

KANCELARIA SENATU
Kancelaria Ogólna

20.02.2019

nr RPW... 5105/2019 P

(podpis)

Commerzbank AG, 60261 Frankfurt am Main

COMMERZBANK



03980200147554
RPW/5105/2019 P
2019-02-20

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For the attention of:

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Jörg Hessenmüller, Michael Mandel, Bettina Orlopp, Michael Reuther

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Registered Office: Amtsgericht Frankfurt am Main, HRB 32000
VAT ID No.: DE 114 103 514

Draft Bill dated 2 August 2017 amending the Polish Act of 9 October 2015 on Assistance to Housing Loan Borrowers in a Difficult Financial Situation

Dear Sirs,

Commerzbank AG ("Commerzbank") is the majority shareholder of mBank S.A. ("mBank"), a bank registered in Poland under court registration number 0000025237.

Today we write to you again concerning intended measures, submitted on 2nd August 2017 to the Polish Parliament by Mr President Andrzej Duda and amendments to it introduced in Parliament in January 2019 (**the "Draft Act"**), which create a very complex system that mandates banks, i.a., to allocate a payment in the amount of a percentage of their foreign exchange portfolio in each quarter to a conversion fund (**the "Fund"**).

We understand that the Draft Bill has been put on the agenda of the Public Finance Commission and shall be subsequently presented to the Sejm.

As investors in mBank and the Polish banking sector we are very concerned about the aforementioned Draft Act. In this context we refer to our letter of 10 October 2017 (see copy attached hereto) and the concerns regarding the Draft Bill raised therein.

The Draft Act and the obligation contained in it to pay a quarterly contribution of 0.5% of the FX portfolio to the Fund represents a significant burden for mBank. In the first full year after implementation, the contribution would amount to about one quarter of the Net profit 2018 followed by significant impacts on the results over a period of years.

In combination with already existing burdens imposed on the Polish banking sector (a.o. Banking Tax, One-off contributions to the Bank guarantee fund, increased capital requirements, higher risk weights for FX mortgages) we regard the Draft Act to be excessive and see it as a further weakening of the financial market.

Furthermore we remain of the opinion that the Draft Act is in conflict with a.o.,

- the commitments made under the Treaty between the Federal Republic of Germany and the People's Republic of Poland Concerning the Encouragement and Reciprocal Protection of Investments, dated 10 November 1989, as amended by the Amending and Supplementing Protocol, dated 14 May 2003,
- general principles of European Union law, in particular the right to property (Article 17 of the Charter of Fundamental Rights), free movement of capital (Article 63 of the Treaty on the Functioning of the European Union (TFEU)), state aid (Article 108 (3) of the TFEU), as well as the principle of market economy (Articles 101 and 102 and also article 3 (1b) of the TFEU)
- Polish constitutional law, in particular the non-retroactivity of the law and protection of legally acquired rights (Article 2 of the Constitution), the principle of proportionality (Article

31.3 of the Constitution), the principle of protection of private property (Articles 21 and 64 of the Constitution) and freedom of economic activity (Articles 20 and 22 of the Constitution)

Accordingly, we again kindly ask you to enter into a consultation process with all affected banks to exchange our views and to jointly work upon solutions for customers in Poland in real distressed situations – something the Draft Act does not provide for.

We respectfully look forward to your response and, in the interim, remain available to provide you with any further information that you may require. We will also naturally make ourselves available for a meeting at the time and location of your convenience.

Yours sincerely,



Jörg Hessenmüller
Chief Operating Officer



Stephan Engels
Chief Financial Officer

Attachment: Copy of letter from Commerzbank dated 10 October 2017

Copy to:

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Draft Bill dated 2 August amending the Polish Act of 9 October 2015 on Assistance to Housing Loan Borrowers in a Difficult Financial Situation

Dear Sirs,

Commerzbank AG ("Commerzbank") is the majority shareholder of mBank S.A. ("mBank"), a bank registered in Poland under court registration number 0000025237.

For more than 20 years we have supported the development of mBank (formerly known as BRE Bank) in terms of capital and funding but also in terms of know-how transfer. In particular, between 2005 and 2008 Commerzbank granted mBank substantial bilateral loans giving many Polish households access to real estate ownership which was instrumental for the economic development of Poland. Thanks to Commerzbank's strength in the German retail business, mBank had the most reliable funds to refinance lending on the Polish market. In 2009, Commerzbank financed mBank's capital increase. We decided to increase mBank's capital substantially despite the fact that at the same time Commerzbank was facing some serious challenges.

The long history of Commerzbank's ownership clearly demonstrates that we were continuously supporting and developing mBank, the Polish market and the economy itself. Currently, mBank serves over 4.5 million retail customers in Poland and more than 21,000 corporate clients.

Today we write to you concerning the proposed "Draft Bill dated 2 August amending the Polish Act of 9 October 2015 on Assistance to Housing Loan Borrowers in Difficult Financial Situation" ("Draft Bill") which was sent to the Parliament by the Polish President on 2 August 2017. The Draft Bill proposes amendments to the Borrower Assistance Act. We understand that its main functions are to: (1) relax the conditions which must be fulfilled by a Polish borrower in order to obtain assistance with respect to the repayment of his or her home loan; and (2) split the existing Borrower Support Fund into two sub-funds, the Support Fund and the Restructuring Fund. Our following considerations are based on what the Draft Bill proposes in relation to the Restructuring Fund.

As investors in mBank and the Polish banking sector we are very concerned about the aforementioned Draft Bill. It needs to be taken into account that the banking sector in Poland already faces material burdens stemming from the banking tax which has already weakened the capacity of banks to accumulate capital. Under the Draft Bill banks would be compelled to contribute another substantial amount to a fund for as long as it holds FX loans in its portfolio. According to our understanding the Draft Bill provides for quarterly contributions to the Restructuring Fund pro rata to FX housing loans granted by the relevant bank up to 0.5 per cent of the portfolio value of FX loans of such bank.

Hence, in essence, the Draft Bill intends to achieve the same result as the former contemplated measures with regard to full FX loan conversion. Through the imposition of the required "contribution", Poland would impose a loss on the affected banks every quarter for as long as they

hold affected loans (which are FX loans regardless as to whether they are defaulted loans or not) with the aim of coercing them into achieving a “voluntary” agreement with borrowers to convert the affected loans into Polish Zloty (PLN). The indefinite duration of contribution to the fund makes it even impossible to estimate the financial burdens for mBank and for us as an investor.

The reasonableness of the Draft Bill is also questioned by the fact that it allows affected banks to receive reimbursement for their contribution only to the extent they reach a “voluntary” agreement within a period of six months – which may prove practically impossible in many cases (depending on the attitude and willingness of individual borrowers) and - in case of mBank - could only be achieved at unjustified commercial terms given the low default likelihood of the respected loans. This would likely require affected banks to divert substantial resources to effect these “voluntary” agreements. Beyond this the National Bank of Poland (NBP) as reflected in its letter to the Deputy Head of the Polish Sejm Chancellery, Mr Adam Podgórski, dated 31 August 2017 (the “NBP Opinion”) suggests that – as regards the procedure for redistribution of the contributions not used in the relevant period – the introduction of a rule could be considered, under which only the banks that made use of a significant proportion (e.g. in 80%) of funds corresponding to their own contribution are eligible for a redistribution. Such an amendment would provide a better incentive for the banks to carry out voluntary restructuring. Thus, the reimbursement rules as currently foreseen in the Draft Bill would likely require affected banks to divert substantial resources to effect these “voluntary” agreements.

Based on these considerations we regard the essence of the Draft Bill to be the same as the previous draft bills and previously contemplated measures. The Draft Bill would disregard the rights and obligations that had been stipulated in the agreements between mBank and its customers. This threat of interference by Poland in private commercial contracts is unwarranted and disproportionate. mBank has always adhered to all regulations of the Polish authorities and been open to find contractual arrangements with its clients aiming at helping them with any possible problems arising from servicing their FX mortgage loans. Furthermore, the Polish banking sector, and indeed mBank itself, has sought since January 2015 to aid borrowers affected by the development of the Swiss Franc (CHF) exchange rate, notably by applying the measures proposed by the Polish Bank Association (Związek Banków Polskich) on 23 January 2015. In this context, it is important to note that while mBank was granting FX mortgage loans, in particular denominated in CHF, the Polish authorities were encouraging banks operating in Poland to offer to customers FX mortgage loans to support the governmental housing policy.

Furthermore, we understand from public statements that the Draft Bill will be just the first step in a forced FX mortgage conversion plan. The Head of the NBP stated that banks probably would proactively convert FX mortgages as a consequence of an additional increase in risk weights on FX mortgages. We strongly believe that achieving politically motivated objectives is not a legitimate purpose for using the regulatory rules for adequate capital positions, as codified in the Capital Requirements Regulation (CRR). In combination with the expected substantial financial effects of the Draft Bill, the announced plans would have the potential to negatively influence the financial stability of the Polish banking sector, but at least of those Polish banks that have a portfolio of FX loans.

In addition, passing the Draft Bill in combination with the expected increase of risk weights and a floor for the Loss Given Default rate (LGD) for FX mortgages not “proactively” converted would affect mBank’s overall capacity to grant loans to individuals but also to corporations and might significantly impair Commerzbank’s, as well as all other shareholders’ (i.e. various Polish Pension Funds), ownership rights.

Beyond this the NBP – as reflected in its NBP Opinion – suggests that a mechanism should be incorporated into the Draft Bill by which contributions made to the restructuring fund established by the Draft Bill should vary depending on whether the bank has a recovery or rehabilitation plan in place. According to the NBP, this would safeguard overall financial stability. We understand that in practice, according to the Polish press, these suggestions would currently only benefit Polish-owned banks. To the extent that the NBP’s proposal would in fact work exclusively (or even primarily) to the advantage of domestically-owned banks and to the disadvantage of foreign-owned banks, this rises to allegations of discrimination based on capital nationality. In addition implementation of such a mechanism results in a situation where banks in a financially-sound position would end up essentially financing the conversion of CHF loans handed out by banks, which are now subject to recovery or rehabilitation plans. Even more so, as a domestically-owned bank being in the state of recovery or rehabilitation potentially might be in financial trouble due to inappropriate loan/mortgage origination policies, whereas mBank’s mortgage portfolios continues to benefit from its conservative origination policies.

As already indicated in our letter of 14 August 2015 FX mortgage loans do not represent a major systemic disruption justifying such an act. Neither the amount of non-performing loans, nor any other reliable source provides evidence for a major systemic problem. This is also obvious from the limited drawings under the fund for Supporting Distressed Mortgage Borrowers over the last months, which was already explained by NBP last year and has since been confirmed by the European Central Bank. This in turn poses justified doubts as to whether the proposed legislation also in combination with the announced increase of risk weights for FX loans not “voluntarily” converted indeed aims to protect the public (general) interest.

Furthermore, according to NBP’s analysis, the situation of borrowers of FX mortgage loans is not aggravated compared to other borrowers. Such borrowers on average earn a higher income than borrowers of PLN mortgage loans (hereinafter: PLN borrowers), and the aggregate amount of instalments paid by them is lower than for PLN borrowers. It needs to be noted that the proposal comes now at a point in time where the exchange rate of Swiss Francs towards the Polish Zloty is at such low level never been seen over the last years. Converting FX loans into PLN loans will lead to the effect that monthly instalments of customers will potentially become higher and therefore exposing more customers to risk of not being in the position to afford their regular instalments. In addition the “reasonableness” of the Draft Bill is also thrown into doubt by the fact that it does not include eligibility criteria for the restructuring fund that would allow to focus on those customers in real distressed situations only.

It should also be taken into account that in contrast to certain allegations used in the current debate mBank's customers were always properly informed about the risk embedded in an FX mortgage loan contract. They even confirmed that mBank suggested contemplating a PLN denominated mortgage loan and mBank was not suggesting a benefit of higher credit worthiness if a customer decided to apply for a FX mortgage loan in comparison with a PLN denominated mortgage loan.

We therefore propose that appropriate measures should be taken to avoid the passing of such an arbitrary and disproportionate piece of legislation, which will cause substantial damage to the Polish banking sector, and mBank in particular. We kindly ask you to enter into a consultation process with us to exchange our views and to jointly work upon solutions for FX mortgage loans in Poland. In particular we ask you to review and to revise the intended Draft Bill with special attention to introducing eligibility/social criteria, time limitation of contributions, equal treatment of all customers and financial institutions, tax deductibility, exclusion of cross-subsidization of (weaker) Polish banks and the creation of a final legal certainty for the banking sector regarding all aspects of FX-denominated loans.

Commerzbank hereby wishes to provide due notice that the enactment of such legislation as well as any intended subsequent legal steps and/or regulatory measures mainly aiming to disproportionately impact FX mortgage lenders would constitute a breach by Poland of its commitments made under the Treaty between the Federal Republic of Germany and the People's Republic of Poland Concerning the Encouragement and Reciprocal Protection of Investments, dated 10 November 1989, as amended by the Amending and Supplementing Protocol, dated 14 May 2003. If a mutually acceptable resolution of this dispute cannot be found, Commerzbank may be compelled to consider arbitration against Poland under this treaty. We understand that the Draft Bill might also give rise to claims relating to the violation of certain EU fundamental freedoms, in particular the free movement of capital (Article 63 of the Treaty on the Functioning of the European Union (TFEU)) and the freedom of establishment (Article 49 in conjunction with Article 54 of the TFEU). Further, there are arguments for a violation of the right to property under Article 17 of the Charter of Fundamental Rights.

We respectfully look forward to your response and, in the interim, remain available to provide you with any further information that you may require. We will also naturally make ourselves available for a meeting at the time and location of your convenience.

Yours sincerely,



Marcus Chromik
Chief Risk Officer



Jörg Hessenmüller
Divisional Board Member

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