

EBA/Op/2023/09

4 September 2023

Opinion of the European Banking Authority on measures in accordance with Article 124 of Regulation (EU) No 575/2013

1. On 3 August 2023, the European Banking Authority (EBA) received a notification from the Ministry of Finance of Poland to extend an existing measure in accordance with Article 124(2) of Regulation (EU) No 575/2013 of the European Parliament and of the Council (Capital Requirements Regulation, CRR).¹
2. The notified measure extends for 24 months the adjustment to the risk weights for foreign currency housing loans introduced via a regulation by the Ministry of Finance of Poland on 18 March 2022. The previous adjustment was introduced for a period of 18 months as an amendment to the risk weight of 150% for foreign currency housing loans introduced originally in 2017.
3. In accordance with the third subparagraph of Article 124(2) of the CRR, within one month of receiving notification from the designated or competent authority entrusted with the national application of Article 124 of the CRR, the EBA is required to provide its Opinion to the Member State concerned.
4. In accordance with Article 14(2) of the Rules of Procedure of the EBA,² the Board of Supervisors has adopted this Opinion.

Background of the measure

5. The original measure, introduced via regulation on 25 May 2017, set a risk weight of 150% for exposures secured by mortgages on residential property when the amount of principal or

¹ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

² Decision of the EBA concerning the Rules of Procedure of the Board of Supervisors of 22 January 2020 (EBA/DC/2020/307).

interest installments depended on changes in the exchange rate of one or more foreign currencies, different from the ones in which the borrower receives income (foreign currency housing loans). The measure applies to banks using the standardised approach for the calculation of capital requirements.

6. With the regulation of 18 March 2022, the original measure was amended for a period of 18 months (ending on 30 September 2023) to set different levels of risk weights on foreign currency housing loans for banks that actively engage in proceedings leading to settlements with borrowers with such loans as follows:³
 - 50% risk weight, if loan loss provisions and write-offs or adjustments amount to at least 35% of the gross exposure;
 - 75% risk weight if loan loss provisions and write-offs or adjustments amount to at least 28% of the gross exposure;
 - 100% risk weight if loan loss provisions and write-offs or adjustments amount to at least 20% of the gross exposure.
7. The proposed measure extends the current adjustment to the level of risk weights for foreign currency housing loans in force since 18 March 2022 by an additional period of 24 months.

Economic rationale for the measure

8. According to the notification, Polish banks have been increasingly exposed to legal risk related to foreign currency housing loans. Several borrowers have brought actions against banks for damages in courts. On 30 June 2023, the portfolio of foreign currency housing loans accounted for approximately 17% of the gross carrying amount (before adjustments) of the entire domestic commercial banks' housing loan portfolio. A significant share of exposures classified as foreign currency housing loans is held by most banks recognised as other systemically important institutions. On 30 June 2023, the value of covered deposits at banks with a portfolio of foreign currency housing loans accounted for approximately 95% of all deposits of commercial banks guaranteed by the Bank Guarantee Fund.
9. The risk weights of 150% for foreign currency loans were introduced via a regulation on 25 May 2017. According to the notification, to limit the legal risk associated with foreign currency housing loans and to reduce the significant uncertainty as to the further increase of legal costs, the Chairman of the Polish Financial Supervision Authority proposed that banks offered borrowers settlements resulting in the conversion of foreign currency housing loans into Polish Złoty (PLN) to equate the situation of borrowers with foreign housing loans with the situation of borrowers who have taken out loans in PLN.

³ The adjusted risk weights do not apply to the exposures or their part above the value fully and completely secured by mortgage on residential property.

10. In September 2021, the Financial Stability Committee of Poland, which is responsible for macroprudential supervision in the country, recommended temporarily adjusting the risk weight for foreign currency housing loans from the previously implemented 150% when banks are engaged to conclude settlements with borrowers. Following this recommendation, the Minister of Finance introduced a regulation, on 18 March 2022, to temporarily reduce until 30 September 2023 the risk weights of foreign currency housing loans depending on the amount of loan loss provisions, write-offs or adjustments to the exposure gross carrying amount created in connection with the planned settlements with borrowers. The adjustment to the risk weights of foreign currency loans was envisaged for a period of 18 months, until 30 September 2023. The reduced risk weights are, however, still higher than the risk weights according to Article 125 of Regulation (EU) 575/2013 for residential mortgages (35%).
11. The temporary amendment of 18 March 2022 (to the risk weight of foreign currency housing loans exposures with higher levels of provisions) was intended to encourage banks to enter such settlements with borrowers by reducing the capital burden on those banks that actively engage in the settlement scheme, to compensate for the fact that according to accounting rules, banks would have to recognise the costs of concluding settlements at the time of approval by the relevant corporate bodies to offer settlements to borrowers. The adjusted risk weights apply until the actual conclusion of a settlement with a borrower.
12. The Polish Ministry of Finance assesses that, in the long term, the reduction of the portfolio of foreign currency housing loans should be beneficial for the stability of the financial system.
13. According to the data reported in the notification and additional information provided, a total of 39,600 settlements in accordance with the model proposed by the Polish Financial Supervision Authority and 30,900 settlements on other individual terms were reached by the end of June 2023. At the same date, Polish banks held a total of 278,600 foreign currency housing loans (denominated in Swiss franc), of which approximately 120,000 loans are subject to litigation processes.
14. The Financial Stability Committee of Poland recommended, on 6 July 2023, to extend the temporary measure by 24 months with the aim to continue encouraging banks to offer settlements.
15. The Ministry of Finance of Poland does not expect, due to the size of the foreign currency housing loans portfolio, that maintaining the current level of risk weights for foreign currency housing loans for another 24 months would have a significant impact on the internal market.
16. No leakages or regulatory arbitrage are expected, given the existing ban on new foreign currency housing loans.

Assessment and conclusions

17. Based on the evidence provided by the Ministry of Finance of Poland, the EBA acknowledges the concerns regarding the financial stability risks stemming from foreign currency housing loans and the uncertainty surrounding the materialisation of litigation and settlement costs.
18. Based on the information provided, the EBA does not object to the temporary extension of the measure until the next periodical assessment in accordance with Article 124(2) of Regulation (EU) No 575/2013 takes place.
19. The EBA understands that the measure may be appropriate to address the identified risks to financial stability in Poland, and in particular the legal risks associated with foreign currency housing loans. In Poland, a large share of loans secured by residential real estate property are in foreign currency. Risks stemming from changes in foreign exchange rates and increases of legal risks associated with the portfolio of foreign currency housing loans require measures to reduce the exposure of Polish banks to such loans. Reducing the portfolio of foreign currency housing loans through settlements is beneficial from the point of view of the stability of banks and the domestic financial system. Therefore, the EBA does not object to the extension of the adjusted risk weights to the extent that the measure continues to encourage banks to engage in settlements with borrowers with foreign currency housing loans.
20. The EBA notes that the current calibration of the measure is linked to the higher legal risk of foreign currency housing loans and to encourage banks to conclude settlements with borrowers. By increasing incentives for banks to conclude such settlements and thus, decreasing the stock of foreign currency housing loans and the associated legal risks, the measure could support financial stability in Poland. However, the EBA would have appreciated in the notification further details on how the loss experience and forward-looking immovable property markets developments have been considered when calibrating the notified measure.
21. Therefore, the EBA invites the Ministry of Finance of Poland to closely monitor the situation. The EBA would like to remind the Ministry of Finance that it shall assess the appropriateness of the risk weights, in accordance with Article 124(2) of Regulation (EU) 575/2013, as further specified by Commission Delegated Regulation (EU) 2023/206,⁴ and adjust them if during its periodical assessment the risk weights do not adequately reflect the actual risks related to the targeted exposures and if it considers that the inadequacy of the risk weights could adversely affect current or future financial stability in Poland.

⁴ Commission Delegated Regulation (EU) 2023/206 of 5 October 2022 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards specifying the types of factors to be considered for the assessment of the appropriateness of risk weights for exposures secured by immovable property and the conditions to be taken into account for the assessment of the appropriateness of minimum loss given default values for exposures secured by immovable property (OJ L 29, 1.2.2023, p. 1–5).

This Opinion will be published on the EBA's website.

Done at Paris, 4 September 2023

[signed]

José Manuel Campa

Chairperson

For the Board of Supervisors