CFA Society Poland

REPORT ON GOLD-PLATING IN POLISH CAPITAL MARKET LAW

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EXECUTIVE SUMMARY

- In the Capital Market Development Strategy (hereinafter referred to as the "Strategy"), the Council of Ministers considered gold-plating a barrier to the development of the capital market in Poland and expressed its endeavour to avoid gold-plating in the future and to remove instances of excessive regulations from the existing Polish laws.
- The Strategy defines gold-plating as: "implementation of European Union laws which goes beyond the minimum requirement." (p. 77)
- In our opinion, the definition of gold-plating provided in the Strategy is too narrow. Such an understanding of gold-plating does not lead to the removal of excessive regulations, since it does not encompass the introduction of regulations having no clear legal bases in EU law to Polish capital market law. Acquiescence to gold-plating within this meaning implies consent to the multiplication of legal, administrative, organizational and financial burdens for participants of the Polish capital market, which are not required by EU law and do not serve the purpose of its harmonization, and thus to the multiplication and exacerbation of barriers to its development.
- We propose the introduction of an expanded definition reading as follows:

"Gold-plating describes a process by which a Member State which has to transpose EU Directives into its national law, or has to implement EU legislation, uses the opportunity to impose additional requirements, obligations or standards on the addresses of its national law that go beyond the requirements or standards foreseen in the transposed EU legislation.", i.e. the definition introduced by the European Commission in the "Better Regulation Guidelines" (Commission Staff Working Document, SWD (2017) 350, 7 July 2017, p. 88, Glossary, publication available at: https://ec.europa.eu/info/law/law-making-process/planning-andproposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox_en).

- The EU considers gold-plating permitted yet undesirable, since, while hampering harmonization of EU law, it is a barrier to the development of the single market and sector markets, e.g. Capital Markets Union and free movement of capital.
- Although there is no EU-level prohibition of gold-plating, some Member States, in order to protect local businesses and their competitive positions in the European market, apply rules prohibiting the introduction of excessive regulations or restricting them to exceptional cases preceded with the regulatory impact assessments as regards costs, administrative and financial burdens for stakeholders and influence on their competitiveness compared with businesses from other Member States. For example:
  - The United Kingdom prohibited gold-plating unless it were to serve its interests; even then, however, prior to adopting an excessive regulation, it required performance of a cost benefit analysis, stakeholder consultations, regulatory impact assessment and consent of the Reducing Regulation Committee;
  - France introduced a statutory prohibition of gold-plating; derogations from this prohibition may be granted exclusively when they are justified by the identified national priorities;

– Germany did not introduce a formal prohibition of gold-plating; gold-plating is eliminated on a factual basis such that: “EU law is to be implemented 1:1.”

> In Poland, gold-plating is legally permitted, as it is not prohibited by generally applicable laws. The regulations regarding gold-plating permit its application in particularly justified cases only. This prohibition concerns, however, exclusively the Council of Ministers and refers to its right of legislative initiative. This results from § 30 sec. 2 of the Rules and Regulations of the Council of Ministers, which reads as follows:

> “The draft act aiming to implement the European Union law may contain provisions going beyond this aim in particularly justified cases only. In such an event, the requesting authority shall append the draft with a tabular statement of the proposed provisions of the act that go beyond the aim of implementing the European Union law along with the explanation of the necessity to have them included in this draft, hereinafter referred to as the «reverse correlation table».”

> In the draft, we have identified numerous examples of gold-plating in Polish capital market law, but there could be many more instances of gold-plating in Poland. This permits the conclusion that gold-plating is a common practice in Poland.

> We call for actions aimed to derogate from the excessive regulations in the Polish law.

> We call for actions aimed to eliminate the gold-plating practice in Poland in the future, in particular through:

– introduction of a legal definition of gold-plating;

– limitation of the possibility to apply gold-plating by introducing its general prohibition with derogations restricted to exceptional cases serving the achievement of specific goals, protection of specified values, benefits for defined groups of stakeholders, with the goals being enumerated in the reasons for the respective legal act, e.g. reduction of regulatory and financial burdens, increase in competitiveness of Polish businesses, benefits for Polish businesses or Polish economic interests taking into account the necessity to ensure an appropriate level of protection to investors;

– extension of the scope of the examination, as part of the regulatory impact assessment (RIA), of draft normative acts serving the purpose of implementing the EU legislation by issues related to the introduction of excessive regulations (introduction of provisions to an extent unrequired by the European Union or broader than required);

– performance of a separate regulatory impact assessment with respect to excessive regulations in particular as regards the comparison to the solutions applied in other Member States, impact on entrepreneurship and competitiveness, introduction of administrative burdens and the related costs, satisfaction of the prerequisites for introducing excessive regulations, purposes of their introduction, potential benefits from regulations;

– reinforcement of the RIA Coordinator by establishing a standing team of professional

and experienced advisors on capital market whose role would be to participate in performing and preparing the regulatory impact assessment of the draft normative act at the preparation stage (i.e. before including it in the list of legislative works), in particular as regards the comparison to the solutions applied in other Member States, avoidance of excessive regulations, impact on entrepreneurship and competitiveness, introduction of administrative burdens and the related costs, satisfaction of the prerequisites for introducing excessive regulations, purposes of their introduction, potential benefits from regulations;

- stakeholder consultations on the regulatory impact assessment at an earlier stage of the legislative process, i.e. at the stage of RIA preparation by the RIA Coordinator, before submitting the draft normative act to the list of legislative works;
- introduction of clear and binding guidelines for the public officials engaged in EU law implementation process as regards the rules and methods of implementing the EU legislation to the Polish law, with “copy out” introduced as the main implementation method;
- creation of the excessive regulation register containing all excessive regulations in the Polish legislation and their justifications;
- periodic (e.g. every 3 years) review of excessive regulations, actual effects of their application (including stakeholder consultations) and their comparison to the regulations of the Member States where excessive regulations are not applied in the respective area;
- inclusion of the actual application method and the application of the implemented EU laws by state authorities, rather than a mere literal wording of the laws, to gold-plating.

PURPOSE OF AND NEED FOR THE REPORT

The observation of the wording of the regulations applicable in Polish capital market law and the methods of implementing EU legal acts to the Polish law applied by the Polish regulator in close cooperation with the supervisor leads to the conclusion that gold-plating is a common practice in Polish capital market law and, what is more, one applied on a grand scale and with commitment, surprisingly, also after the publication of the Strategy (i.e. since November 2019).

Gold-plating is an unfavourable, and hence undesirable, phenomenon. Some Member States use legal mechanisms that effectively protect them from excessive implementation of the obligations arising from EU law, also through introduction of strict measures in the form of prohibition of gold-plating and liability for its breach.

Introducing stricter obligations than the minimum requirements arising from EU law with respect to participants of the Polish capital market results in increased administrative and financial burdens of the Polish economic operators compared to operators of the same type from other Member States operating in the same market. Consequently, it leads to lower competitiveness of Polish operators.

Hopefully, this report will contribute to a broad market debate, where market participants will present their standpoints on the effect of gold-plating on their business activities and market positions and express their postulates for the future.

We intend this report to:

- present the identified instances of gold-plating: see Section VII and the expanded version contained in the table appended to the report,
- describe the legal situation regarding gold-plating in Poland: see Section VI,
- describe the European Union's approach to gold-plating: see Section IV,
- present the legal measures applied by selected Member States to combat gold-plating: see Section V,
- propose measures aimed to rationalize the issue of excessive regulations in the Polish law: see Section VIII.

CONCEPT OF GOLD-PLATING

Presentation of selected definitions of gold-plating requires a prior indication of its sources. Polish capital market law is based on the EU legislation. EU institutions legislate by, in particular, adopting regulations and directives. Regulations have direct effect, which means that they become part of the national legal system on their entry into force with no need of being transposed (in principle). Directives, in turn, must be implemented to national legal systems. This results from the fact that they bind Member States as regards the purpose of the regulation, while enabling them to select the methods and means for achieving this purpose by a specified deadline. Directives contain at the same time the minimum requirements the satisfaction of which is to lead to harmonization of the Member States' legislations in the area regulated by the respective directive.

Implementation of a directive to the national legal system requires that a legal act is adopted or an existing legal act, i.e. a statutory act or a regulation, is amended. Hence, it is necessary to commence a legislative process as part of which the wording of the Polish laws the adoption of which will constitute implementation of a directive will be determined. It is the works on the wording of such laws that allow space for introducing excessive regulations with respect to the minimum requirements arising from the implemented directive.

Consequently, the most common source of gold-plating in Poland is the process of implementing directives to the Polish law.

Directives may be implemented to national legal systems using various methods, from among which the following are the most relevant for the purposes of this report: the "copy out" method, the "copy out" method extended by the necessity to adapt the wording of directives to the legal institutions and concepts existing in the Polish legal system and methods of going beyond the minimum requirements provided for in the implemented directive, which normally result in introducing additional provisions having no bases in the wording of the implemented directive and, frequently, also the purpose to be achieved by it.

The "copy out" methods ensure that directives are implemented according to the 1:1 model and, in principle, are an effective barrier to introducing excessive regulations, whereas the natural consequence of other implementation methods is going beyond the framework of the implemented directive. What needs to be borne in mind is that a thorough interpretation of the European laws must be made, since provisions worded in a certain manner may be interpreted differently in different legal systems.

It is characteristic that the Member States which have introduced anti-gold-plating regulations implement directives using the "copy out" method or the "copy out" method extended by the necessity to adapt the wording of directives to the legal institutions and concepts existing in their legal systems.

The concept of gold-plating is not defined in a uniform manner. The European Commission defined gold-plating e.g. in "Better Regulation Guidelines" (Commission Staff Working Document, SWD (2017) 350, 7 July 2017, p. 88, Glossary, publication available at: https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox_en):
"Gold-plating describes a process by which a Member State which has to transpose EU

Directives into its national law, or has to implement EU legislation, uses the opportunity to impose additional requirements, obligations or standards on the addresses of its national law that go beyond the requirements or standards foreseen in the transposed EU legislation."

Polish translation of the foregoing:
„Gold-plating opisuje proces, przez który państwo członkowskie, które musi transponować unijną dyrektywę do prawa krajowego lub musi implementować unijne ustawodawstwo, korzysta z okazji do nałożenia dodatkowych wymagań, obowiązków lub standardów na adresatów prawa krajowego, które wykraczają poza wymagania czy standardy przewidziane w transponowanym ustawodawstwie unijnym".

An exhaustive definition of gold-plating was adopted in the United Kingdom. The UK Department for Business, Energy & Industrial Strategy, in the document of 2018 titled "Transposition guidance. How to implement European Directives effectively"), published at: https://www.gov.uk/government/publications/implementing-eu-directives-into-uk-law, provides the following definition of gold-plating:
"**What is gold-plating?**
Gold-plating is when implementation goes beyond the minimum necessary to comply with a Directive, by:

- extending the scope, adding in some way to the substantive requirement, or substituting wider UK legal terms for those used in the Directive; or
- not taking full advantage of any derogations which keep requirements to a minimum (e.g. for certain scales of operation, or specific activities); or
- retaining pre-existing UK standards where they are higher than those required by the Directive; or
- providing sanctions, enforcement mechanisms and matters such as burden of proof which are not aligned with the principles of good regulation; or
- implementing early, before the date given in the Directive."

Polish translation of the foregoing:
„Co to jest gold-plating?
Gold-plating ma miejsce, kiedy implementacja wykracza poza minimum konieczne do zapewnienia zgodności z Dyrektywą, poprzez:

- rozszerzenie zakresu, dodanie w jakiś sposób do materialnych wymagań lub zastąpienie szerszych pojęć prawnych tymi użytymi w Dyrektywie; lub
- nieskorzystanie w pełni z derogacji, które utrzymują wymagania na minimalnym poziomie (np. dla pewnych skal operacji lub konkretnych działań); lub
- utrzymanie wcześniej istniejących standardów w sytuacji, gdy są one wyższe niż te wymagane przez Dyrektywę; lub

> wprowadzanie sankcji, mechanizmów wykonawczych i spraw, takich jak ciężar dowodu, które nie są zgodne z zasadami dobrych regulacji; lub
> wczesne implementowanie przed datą określoną w Dyrektywie".

In Poland, the definition of gold-plating was included in the Strategy. According to it, gold-plating should be understood as: "implementation of European Union laws which goes beyond the minimum requirement." (p. 77)

In the context of the definitions of gold-plating presented above, the Polish definition seems to be quite narrow and laconic on the one hand and, depending on the interpreter, it might encompass also the issue of applying provisions on the other hand. The above definition boils down to deeming regulations that are identical to the provisions of the implemented directive in terms of the subject matter yet implemented to a broader extent than the minimum required by it as gold-plating. Therefore, when examining the existence of gold-plating in the Polish law, according to this definition, in simplified terms, one should juxtapose the wording of a provision of a directive with the wording of the implemented Polish provision and compare the wording of the Polish provision to the EU one it implements in terms of the former being broader or not. If it is broader, gold-plating occurs; if not, it does not occur.

Such an understanding of gold-plating results in leaving significant issues outside the scope of the regulation of this definition; the issues are e.g. derogation from the national provisions or standards that are broader than the minimum requirement, the implementation deadline, sanctions or introduction of provisions going beyond the subject matter of the regulation of the provisions of the implemented directive, i.e. having no legal basis in them (a relevant provision the wording of which to be juxtaposed and compared) while implementing and within the directive.

If, however, the term "implementation of [...] laws which goes beyond the minimum requirement" were to be considered as one encompassing not only the wording of provisions *expressis verbis* but also their implementation, application and interpretation, the definition would need to be considered as encompassing not only the introduction of provisions analogous to the ones contained in European laws to Polish laws, but also introduction of such provisions to Polish laws and such an interpretation and such a conduct of the authorities applying such provisions as ensure that the effect of their application corresponds to the wording of the European provisions and the intentions of the European legislature.

Such an understanding of the concept of implementation is shared by some relevant publications: C. Mik, *Metodologia implementacji europejskiego prawa wspólnotowego w krajowych porządkach prawnych* [Methodology for the implementation of European Community law in national legal systems] [in:] *Implementacja prawa integracji europejskiej w krajowych porządkach prawnych* [Implementation of European integration law in national legal systems], ed. C. Mik, Toruń

1998, pp. 28–29.

Applying such a narrow definition of gold-plating might not contribute to removing or identifying all excessive regulations in the Polish law and preventing them from being legislated in the future. This is because the legal analyses and identified instances of excessive regulations lead to the conclusion that the primary source of over-regulation in Poland is production of provisions that have no legal bases in EU law whatsoever rather than implementation of provisions which goes beyond the EU minimum. In this context, the very fact of introduction and application of such provisions is in a certain conflict with a "minimum" that is non-existent, unrequired, in EU law.

Another source of the actual over-regulation is the very application of provisions by state authorities in a manner that is stricter than the provision having its source in the European legislation and that goes beyond it and, first of all, in a stricter manner than the one in which such a provision is implemented and applied in other Member States.

In order to remove excessive regulations from Polish capital market law, and hence remove regulatory barriers to the development of such market, a modification of the definition of gold-plating to encompass the introduction of provisions having no legal bases in EU law while implementing EU legal acts should be considered. This seems to be necessary if the established practice applied in this respect in Poland is to be eliminated.

In Poland, it seems most reasonable to use a definition based on the definition provided by the European Commission in "Better Regulations Standard" reading as follows:

> "Gold-plating describes a process by which a Member State which has to transpose EU Directives into its national law, or has to implement EU legislation, uses the opportunity to impose additional requirements, obligations or standards on the addresses of its national law that go beyond the requirements or standards foreseen in the transposed EU legislation."

EUROPEAN UNION VERSUS GOLD-PLATING

European Union Institutions notice the issue of gold-plating and take stance on it in a variety of contexts and documents.

The most important ones are general, regarding the legislation process, transposition and enforcement of EU law as well as check on the correctness of transposition of directives to national legal systems, and consequently applicable to the entire EU legislation regardless of its subject matter. The other group of documents concerns the capital market.

1. PROCESS OF BETTER LAWMAKING

The European Commission and the European Parliament were engaged in the process of developing mechanisms for better law-making for a dozen or so years. The aim of these actions was to not only simplify and improve the existing EU legal regulations but also to develop rules for designing new regulations, ensuring their correct implementation and enforcement.

In the numerous documents issued by the Commission and the Parliament over years, it was emphasized that the measures taken at the EU level are insufficient to ensure the proper quality ad effectiveness of EU law. In order to achieve this aim, it is necessary for Member States to establish cooperation consisting in a correct transposition of EU law to national legal systems to ensure its enforceability.

The risks brought by gold-plating in this context were indicated in the documents on numerous occasions. For example, the following standpoints touching upon the issue of gold-plating can be enumerated:

a) “Commission Working Document, Second progress report on the strategy for simplifying the regulatory environment” of 30 January 2008, COM(2008) 33 final, where the European Commission indicated as follows:

“[…] In the same vein, national, regional or local authorities in charge of transposing and implementing EU law should strive to complement the work done in Brussels. Too often late transposition or layers of “gold-plating” erode the simplifying effect of EU rules. The work currently being carried out to map and measure administrative burden in certain policy areas is expected to provide interesting lessons in this regard. In line with its recent Communication «A Europe of Results – Applying Community Law», the Commission will intensify its upstream efforts to prevent infringements of EC law by improving the quality of assistance it offers to Member States to facilitate the correct transposition and application of directives. Finally, since the greater part of the EU regulatory landscape is not shaped at Community level, simplification programmes must also be developed or reinforced at national (and where appropriate, regional) level to tackle the reams of red tape which spew forth independently of EU legislation. In future, the Commission will place the emphasis on this aspect when it looks at the National Reform Programmes submitted in the context of the Lisbon Agenda.”

b) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions “Smart Regulation in the European Union” of 8 October

2010, COM(2010) 543 final, where the Commission indicated as follows in the section "Improving the stock of EU legislation. Evaluating benefits and costs of existing legislation":

> "[…] In light of the above, to step up efforts to improve the quality of existing legislation the Commission intends to:
> "(vi) Invite Member States to use the possibilities in EU legislation to waive obligations for businesses such as SMEs. The Commission has asked the High Level Group of Independent Stakeholders to present a report by November 2011 on best practices of Member States in implementing EU legislation in the least burdensome way. In parallel, the Commission will analyse further the issue of 'gold plating' and report on any substantial findings. […]."

The Commission included also the following definition of gold-plating in the document: "the practice of national bodies going beyond what is required in EU legislation when transposing or implementing it at Member State level."

c) In the European Parliament resolution of 4 September 2007 on Better lawmaking 2005: application of the principles of subsidiarity and proportionality — 13th annual report (2006/2279(INI)) (P6_ TA(2007)0364); „Better lawmaking 2005: subsidiarity and proportionality, European Parliament resolution of 4 September 2007 on Better lawmaking 2005: application of the principles of subsidiarity and proportionality" (publication available at: https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=urisery%3AOJ.CE.2008.187.01.0022.01.POL&toc=OJ%3AC%3A2008%3A187E%3ATOC#CE20 08187PL.01006701), the European Parliament indicated:

"[…] 11. Emphasises, in particular, that an effective strategy for the reduction of unnecessary European administrative burdens must be implemented both by the Commission, as regards unnecessary administrative burdens arising from European regulations and directives, and by the Member States, as regards such burdens arising from national legislation; calls on the Commission to take the lead and not to make its actions to reduce the unnecessary administrative burden at EU level dependent on the actions undertaken by the Member States at national level to reduce such unnecessary burdens arising from national legislation […]."

Polish translation of the foregoing:
„[…] podkreśla w szczególności, że efektywną strategię na rzecz obniżki zbędnych obciążeń administracyjnych w Europie musi wdrażać zarówno Komisja — w zakresie zbędnych obciążeń administracyjnych wynikających z europejskich rozporządzeń i dyrektyw, jak i państwa członkowskie — jeśli takie obciążenia wynikają z ustawodawstwa krajowego; wzywa Komisję do podjęcia inicjatywy i nieuzależniania działań na rzecz obniżki zbędnych obciążeń administracyjnych na szczeblu UE od działań podejmowanych przez państwa członkowskie na szczeblu krajowym na rzecz obniżki zbędnych obciążeń administracyjnych wynikających z prawodawstwa krajowego […]".

Moreover:
"[…] 28. Calls on the Member States to extend their efforts to reduce the burden resulting from purely national legislation […]"

Polish translation of the foregoing:
„[…] 28. Wzywa państwa członkowskie do zwiększenia wysiłków w celu zmniejszenia obciążenia wynikającego z czysto krajowego prawodawstwa […]".

d) In the European Parliament resolution of 4 September 2007 on the Single Market Review: tackling barriers and inefficiencies through better implementation and enforcement (2007/2024(INI)) – Single Market Review, OJ C 187E, 24.7.2008, P6_TA(2007)0367" (publication available at: https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=uriserv%3AOJ.CE.2008.187.01.0022.01.POL&toc=OJ%3AC%3A2008%3A187E%3ATOC#CE2008187PL.01006701), the European Parliament indicated:
"[…] Reducing administrative burdens
38. Points out that ex-post evaluation of legislation should also be undertaken to ensure that rules are working as intended and to highlight any unforeseen negative effects;
39. Shares the Commission's view that co-regulation and self-regulation can be tools which may complement legislative initiatives in some areas, while respecting the legislator's prerogatives; also stresses the effectiveness of closer cooperation in some areas, making it possible to move towards harmonisation on a voluntary basis;
40. Is of the opinion that inadequate transposition is one of the major barriers to the completion of the Single Market and that Member States are responsible for improving transposition and implementation of EU legislation; welcomes the improvement in national transposition and the aim of the above mentioned Brussels European Council gradually to reduce the target transposition deficit to 1%; calls on Member States to avoid the pitfall of national over-regulation ('gold-plating') […]."

Polish translation of the foregoing:
„[…] 38. Przypomina, że należy również prowadzić ocenę ex post aktów prawnych w celu upewnienia się, że przepisy funkcjonują zgodnie z założeniami, i naświetlenia wszystkich nieprzewidzianych skutków negatywnych;
39. Zgadza się z poglądem Komisji, że współregulacja i samoregulacja mogą być — przy poszanowaniu uprawnień organu prawodawczego — narzędziami uzupełniającymi inicjatywy prawne w niektórych dziedzinach; podkreśla również skuteczność ściślejszej współpracy w niektórych dziedzinach w celu osiągnięcia harmonizacji opartej na dobrowolności;
40. Uważa, że deficyt w zakresie transpozycji aktów prawnych jest jedną z głównych przeszkód w realizacji jednolitego rynku oraz że państwa członkowskie są odpowiedzialne za poprawę transpozycji i wdrażania aktów prawnych UE; z zadowoleniem przyjmuje poprawę transpozycji do prawa krajowego, a także cel ustanowiony przez wyżej wspomniany szczyt Rady Europejskiej w Brukseli, aby docelowy odsetek nietransponowanych aktów prawnych został stopniowo zmniejszony do 1%; wzywa państwa członkowskie do unikania niebezpieczeństwa nadmiernej regulacji krajowej (tzw. „gold plating") […]."

e) The Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016, Section VII. Implementation and application of Union legislation indicates:

"[…] 43. The three Institutions call upon the Member States, when they adopt measures to transpose or implement Union legislation or to ensure the implementation of the Union budget, to communicate clearly to their public on those measures. When, in the context of transposing directives into national law, Member States choose to add elements that are in no way related to that Union legislation, such additions should be made identifiable either through the transposing act(s) or through associated documents. 44. The three Institutions call upon the Member States to cooperate with the Commission in obtaining information and data needed to monitor and evaluate the implementation of Union law.

The three Institutions recall and stress the importance of the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents and of the Joint Political Declaration of 27 October 2011 of the European Parliament, the Council and the Commission on explanatory documents, regarding explanatory documents which accompany the notification of transposition measures […].”

f) In the final document on better law-making: “Commission Staff Working Document, Better Regulations Guidelines of 7 July 2017 SWD (2017) 350”, the Commission indicated:

“[…] 3.6. Implementation support and monitoring

The full benefits of an EU intervention will only be delivered if the policy is implemented and applied appropriately. Similarly, burdens for business may be increased beyond what is foreseen by the legislation if the Member States impose additional obligations (so-called „gold-plating”) or implement the legislation inefficiently. That is why it is essential to take into account implementation and enforcement issues when designing an EU intervention including the impact assessment process and associated stakeholder consultation. It is also important to identify ways to assist Member States in the transposition phase (aligning national legislation with EU legislation) by preparing ‚implementation plans’ (in the form of a SWD) which should also be subject to interservice consultation together with the impact assessment and the proposed intervention. Checks on transposition and assessments of compliance are also key tools used to monitor the correct application of EU legislation. (…)”. (p. 9)

“(…) Anticipate Implementation Problems And Facilitate Transposition: Implementation Plans45

Pursuant to the Interinstitutional Agreement on Better Law-Making4, the European Parliament, the Council and the European Commission have committed themselves to promote greater transparency about „gold-plating”. This should be achieved by providing information in the national transposing measure itself or in complementary materials notified by the Member States to the Commission. The Commission cannot insist that such information be provided”. (p. 34)

“(…) The Link Between EU Law And Member State Transposing Measures: Explanatory Documents63 Why is it important to make the link between EU law and national transposition measures?

The Commission is the guardian of the Treaties. That means that it has to monitor the application of EU law and should be able to identify clearly how a Member State’s legislation links with EU legislation64. The European institutions have agreed on a set of joint political declarations, which indicate how the Commission can be provided with this information on the transposition of directives. The Member States undertake to accompany the notification of transposition measures with one or more so-called explanatory documents, which can take the form of correlation tables or other documents serving the same purpose. The Commission must first justify the need for, and the proportionality of, providing such documents on a case by case basis when presenting its proposals […]”. (pp. 40–41)

2. Capital market

It must be noted that the European Commission considered gold-plating a barrier to the development of the Capital Markets Union (CMU). Already in its first communication on the establishment of the Capital Markets Union (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions titled "Action Plan on Building a Capital Markets Union", SWD (2015) 183 final, SWD (2015) 184 final), the Commission indicated:

„Removing national barriers to cross-border investment

Consistency in application, implementation and enforcement of the legal and supervisory framework is pivotal to the free movement of capital and the creation of a level playing field. Now that a significant number of EU financial provisions are in place to facilitate cross-border investment, the focus must move to effective implementation and enforcement. Barriers may have their origins in national legislation or administrative practice. Some relate to national „gold-plating" of EU minimum rules, while others may arise from divergent application of EU rules. Other barriers stem from national measures taken in areas where there is no EU legislation or where responsibility remains at national level.

For those barriers not addressed through other actions, including through supervisory convergence, the Commission will work with Member States to identify and dismantle them through a collaborative approach. The Commission will:

- *set up a network of 28 national contact points and engage in bilateral discussions on the potential for national action to lift barriers;*
- *develop best practice, scorecards, recommendations and guidelines based on the work within the network.*

The Commission, working with Member States, will map and work to resolve unjustified national barriers to the free movement of capital, stemming, amongst other things, from insufficient implementation or lack of convergence in interpretation of the single rulebook and from national law that are preventing a well-functioning Capital Markets Union and publish a report by the end of 2016."

Polish translation of the foregoing:

„Usuwanie krajowych barier w zakresie inwestycji transgranicznych

Spójność w zakresie stosowania, wdrażania i egzekwowania ram prawnych i nadzorczych ma decydujące znaczenie dla swobodnego przepływu kapitału i stworzenia równych warunków działania. Obecnie, gdy w UE obowiązuje wiele postanowień finansowych mających na celu ułatwienie inwestycji transgranicznych, należy skoncentrować się na ich skutecznym wdrażaniu i egzekwowaniu. **Bariery mogą wynikać z prawodawstwa krajowego lub praktyk administracyjnych. Niektóre odnoszą się do nadmiernie rygorystycznego wdrażania minimalnych przepisów UE, natomiast inne mogą wynikać z odmiennego stosowania przepisów UE.**

Jeszcze inne bariery wynikają z krajowych środków podjętych w dziedzinach, w których nie istnieje prawodawstwo UE lub odpowiedzialność spoczywa na organach krajowych.

Jeżeli chodzi o bariery nieuwzględnione w innych działaniach, w tym w ramach spójności w zakresie nadzoru, Komisja będzie współpracowała z państwami członkowskimi w celu ich określenia i zniesienia dzięki wspólnemu podejściu. Komisja podejmie następujące działania:

- stworzy sieć 28 krajowych punktów kontaktowych i weźmie udział w dwustronnych rozmowach na temat potencjału krajowych działań ukierunkowanych na zniesienie barier;
- opracuje najlepsze praktyki, karty wyników, zalecenia i wytyczne w oparciu o prace prowadzone w ramach tej sieci.

Komisja przy współpracy z państwami członkowskimi zidentyfikuje i podejmie działania mające na celu rozwiązanie problemu nieuzasadnionych krajowych barier utrudniających swobodny przepływ kapitału, wynikających między innymi z niewystarczającego wdrożenia lub braku spójności w interpretacji jednolitego zbioru przepisów i prawa krajowego, które uniemożliwiają sprawne funkcjonowanie unii rynków kapitałowych, oraz opublikuje do końca 2016 r. sprawozdanie".

The Commission's standpoint on the significance and effects of gold-plating in the process of building the Capital Markets Union and on the necessity to prevent it in order to harmonize and simplify the capital market law in Member States was shared by the European Parliament. Namely, in the "European Parliament resolution of 8 October 2020 on further development of the Capital Markets Union (CMU): improving access to capital market finance, in particular by SMEs, and further enabling retail investor participation (2020/2036(INI))", when presenting its opinion on the capital market structure, the European Parliament indicated:

"Observes that the regulation of financial services is a very complex undertaking, existing at international, European and national level; encourages all relevant actors to address this complexity in order to ensure the proportionality of financial regulation, and to remove unnecessary administrative burdens; also notes that proportionality of financial regulation can sometimes lead to increased complexity, and calls on the Commission and the Member States to commit to significant efforts to streamline and harmonise existing and future rules, by phasing out national exemptions as appropriate and by preventing the 'gold-plating' of EU law at national level; highlights that regulations with clear timelines for transition and the phasing-out of existing regimes can build a smooth and steady path to regulatory convergence […]."

3. Conclusion

Analysis of the content of the documents referred to above permits, in our opinion, the interpretation of European Union Institutions' present approach to gold-plating: an approach which has been shaped over years. Namely, gold-plating is a permitted and acceptable practice, but it is not a desirable practice, since it hampers harmonization of EU law by introducing differences to its wording, interpretation, application and enforcement. The harmonization of EU law reflected in its uniform wording, application and effective enforcement mechanisms in all Member States is a tool enabling the establishment and development of the European single market and its individual sectors, e.g. Capital Markets Union. Gold-plating, which contradicts harmonization of the law, might be a barrier to the development of the single market and Capital Markets Union.

Aware of the unfavourable effects of excessive regulations, the European Union has created the legal framework enabling the obtainment of information about the national legal norms adopted in connection with the implementation of directives to national legal systems from Member States. The information, provided in the form of tables (in Poland: correlation table and reverse correlation table), is supposed to ensure the European Union the knowledge of the wording of the implementation and facilitate the monitoring of and check on implementation correctness.

In practice, however, information flow in this channel is quite limited and ineffective. This is because the phenomenon of gold-plating is essentially based on (intended or not) actions of the Member States which implement and apply European laws excessively. It is Member States that are the source of such gold-plating. Hence, it is hard to imagine that Member States would actively inform the Commission about the instances of gold-plating unintended by their authorities or actively counteract the intended instances of gold-plating. Introducing an information channel between stakeholders of individual laws and the European Commission would ensure that the Commission is informed about instances of gold-plating, disregarding their purposefulness, much more efficiently and extensively.

As early as at the stage of legislation, European Union Institutions are obliged to allow for the necessity and methods of its later transposition to national legal systems on the one hand and entitled to check the correctness of its implementation on the other hand. According to "Better Regulations Guidelines" ("Commission Staff Working Document, Better Regulations Guidelines of 7 July 2017 SWD (2017) 350"), the check on implementation correctness is to be conducted in accordance with the following assumptions:

"[…] ***6. Monitoring Implementation Compliance assessment65***

The Commission is committed to more systematic monitoring of the implementation of legislation.66,67 This is done, inter alia, by conducting compliance assessments of both transposition and conformity of Directives. Compliance assessment is two-staged: First, the services carry out a transposition check (completeness), assessing the status of the transposition of the directive concerned. If Directives are not completely transposed,

services propose to launch an infringement procedure under Article 258 or, where a legislative Directive is concerned, in conjunction with Article 260(3) TFEU68. Once the transposition check is finalised and once possible ensuing infringement procedures for failure to communicate transposition measures have been closed, services should immediately start the second stage of the compliance assessment, the conformity check without excluding the possibility of launching conformity checks on parts of the Directive that have already been transposed completely. This check aims at getting a meaningful picture of the conformity of the legislation of the Member State with the Directive. Detailed guidance is provided in the Toolbox […]". (p. 42)

Therefore, it must be borne in mind that incorrect implementation of directives may result in instituting a procedure against a Member State, which means that the effects of excessive regulations (gold-plating) could prove painful for the Member State which applies them.

SELECTED MEMBER STATES VERSUS GOLD-PLATING

Regardless of the approach presented by the European Union, which considers gold-plating permitted, some Member States have taken measures to restrict or exclude the possibility to apply the practice of gold-plating.

The most spectacular example of a country which introduced such regulations is the United Kingdom, which, at the time of its membership in the European Union, prohibited gold-plating, save when its application was to serve its interests.

Protection of UK businesses, in particular from excessive administrative and financial burdens and from deterioration in their competitiveness compared with European Union businesses, was indicated as the reason for avoiding gold-plating.

The already cited "Transposition Guidance. How to implement European Directives effectively" explains the British government's approach to implementation of EU law and specifies directive implementation methods clearly and specifically.

While setting goals for the Guidance, it was indicated as follows:
"[…] The Guiding Principles are aimed at ensuring the UK systematically transposes so that burdens are minimised and UK businesses are not put at a disadvantage relative to their European competitors. The Principles state that, when transposing EU law, the government will:

- *ensure that (save in exceptional circumstances) the UK does not go beyond the minimum requirements of the measure which is being transposed;*
- *wherever possible, seek to implement EU policy and legal obligations through the use of alternatives to regulation;*
- *endeavour to ensure that UK businesses are not put at a competitive disadvantage compared with their European counterparts;*
- *always use copy-out for transposition where it is available, except where doing so would adversely affect UK interests e.g. by putting UK businesses at a competitive disadvantage compared with their European counterparts or going beyond the minimum requirements of the measure that is being transposed. If departments do not use copy-out, they will need to explain to the Reducing Regulation Committee (RRC) the reasons for their choice […]."*

The Guidance is, or rather was (as a result of it leaving the European Union, the United Kingdom will no longer implement the EU legislation from 1 January 2021), addressed to the officials engaged in the process of implementing EU law, in particular directives, to the British law.

The Guidance specified the guiding principles to be followed in the implementation process. In order to fully understand the applied approach and its categorical nature, it is worth familiarizing oneself with the most important ones:

- *"Guiding Principle: ensure that (save in exceptional circumstances) the UK does not go beyond the minimum requirements of the measure which is being transposed". (p. 6)*

This principle was expanded in item 2.2. of the Guidance, according to which:

"2.2. When transposing EU legislation, the aim should be to avoid going beyond the minimum requirements of the measure being transposed. Taking such an approach will ensure that the UK does not create unnecessary legislative

burdens and place UK business at a competitive disadvantage."

Pursuant to item 2.3., derogations from this principle are allowed exclusively in exceptional circumstances which justify them on condition that they serve UK interests:

"2.3 This principle should only be departed from where there are exceptional circumstances which would justify it. Such circumstances would include where going beyond the minimum requirements would serve UK interests by, for example, reducing the regulatory burden imposed on business".

> Guiding Principle: endeavour to ensure that UK businesses are not put at a competitive disadvantage compared with their European counterparts". (p. 7)

This principle was expanded in item 2.10. of the Guidance, according to which:

"2.10 Government policy is that you should not to go beyond the minimum requirements of European Directives, unless there are exceptional circumstances, justified by a cost-benefit analysis and consultation with stakeholders. Any gold- plating, as defined below, must be explained in your impact assessment and will need to be cleared by the Reducing Regulation Committee."

> *"Guiding Principle: always use copy-out for transposition where it is available, except where doing so would adversely affect UK interests e.g. by putting UK businesses at a competitive disadvantage compared with their European counterparts. If departments do not use copy-out, they will need to explain to the RRC the reasons for their choice." (p. 11)*

What follows from the foregoing is that the UK prohibited gold-plating except in situations where it served its interests. As a consequence, in the process of implementing EU law to the national law, it was in principle forbidden to go beyond the minimum requirements provided for in the European law. This aim was to be ensured by implementing directives with the "copy out" method.

Even if, in exceptional situations, an implementation going beyond the minimum requirements of EU law was intended, the regulation proposal had to be preceded with a cost benefit analysis, stakeholder consultations, and additionally explained in the regulatory impact assessment. Such a proposal required a previous assessment and acceptance of the Reducing Regulation Committee, i.e. a special committee at the governmental level performing, in particular, regulatory impact assessment.

The Reducing Regulation Committee was established in 2009 in order to improve regulatory scrutiny in the UK, including to reduce regulatory burdens, in particular through an ex ante impact assessment of the draft legal acts in terms of the effects of the regulations contained in them. The Committee is composed of subcommittees, which permits it to pursue an extended activity.

The very establishment and operation of this Committee at the governmental level expresses the British government's endeavour to legislate in a reasonable manner, to legislate only where necessary and to minimize the legal regulations which, prior to their implementation, are assessed by specialists in terms of their effects.

What deserves a mention is the provision saying that the purpose of the aforementioned guidelines, and therefore, in fact, the purpose of acting as part of implementation of laws is

that "UK businesses are not put at a disadvantage relative to their European competitors" even if the respective proposed over-regulation was to serve UK interests. Hence, such gold-plating as would result in British businesses being treated less favourably should not be introduced even if it served the national interests.

Gold-plating was prohibited also in France. It was noticed that excessive regulations reduce the competitiveness of the French economy and make it more difficult for French economic operators to compete in the European market with their counterparts from other countries. The prospect of Brexit and the French economic ambitions related to the consequences of the UK leaving the European Union were not insignificant for the process of combating gold-plating. In July 2017, the then French Prime Minister, Edouard Philippe, in his speech delivered at the opening of the European finance panel at the Europlace Forum in Paris, said:
„Notre objectif, c'est, dans toute la mesure du possible, d'éliminer la surtransposition des directives européennes qui est une spécialité bien française, qui peut d'ailleurs parfois se justifier. Après tout, ne critiquons pas ce qui a été fait. Il y a parfois des moments où la surtransposition peut avoir un intérêt, mais enfin, il ne faut pas que ça devienne une règle. Notre objectif, c'est de faire en sorte d'essayer de revenir à la norme commune européenne, c'est- à-dire au fond à celle qui dicte les conditions dans lesquelles la concurrence peut être effectuée et, après tout, être en concurrence avec les autres places financières sans alourdir la tâche n'est pas forcément une mauvaise idée." This means: "Our aim is, as far as possible, to remove over-regulations of European directives, which is our French specialty and which might be justified at times. We do not criticize what has been done. It might happen that over-regulations are in [our] interest, but this should not be a rule. Our aim is to assure you that we are making endeavours to return to the common European standard, that is, in simplified terms, one that imposes the conditions on which competition is to take place, and competing with other financial centres without introducing additional burdens seems to be a good idea."

Polish translation of the foregoing:
„Naszym celem jest – w zakresie w jakim jest to tylko możliwe – eliminować nadregulacje europejskich dyrektyw, co jest naszą francuską specjalnością, która czasami może być uzasadniona. Nie krytykujmy, tego co zostało zrobione. Zdarza się, że nadregulacje mogą być zgodne z [naszym] interesem, ale to nie powinno stanowić reguły. Naszym celem jest zapewnienie, że staramy się powrócić do wspólnego europejskiego standardu, czyli w uproszczeniu – tego, który narzuca warunki, na jakich ma być prowadzona konkurencja, a konkurowanie z innymi finansowymi miastami bez wprowadzania dodatkowych obciążeń jest raczej dobrym pomysłem".

Already in October 2017, public consultations were announced with the view to identify excessive regulations in the French law. The consultations were announced by the Ministry of Finance (publication available at: https://www.tresor.economie.gouv.fr/Articles/2

017/10/02/consultation-publique-sur-la-simplification-et-la-de-surtransposition-en-matiere-financiere).

They were open to all interested parties. The Ministry of Finance developed and published a form for reporting instances of gold-plating, which, due to its standardized character, certainly facilitated efficient review of the reported contents. According to the statement of the Ministry of Treasury, the consultations in the area of financial market were to cover:
„Toutes les activités financières qui constituent les canaux de transmission du financement de l'économie française, c'est-à-dire les activités bancaires, assurantielles, de gestion d'actifs et les marchés financiers (infrastructures de marchés, entreprises d'investissement, règles applicables aux émetteurs, etc.).” Which means: "All financial activities which constitute a channel of French economy finance transmission, i.e. banking, insurance, asset management, financial markets (market infrastructure, investment firms, rules referring to issuers etc.)".

Polish translation of the foregoing:
„Wszystkie aktywności finansowe, które stanowią kanał transmisji finansów francuskiej gospodarki, tj. bankowość, ubezpieczenia, asset management, rynki finansowe (infrastruktura rynku, firmy inwestycyjne, zasady odnoszące się do emitentów i inne)".

Finally, in 2018, "Le loi portant suppression de sur-transpositions de directives européennes en droit français" (publication available on: https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000037460424/) was enacted based on identified examples of gold-plating and introduced a general prohibition of gold-plating and performed deregulation.

The Council of Ministers issued a press release (publication available on: https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000037460424/) in connection with the works related to the aforementioned Act on 3 October 2018, which summarized the hitherto works and presented assumptions for the future.

The press release pointed that:
"The Minister for Europe and Foreign Affairs and the Minister to the Minister for Europe and Foreign Affairs, responsible for European affairs, have presented a draft law to abolish over-transpositions of EU directives under French law. This project is part of the Government's efforts to simplify administrative simplification and control of normative production in order to alleviate constraints on business competitiveness, the daily lives of citizens and the efficiency of public services.

To this end, the Prime Minister signed a circular on 26 July 2017 on the control of the flow of regulatory texts and their impact. It has set the principle of abolishing or, if it is not possible, simplifying at least two existing standards for the adoption of any new regulatory standard. In principle, this circular outlawed any transposition measure that went beyond the minimum requirements of a directive. It strictly supervised the exemptions and provided that inventory work would be carried out on existing over transpositions.

The Government is paying particular attention

to the phenomenon of over-transposition of the European Union directives, which consists of adopting national standards that are more stringent than those which are strictly the result of The European directives, without this being justified by the desire to achieve, at the national level, more ambitious targets than those set at European level in the area concerned. This may be the case, for example, where the law that transposes a directive into domestic law does not use the possibility of a waiver or exemption provided by it. The result is the accumulation of standards and formalities that unjustifiably penalize France's competitiveness and attractiveness, where our European partners will have made less restrictive choices for their businesses and citizens. In order to combat these over-transpositions, the Government has carried out an unprecedented work to identify and analyse the appropriateness of all national measures for transposing the directives that govern the internal market of the European Union.

At the end of this inventory, the Government proposes to eliminate certain formalities and standards deemed unjustified or penalizing, in the areas of consumer law, corporate law, financial services, public procurement, electronic communications, environmental law, transport, agriculture and culture. As a result, medium-sized enterprises will benefit from the annual financial statement relief provided by the 2013/34/EU Directive of 26 June 2013: they will now be able to establish an abbreviated income statement and publish an abbreviated balance sheet and annex, which will reduce their administrative burden and enable them to better protect their strategic financial data.

[…]

Beyond the work carried out, under this bill, on the stock of the directives in force, this process of administrative simplification and normative relief will continue, in the future, within the framework of the transposition of the new directives to be adopted by the European Union.

The Government intends to outlaw, in the bills it will submit to Parliament, measures of over-transposition that are not justified by an identified national priority".

The above passage reveals clearly that gold-plating was essentially prohibited in France. Its permissibility was limited to exceptional situations, which are justified by identified national priorities.

The issue of gold-plating was noticed also in the Federal Republic of Germany. The German Federal Government expressed its standpoint as to gold-plating in the reply given to the 19th German Bundestag to the "minor question asked by Members of Parliament Carl-Julius Cronenberg, Michael Theurer, Renata Alt and other Members of Parliament and by FDP (Letter no. 19/22317 – "Gold-Plating" procedure) during the implementation of European legal acts into the legal systems of individual Member States"[1], by pointing the following after the authors of the question:

> "Additional bureaucratic burdens are a nuisance to most economic operators and citizens. Brussels or the European Union are often perceived as the cause of such excessive regulations. However, in many cases this is only partially true because during the implementation of EU Directives into the law of the respective country (Member State) the

> legislature inserts additional national regulations. This way the implementation of the Directive is overfulfilled by means of regulations which were not stipulated therein. This procedure is designated as "gold-plating". There are both active gold-plating, where the regulations go beyond the minimum standards stipulated in the Directive, and passive gold-plating, where the simplification possibilities stipulated in the Directive are not applied."

(after: "Limitations of the gold-plating procedure during implementation of Directives and introduction of obligatory regulatory impact assessments to the legislative process", Subdivision Europe, Department Europe, project PE 6 – 3000 – 142/15 of 23 December 2015)

In the context of the principle of subsidiarity, the implementation of Directives by Member States on the national level in different manners seems to be in compliance with law. But if excessively bureaucratic regulations are enacted under the guise of an EU Directive, gold-plating constitutes a threat to the reputation of the EU among its citizens. A convoluted tangle of regulations is created for economic operators and consumers, which disturbs the equal opportunities in the internal market. Such forms of distortion of competition promote protectionist interests, which are in contravention to the functioning of the internal market. Examples can be found in the labour market and in social policy. For example, the Directive on Posting of Employees was not implemented precisely (on a 1:1 basis) although CDU, CSU and SPD espouse such a manner of its implementation in several sections of the coalition agreement […]."

As part of the EU ex ante review procedure, the National Regulatory Control Council (NKR) has reviewed the EU legislative proposals and their cost estimates since the beginning of 2016. Because approx. 50% of costs of the follow-up originates from Brussels, this actually affects Germany. In this context NKR states that "the quality of the EU estimates of follow-up costs leaves much to be desired" (after: "Bürokratieabbau. Bessere Rechtsetzung. Digitalisierung", p. 5, no. 10; publication available on: https://www.normenkontrollrat.bund.de/resource/blob/267760/444032/0277432480e047%20ede4%20be336b9fbf5f83/2017-07-12-nkr-jahresbericht-2017-data.pdf). In the case of regulatory proposals whose estimated annual cost of compliance with the laws in the whole of Europe exceeds EUR 35 million, the Federal Government must prepare its own estimation of follow-up costs for Germany in the future (after: https://www.normenkontrollrat.bund.de/nkr-de/ueber-uns/gesamtkonzept) […]". It seems, though, that the reply given by the Federal Government to question no. 3 below is crucial:

> "Does the Federal Government intend to introduce an «Anti-Gold-Plating Act» or a different Act with the same purpose (to eliminate regulations going beyond the minimum requirements of EU law and imposing excessive burdens on the economic operators in question)?".

The reply points that:

> "The coalition agreement between CDU, CSU and SPD provides that EU law shall be implemented on a 1:1 basis (line 2910). Therefore, a separate Anti-Gold-Plating Act is not anticipated."

The above means that the "copy out" method was adopted in Germany as the primary method of implementation of Directives. Gold-plating was not formally prohibited in Germany but it is eliminated in fact, by not going beyond the content of the Directives being implemented in the process of their implementation.

In addition, the information regarding the activities aiming to counteract gold-plating taken by Austria contained in the reply are also noteworthy.

> Namely, the reply points that: "(…) «Anti-Gold-Plating Act 2019» entered into force in Austria on 29 May 2019" (Federal Journal of Laws I no. 46/2019). The Anti-Gold-Plating Act intends to limit regulations that go beyond the minimum requirements of EU law and impose excessive burdens on the economic operators in question.
>
> This concerns, in particular, notification, reporting, authorization and control obligations. Thanks to that Federal Act, amendments for example to the company law and changes in the financial sector will be introduced. This way the legislature intends to prevent subsequent cases of gold-plating in the future. This way the item of the Austrian Government's agenda for the period 2017–2022 is implemented. In particular, the thematic area "Labour" provides that there will be no gold-plating during the upgrade of the labour law and the implementation of EU law (after: https://www.oeh.ac.at/sites/default/files/files/pages/regierungsprogramm_2017-2022.pdf, p. 146). Furthermore, the "Anti-Gold-Plating Act" constitutes the first step also in the process of preparation of a "Better Law-making Strategy", implemented by the Austrian Federal Government.

POLAND'S RELATION TO GOLD-PLATING

1. GOLD-PLATING AS A BARRIER TO DEVELOPMENT OF CAPITAL MARKET IN CAPITAL MARKET DEVELOPMENT STRATEGY

In November 2019, the Council of Ministers adopted the Capital Market Development Strategy ("Strategy"). The Strategy describes, among others, the present state of the capital market in Poland, the problems of this market and the barriers to its development. Moreover, measures aimed to eliminate the identified barriers and to develop the market were planned. Such measures were to be taken by the Finance Minister's Representative for the Implementation of the Capital Market Development Strategy appointed for this purpose, thematic working parties composed of organizations associating market participants in cooperation with the Ministry of Finance and the Polish Financial Supervision Authority (PFSA).

The Strategy points, among others, to gold-plating as one of the regulatory barriers to the capital market development.

The Strategy recommends taking remedial measures in the field of gold-plating by avoiding it:
"[…] Therefore, we should make all effort that the legislative solutions adopted in the Polish legislation do not impose an excessive burden on Polish entities, in particular in comparison to entities from other Member States, in which the corresponding transposition of the EU regulations into the national law is characterized by a literal approach to individual legal acts […]."

As regards the already transposed EU law acts, the Strategy recommends the identification of gold-plating cases and the elimination thereof from the Polish legal system, by stipulating the following:
"[…] Avoidance of gold-plating in national regulations. During the process of implementation of EU regulations into the national law, in certain cases stricter or farther-reaching solutions were adopted than resulting literally from the given EU legal act (so-called gold-plating), which led to occurrence of additional burdens on the part of stakeholders of the Polish market.
Thus, it seems reasonable that the Ministry of Finance together with the PFSA should establish a working party to conduct consultations with entities from all capital market sectors for the purpose of identifying the existing loopholes and gold-plated provisions. Any identified barriers should be eliminated or corrected in stages (the most important indicated barriers over the first 6 months from the establishment of the party, the remaining ones by the end of 2020) […]."

In addition, the Strategy contains guidance for implementation of EU law acts into the Polish law in the future:
"[…] Furthermore, each time when implementing new EU regulations into the Polish law or preparing national laws related to the capital market, an analysis of costs and benefits of the proposed amendments must be performed, while in the cases where the PFSA or the Government propose an implementation of stricter regulations than the EU norms, the proposed provisions shall be consulted with the entities which are to be bound by them [...]." (p. 39)

The establishment of a working party for gold-plating was indicated as the third, while avoidance of gold-plating as the twenty-second "most important measure planned as part of CMDS" (Appendix 8 to the Strategy).

2. GOLD-PLATING REGULATION IN THE POLISH LEGAL SYSTEM

The Act of 8 August 1996 on the Council of Ministers, which contains regulations concerning legislative initiative, does not include provisions concerning methods of implementation of EU law into the Polish legal system. Similar regulations are not included also in the Regulation, issued pursuant thereto, of the Prime Minister of 20 June 2002 on the "Principles of Legislative Technique", which specifies the manner of structuring of Polish law acts, in particular Acts and Regulations.

These topics were regulated in the Resolution no. 190 of the Council of Ministers – Rules of Procedure of the Council of Ministers of 29 October 2013 ("CM Rules of Procedure"), i.e. an act with a lower rank than an Act and a Regulation.

Pursuant to § 30 sec. 2 of the CM Rules of Procedure:
"A draft Act aiming to implement European Union law may contain provisions going beyond this purpose exclusively in particularly justified cases. In such an event, the requesting authority shall append the draft with a tabular statement of the proposed provisions of the Act that go beyond the aim of implementing the European Union law along with the explanation of the necessity to have them included in this draft, hereinafter referred to as the «reverse correlation table»."

The interpretation of this provision leads to the conclusion that gold-plating is permitted and acceptable in Poland. This assertion is not contradicted by the alleged limitation of its permissibility exclusively to "particularly justified cases." The concept of "particularly justified cases" is evaluative, extremely extensive and unspecific (general clause), which is the reason why it may cover a whole spectrum of various events depending on situation. In addition, it is not oriented towards achievement of a specific purpose. Such an approach means that the assessment whether going beyond the purpose of the Directive is "particularly justified" in specific circumstances is at the exclusive discretion of the regulator and supervisor, without any specific criteria and without the necessity to take into account purposes that are determined even generically, whose superiority or protection would justify going beyond the framework of EU regulations.

In our opinion, the limitation of permissibility of going beyond the purpose of a Directive exclusively to "particularly justified cases" is a purely theoretical, and consequently illusory, limitation.

In this context, it seems particularly important to extend the definition of gold-plating included in the Strategy. Its current material scope excludes the possibility to regard such provisions as gold-plating that go beyond the purpose of the Directive being implemented due the occurrence of "particularly justified cases", i.e. provisions of the Polish law implemented "on the occasion" of Directive implementation but without equivalents (legal bases) in its content.

To conclude, it must be stated that the issue of gold-plating in Poland is regulated at present in two acts issued by the Council of Ministers: the CM Rules of Procedure and the Strategy. Based on their literal content, an impression may be gained that the purposes of these regulations are inconsistent and can be even regarded as mutually exclusive to a certain extent. The CM Rules of Procedure permits

gold-plating (§ 30 sec. 2), while the Strategy orders to avoid and eliminate it (see Section III).

In order to present the full regulation concerning the methods of EU law implementation into the Polish law, we are drawing attention to the provision of § 30 sec. 1 of the CM Rules of Procedure, stipulating the following:

"Where a draft Act or a draft Regulation aims to implement a European Union law, the requesting authority shall additionally append the following to the draft:

1) a tabular statement of the provisions of the Directive or Directives the implementation whereof is the purpose of the draft, and the designed provisions of the Polish law, hereinafter referred to as «correlation table»;

2) an explanation specifying the causes of entry of the Act or Regulation or some of their provisions into force within the respective time-limit and containing information whether the proposed time-limit of entry into force takes into account the requirements for time-limits of implementation of a Directive or Directives, hereinafter referred to as «explanation for entry into force time-limit»."

Therefore, the aforementioned provisions cannot constitute clear and specific guidelines concerning methods of EU law implementation into the Polish law in terms of scope, content, manner or time-limit of implementation. They amount to the obligation to satisfy formal requirements being preparation of tables and submission of explanations, at the same time without developing the subject-matter rules of conduct of government officials involved in the implementation process.

IDENTIFIED EXAMPLES OF GOLD-PLATING

In cooperation with its members, CFA Society Poland has identified various cases of gold-plating in Polish capital market law. Due to their extensive nature, these identified examples of gold-plating are presented in a table forming an appendix to this report. The list included in the appendix is by no means exhaustive. It contains only a handful of examples of gold-plating, of which there are many more in Polish capital market regulations, let alone in the Polish legal system.

In identifying these examples, we applied the definition included in Section III. For the readers' convenience, here it is again: "Gold-plating describes a process by which a Member State which has to transpose EU Directives into its national law, or has to implement EU legislation, uses the opportunity to impose additional requirements, obligations or standards on the addresses of its national law that go beyond the requirements or standards foreseen in the transposed EU legislation." Moreover, we adopted a broader understanding of gold-plating, like in the broadly construed definition included in the Strategy (p. 77) discussed herein, encompassing also gold-plating that arises not merely from the provisions of law but from the practice of the authorities in the application of the law.

The cases of gold-plating presented herein only form a list of examples and are by no means exhaustive. Nevertheless, these are examples that are often harsh for the market participants and result in their considerably smaller competitiveness and limited possibilities of action in comparison with their counterparts from other Member States. The appointment of a team dedicated to the identification, description, presentation of examples of gold-plating to legislators and market participants would make it easier to accurately determine the scale and essence of the phenomenon and to eliminate it.

POSTULATES

The cases of excessive regulations specified in Section VII prove that gold-plating is present in the provisions of Polish capital market law. Similarly to the Strategy, CFA Society Poland supports the initiative to eliminate excessive regulations from the Polish law. However, the deregulation itself of the already existing cases of gold-plating is not sufficient for preventing the application of this practice in the future. Therefore, it is important to take up initiatives that would lead to the elimination of the practice of gold-plating in Poland in the future.

For this purpose, a uniform definition of gold-plating should be introduced in the first place. The definition used by the European Commission seems to be the most reasonable one:

> "Gold-plating describes a process by which a Member State which has to transpose EU Directives into its national law, or has to implement EU legislation, uses the opportunity to impose additional requirements, obligations or standards on the addresses of its national law that go beyond the requirements or standards foreseen in the transposed EU legislation."

We regard it desirable to introduce a general gold-plating prohibition together with a precise specification of exceptions that make it possible to depart therefrom. These exceptions should be specified on a directional basis, serve the achievement of specific goals, protection of specified (even generically) values, benefits for defined groups of stakeholders, e.g. reduction of regulatory and financial burdens, increase in competitiveness of Polish businesses, benefits for Polish businesses or Polish economic interests taking into account the necessity to ensure an appropriate level of protection to investors, or other transparent goals.

It is crucial that the information about the occurring exceptions and the application of gold-plating is publicly available in a clear and transparent manner along with the purposes they are supposed to serve. Such a situation would make it possible to perform a periodic assessment whether the application of gold-plating in a specific case was justified, whether it achieved the assumed goals and whether it is still necessary to maintain it.

For the purpose of preventing gold-plating, it would be reasonable to apply the already existing legal tools to a broader extent by their intensification or by the extension of their scope of application. In our opinion, for the purpose of diagnosing cases of excessive regulations already at an early stage of normative act preparation, the scope of the examination, as part of the regulatory impact assessment (RIA), of draft normative acts serving the purpose of implementing the EU legislation should be extended by issues related to the introduction of excessive regulations (introduction of provisions to an extent unrequired by the European Union or broader than required).

It would be also reasonable to perform a separate regulatory impact assessment with respect to excessive regulations in particular as regards the comparison to the solutions applied in other Member States, impact on entrepreneurship and competitiveness, introduction of administrative burdens and the

related costs, satisfaction of the prerequisites for introducing excessive regulations, purposes of their introduction, potential benefits from regulations.

For this purpose, it would be reasonable also to reinforce the RIA Coordinator by establishing a standing team of professional and experienced advisors on capital market whose role would be to participate in performing and preparing the regulatory impact assessment of the draft normative act at the assessment preparation stage (i.e. before including the act in the list of legislative works), in particular as regards the comparison to the solutions applied in other Member States, avoidance of excessive regulations, impact on entrepreneurship and competitiveness, introduction of administrative burdens and the related costs, satisfaction of the prerequisites for introducing excessive regulations, purposes of their introduction, potential benefits from regulations.

It seems necessary also to engage stakeholders in the process of assessing the effects of the planned regulations at a definitely earlier stage of the legislative process by conducting consultations of the regulatory impact assessment with the stakeholders already at the stage of RIA preparation by the RIA Coordinator before submitting the draft normative act to the list of legislative works.

The fact is that stakeholders are allowed to participate in public consultations of draft legal acts upon their submission for consultations. However, the practice shows that consultations concern legal acts with already developed assumptions and contents and are not very effective, basically due to the approval of the act's content by the supervisor and the necessity to finish the legislative works urgently. Such consultations also do not apply to all legal acts and in the case of some of them the time-limit for submitting comments is so short that it makes it difficult to do that. Shifting the burden of consultations and approvals to an earlier stage, being preparation of assumptions of a normative act and contents of legal norms, would result in the pre-approval of the acts published in the list.

In addition, not all stakeholders are informed about the pending works and the draft legal acts. It seems reasonable to inform them publicly about the pending works on the legal acts.

An approach that involves market professionals and practitioners in the law-making process ensures that the legal norms contain practical aspects related to their application, which undoubtedly exerts a positive influence not only on compliance with law and the degree of conformity with law in the process of its application but also on the uniformity of its application and interpretation. It makes it possible also to balance the interests of different groups of stakeholders, to avoid creating successive barriers to market development and to protect the Polish business. Last but not least, it efficiently increases the level of respect for the law created in such a manner.

Regardless of the foregoing, in order to eliminate gold-plating practices (including gold-plating resulting from the requirements and norms applied in real life to market participants), it would seem reasonable to introduce clear and binding guidelines for the public officials engaged in the EU law implementation process as regards the rules and methods of transposing the EU legislation to Polish law, with "copy and paste" introduced as the main implementation method.

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1 Reply submitted on behalf of the Federal Government by letter of the Federal Ministry of the Economy and Energy of 24 September 2020, no. 19/22840.

EXAMPLES OF GOLD-PLATING (PREPARED BY MEMBERS OF CFA SOCIETY POLAND)

I. Examples of gold-plating submitted to the Ministry of Finance

No.	Column I Wording of a provision of Polish law forming a manifestation of gold-plating (with an indication of the pertinent legal act and editorial unit).	Column II Wording of a provision of EU law with an indication of the pertinent legal act and editorial unit that has been transposed into the Polish legal system or interpreted in a manner resulting in gold-plating.	Column III Legal act by which the provision indicated in column I has been transposed into the Polish legal system.	Column IV Explanation of the manifestation of excessive regulation in the case at hand.
1	**Article 18(3)-(6) of the Act of 27 May 2014 on Investment Funds and Management of Alternative Investment Funds:** "3. The amount of the company's remuneration for the management of an open-end investment fund or a specialized open-end investment fund depends on the type of the investment policy pursued by the fund or the sub-fund and the investment risk. 4. The amount of remuneration for the management of an open-end investment fund or a specialized open-end investment fund should be set in such a	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act referred to in column III.	Act of 1 March 2018 Amending the Act on Trading in Financial Instruments and Certain Other Acts, which: 1) within the scope of its regulation, implements Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.06.2014, p. 349, OJ L 257, 28.08.2014, p. 1, OJ L 175, 30.06.2016, p. 8, OJ L 188, 13.07.2016, p. 28, OJ L 273, 08.10.2016, p. 35, and OJ L 64, 10.03.2017, p. 116);	No legal basis for introducing these provisions in EU legislation transposed into the Polish legal system by the Act referred to in column III, implementing MIFID II. Provisions added by the Polish regulator when MIFID II was implemented.

	manner as to ensure the protection of interests of investment fund participants and the competitiveness of investment funds. 5. The articles of association of an open-end investment fund or a specialized open-end investment fund may not provide for charging the fund's assets with costs associated with the sale and repurchase of participation units. 6. The minister in charge of financial institutions, having consulted the Authority, shall determine, by way of regulation, the maximum amount of the company's fixed remuneration for the management of an open-end investment fund or a specialized open-end investment fund, guided by the need to ensure the competitiveness of investment funds, in consideration of the financial standing of investment fund companies."		2) within the scope of its regulation, implements Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits (OJ L 87, 31.03.2017, p. 500); 3) serves the application of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.06.2014, p. 84, OJ L 270, 15.10.2015, p. 4, and OJ L 175, 30.06.2016, p. 1); 4) serves the application of Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending	

			Regulation (EU) No 648/2012 (OJ L 337, 23.12.2015, p. 1); 5) serves the application of Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.06.2016, p. 1, and OJ L 137, 24.05.2017, p. 41).	
2	All provisions of the Regulation of the Minister of Finance of 13 December 2018 on the Maximum Amount of the Company's Fixed Remuneration for the Management of an Open-End Investment Fund or Specialized Open-End Investment Fund, issued on the basis of the statutory delegation provided for in Article 18(6) of the Act on Investment Funds and Management of Alternative Investment Funds.	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act referred to in column III.	Act of 1 March 2018 Amending the Act on Trading in Financial Instruments and Certain Other Acts.	No legal basis for introducing these provisions in EU legislation transposed into the Polish legal system by the Act referred to in column III, implementing MIFID II. Regulation issued on the basis of the statutory delegation arising out of Article 18(6) of the Act on Investment Funds and Management of Alternative Investment Funds, which was added by the Polish regulator when MIFID II was implemented. There is no provision in MIFID II that would justify the need for the regulator to define the maximum amount of the management fee. The purpose of MIFID II is to ensure greater market transparency and to fully inform clients about

				the extent and amount of fees to be paid in connection with investing money in investment funds. Although the very idea of taking steps to reduce management fees seems justified and favourable for clients, imposing its amount in the form of a regulation is not justified in the light of MIFID II.
3	**Article 24(2b) of the Act of 27 May 2014 on Investment Funds and Management of Alternative Investment Funds:** "Amendments to the articles of association of an open-end investment fund or a specialized open-end investment by adjusting the company's fixed remuneration for managing the fund to a maximum amount specified in accordance with regulations issued pursuant to Article 18(6) does not require obtaining a permit.	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act referred to in column III.	Act of 1 March 2018 Amending the Act on Trading in Financial Instruments and Certain Other Acts.	No legal basis for introducing these provisions in EU legislation transposed into the Polish legal system by the Act referred to in column III, implementing MIFID II. Provisions added by the Polish regulator when MIFID II was implemented.
4	**Article 32a(7)(2)(b) of the Act of 27 May 2014 on Investment Funds and Management of Alternative Investment Funds:** "7. The entity referred to in Article 32(2), in connection with the provision of brokerage services related to the sale and	Article 24(9) paragraph 3 of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instrument amending Directive 2002/92/EC and Directive 2011/61/EU ("MIFID II"):	Act of 1 March 2018 Amending the Act on Trading in Financial Instruments and Certain Other Acts.	The provision of Article 32a(7)(2)(b) of the Act is an excessive regulation insofar as it requires that the source of the payment obligation or costs is a legal regulation in a situation where the pertinent provision of EU law does not introduce any such distinction.

	repurchase of units in investment funds or participation titles in foreign funds and open-end investment funds with their registered office in EEA countries or in connection with the provision of investment advisory services may not accept or transfer any cash benefits, including fees or commissions, or any non-monetary benefits, except for: 2) cash or non-cash benefits accepted or transferred to a third party that are necessary for the provision of the service to the client, in particular: b) taxes, public levies and other fees the payment of which arises out of legal regulations."	"The payment or benefit which enables or is necessary for the provision of investment services, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which by its nature cannot give rise to conflicts with the investment firm's duties to act honestly, fairly and professionally in accordance with the best interests of its clients, is not subject to the requirements set out in the first subparagraph."		
5	**Article 32a(7)(3)(c) of the Act of 27 May 2014 on Investment Funds and Management of Alternative Investment Funds:** "3) cash benefits and non-cash benefits other than those specified in items 1 and 2 if: a) they are accepted or transferred in order to improve the quality of the	Article 24(9) paragraphs 1 and 2 of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instrument amending Directive 2002/92/EC and Directive 2011/61/EU ("MIFID II"): "Member States shall ensure that investment firms are regarded as not fulfilling their obligations under Article 23	Act of 1 March 2018 Amending the Act on Trading in Financial Instruments and Certain Other Acts.	The provision of Article 32(7)(3)(c) makes the fulfilment of the information obligation referred to in Article 24(9) paragraph 2 of MIFID II a necessary condition for the transfer or receipt of benefits other than those specified in items 1 and 2 of Article 24(9) paragraph 1 of MIFID II and items 1 and 2 of Article 32a(7) of the Act, in a situation where MIFID II does not make the fulfilment of such information obligation a condition for the

	service provided by the entity referred to in Article 32(2) in favour of the client, b) their acceptance or transfer does not exert an adverse impact on the operation of the entity referred to in Article 32(2), in a reliable and professional manner, in compliance with the principles of fair dealing and in accordance with the best interests of such entity's client, c) information about the benefits, including their essence and amount, or, if the amount of such benefits cannot be estimated, about the manner of determining their amount, has been provided to the client or prospective client in a reliable, accurate and comprehensible manner prior to the commencement of provision of the service; this condition shall be deemed satisfied also in the event of providing the client or potential client with information in standardized form."	or under paragraph 1 of this Article where they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit in connection with the provision of an investment service or an ancillary service, to or by any party except the client or a person on behalf of the client, other than where the payment or benefit: (a) is designed to enhance the quality of the relevant service to the client; and (b) does not impair compliance with the investment firm's duty to act honestly, fairly and professionally in accordance with the best interest of its clients. The existence, nature and amount of the payment or benefit referred to in the first subparagraph, or, where the amount cannot be ascertained, the method of calculating that amount, must be clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant investment or ancillary		acceptance or transfer of the benefit, requiring only its provision in favour of the client.

		service. Where applicable, the investment firm shall also inform the client on mechanisms for transferring to the client the fee, commission, monetary or non-monetary benefit received in relation to the provision of the investment or ancillary service."		
6	**Article 32b(1) of the Act of 27 May 2014 on Investment Funds and Management of Alternative Investment Funds:** "1. The entities referred to in Article 32(1)(2) and (3) and Article 32(2) are required to provide clients, prior to the acceptance of an order to purchase participation units in an open-end investment fund or a specialized open-end investment fund, or participation titles in a foreign fund or an open-end investment fund with its registered office in an EEA country, or prior to the provision of investment advisory services, with a list of investment funds with which they have entered into an agreement for the acceptance and forwarding of orders to purchase or sell participation units or titles, or an agreement for the	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act referred to in column III.	Act of 1 March 2018 Amending the Act on Trading in Financial Instruments and Certain Other Acts.	No legal basis for introducing these provisions in EU legislation transposed into the Polish legal system by the Act referred to in column III, implementing MIFID II. Provisions added by the Polish regulator when MIFID II was implemented.

	intermediation in the sale or repurchase of participation units or titles."			
7	**Article 32b(2) of the Act of 27 May 2014 on Investment Funds and Management of Alternative Investment Funds:** "2. The entities referred to in Article 32(1)(2) and (3) and Article 32(2), are required to provide the company, in the manner and within the timeframe agreed with the company, with information and documents specifying activities aimed at improving the quality of the service provided to the participant or potential participant, as respectively referred to in: 1) Article 83d(1)(3)(a) of the Act on Trading in Financial Instruments – in the case of entities referred to in Article 32(1)(2) and (3), 2) Article 32a(7)(3) – in the case of entities referred to in Article 32(2) – rendered by these entities in favour of participants or potential participants of a fund whose participation units are sold through such entities, along with an indication of the amount of costs	Article 11(4) of Commission Delegated Directive (EU) 2017/593: "4. Investment firms shall hold evidence that any fees, commissions or non-monetary benefits paid or received by the firm are designed to enhance the quality of the relevant service to the client: (a) by keeping an internal list of all fees, commissions and non-monetary benefits received by the investment firm from a third party in relation to the provision of investment or ancillary services; and (b) by recording how the fees, commissions and non-monetary benefits paid or received by the investment firm, or that it intends to use, enhance the quality of the services provided to the relevant clients and the steps taken in order not to impair the firm's duty to act honestly, fairly and professionally in accordance with the best interests of the client."	Act of 1 March 2018 Amending the Act on Trading in Financial Instruments and Certain Other Acts.	The provision of Article 32b(2) of the Act is an excessive regulation insofar as: It requires providing the investment fund management company with information and documents specifying activities aimed at improving the quality of the service provided to the participant or potential participant to a greater extent than the list referred to in Article 11(4)(a) of Commission Delegated Directive (EU) 2017/593; It assumes that payment for activities aimed at improving the quality of services will be made following their provision and on the basis of the costs already incurred, in a situation where Article 11(4)(b) of the Directive also mentions the benefits "that it [the company] intends to use."

	incurred in connection with the provision of such services in the respective period."			
8	**Article 32b(3) of the Act of 27 May 2014 on Investment Funds and Management of Alternative Investment Funds:** "3. The company may, for the benefit of the entity referred to in Article 32(1)(2) or (3) or Article 32(2), effect payments to the extent that they constitute remuneration for the activities performed by such entities, as referred to in sec. 2, if the legitimacy of such payments has been verified by the company and confirmed on the basis of information and documents provided to the company in compliance with sec. 2."	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act referred to in column III.	Act of 1 March 2018 Amending the Act on Trading in Financial Instruments and Certain Other Acts.	No legal basis for introducing these provisions in EU legislation transposed into the Polish legal system by the Act referred to in column III, implementing MIFID II. Provisions added by the Polish regulator when MIFID II was implemented. MIFID II does not require the investment fund management company to verify and does not make the possibility of making a payment to a distributor contingent on the prior verification of evidence by the investment fund management company. In accordance with Article 11(4) of Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits – payment is supposed to be made in order to improve the quality of services provided to the client, while investment firms

				are required to be in possession of evidence that payments have been made in fulfilment of such purpose; the types of evidence to demonstrate such purpose are specified in Article 11(4)(a) and (b) of the said Directive;
9	**Article 32b(4) of the Act of 27 May 2014 on Investment Funds and Management of Alternative Investment Funds:** "4. The company's management board presents to the supervisory board, at least once per year, a report on the performance of the obligations referred to in sec. 3."	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act referred to in column III.	Act of 1 March 2018 Amending the Act on Trading in Financial Instruments and Certain Other Acts.	No legal basis for introducing these provisions in EU legislation transposed into the Polish legal system by the Act referred to in column III, implementing MIFID II. Provisions added by the Polish regulator when MIFID II was implemented.
10	**Article 83a(1)–(4) of the Act of 27 May 2014 on Investment Funds and Management of Alternative Investment Funds:** "1. The articles of association of an open-end investment fund should specify the categories of participation units: 1) sold by the fund directly; 2) sold by the fund through the entities referred to in Article 32(1) and (2). 2. The articles of association of an open-end investment fund shall specify the	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act referred to in column III.	Act of 1 March 2018 Amending the Act on Trading in Financial Instruments and Certain Other Acts.	No legal basis for introducing these provisions in EU legislation transposed into the Polish legal system by the Act referred to in column III, implementing MIFID II. Provisions added by the Polish regulator when MIFID II was implemented.

	maximum amount of the company's fixed remuneration for the management of the fund in respect of the participation unit category referred to in Article 1. 3. The amounts transferred to the intermediaries in the sale or repurchase of participation units referred to in Article 32(1) and (2) in connection with the activities performed by such entities with a view to improving the quality of the service provided to a participant or potential participant in an open-end investment fund may be taken into account only when determining the company's fixed remuneration for managing the fund that is charged against the fund's assets allocated to the participation unit category referred to in sec. (1)(2). 4. The provisions of Article 158 shall apply accordingly to the participation unit categories referred to in sec. 1."			
11	**§ 24(1) and (4) of the Regulation of the Minister of Finance, Investment and Development of 3 October 2019 on the Conduct of Entities Acting as**	Article 16(6) and (7) (paragraphs 1–3) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instrument	ND.	The Polish legislature has extended the obligation to record telephone conversations and electronic communication with clients to all services provided by entities subject to the

	Intermediaries in Selling and Repurchasing Participation Units and Participation Titles and Providing Investment Advice on Such Instruments: "The entity shall record telephone conversations a client in connection with the services provided, and shall prepare reports or notes on, or recordings of, conversations conducted in the direct presence of a client or prospective client in connection with such services. […] 4. The obligation referred to in sec. 1 also includes recording telephone conversations and saving electronic correspondence related to activities that might result in the provision of a service by the entity, even if such service is not rendered as a result of such conversations or communication. The obligation to record telephone conversations and to save electronic communication applies to devices used by the entity and, provided that the entity has approved for use any personal	amending Directive 2002/92/EC and Directive 2011/61/EU (MIFID II): "6. An investment firm shall arrange for records to be kept of all services, activities and transactions undertaken by it which shall be sufficient to enable the competent authority to fulfil its supervisory tasks and to perform the enforcement actions under this Directive, Regulation (EU) No 600/2014, Directive 2014/57/EU and Regulation (EU) No 596/2014, and in particular to ascertain that the investment firm has complied with all obligations including those with respect to clients or prospective clients and to the integrity of the market. 7. Records shall include the recording of telephone conversations or electronic communications relating to, at least, transactions concluded when dealing on own account and the provision of client order services that relate to the reception, transmission and execution of client orders. Such telephone conversations and electronic communications shall also include those		requirements of the Regulation referred to in column I (including the investment advisory service that may be provided by such entities) in a situation where MIFID II permitted the limitation of this obligation only to the service of executing orders on own account, accepting and transmitting orders and executing client orders. Bearing in mind the fact that this legal regulation also includes the obligation to record conversations that might result in the provision of a service – in practice, it imposes an obligation on regulated entities to record all telephone conversations with clients. However, this may have been limited solely to the 3 services specified in MIFID II.

	devices used by persons employed by the entity, also such personal devices."	that are intended to result in transactions concluded when dealing on own account or in the provision of client order services that relate to the reception, transmission and execution of client orders, even if those conversations or communications do not result in the conclusion of such transactions or in the provision of client order services. For those purposes, an investment firm shall take all reasonable steps to record relevant telephone conversations and electronic communications, made with, sent from or received by equipment provided by the investment firm to an employee or contractor or the use of which by an employee or contractor has been accepted or permitted by the investment firm.		
12	**Article 4(1) in conjunction with Article 4(6) of the Act of 11 April 2003 on Agricultural System Formation:** "1. If an agricultural property is acquired as a result of: 1) the execution of an agreement other than a purchase agreement, or	NO LEGAL BASIS IN EU LAW.	NO IMPLEMENTING LEGISLATION.	Pursuant to Article 4(1) in conjunction with Article 4(6) of the Act of 11 April 2003 on Agricultural System Formation, if a commercial company that is the owner or perpetual usufructuary of an agricultural property with an area of at least 5 ha intends to issue shares, the National Agricultural Support Centre (KOWR) is

	2) a unilateral legal transaction, or 3) a ruling of a court or public administration authority or a ruling of a court or enforcement authority issued on the basis of regulations on enforcement proceedings, or 4) any other legal transaction or legal event, in particular: a) usucaption of an agricultural property, inheritance or specific bequest the object of which is an agricultural property or a farm, b) demerger, transformation or merger of commercial companies – the National Centre acting for the benefit of the State Treasury may submit a declaration on the acquisition of such property for the payment of the price for such property. […] 6. The provisions of sec. 1–3, sec. 4(2)(b)–(g), Article 3(10) and (11) and Article 3a(3)–(6) shall apply accordingly to the acquisition of shares and stocks in a commercial law company that is the owner or perpetual usufructuary of an			entitled to purchase the Offered Shares for a price equal to the issue price. This means that the issuer, having completed the Public Offering, having collected the interest of institutional investors (book-building), having collected subscriptions for its shares by retail investors and having accepted payments from investors, must apply to the KOWR for a decision regarding the exercise of its right of first refusal. In this situation, it is impossible to market allotment certificates as their marketability would be limited. In accordance with the provisions of the Act on Agricultural System Formation, the company is required to notify the KOWR about the possibility of exercising its right to purchase the Offered Shares promptly after the registration by the district court of the share capital increase by way of an issue of the Offered Shares. This situation leads to the actual freezing of investors' funds for a period of several weeks until the court registers the increase in the share capital plus the 2 months resulting from the right granted to the KOWR.

	agricultural property with an area of at least 5 ha or of agricultural properties with a total area of at least 5 ha, except where the buyer of such shares or stocks is the State Treasury. In the event of the acquisition of shares or stocks in such company as a result of an increase in the share capital, the notification referred to in sec. 5 shall be made by the company following the entry of such increase in the register of commercial undertakings kept in compliance with the regulations on the National Court Register."			The KOWR may exercise its right to purchase the Offered Shares within two months from the date of receipt of such notification from the company. If the company fails to notify the KOWR, it runs a risk that the issue of the Offered Shares will be invalidated. If the KOWR, as a result of such notification, exercises its right to purchase all or only some of the Offered Shares in compliance with Article 4(1) in conjunction with Article 4(6) of the Act on Agricultural System Formation, then investors who will become the owners of the Offered Shares for which the KOWR has submitted a declaration of their purchase to the company will receive from the KOWR, in exchange for the transfer of such Offered Shares to the KOWR, an amount equal to the product of the issue price and the number of the Offered Shares in respect of which the KOWR has exercised its right of purchase. This amount may be lower than the investor's total expenses for the subscription for the Offered Shares, because such expenses may include, in addition to the issue price, also the purchase price for the Unit Subscription Rights, which applies, for instance, to investors who were not

				shareholders of the Company as at the Subscription Right Date and purchased their Unit Subscription Rights on the secondary market. Moreover, the Act on Agricultural System Formation does not specify the manner of identification of the shares or shareholders in respect of which the KOWR intends to partially exercise its right to purchase the shares. As a consequence, it is impossible to rule out that the adopted method of determining which of the Offered Shares have been purchased by the KOWR will be effectively challenged in the future. Among the large companies listed on the Warsaw Stock Exchange and companies that intend to apply for admission and introduction to trading, it would be very difficult to find any that do not own or hold in perpetual usufruct any agricultural property with an area of at least 5 ha. Managing this kind of risk before a Public Offering may be difficult due to the company's inability to sell agricultural land or because the process might take too long. It

				should be added that in the case of the sale of agricultural land, the KOWR also has the right of first refusal. As a consequence, companies listed on the Warsaw Stock Exchange and those considering a Public Offering assuming an increase in their capital have a limited possibility of obtaining it. The execution of such a transaction renders it less profitable than if it were executed on market terms and thus makes it difficult to accept, especially by foreign institutional investors who would lose the opportunity to trade in securities (allotment certificates) for approx. 3 months (the period necessary for the court of registration to make the entry plus by the maximum waiting period for the KOWR decision). Moreover, there are no guidelines regarding the interpretation of the provisions of the Act or the procedure to be applied for the execution of this type of project. Recently, a company has even decided to suspend the approval procedure for its prospectus by the Polish Financial Supervision Authority (KNF) pending regulatory amendments, see **Grupa Azoty Zakłady Chemiczne Police, Current Report No. 32/2019.** Ultimately, the company

				has decided to go ahead with the Public Offering, but the funds obtained from the issue were much lower than originally intended. The obligation to regulate this aspect does not arise from EU law.
13	**Article 8(1)-(4) of the Act of 15 January 2015 on Bonds:** "1. Bonds must be in book-entry form. 2. Bonds are subject to registration in the securities depository kept in compliance with the provisions of the Act of 29 July 2005 on Trading in Financial Instruments (Journal of Laws of 2020, items 89, 284, 288 and 568), hereinafter referred to as the "Act on Trading in Financial Instruments". 3. The provisions of the Act on Trading in Financial Instruments shall apply to the creation and transfer of rights attaching to bonds. 4. Once the entitlement to the benefits arising out of the redemption of the bonds has been determined, the rights attaching to such bonds may not be transferred."	NO LEGAL BASIS IN EU LAW.	NO IMPLEMENTING LEGISLATION, Amendment adopted: Article 14 of the Act of 9 November 2018 Amending Certain Acts in Connection with the Strengthening of Supervision over the Financial Market and Protection of Investors in such Market;	No such requirement regarding bonds in EU regulations (EU requirements apply only to shares). The need for book-entry form of all bond issues, even those performed within the framework of bilateral transactions, will lead to a reduced ability to use bonds as an enterprise financing instrument, especially by small and medium-sized enterprises (SMEs). It will also result in extending the duration of the process of obtaining capital from this source and increasing the costs of the issue itself. Amendments in this area should refer to all issues except for bilateral issues, i.e. those executed by an issuer and subscribed for by a single investor.

14	**Article 37b(1) of the Act of 29 July 2005 on Public Offering and the Terms and Conditions for Introducing Financial Instruments to an Organized Trading System and on Public Companies:** "1. The publication of a prospectus, provided that an information memorandum has been published, is not required for a public offering of securities as a result of which the assumed gross proceeds to be generated by the issuer or the offeror in the territory of the European Union, calculated at the issue price or purchase price as at the date of its determination, are not less than EUR 1,000,000 and less than EUR 2,500,000, and together with the proceeds that the issuer or the offeror intended to obtain from such public offerings of such securities effected during the preceding 12 months, are not less than EUR 1,000,000 and less than EUR 2,500,000."	Article 3(2)(b) of Regulation (EU) 2017/1129 of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC of 14 June 2017: "2. Without prejudice to Article 4, a Member State may decide to exempt offers of securities to the public from the obligation to publish a prospectus set out in paragraph 1 provided that: (a) such offers are not subject to notification in accordance with Article 25; and (b) the total consideration of each such offer in the Union is less than a monetary amount calculated over a period of 12 months which shall not exceed EUR 8,000,000.	Act Amending the Act on Public Offering and the Terms and Conditions for Introducing Financial Instruments to an Organized Trading System and on Public Companies and Certain Other Acts of 16 October 2019	Limitation of the value of public offerings effected on the basis of an information memorandum not approved by the Polish Financial Supervision Authority to EUR 2.5 million in the last 12 months. EU regulations permit EUR 8 million in this respect.
15	**Article 3(1a) of the Act of 29 July 2005 on Public Offering and the Terms and Conditions for Introducing Financial**	Article 1(4)(b) of Regulation (EU) 2017/1129 of the European Parliament and of the Council on the prospectus to	Act Amending the Act on Public Offering and the Terms and Conditions for Introducing Financial Instruments to an	Limitation of the number of persons to whom the purchase offering may be addressed to 149 investors. EU regulations impose this limit per

	Instruments to an Organized Trading System and on Public Companies: "1a.[6)] The public offering of securities referred to in Article 1(4)(b) of Regulation 2017/1129 in respect of which the number of persons to whom such offering is addressed, along with the number of persons to whom the public offerings referred to in Article 1(4)(b) of Regulation 2017/1129 are addressed for the same type of securities, effected in the period of the previous 12 months, exceeds 149, requires the publication of the information memorandum referred to in Article 38b, which is subject to approval by the Authority."	be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC of 14 June 2017: "4. The obligation to publish a prospectus set out in Article 3(1) shall not apply to any of the following types of offers of securities to the public: (b) an offer of securities addressed to fewer than 150 natural or legal persons per Member State, other than qualified investors."	Organized Trading System and on Public Companies and Certain Other Acts of 16 October 2019	issue, while the Polish legislature has extended this limit to all issues of the respective type effected by the issuer in the last 12 months.
16	**Article 7a of the Act of 29 July 2005 on Trading in Financial Instruments:** "1. In the case of bonds issued under the Act of 15 January 2015 on Bonds (Journal of Laws of 2018, items 483 and 2243, and of 2019, items 1572, 1655, 1798 and 2217) and covered bonds issued on the basis of the Act of 29 August 1997 on Covered Bonds and Mortgage Banks	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act referred to in column III.	Act Amending the Act on Public Offering and the Terms and Conditions for Introducing Financial Instruments to an Organized Trading System and on Public Companies and Certain Other Acts of 16 October 2019	No EU regulations that introduce the institution of the issuing agent.

	(Journal of Laws of 2016, item 1771, of 2018, item 2243, and of 2019, item 2217), subject to Article 5a(2) of this Act, for which the issuer does not intend to apply for admission to trading on a regulated market or for introduction to the ATS, and in the case of investment certificates issued by a closed-end investment fund that is not a public closed-end investment fund, prior to the execution of an agreement the subject matter of which is the registration of such securities in the depository for securities, the issuer shall enter into an agreement for the performance of the function of an agent for the issue of such securities with an investment firm authorized to keep securities accounts or with a custodian bank."			
17	**Article 3(1a) of the Act on Public Offering and the Terms and Conditions for Introducing Financial Instruments to an Organized Trading System and on Public Companies:** "1a. The public offering of securities referred to in Article 1(4)(b) of Regulation	Article 2 and Article 1(1) and (4) of Regulation 2017/1129: Article 2, definition: 'offer of securities to the public' means a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and	Act Amending the Act on Public Offering and the Terms and Conditions for Introducing Financial Instruments to an Organized Trading System and on Public Companies and Certain Other Acts of 16 October 2019	In respect of offerings for which, in compliance with Regulation 2017/1129, a prospectus is not required, an information memorandum appears in Polish law, which does not exist in EU law.

	2017/1129 in respect of which the number of persons to whom such offering is addressed, along with the number of persons to whom the public offerings referred to in Article 1(4)(b) of Regulation 2017/1129 are addressed for the same type of securities, effected in the period of the previous 12 months, exceeds 149, requires the publication of the information memorandum referred to in Article 38b, which is subject to approval by the Authority."	the securities to be offered, so as to enable an investor to decide to purchase or subscribe for those securities. This definition also applies to the placing of securities through financial intermediaries" Article 1(2): "2. This Regulation shall not apply to the following types of securities: [..] 4. The obligation to publish a prospectus set out in Article 3(1) shall not apply to any of the following types of offers of securities to the public: [...]."		
18	**Article 69(2) of the Act on Trading in Financial Instruments:** "2. Brokerage activities, subject to Article 16(3) and (5) and Article 70, includes the performance of activities consisting of the following: [...] 6) offering financial instruments."	Annex I SECTION A of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/67/EU.	Act of 1 March 2018 Amending the Act on Trading in Financial Instruments and Certain Other Acts.	The annex referred to in column II does not mention the financial service of offering financial instruments. "Offering financial instruments" has been added by the Polish legislature as an investment service.
19	**§ 5 of the Regulation of the Minister of Finance of 29 March 2018 on Current and Periodic Information Transmitted by Securities Issuers and the Conditions for Recognizing the Information Required by**	NO LEGAL BASIS IN EU LAW.		The whole paragraph 5 of the Regulation of the Minister of Finance may be treated as gold-plating, because in the provisions of the Act on Public Offering, references are made to confidential information according to the MAR, periodic reports (annual, semi-annual and

	the Regulations of a Non-Member State as Equivalent: "The issuer provides information in the form of a current report on: 1) registration or refusal to register by the court of amendments to the issuer's articles of association; 2) changes in the rights attaching to the issuer's securities; 3) termination by the issuer or the audit firm of a contract for the audit or review of financial statements or consolidated financial statements; 4) dismissal or resignation of a managing or supervising person or the issuer obtaining information about the decision of a managing or supervising person to opt out of applying for election in the next term of office; 5) appointment of a managing or supervising person; 6) placing of an entry regarding the issuer's enterprise in section 4 of the register of commercial undertakings referred to in the Act on the National Court Register; 7) court ruling declaring the issuer's bankruptcy becoming final non-appealable, dismissal of the petition to			quarterly) and current reports. The whole Regulation on Current and Periodic Reports with regard to current reports – par. 5 – is an instance of gold-plating. EU law does not provide for such regulations.

	declare its bankruptcy in a situation where the debtor's assets are insufficient to cover the costs of the proceedings or are only sufficient to cover such costs, change of a decision on opening restructuring proceedings to a decision declaring the issuer's bankruptcy; 8) issuance of share documents as part of a conditional increase in the issuer's share capital; 9) adoption by the issuer's management board of a resolution on the issue of shares as part of a target increase in the issuer's share capital; 10) change of the address of the issuer's registered office or website address; 11) posting on the issuer's website of a statement by its corporate group on non-financial information or a report of its corporate group on non-financial information prepared by a higher-level parent entity, in compliance with Article 69(5) of the Accounting Act."			
20	**§ 60(1) of the Regulation of the Minister of Finance of 29 March 2018 on Current and Periodic Information Transmitted by Securities Issuers and the Conditions for**	Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation	Act Amending the Act on Public Offering and the Terms and Conditions for Introducing Financial Instruments to an Organized Trading System and on Public	The Directive referred to in column II does not require quarterly financial statements (periodic information) in Article 4. Quarterly reports may also be treated as gold-plating – they have

	Recognizing the Information Required by the Regulations of a Non-Member State as Equivalent: "1. The issuer submits, subject to § 62, periodic reports: 1) quarterly; 2) semi-annually; 3) annually."	to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC.	Companies and Certain Other Acts of 4 September 2008.	been introduced into Polish regulations in a situation where there is no such obligation in EU law.
21	**Article 69(1) of the Act on Public Offering and the Terms and Conditions for Introducing Financial Instruments to an Organized Trading System and on Public Companies:** "1. Whoever: 1) has reached or exceeded 5%, 10%, 15%, 20%, 25%, 33%, 33⅓%, 50%, 75% or 90% of the total number of votes in a public company, or 2) used to hold at least 5%, 10%, 15%, 20%, 25%, 33%, 33⅓%, 50%, 75% or 90% of the total number of votes in such company, but as a result of a reduction in his/her/its shareholding, has reached 5%, 10%, 15%, 20%, 25%, 33%, 33⅓%, 50%, 75% or 90%, respectively, or less of the total number of votes – is required to promptly notify the Authority and the company about this fact."	Article 9(3) of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC: "The home Member State need not apply: (a) the 30 % threshold, where it applies a threshold of one-third; (b) the 75 % threshold, where it applies a threshold of two-thirds."	Act Amending the Act on Public Offering and the Terms and Conditions for Introducing Financial Instruments to an Organized Trading System and on Public Companies and Certain Other Acts of 4 September 2008.	The Directive referred to in column II stipulates that the shareholder is required to notify the company of exceeding the 30% and 75% threshold, but these thresholds need not be applied if the respective Member State applies a threshold of 1/3 or 2/3. The Polish Act on Trading (Article 69) contains both 30% and 33 1/3%, but also 90%.

22	**Article 172(1) of the Act of 16 July 2004 entitled Telecommunications Law:** "1. It is prohibited to use telecommunications terminal devices and automatic calling systems for the purposes of direct marketing unless the subscriber or end-user has previously given their consent to such use."	Article 13(1) of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications): "1. The use of automated calling systems without human intervention (automatic calling machines), facsimile machines (fax) or electronic mail for the purposes of direct marketing may only be allowed in respect of subscribers who have given their prior consent.		The exclusion of faxes and e-mails from Polish law in practice prevents the use of such solutions for direct marketing in the manner described in Article 172(1) of the Telecommunications Law.
23	**Article 48c(3) of the Act of 27 May 2014 on Investment Funds and Management of Alternative Investment Funds:** "The minister in charge of financial institutions shall define, by way of a regulation, the maximum exposure limit of the AIF of a specialized open-end investment fund that applies the investment rules and limits specified for an open-end investment fund, a specialized open-end investment fund	Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositories, leverage, transparency and supervision (in particular, Articles 6-11).	Act of 31 March 2016 Amending the Act on Investment Funds and Certain Other Acts (Journal of Laws of 2016, item 615).	Commission Delegated Regulation (EU) No 231/2013 has introduced the concept of the exposure of an AIF, but did has not introduced the obligation or the possibility of its top-down limitation by the regulator. In this respect, the said provision and the delegated Polish regulation which introduces a top-down AIF exposure limit are examples of gold-plating, because they impose an additional requirement on investment fund management

	that applies the investment rules and limits specified for a closed-end investment fund and a closed-end investment fund, bearing in mind the need to ensure the protection of interests of the participants in the investment fund." and issued based on the statutory delegation under the above provision of the **Regulation of the Minister of Finance of 20 July 2017 on the Maximum AIF Exposure Limit – all provisions.**			companies that does not arise out of the transposed regulations.
24	**§ 9(2) and (3) of the Regulation of the Minister of Finance of 2 July 2019 on the Manner, Procedure and Conditions for Conducting Business Activity by Investment Fund Management Companies** "2. In the organizational structure of the company, a separate and independent internal audit unit must exist, headed by an internal auditor. If justified by the type and scope of business conducted by the	Article 1(1) and Article 24 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive: Article 1(1): "Chapter II, and Sections 1 to 4, Articles 59(4) and 60 and Sections 6 and 8 of	Regulation of the Minister of Finance of 2 July 2019 on the Manner, Procedure and Conditions for Conducting Business Activity by Investment Fund Management Companies, the content of which differs from the provisions of Regulation 2017/565 in column II.	It follows from Article 1(1) of the Regulation referred to in column II that the whole Chapter II of this Regulation applies to investment fund management companies, including Article 24. Prohibition of outsourcing internal audit and supervision of compliance in investment fund management companies.

	company and unless the interests of clients and fund participants are threatened, internal audit activities may be performed by a one-person internal auditor position; the provisions on the internal audit unit apply to such one-person positions. No member of the company's management board may simultaneously discharge the function of an internal auditor or perform internal audit tasks. 3. The company shall ensure that persons performing internal audit tasks: 1) do not combine them with the function of supervising compliance or the function of risk management; 2) do not participate in the performance of operational activities pertaining to the determination of the level or type of risk incurred by the open-end investment fund – if this leads to a situation where such persons simultaneously supervise the activities performed by themselves;	Chapter III and, to the extent they relate to those provisions, Chapter I and Section 9 of Chapter III and Chapter IV of this Regulation shall apply to management companies in accordance with Article 6(4) of Directive 2009/65/EC and Article 6(6) of Directive 2011/61/EU of the European Parliament and of the Council." Article 24: Investment firms shall, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of investment services and activities undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the investment firm and which has the following responsibilities: (a) establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the		

		investment firm's systems, internal control mechanisms and arrangements; (b) issue recommendations based on the result of work carried out in accordance with point (a) and verify compliance with those recommendations; (c) report in relation to internal audit matters in accordance with Article 25(2).		
25	**Article 42b(1)–(3) of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds:** 1. The appointment of: 1) a member of the management board supervising the risk management system in the company, 2) a member of the management board supervising investment decisions pertaining to investment portfolios of funds managed by the company or portfolios which include one or more	Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.	Act Amending the Act on Trading in Financial Instruments and Certain Other Acts of 4 September 2008 (Journal of Laws 2009 No. 165, item 1316), which has implemented the following Directives in its content: 1) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council	An excessively restrictive solution requiring the consent of the Polish Financial Supervision Authority (KNF) for each appointment, in an investment fund management company, of a management board member supervising the risk management system or in charge of investments is not justified by either MIFID or MIFID II in the capital sector. The issuance of personnel decisions by the KNF is very often discretionary and based on unclear grounds, documents or clarifications the scope of which is delineated by the KNF in an unconstrained manner.

	financial instruments managed by the company, – requires the consent of the Authority, subject to Article 61(1e). 2. The request for the consent referred to in sec. 1 shall be submitted by the company's supervisory board, attaching to such request information on and statements by the persons indicated in the said provision, regarding: 1) personal data of such persons; 2) knowledge, skills and experience of such persons, in particular their education, professional career and completed professional training; 3) functions performed in the corporate bodies of other entities; 4) criminal record of such persons, criminal proceedings pending against them or proceedings in cases involving fiscal offenses, including information from the National Criminal Register; 5) administrative sanctions imposed on such persons or other entities in relation to the scope of their responsibilities;		and repealing Council Directive 93/22/EEC (OJ L 145, 30.04.2004, p. 1; OJ, Polish special edition, chapter 6, vol. 7, p. 263, as amended); 2) Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (OJ L 177, 30.06.2006, p. 1); 3) Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (OJ L 177, 30.06.2006, p. 201); 4) Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 241, 02.09.2006, p. 26).	

	6) potentially sanctioned administrative or disciplinary proceedings in which such persons have acted or are acting as a party; 7) other circumstances that may affect the assessment of such persons' compliance with the requirements laid down in Article 42(2)–(4) and (6). 3. The Authority shall refuses to grant the consent referred to in sec. 1 if the person for whom such consent is requested fails to satisfy the requirements laid down in Article 42(2)–(4), (6) and (7). **– which has replaced the originally implemented and amended provision of Article 42 of the Act of 27 May 2004 on Investment Funds (Journal of Laws of 2004 No. 146, item 1546), reading as follows:** 1. The company's management board shall consist of at least two members. 2. The Authority's consent shall be required for the appointment of two members of the management board, including the president of the company's management board.			

	3. A member of the company's management board may be a person who satisfies all of the following conditions: 1) has full capacity to enter into legal transactions; 2) has not been penalized for a deliberate crime or a tax-related crime. 4. A management board member whose appointment requires the Authority's consent, including the president of the company's management board, may be a person who, in addition to the requirements referred to in sec. 3, satisfies the following conditions: 1) has a higher education or the right to practice the profession of an investment advisor referred to in Article 22(2) of the Act on Trading in Financial Instruments; 2) has professional experience of not less than 3 years in a managerial or independent position in financial institutions or has discharged functions in the corporate bodies of such institutions during this period. 5. A 'financial institution' is construed as a domestic bank, foreign bank, credit			

	institution, brokerage house, investment company, company operating a stock exchange or an over-the-counter market in the field of trading in securities, management company, entity conducting insurance activity, entity managing entrusted assets, investment fund management company, universal pension fund management company, employee pension fund management company, foreign fund, the National Depository for Securities [Krajowy Depozyt Papierów Wartościowych Spółka Akcyjna] or the National Clearing House [Krajowa Izba Rozliczeniową Spółka Akcyjna]. 6. In the event that a supervisory board member is seconded to temporarily perform the duties of a management board member, if such delegated person is to perform the activities of a management board member approved by the Authority, the Authority may object to the secondment of such person within 14 days from the date of receipt of the respective notification. Such notification shall be accompanied by the			

	personal data of this person together with the description of his/her qualifications and professional experience as well as information from the National Criminal Register. 7. From the date of the objection referred to in sec. 6, the person against whom the Authority has raised an objection may not perform the activities of a management board member.			
26	**Article 102a(1) of the Act of 29 July 2005 on Trading in Financial Instruments:** The appointment of the president of the management board of a brokerage house or of a member of the management board of a brokerage house who will be responsible for overseeing the risk management system shall be made, subject to Article 84(1a), with the consent of the Authority. The request for such consent shall be submitted by the supervisory board.	Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.	Act Amending the Act on Trading in Financial Instruments and Certain Other Acts of 4 September 2008 (Journal of Laws 2009 No. 165, item 1316)	An excessively restrictive solution requiring the consent of the Polish Financial Supervision Authority (KNF) for each appointment, in an investment fund management company, of the president of the management board and the management board member in charge of risk management is not justified by either MIFID or MIFID II in the capital sector. The issuance of personnel decisions by the KNF is very often discretionary and based on unclear grounds, documents or clarifications the scope of which is delineated by the KNF in an unconstrained manner.
27	§ 14. Regulation of the Minister of Finance and Development of 25 April 2017 on Detailed Technical and	Article 23(1) of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive	Regulation of the Minister of Finance and Development of 25 April 2017 on Detailed Technical and Organizational Conditions for	Prohibition on outsourcing the function of supervising compliance in investment firms.

	Organizational Conditions for Investment Companies, the Banks Referred to in Article 70(2) of the Act on Trading in Financial Instruments and Custodian Banks: 4. The investment firm shall have a separate unit for the supervision of compliance and shall ensure the independence of such unit in order to enable the proper and continuous performance of its duties. If justified by the type and scope of business conducted by the investment firm, activities of the function of supervising compliance may be performed within the framework of a one-person position. In such case, the provisions of the Regulation regarding the function of supervising compliance shall apply to such position of supervising compliance.	2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive: 1. Investment firms shall take the following actions relating to risk management: (a) establish, implement and maintain adequate risk management policies and procedures which identify the risks relating to the firm's activities, processes and systems, and where appropriate, set the level of risk tolerated by the firm; (b) adopt effective arrangements, processes and mechanisms to manage the risks relating to the firm's activities, processes and systems, in light of that level of risk tolerance;	Investment Companies, the Banks Referred to in Article 70(2) of the Act on Trading in Financial Instruments and Custodian Banks.	

		(c)monitor the following: (i) the adequacy and effectiveness of the investment firm's risk management policies and procedures; (ii) the level of compliance by the investment firm and its relevant persons with the arrangements, processes and mechanisms adopted in accordance with point (b); (iii) the adequacy and effectiveness of measures taken to address any deficiencies in those policies, procedures, arrangements, processes and mechanisms, including failures by the relevant persons to comply with such arrangements, processes and mechanisms or follow such policies and procedures.		
28	Article 87(4) of the Act of 29 July 2005 on Public Offering and the Terms and Conditions for Introducing Financial	Article 2(1)(d) and (2) of Directive 2004/25/EC of the European Parliament	Act of 29 July 2005 on Public Offering and the Terms and Conditions for Introducing Financial Instruments to an Organized	The introduction of presumptions which are not included in the provisions of the Directive and which necessitate the announcement of a

	Instruments to an Organized Trading System and on Public Companies: 4. The existence of the agreement referred to in sec. 1(5) is presumed in the case of holding shares in a public company by: 1) spouses, their ascendants, descendants, siblings or relatives in the same line or degree as well as persons in a relationship of adoption, custody or guardianship; 2) persons remaining in a common household; 3) (repealed), 4) related parties within the meaning of the Accounting Act of 29 September 1994.	and of the Council of 21 April 2004 on takeover bids: Article 2(1)(d): 'persons acting in concert' shall mean natural or legal persons who cooperate with the offeror or the offeree company on the basis of an agreement, either express or tacit, either oral or written, aimed either at acquiring control of the offeree company or at frustrating the successful outcome of a bid; Article 2(2): 2. For the purposes of paragraph 1(d), persons controlled by another person within the meaning of Article 87 of Directive 2001/34/EC (12) shall be deemed to be persons acting in concert with that other person and with each other.	Trading System and on Public Companies in the wording announced in Journal of Laws 2005 No. 184, item 1539.	tender offer (including the presumption that shares held by spouses should be treated as held jointly).
29	**Article 72 of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds:** 1. The depositary's obligations arising out of an agreement for the performance of	Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and	Act of 31 March 2016 Amending the Act on Investment Funds and Certain Other Acts (Journal of Laws of 2016, item 615).	The imposition of the de facto requirement on the depositary to supervise the fund to an extent that does not exist in other EU countries.

	the function of the depositary of an investment fund, in consideration of Article 83, Articles 85–90 and Articles 92–97 of Regulation 231/2013 – in the case of a specialized open-end investment fund or a closed-end investment fund include: 1) keeping the assets of the investment fund; 2) keeping a register of all assets of the investment fund; 3) ensuring that the cash held by the investment fund is kept in cash accounts and bank accounts maintained by entities authorized to keep such accounts in compliance with the provisions of Polish law or satisfying the requirements laid down in Community law or equivalent to such requirements; 4) ensuring the monitoring of cash flows of the investment fund; 5) ensuring that the sale and repurchase of participation units as well as the issuance, delivery and repurchase of investment certificates takes place in accordance with the applicable laws and	Regulations (EC) No 1060/2009 and (EU) No 1095/2010.		

	the investment fund's articles of association; 6) ensuring that the settlement of agreement pertaining to the assets of the investment fund takes place without undue delay, and controlling the timeliness of the settlement of agreements with fund participants; 7) ensuring that the value of the investment fund's net assets and the value of net assets per participation unit or investment certificate are calculated in compliance with the applicable laws and the investment fund's articles of association; 8) ensuring that the income of the investment fund is used in a manner consistent with the applicable laws and the investment fund's articles of association; 9) executing the investment fund's orders unless out of compliance with the law or the investment fund's articles of association; 10) verifying compliance of the investment fund's activities with the			

	applicable laws governing the business of investment funds or with the articles of association outside the scope specified in items 5–8 and in consideration of the interests of participants. 2. In the case of the fund referred to in Article 159, the custodian, in addition to the fund's asset register, shall keep sub-registers of the assets of each sub-fund. 3. The depositary shall ensure that the fund's obligations referred to in sec. 1(3)–(8) are fulfilled, at least by exercising continuous control over the actual activities and legal transactions executed by the fund and supervising the bringing of such activities and legal transactions into compliance with the applicable laws and the fund's articles of association. 4. The entity discharging the function of the depositary of an investment fund may not perform any other activities in respect of such fund or management company that might cause a conflict of interest between it, the investment fund, the management company or the participants of the investment fund, in			

	particular, by acting as a prime broker, unless: 1) it carves out, in organizational and technical terms, the discharge of the function of the depositary of the investment fund, from the performance of other activities that may result in a conflict of interest, and 2) it ensures proper identification, monitoring and management of conflicts of interest as well as mechanisms of informing fund participants about any identified cases of such conflict.			

II. Other examples of gold-plating

30	**Article 22(1)(12) of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds:** "The management company's application for a permit to establish an investment fund shall be accompanied by: a statement by the audit firm on compliance of the methods and principles of valuation of the fund's assets described in its articles of	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act (or regulated by the Act prior to the transposition) referred to in column III.	Act of 27 May 2004 on Investment Funds.	No legal basis for introducing these provisions in EU legislation transposed into the Polish legal system by the Act referred to in column III, implementing AMIFID or enacted prior to its implementation. Provisions added by the Polish regulator when AIFMD was implemented.

	association with the laws governing the accounting in investment funds and on compliance and completeness of such principles with the fund's investment policy – in the case of a closed-end investment fund."			
31	**Article 22(1)(13) of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds:** "The management company's application for a permit to establish an investment fund shall be accompanied by: a statement by the statutory auditor on the correctness and compliance of the investment fund's risk management system with the fund's investment risk profile and investment policy, the adopted risk measurement and monitoring methods, determination of the total exposure or exposure of the AIF, and the system of internal limits adopted for the investment fund, in a situation where the management company does not manage an investment fund with an investment risk	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act (or regulated by the Act prior to the transposition) referred to in column III.	Act Amending the Act on Investment Funds and Certain Other Acts of 31 March 2016 (Journal of Laws 2016, item 615)	No legal basis for introducing these provisions in EU legislation transposed into the Polish legal system by the Act referred to in column III, implementing AMIFID or enacted prior to its implementation. Provisions added by the Polish regulator when AIFMD was implemented.

	profile and investment policy of the kind as the fund covered by the application, or the management company's statement that the company manages an investment fund with such an investment risk profile and investment policy."			
32	**Article 36a(5) of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds:** "An external valuation entity must not be the audit firm that audits the financial statements of the designating fund, the management company forming its governing body or EU-based manager, the depositary of that fund or any other entity whose interests may conflict the interests of that fund, management company or the EU-based manager, or the interests of fund participants."	Article 19(4) of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 – hereinafter: "AIFMD": The depositary appointed for an AIF shall not be appointed as external valuer of that AIF, unless it has functionally and hierarchically separated the performance of its depositary functions from its tasks as external valuer and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.	Act of 31 March 2016 Amending the Act on Investment Funds and Certain Other Acts.	Extending the group of entities that are prohibited from providing the services of an external valuer by excluding the possibility of separating the performance of their function from the tasks as an external valuer.

33	**Article 46(9)(2) of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds:** "The management company may not order the management of the fund's investment portfolio or any part thereof to any entity whose interests may conflict with the interests of the management company or the interests of participants in the investment fund."	Article 20(2)(b) of AIFMD: No delegation of portfolio management or risk management shall be conferred on any other entity whose interests may conflict with those of the AIFM or the investors of the AIF, unless such entity has functionally and hierarchically separated the performance of its portfolio management or risk management tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.	Act Amending the Act on Investment Funds and Certain Other Acts of 31 March 2016 (Journal of Laws 2016, item 615)	Extending the group of entities that are prohibited from providing the management company with investment portfolio management services by excluding the possibility of separating the performance of their function from the performance of other, potentially conflicting tasks.
34	**Article 46(10) of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds:** "The provisions of sec. 1-3a and sec. 9 shall apply accordingly to the transfer referred to in Article 45a(4b) and the further transfer referred to in Article 45a(4c), to the performance of activities related to the management of the investment portfolio of a specialized open-end investment fund or a closed-end investment fund, or a portion of	Article 20(5)(b) of AIFMD: No sub-delegation of portfolio management or risk management shall be conferred on any other entity whose interests may conflict with those of the AIFM or the investors of the AIF, unless such entity has functionally and hierarchically separated the performance of its portfolio management or risk management tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly	Sec. 10 has been added by the Act Amending the Act on Investment Funds and Certain Other Acts of 31 March 2016. (Journal of Laws 2016, item 615)	Extending the group of entities that are prohibited from providing investment portfolio management or risk management services by excluding the possibility of separating the performance of the portfolio or risk management function from the performance of other, potentially conflicting functions.

	such portfolio, or the activities referred to in Article 2."	identified, managed, monitored and disclosed to the investors of the AIF.		
35	**Article 72(1)(10) of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds:** "The depositary's duties include verifying compliance of the investment fund's activities with the applicable laws governing the business of investment funds or with the articles of association outside the scope specified in Article 72(1)(5)–(8) of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds and in consideration of the interests of participants."	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act (or regulated by the Act prior to the transposition) referred to in column III.	Act of 31 March 2016 Amending the Act on Investment Funds and Certain Other Acts.	No legal basis for introducing these provisions in EU legislation transposed into the Polish legal system by the Act referred to in column III, implementing AMIFID or enacted prior to its implementation. Provisions added by the Polish regulator when AIFMD was implemented.
36	**Article 72a of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds:** "1. The depositary shall bring legal action on behalf of the fund's participants against the management company for damage caused by the non-performance or improper performance of obligations in the area	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act (or regulated by the Act prior to the transposition) referred to in column III.	Act of 31 March 2016 Amending the Act on Investment Funds and Certain Other Acts.	No legal basis for introducing these provisions in EU legislation transposed into the Polish legal system by the Act referred to in column III, implementing AMIFID or enacted prior to its implementation. Provisions added by the Polish regulator when AIFMD was implemented.

	of management and representation of the fund; in a situation where, based on the agreement referred to in Article 4(1a) or (1b), the investment fund is managed and its affairs are conducted by a management company or an EU-based manager, against such management company or against such EU-based manager for damage caused by the non-performance or improper performance of obligations in the area of management of such fund and the conduct of its affairs remaining within the scope of duties of the management company or the EU-based manager, as the case may be, in compliance with Article 272c(1) or Article 276e(1)."			
37	**Article 73(3) of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds:** "If investment fund participants have suffered losses caused by the non-performance or improper performance of the company' s fund management and representation duties, it shall be presumed that the depositary being a	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act (or regulated by the Act prior to the transposition) referred to in column III.	Act of 27 May 2004 on Investment Funds.	No legal basis for introducing these provisions in EU legislation transposed into the Polish legal system by the Act referred to in column III, implementing AMIFID or enacted prior to its implementation. Provisions added by the Polish regulator when AIFMD was implemented.

	member of the company's corporate group has consciously breached its duties arising out of the Act and the agreement to perform the function of the investment fund's depositary."			
38	**Article 107(2)(1) of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds in conjunction with Article 145(9) of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds:** "A closed-end investment fund may not invest the fund's assets in securities or receivables of the management company that manages the fund and conducts its affairs or their shareholders or entities that are parent entities or subsidiaries of such management company or the company managing their or their shareholders' affairs."	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act (or regulated by the Act prior to the transposition) referred to in column III.	Act of 27 May 2004 on Investment Funds.	No legal basis for introducing these provisions in EU legislation transposed into the Polish legal system by the Act referred to in column III, implementing AMIFID or enacted prior to its implementation. Provisions added by the Polish regulator when AIFMD was implemented.
39	**Article 131 of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds:** "A closed-end investment fund shall measure the fund's assets and	Article 19(3) of AIFMD: The valuation procedures used shall ensure that the assets are valued and the net asset value per unit or share is calculated at least once a year. If the AIF	Act of 27 May 2004 on Investment Funds.	Obligation to perform more frequent valuations of fund assets and determine the net asset value more frequently than provided for in AIFMD.

	determine the net asset value and net asset value per investment certificate with the frequency specified in the articles of association, but not less frequently than once every 3 months and 7 days prior to the commencement of subscriptions for subsequent issue certificates, and on the day such certificates are repurchased."	is of the closed-ended type, such valuations and calculations shall also be carried out in case of an increase or decrease of the capital by the relevant AIF. The investors shall be informed of the valuations and calculations as set out in the relevant AIF rules or instruments of incorporation.		
40	**Article 134 of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds:** 1. The issue of investment certificates shall be closed after the completion of payments for the certificates in the amounts and within the time limit specified in the articles of association and the prospectus or information memorandum, or the terms of issue. Such time limit may not be longer than 2 months from the date of commencement of the subscription. 2. Another issue of investment certificates shall be possible after the closing of the previous issue, subject to Article 127, or after the refund of	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act (or regulated by the Act prior to the transposition) referred to in column III.	Act of 27 May 2004 on Investment Funds.	No legal basis for introducing these provisions in EU legislation transposed into the Polish legal system by the Act referred to in column III, implementing AMIFID or enacted prior to its implementation. Provisions added by the Polish regulator when AIFMD was implemented.

	payments to the fund in the case referred to in sec. 4. 3. The second and subsequent issues of investment certificates shall not come into effect unless the payments for the certificates have been collected in the amounts and within the time limit referred to in sec. 1. 4. In the event of failure of the second and subsequent issues of investment certificates, the fund, within 14 days from the date referred to in sec. 1, shall refund payments to the fund, shall transfer the rights to securities and shares in limited liability companies, and shall transfer the rights referred to in Article 147(1)(1)(a) and (b) and Article 147(1)(2), along with the value of the benefits received and interest accrued by the depositary for the period from the date of payment to the account kept by the depositary until the date referred to in sec. 1 as well as any handling fees collected. 5. In the case of the second and subsequent issues, the management			

	company may not make use of the payments to the fund for the certificates of the respective issue, the handling fees charged or the amounts of accrued interest on such payments, or any benefits that these payments have brought, prior to the allocation of the investment certificates of the respective issue. 6. In the event of the execution of the agreement referred to in Article 4(1b), the provision of sec. 5 shall also apply to an EU-based manager.			
41	**Articles 140, 141, 142, 143, 144 of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds.** The full text of the provision is presented on p. 90.	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act (or regulated by the Act prior to the transposition) referred to in column III.	Act of 27 May 2004 on Investment Funds.	No legal basis for introducing these provisions in EU legislation transposed into the Polish legal system by the Act referred to in column III, implementing AMIFID or enacted prior to its implementation. Provisions added by the Polish regulator when AIFMD was implemented.
42	**Article 145(2) of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds:** "The closed-end investment fund referred to in Article 183 and Article 196	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act (or regulated by the Act prior to the transposition) referred to in column III.	Act of 27 May 2004 on Investment Funds.	No legal basis for introducing these provisions in EU legislation transposed into the Polish legal system by the Act referred to in column III, implementing AMIFID or enacted prior to its implementation.

	may invest its assets in transferable receivables from natural persons."			Provisions added by the Polish regulator when AIFMD was implemented.
43	**Article 145(3) of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds:** "Money market securities or instruments issued by a single entity, receivables from that entity and participations in that entity may not constitute, subject to sec. 4, a total of more than 20% of the fund's asset value, or, in the event that a securitization fund enters into the agreement referred to in this section, the same shall apply to each receivable forming the subject matter of the securitization."	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act (or regulated by the Act prior to the transposition) referred to in column III.	Act of 27 May 2004 on Investment Funds.	No legal basis for introducing these provisions in EU legislation transposed into the Polish legal system by the Act referred to in column III, implementing AMIFID or enacted prior to its implementation. Provisions added by the Polish regulator when AIFMD was implemented.
44	**Article 145(4) of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds:** "Covered bonds issued by a single mortgage bank may not account for more than 25% of the fund's asset value."	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act (or regulated by the Act prior to the transposition) referred to in column III.	Act of 27 May 2004 on Investment Funds.	No legal basis for introducing these provisions in EU legislation transposed into the Polish legal system by the Act referred to in column III, implementing AMIFID or enacted prior to its implementation. Provisions added by the Polish regulator when AIFMD was implemented.

45	**Article 145(6) of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds:** "Deposits in a single domestic bank, foreign bank or credit institution may not account for more than 20% of the fund's assets, excluding deposits held by the depositary."	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act (or regulated by the Act prior to the transposition) referred to in column III.	Act of 27 May 2004 on Investment Funds.	No legal basis for introducing these provisions in EU legislation transposed into the Polish legal system by the Act referred to in column III, implementing AMIFID or enacted prior to its implementation. Provisions added by the Polish regulator when AIFMD was implemented.
46	**Article 145(7) of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds:** "No foreign currency of any single country or euro may account for more than 20% of the fund's asset value."	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act (or regulated by the Act prior to the transposition) referred to in column III.	Act of 27 May 2004 on Investment Funds.	No similar limit in AIFMD or other European regulations.
47	**Article 146(6) of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds:** "Investment certificates of any other closed-end investment fund managed by the same management company may not account for more than 20% of the fund's asset value."	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act (or regulated by the Act prior to the transposition) referred to in column III.	Act of 27 May 2004 on Investment Funds.	No similar limit in AIFMD or other European regulations.
48	**Article 145(9) of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds:**	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act (or regulated by	Act of 29 July 2005 (Journal of Laws No. 183, item 1537).	No similar limit in AIFMD or other European regulations.

	The provisions of Article 107(2)–(6) shall apply to deposits of a closed-end investment fund.	the Act prior to the transposition) referred to in column III.		
49	**Article 148(4) of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds:** "4. The fund may not allocate more than 25% of the value of its assets in aggregate for the acquisition of any single one of its investment targets referred to in Article 147(1) or for investments in such target."	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act (or regulated by the Act prior to the transposition) referred to in column III.	Act of 27 May 2004 on Investment Funds.	No similar limit in AIFMD or other European regulations.
50	**Article 149 of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds:** "A closed-end investment fund may establish encumbrances on the assets specified in Article 147(1) and (2) with a total amount not exceeding 50% of the fund's net asset value at the time of establishment of such encumbrance, with the consent of the depositary and under on the terms laid down in the articles of association."	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act (or regulated by the Act prior to the transposition) referred to in column III.	Act of 27 May 2004 on Investment Funds.	No similar limit in AIFMD or other European regulations.

51	**Article 151(2) of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds:** "The total value of borrowed securities and securities of the same issuer held in the investment portfolio of a closed-end investment fund must not exceed the limit referred to in Article 145(3) and (4)."	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act (or regulated by the Act prior to the transposition) referred to in column III.	Act of 27 May 2004 on Investment Funds.	No similar limit in AIFMD or other European regulations.
52	**Article 152(1) of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds:** "A closed-end investment fund may take out, only from domestic banks, credit institutions or foreign banks, loans or borrowings with the total value not greater than 75% of the fund's net assets as at the time of execution the loan or borrowing agreement."	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act (or regulated by the Act prior to the transposition) referred to in column III.	Act of 27 May 2004 on Investment Funds.	No similar limit in AIFMD or other European regulations.
53	**Article 152(2) of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds:** "If the fund's articles of association so provide, a closed-end investment fund that has an investors' meeting may issue bonds in an amount not greater than	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act (or regulated by the Act prior to the transposition) referred to in column III.	Act of 27 May 2004 on Investment Funds.	No similar limit in AIFMD or other European regulations.

	15% of the fund's net asset value as at the date preceding the date of the resolution on the issue of bonds by the investors' meeting."			
54	**Article 152(3) of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds:** "If an investment fund issues bonds, the total value of loans, borrowings and bond issues may not be greater than 75% of the fund's net asset value."	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act (or regulated by the Act prior to the transposition) referred to in column III.	Act of 27 May 2004 on Investment Funds.	No similar limit in AIFMD or other European regulations.
55	**Article 153(1)(1) of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds:** "A closed-end investment fund may grant cash loans up to an amount not greater than 50% of the fund's asset value, provided that the amount of cash loans granted to any single entity is not greater than 20% of the fund's asset value."	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act (or regulated by the Act prior to the transposition) referred to in column III.	Act of 27 May 2004 on Investment Funds.	No similar limit in AIFMD or other European regulations.
56	**Article 248(1) of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds:**	NO LEGAL BASIS IN EU LEGISLATION TRANSPOSED by the Act (or regulated by	Act of 27 May 2004 on Investment Funds.	No legal basis for introducing these provisions in EU legislation transposed into the Polish legal system by the Act referred to

	"The liquidator of an investment fund is its depositary."	the Act prior to the transposition) referred to in column III.		in column III, implementing AMIFID or enacted prior to its implementation. Provisions added by the Polish regulator when AIFMD was implemented.

III. Examples of gold-plating based on the practice of law enforcement authorities

No.	Column I Wording of a provision of Polish law forming a manifestation of gold-plating (with an indication of the pertinent legal act and editorial unit).	Column II Wording of a provision of EU law with an indication of the pertinent legal act and editorial unit that has been transposed into the Polish legal system or interpreted in a manner resulting in gold-plating.	Column III Interpretation of the provision if gold-plating is manifested in its interpretation rather than literal wording.	Column IV Legal act by which the provision indicated in column I has been transposed into the Polish legal system.	Column V Explanation of the manifestation of excessive regulation in the case at hand.
57	NONE	Article 74(1) of MIFID/MIFID 2	ND	This provision has not been transposed.	Inability to appeal against the supervisor's decision to the court. Article 74(1) of MIFID grants the right to appeal to a court against any decision made under Regulation (EU) No 600/2014 or under a statute, regulation or administrative provision enacted in compliance with MIFID. The right to appeal to a court also applies in

					situations where, in respect of an application for a permit containing all required information, no decision has been made within six months of its submission. The extent of such appeal is not limited to any specific grounds. However, this Article does not specify to what extent such appeal should apply. Assuming that the absence of specification of the extent or any limitation of the scope of such appeal, it should apply to the whole decision, yet Polish law does not provide for this possibility. Polish law does not provide for the possibility of appealing against an administrative decision of the regulator made on the basis of either European or domestic laws. It is only possible to file a complaint against an administrative decision limited solely to formal grounds. Accordingly, within the meaning of Article 74(1) of the Directive, such complaint does not constitute an 'appeal' against the

					decision, contrary to the provisions of the Directive.
58	**Article 35 of the Code of Administrative Procedure and special provisions**	-	Interpretation of the provision of Article 35 of the Code of Administrative Procedure by the authority, considering the time limit specified in paragraphs 2 and 3 not as an instructional time limit for the resolution of the case in accordance with the provisions of the Code of Administrative Procedure but as the time limit within which the authority should send another letter to the party concerning the case.	-	In a large portion of the proceedings pending before the authority, both the time limits laid down in the Code of Administrative Procedure and the specific provisions are significantly exceeded, and the authority does not take any action with a view to completing such proceedings within the statutory time limits.
59	**Article 36 of the Code of Administrative Procedure**	-	Interpretation of the provision of Article 36(1) of the Code of Administrative Procedure by the authority treating this provision as an authorization for the authority to extend the resolution of the case indefinitely, as long as the extensions are made at monthly intervals. Failure to state the reasons for the delay in resolving	-	Article 36(1) of the Code of Administrative Procedure, in all situations where a case has not been resolved in a timely manner by a public administration authority, requires proper notification of the party, stating the reasons for the delay, indicating a new date for resolving the case and providing information on the right to file a reminder. This provision requires

			the case. Failure to provide information on the right to file a reminder.		the authority which fails to resolve the case within the prescribed time limit: 1. To set a new time limit by which, as expected by the authority, the case will be resolved, 2. To informing the party about such time limit, 3. To inform the party about the reason for the delay. 4. To inform the party about the right to file a reminder. The purpose of these provisions is the achievement of a situation where, if the authority is unable to resolve the case/issue a decision within the time limit provided for in the Code of Administrative Procedure or special provisions, the authority should set a new time limit for resolving the case and actually resolving the case within this time limit or at least take steps aimed at resolving the case within this time limit in accordance with the authority's best knowledge. In a large portion of proceedings conducted before the authority, no reasonable time limit for the completion of the case is set, and the authority normally 'extends the

					examination of the case' by a month or a similar period without taking any actions that might result in such proceedings being completed within the time limit specified in the letter informing the party about such 'extension'. When such time limit expires, the authority effects another 'extension' of the proceedings, recognizing that the monthly time limit is, in fact, only the period by which the authority may extend the time limit for resolving the case at a time, but the number of such 'extensions' is in fact unlimited. Proceedings extended in this manner may last up to 8 years, during which the authority keeps sending letters 'extending the proceedings' at monthly intervals. Thus, the authority does not actually provide the time limit for resolving the case, contrary to Article 36 of the Code of Administrative Procedure, but 'extends the proceedings' for a specified period without statutory grounds, and the period necessary for resolving the case

					provided in the authority's letter is in fact only the date by which the authority sends the next letter in the case. In accordance with Article 36, the authority, when notifying the party about its failure to resolve the case in a timely manner, is required to state the reason for the delay. In a large number of cases, the authority does not state the reason for the delay in resolving the case, limiting itself to justifying the 'extension of the resolution of the case' with the need for further analysis of the documents. This justification is sometimes repeated in several or more than a dozen consecutive 'extension' letters. According to the case-law, the reasons for such delay should be specified in detail rather than by way of a general statement. They should also be true. However, in many cases, no new documents or circumstances appear within 1 month of sending the letter by the authority. Very often, such extension letters fail to contain

					information about the right to file a reminder.

Full text of the footnote in item 41. To: Articles 140, 141, 142, 143, 144 of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds.

Article 140 [Investors' board]

1. In a closed-end investment fund, an investor's board shall operate as a controlling body or an investors' meeting.

2. The manner of operation of the investors' board shall be specified in the articles of association of a closed-end investment fund and the rules and regulations adopted by the board.

2a. Participation in meetings of the investors' board may take place via electronic means of communication in accordance with the terms referred to in Article 114(2b)–(2c) unless the fund's articles of association provide otherwise. The person convening the meeting shall decide about participation in the meeting of the investors' board in the manner referred to in the first sentence.

3. The investors' board monitors the pursuit of the investment objective and investment policy of a closed-end investment fund and compliance with investment limits. To ensure this, members of the investors' board may review the fund's ledgers and documents and request clarifications from the management company, and, in the event of the execution of the agreement referred to in Article 4(1b), may also request clarifications from an EU-based manager.

4. The articles of association of a closed-end investment fund may extend the powers of the investors' board and may grant the investors' board the right to affect the fund's investment policy, including, in particular, the right to object to any presented investment projects binding on the fund manager or EU-based manager if the investors' board consists of participants holding at least 50% of the total number of the fund's investment certificates.

4a. The articles of association of a closed-end investment fund which is not a public closed-end investment fund may extend the powers of the investors' board by granting it the powers of the investors' meeting if the investors' board consists of participants holding a total of at least 50% of the total number of the fund's investment certificates. In such case, participants representing in aggregate more than 5% of the total number of the fund's investment certificates shall have the right to select their joint representative to the investors' board.

4b. In the case referred to in sec. 4a, for the adoption of resolutions by the investors' board, the conditions laid down in the statute or in the investment fund's articles of association regarding the adoption of resolutions by the investors' meeting by participants representing the required minimum number of investment certificates shall apply.

5. Should the investors' meeting ascertain any irregularities in the pursuit of the investment objective or investment policy or compliance with the investment limits, the investor's meeting shall call on the management company and, in the event of execution of the agreement referred to in Article 4(1b), also on the EU-based manager to promptly remove such irregularities and shall notifies the Authority thereof.

6. The investors' board may decide to dissolve a closed-end investment fund. A resolution on the dissolution of the fund shall be adopted if the votes in favour of the dissolution of the fund are cast by participants representing jointly at least 2/3 of the total number of investment certificates of the respective fund.

7. The articles of association of the fund referred to in Article 196:

1) which is not a public closed-end investment fund, or

2) which is a public closed-end investment fund issuing investment certificates with the issue price per certificate not lower than the PLN equivalent of EUR 40,000,

may stipulate that in the case referred to in sec. 6, the fund's management company and, in the event of execution of the agreement referred to in Article 4(1b), also the EU-based manager, shall be entitled to charge an additional fee to cover the costs of arranging the fund and lost profits, except that, if such right is vested in both these entities, this shall be pro rata to the costs of arranging the fund and lost profits incurred by each of these entities.

8. If, in order to effect a legal transaction, the statute requires the consent of the investors' board or the investors' meeting, any legal transaction effected without the required consent shall be invalid. Such consent may be expressed before or after the legal transaction is effected, but not later than within 2 months from the date of such legal transaction. Confirmation expressed after the legal transaction has been performed shall have retroactive effect from the time of performance of such legal transaction.

9. A legal transaction effected without the consent of the investors' board or the investors' meeting, if required only by the articles of association of the closed-end investment fund, shall be valid, but this fact shall not exclude the liability of the management company or EU-based manager for a breach of the fund's articles of association.

Article 141 [Membership in the investors' board]

1. A member of the investors' board may only be a participant of a closed-end investment fund representing more than 5% of the total number of investment certificates in the respective fund, who has consented in writing to his/her participation in the board and frozen his/her investment certificates in the number representing more than 5% of the total number of certificates in a securities account or in a collective account, or in the records of persons entitled to benefits arising out of securities kept by the issue agent, as referred to in Article 7a of the Act on Trading in Financial Instruments.

1a. In the case referred to in sec. 1, each frozen investment certificate shall carry the right to one vote in the investors' board.

2. The investors' board shall start to operate when at least three participants fulfil the conditions referred to in Article 1.

3. Membership in the investors' board shall cease on the date when the respective member of the investors' board resigns or on the date when the freeze referred to in sec. 1 is released.

4. The investors' board shall suspend its activity if fewer than three members of the investors' board fulfil the conditions referred to in sec. 1.

5. The investors' board shall resume its operations when at least three participants fulfil the conditions referred to in Article 1.

6. Each participant shall perform the rights and obligations resulting from his or her membership in the investors' board:

1) in person or via no more than a single representative – for participants who are natural persons;

2) via persons authorized to represent the participant or no more than a single representative – for participants who are not natural persons.

Article 142 [Investors' meeting]

1. The investors' meeting shall take place in the fund's registered office or in any other place in the territory of the Republic of Poland, as specified in the fund's articles of association.

1a. Participation in the investors' meeting may also take place via electronic means of communication unless the fund's articles of association provide otherwise. The person convening the meeting shall decide about participation in the meeting of the investors' board in the manner referred to in the first sentence.

1b. Participation in the investors' meeting via means of electronic communication shall consist of the following in particular:

1) real-time two-way communication between all persons participating in the investors' meeting as part of which the participants may take the floor during the investors' meeting from a location other than the place of the investors' meeting;

2) exercise of the voting rights before or during the meeting in person or via a proxy.

1c. Participation in the investors' meeting via means of electronic communication may be subject only to such requirements and limitations as are necessary for the identification of participants and the assurance of secure electronic communication.

1d. The minutes of the investors' meeting shall be signed by the chairperson of the investors' meeting and the minute taker. Such minutes shall be accompanied by the attendance list with the signatures of the participants of the investors' meeting and the list of participants voting via means of electronic communication.

2. The investors' meeting shall be convened by the fund management company or, in the event of execution of the agreement referred to in Article 4(1b), if such agreement so provides, by the EU-based manager, in the form of an announcement made at least 21 days before the planned date of the meeting.

2a. If the articles of association of a closed-end fund which is not a public closed-end investment fund so stipulate, the investors' meeting may adopt resolutions despite not having been formally convened if all investment certificates of the respective fund are represented at the meeting and no one present has objected to holding the investors' meeting or putting any items on the agenda.

3. Fund participants holding at least 10% of the investment certificates issued by the fund may request the convening of the investors' meeting by submitting a request to such effect in writing to the company's management board or, in the event of execution the agreement referred to in Article 4(1b), if such agreement so provides, to the EU-based manager.

4. Should the management company or the EU-based manager fail to convene such meeting within 14 days from the date of the request referred to in sec. 3, the court of registration may authorize the participants submitting such request to convene the meeting at the expense of the management company or the EU-based manager, as the case may be.

Article 143 [Persons entitled to participate in the meeting]

1. Persons entitled to participate in the investors' meeting shall be those fund participants who, no later than 7 days before the meeting or, in the case referred to in Article 142(2a), no later than on the date of its holding, submit to the management company a certificate of deposit issued in compliance with the provisions of the Act on Trading in Financial Instruments or a certificate

issued by the issue agent referred to in Article 7a of the Act on Trading in Financial Instruments keeping a record of persons entitled to investment certificates, confirming the freezing of the participant's investment certificates in such record and indicating the number, type and class of such certificates.

1a. (repealed)

2. The manner and conditions for convening the meeting and adopting resolutions shall be specified in the fund's articles of association.

3. (repealed)

4. (repealed)

Article 144 [Resolution on the dissolution of the fund]

1. The investors' board may adopt a resolution to dissolve a closed-end investment fund. A resolution on the dissolution of the fund shall be adopted if the votes in favour of the dissolution of the fund are cast by participants representing jointly at least 2/3 of the total number of investment certificates of the respective fund.

2. The articles of association of the fund referred to in Article 196:

1) which is not a public closed-end investment fund, or

2) which is a public closed-end investment fund issuing investment certificates with the issue price per certificate not lower than the PLN equivalent of EUR 40,000,

may stipulate that in the case referred to in sec. 1, the fund's management company and, in the event of execution of the agreement referred to in Article 4(1b), also the EU-based manager, shall be entitled to charge an additional fee to cover the costs of arranging the fund and lost profits, except that, if such right is vested in both these entities, this shall be pro rata to the costs of arranging the fund and lost profits incurred by each of these entities.

3. The investors' meeting shall express its consent to the following:

1) change of the depositary;

1a) taking over of the management of a closed-end investment fund by another management company;

1b) taking over of the management of a closed-end investment fund and the conduct of its affairs by an EU-based manager;

2) issue of new investment certificates;

3) amendments to the fund's articles of association with regard to exclusion of the priority right to purchase a new issue of investment certificates,

4) issue of bonds;

5) conversion of registered investment certificates into bearer certificates;

6) amendments to the articles of association of an investment fund, as referred to in Article 117a(1).

4. A resolution regarding the matters referred to in sec. 3(4)–(6) shall be adopted if the votes in favour of the issue of bonds, the conversion of investment certificates or the amendments to the articles of association of the investment fund have been cast by participants representing at least 2/3 of the total number of investment certificates of the respective fund.

5. Unless the fund's articles of association provide otherwise, an investment decision pertaining to the fund's assets the value of which is greater than 15% of the fund's asset value shall require the consent of the investors' meeting to become valid.

6. The investors' meeting, within 4 months following the end of each financial year, shall review and approve the fund's financial statements, the combined financial statements of the fund and the separate sub-funds referred to in Article 159, and the individual sub-fund financial statements for that year.

7. The fund's articles of association may extend the powers of the investors' meeting, and the articles of association of a closed-end investment fund which is not a public closed-end investment fund may grant the investors' meeting the powers of the investors' board.

8. Resolutions of the investors' meeting must be recorded in the minutes. Unless the fund's articles of association provide otherwise, the resolutions of the investors' meeting shall be recorded in the minutes by a notary.