Authority * 1*" with the national emblem of the Republic of Poland in the centre*

- 5) the method of guaranteeing the deposits accumulated at HSBC France, and in particular:
 - a) the guaranteeing institution (name, address, website);
 - b) the maximum guaranteed amount as well as limits and deductions;
 - c) the types of entities which may be recognised as being entitled to receive a pecuniary benefit;
 - d) the procedure of enforcing claims concerning the guaranteeing of deposits provided for in the applicable regulations (including the required documents, times for filing such documents, mailing address, language to be used for the purposes of correspondence and the compensation payment dates);
 - 6) the place where HSBC France stores and processes information constituting bank secret within the meaning of the Banking Law and the relevant regulations of French law on protection and disclosure of such information;
 - 7) the contents of the present decision of the Polish Financial Supervision Authority;
 - 8) the ability to request any other information referred to in condition 2 below;
2. irrespective of the information provided in connection with condition 1 above, in connection with offering the banking services in the territory of the Republic of Poland via a branch HSBC France must, at a client's request, prior to entering into an agreement and at the latest at the time of making an offer, notify a client explicitly and with the client's confirmation of:
 - 1) the regulations applicable to the operations of HSBC France and its branch in Poland, as well as the method of accessing such regulations; and
 - 2) the best practices codes HSBC France must observe and the place of their publication;
 3. when operating in the territory of the Republic of Poland via a branch HSBC France must ensure that its advertising or marketing materials do not mislead their recipients as regards the information referred to in conditions 1 and 2 above and 6 below;
 4. HSBC France must make available the information referred to in conditions 1 and 2 above in the manner ensuring that a client will be able to read such information, in particular:
 - 1) at the place where a service is provided;
 - 2) at the place where an agreement is executed;
 - 3) on its website; and
 - 4) in the information documents provided to a client;
 5. in order to satisfy condition 4 above HSBC France shall ensure in particular that the materials presenting the offer of its branch in the territory of the Republic of Poland, including its websites, the information referred to in conditions 1.1), 1.5)a) and 1.5)b) above is presented using the fonts and characters not smaller and not less readable than the largest and the best readable fonts and characters used to present its offer;

6. HSBC France shall make publicly available in Polish the contents of its financial statements upon their approval as well as any information on the supervisory measures the competent authorities in its home state applied to it to the extent such information must be disclosed in its home state;
7. if at the same time HSBC France will be pursuing any cross-border activities in the territory of the Republic of Poland – on the basis of the freedom to provide services, HSBC France will ensure that the offer of the services provided in the course of such operations will be explicitly separated from the offer of its branch. In particular HSBC France shall ensure that the materials presenting the offer of its branch in the territory of the Republic of Poland do not include any reference to the offer of the services provided in the course of its cross-border activities and that the branch does not act as an intermediary in the provision of the services in the course of its cross-border activities or promote or advertise such services;
8. when operating in the territory of the Republic of Poland via a branch HSBC France must ensure that the high KYC standards are applied, in particular ensuring the correct identification of its client and providing for the refusal to provide services should such identification be impossible;
9. when operating in the territory of the Republic of Poland via a branch HSBC France must refrain from benefiting from any competitive advantage on the banking services market in Poland gained as a result of the non-market mechanisms, and in particular as a result of not complying with the principles of carrying on banking activities prevailing on the banking services market in Poland resulting from the supervisory regulations and recommendations;
10. when operating in the territory of the Republic of Poland via a branch HSBC France must ensure that all the civil-law disputes concerning the executed agreements are settled by Polish courts on the same terms and conditions as the civil-law disputes concerning agreements executed by domestic banks; and
11. when operating in the territory of the Republic of Poland via a branch HSBC France must follow the guidelines of the Polish Financial Supervision Authority concerning the functioning of the branch in the manner consistent with the public interest, and in particular the guidelines concerning protection of the consumer interests, ensuring the safety of business transactions as well as preventing any violations of law or any increase of the systemic risk in the financial sector.

REASONS

On 9 July 2018 the Polish Financial Supervision Authority received the notice (supplemented on 17 August 2018 and 4 December 2018) that HSBC France, a credit institution, intends to launch its operations in the territory of the Republic of Poland via a branch. In accordance with the presented information a branch of HSBC France intends to carry on in the territory of the Republic of Poland the activities consisting in particular in:

- taking deposits and other repayable funds;
- lending including, inter alia: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting);

- execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider:
 - execution of direct debits, including one-off direct debits;
 - execution of payment transactions through a payment card or a similar device;
 - execution of credit transfers, including standing orders;
- execution of payment transactions where the funds are covered by a credit line for a payment service user:
 - execution of direct debits, including one-off direct debits;
 - execution of payment transactions through a payment card or a similar device;
 - execution of credit transfers, including standing orders;
- issuing and/or acquiring of payment instruments;¹
- guarantees and commitments;
- trading for own account or for account of customers in any of the following:
 - money market instruments (e.g. cheques, bills, certificates of deposit, etc.);
 - foreign exchange;
 - financial futures and options;
 - exchange and interest-rate instruments
 - transferable securities;
- participation in securities issues and the provision of services relating to such issues;
- advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings;
- provision of investment services and activities as well as additional services benefitting from financial instruments set out in the notice.

¹ The name of this service is included herein in the form set out in the form attached to the notice of HSBC France's intention to launch its operations in the territory of the Republic of Poland via a branch and in item 5 of Annex to Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (hereinafter referred to as **PSD1**). The above name is also used on item 2.1.3 of Annex I to Commission Implementing Regulation (EU) No 926/2014 of 27 August 2014 laying down implementing technical standards with regard to standard forms, templates and procedures for notifications relating to the exercise of the right of establishment and the freedom to provide services according to Directive 2013/36/EU of the European Parliament and of the Council. 13 January 2018 was the effective date of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (hereinafter referred to as **PSD2**). Pursuant to item 5 of Annex I to PSD2 the name of the service in question was changed to "Issuing of payment instruments and/or acquiring of payment transactions". Taking into account the instruction in Art. 114 of PSD2 any reference to the repealed PSD1 shall be construed as a reference to PSD2 and shall be read in accordance with the correlation table in Annex II to PSD2.

Under Art. 481.2 of the Banking Law within two months of receiving the information referred to in Art. 481.1 of the Banking Law, related to the notice of an intention to take up activities in Poland via a branch, the Polish Financial Supervision Authority may specify the conditions which a branch of a credit institution must satisfy when pursuing its activity in the territory of the Republic of Poland in the public interest, and in particular in order to protect the consumer interests, ensure the safety of business transactions and prevent any violations of law.

The conditions specified in this decision are aimed at ensuring that:

- 1) the clients are properly informed of the operations of the branch of HSBC France in the territory of the Republic of Poland; including the facts significant from the perspective of the funds deposited with the branch;
- 2) the appropriate standards of such operations are maintained as regards the explicit separation of the offers of services provided via the branch and the Bank's cross-border activities, if any, pursued on the basis of the freedom to provide services and the identification and verification of a client's identity (KYC) are maintained; and
- 3) the systemic risk in the banking services sector which might give HSBC France opportunities of regulatory arbitrage is eliminated.

These conditions are aimed at protecting the interests of the consumers who will be the clients of the branch of HSBC France in Poland.

For the above reasons the Polish Financial Supervision Authority has decided as at the outset.

NOTE

1. A party dissatisfied with this administrative decision may request the Polish Financial Supervision Authority to re-examine the case pursuant to Art. 127.3 of the APC in connection with Art. 11.6 of the Act on Financial Market Supervision. Pursuant to Art. 129.2 of the APC in connection with Art. 127.3 *in fine* of the APC a request to re-examine the case should be filed directly to the Polish Financial Supervision Authority within 14 days of the receipt of this decision.
2. During the period or 14 days for filing the request to re-examine the case, under Art. 127a.1 of the APC in connection with Art. 127.3 *in fine* of the APC, a party may waive the right to request the Polish Financial Supervision Authority to re-examine the case. Under Art. 127a.2 of the APC in connection with Art. 130.4 of the APC, when the Polish Financial Supervision Authority receives the declaration of waiver of the right to file the request to re-examine the case from the last party to the proceedings, the administrative decision will become final and binding and shall be come enforceable before the lapse of the time limit to file the request to re-examine the case. Under Art. 16.1 of the APC a final decision is the decision in the event of which a request to re-examine the case may not be filed and it may be revoked or amended, declared invalid or the proceedings with respect thereto may be reopened only in the circumstances set out in the APC or any specific laws and regulations. In turn, under Art. 16.3 of the APC, a binding decision is a final decision which may not be appealed against to an administrative court.
3. Under Art. 52.3 of the Law on Proceedings Before Administrative Courts dated 30 August 2002 (consolidated text: Journal of Laws of 2018, item 1302, as amended), hereinafter the "LPBAC",

a party may file a complaint against this administrative decision with the Provincial Administrative Court in Warsaw without first exercising the right to request the Polish Financial Supervision Authority to re-examine the case. Under Art. 53.1 of the LPBAC the complaint must be filed within 30 days from the day of serving this decision on the party. A complaint to Provincial Administrative Court in Warsaw shall be filed through the Polish Financial Supervision Authority (Art. 54.1 of the LPBAC). Under Art. 2.6 of the Regulation of the Council of Ministers on the amount and the detailed terms and conditions of charging court fees in proceedings before administrative courts dated 16 December 2003 (Journal of Laws of 2003, item 2193, as amended) a complaint against this administrative decision shall be subject to a fixed court fee of PLN 200. If a complaint is filed to an administrative court, then the party, under Art. 243.1 of the LPBAC, at its request filed before or in the course of the proceedings before administrative courts, may be granted legal aid. Under Art. 244.1 of the LPBAC the legal aid shall include exemption from court fees and appointing an advocate or n attorney-at-law. The detailed terms and condition of the legal aid are regulated in Art. 243 – Art. 262 of the LPBAC.

On behalf of the Polish Financial Supervision Authority

stamp in red ink reading:

Jacek Jastrzębski

PRESIDENT OF THE POLISH FINANCIAL SUPERVISION AUTHORITY

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To:

1. HSBC France – 1 copy
2. archives – 2 copies