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EBA - Consultation; Guidelines on sound remuneration policies

The Division Bank and Insurance of the Austrian Federal Economic Chamber, as representative of the entire Austrian banking industry, appreciates the possibility to comment on the Consultation Paper for Draft Guidelines on sound remuneration policies under Article 74(3) and 75(2) of Directive 2013/36/EU and disclosures under Article 450 of Regulation (EU) No 575/2013 and would like to submit the following position:

General comments

We appreciate the initiative of EBA to exchange views on its Consultation Paper and we would therefore like to use this opportunity to particularly comment on Q5 with regard to the principle of proportionality. The suggested approach on “neutralization” that was supposedly required due to a different interpretation of the wording of the CRD IV will have considerable impacts on the well-established remuneration systems of smaller institutions with low risk profiles.

A lot of non-complex institutions in Austria with a low risk profile and no incentive to excessive risk-taking within the remuneration system do currently make use of the possibility to neutralize the specific principles in line with the national implementation of the remuneration principles of the CRD IV. Therefore we would like to point out why EBA should not change its approach on “neutralization” as follows:

- Small low-risk banks active in traditional banking businesses are vital for the stability of the financial markets and the real economy. While recent regulatory initiatives aim at reducing the systemic risk emanating from large high-bonus-paying banks, small banks struggle with the expenses resulting from requirements that do not adequately take into account the principle of proportionality.
- Proportionality as an overarching principle already is an integral part of all areas and all levels of the supervisory framework. However, as the references to the principle of proportionality are not specific, the practical application is often difficult and there is little legal certainty. There clearly is a need for establishing a harmonized well-defined framework for proportionality guiding both supervisors and supervised institutions across

the EU.

- We recall that EBA expressed its wishes to honour its mandate under the CRR/CRD IV which states that EBA's regulatory and implementing technical standards are drafted in such a way that they are consistent with and uphold the principle of proportionality and can be applied by all institutions in a manner that is proportionate to their nature, scale and complexity, and also to their activities. This has resulted in EBA's initiative for shaping a Proportionality framework (EBA workshop on "Proportionality").
- We have reason to doubt the opinion of the European Commission whereupon Art 92 - 95 CRD IV cannot be applied on a proportional basis. This view does not adequately consider recital 66 CRD IV which takes the principle of proportionality explicitly into account (see our further comments). Also EBA has always argued in support of a proportional application of Art 92 - 95 CRD IV on the grounds that a proportional application of these provisions corresponds with their regulatory target. Art 92 - 95 CRD IV shall stem the excessive and incautious risk taken by the banking sector and counteract inadequate remuneration structures. A prudent, sound remuneration policy constitutes a real benefit for credit institutions and conduces to highly motivated employees, who have the success of the institution in mind. Generally, bonuses settle the economic cycle of an institution. Countercyclical measures lead to stabilization what is required for supervisory purposes.
- The implementation of the principle of proportionality should also accurately reflect the fact that small, non-complex institutions did not give rise to the current regulatory initiatives for remuneration principles. Neutralization is the right approach for institutions with low risk profiles where the extensive application of all remuneration tools would not lead to an improvement to the risk profile at all. It can be seen as EBA's duty to issue regulations that acknowledge the EU banking sector's diversity.
- It is at the heart of the principle of proportionality that institutions should be allowed to achieve the intended purpose of the regulatory rules by applying measures adequate to their size, complexity and risk profile. Neutralization of certain remuneration principles for non-complex institutions may be an adequate method of applying the proportionality principle.
- Comparing the remuneration principles set out within CRD III and CRD IV, no substantial changes to the wording are to be found. Moreover, within both directives the principle of proportionality is laid down as core principle forming the basis for the application of the remuneration rules. Accordingly there is no apparent reason for a change in the application approach of proportionality.
- Since EBA has allowed the use of the neutralization principle under CRD III and the use of this concept has not shown adverse impacts such as misuse of the principle of proportionality by non-complex institutions, EBA should not deviate from its initial standpoint and should continue to allow for neutralization when applying the proportionality principle under CRD IV. Furthermore, neutralization is also crucial to allow for consistency in the application of the regulatory frameworks.
- According to the recitals of the CRD IV, credit institutions have to develop remuneration policies and practices which are consistent with effective risk management. Therefore, the assessment of the performance-based component of remuneration should be based on long-term performance and take into account the current and future risks associated with that performance. Within smaller institutions with specialized business models the management of risks is less complex, hence the need for applying remuneration principles such as the payout in instruments or the deferral period is lower.

- Another reason for maintaining the possibility to neutralize some of the remuneration principles can be found within several provisions of the CRR which clearly state that they are supposed to be implemented in a manner that is proportionate to the bank's size, internal organization, nature, scale and complexity of their activities. For certain banks it may be the case that the remuneration system gives no incentives for its employees to assume risk. Therefore EBA should give smaller institutions the possibility to neutralize the payment in shares and deferral of variable remuneration (see recital 46 CRR).
- Another possible approach for the implementation of the principle of proportionality would be the implementation of a threshold for annual variable remuneration (e.g. EUR 150.000). It should be possible to neutralize the application of the specific remuneration rules for variable remuneration levels below the materiality threshold. There is no need for extensive application of deferral and ex-post risk adjustment or non-cash payout to very low bonuses which do not trigger risk incentives at all.
- The new approach regarding neutralization may cause disproportionate implementation costs for smaller institution by applying non-effective rules.
- Most important, we would like to urge EBA to further develop standard rules and harmonized criteria for the application of the concept of proportionality in the sense of entry level thresholds for institutions to apply the remuneration rules. In our view, proportional application of the stringent remuneration principles should be regulated on a European level in order to ensure a level-playing field. For instance, low-risk institutions of less systemic importance with balance sheets below EUR 5 bn (or by applying the general proportionality criteria outlined above) should only apply the general remuneration rules and be allowed to waive the application of all specific remuneration rules.

Response to the questions

Q 1: Are the definitions provided sufficiently clear; are additional definitions needed?

Definition of Staff (page 23 g): Regarding the Consultation Paper the scope of the definition of staff is

- *“all employees of an institution and its subsidiaries, including subsidiaries not subject to the CRD,*
- *all members of the management bodies within that scope and*
- *any other person acting on behalf of the institution and its subsidiaries” (page 23).*

“Staff”:

The reference to “any other person acting on behalf of the institution and its subsidiaries” is too broad and intransparent. For Identified Staff the RTS on Identified Staff selection clearly describes the relevant roles and responsibilities. For “other staff” it would be sufficient to include persons acting on the basis of an employment agreement and to refer to the prohibition to create circumvention structures.

The definition “any other person acting on behalf of the institution” should be clarified by EBA. From our point of view this cannot include e.g. advisors, attorneys etc. Please also see our comments regarding Art. 92.2 CRD IV in the reply to Q 5.

Q 2: Are the guidelines in chapter 5 appropriate and sufficiently clear?

See Q1

Q 3: Are the guidelines regarding the shareholders' involvement in setting higher ratios for variable remuneration sufficiently clear?

Point 32: “the approval of an institution’s remuneration policy and, where appropriate, decisions relating to the remuneration of members of the management body (or other identified staff), may be also assigned to the shareholders’ meeting”

A remuneration policy which has to be agreed in the shareholders meeting has to be rejected in every respect.

The approval of the remuneration of the management board by the shareholders is subject to specific rules, which are currently discussed (see proposal for a Directive of the European Parliament and of the Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement) and therefore should not be separately regulated in the EBA Guideline on remuneration. A reference to the specific rules should be sufficient and obviates the risk that contradictory rules are implemented. Further the EBA draft GL relating to approval of the remuneration policy by shareholders have no legal basis in CRD, as CRD does not provide for the approval of the remuneration policy by the shareholders, but requires that “the management body in its supervisory function adopts” the general principles of remuneration.

The procedure proposed by EBA for increase of the Bonus Cap up to 200 % of fixed remuneration is much more complicated than described in the CRD. In a group-context with several tiers, the increase of a bonus cap could consequently not only require the approval of the direct shareholder, but also of the shareholders’ meeting of the consolidating institution. Such procedure (approvals and notifications for each level) needs long time for implementation and requires much paperwork on each level, in particular if listed companies or companies with multiple shareholders are involved. Consequently it will not be possible in due time to react on market practices and specific situations where it would be prudent and reasonable to increase the bonus cap to ensure professional and qualified management by key employees (e.g. in order to implement Retention Programs to keep the key staff in specific situation). Finally in many jurisdictions remuneration issues, including the approval of a Bonus Cap, are not in the competence of the general shareholders’ meeting based on company law.

The purpose of the annual shareholders’ meeting is to decide on the most important issues of the company as set forth by law (esp. Company Act). The lawmaker has made a decision what issues should be brought to the attention of the shareholder and this list is extensive and conclusive. The purpose of the shareholders’ meeting is not to mingle into the daily business of the company, which is the management boards task to take care for. The approval and say on certain policies, which includes also the policy on the remuneration, is clearly an operative business and is not appropriate to be brought to the attention of the shareholder, since it contains especially technical and administrative procedures whose content is not of any purpose for the shareholder. The remuneration of the Management and Supervisory Board is reported anyway to the shareholder via the Corporate Governance Report which will be also distributed to each shareholder in the shareholders’ meeting. This report includes also the basic mechanism of remuneration of the boards. Therefore, we do not regard it necessary and useful to report in the shareholders meeting on certain policies, including the remuneration policy.

Q 4: Are the guidelines regarding remuneration policies in group context appropriate and sufficiently clear?

Point 61 and point 63, section 7, require that “...the consolidating institution must ensure that subsidiaries within the group which are not themselves subject to the CRD, apply the group-wide remuneration policies to all staff....”. This procedure seems to be mandatory without taking into consideration the legal proportionality principle (Article 92.2 CRD) which

provides the possibility to differentiate amongst institutions depending on "their size, internal organization and the nature and scope and complexity of their activities".

If the application of all remuneration rules is really required to all subsidiaries within a group, this could mean in practice that in complex credit institution groups with subsidiaries in different jurisdictions inside and outside the EU, the parent undertaking would have to implement and oversee the application of all general remuneration principles irrespective of the size, internal organization and nature, scope and complexity of the subsidiary's activities and the subsidiary's impact on the group risk profile. This would require enormous organizational efforts and expenditures on group and subsidiary level which are disproportionate to the potential effect on the group risk profile and financial situation.

Setting up a remuneration committee

The draft remuneration GL refer to the EBA GL on Internal Governance which stipulate that a regulated subsidiary should consider having as an element of strong governance also a sufficient number of independent non-executive directors who are independent of the subsidiary and of its group, and of the controlling shareholder. The GL on Internal Governance do not require that a "majority" of the Supervisory Board or Remuneration Committee (RemCo) members should be independent, but it is in the discretion of the institute to assess what number of independent members is appropriate. There is no reason why the composition of the Remco should deviate from this rule and a majority of independent members should be required. By taking into consideration that according to Austrian law (and other jurisdictions) the Remco members must be also members of the Supervisory Board, the majority requirement could also require a change of the composition of the Supervisory Board itself, even if the Supervisory Board's composition is fully in compliance with the GL on Internal Governance. Such burden, together with the extension of the competences and responsibilities for the Remco, seem disproportionate and would create additional material costs and would cause huge organizational efforts.

§ 39c of the Austrian Banking Act relating to the obligation to set up a remuneration committee does not require any "independent member" in the meaning of EBA, but only defines that the Remco shall be in the position to "independently assess" the remuneration issues.

Group context:

EBA stated in its final draft RTS on Identified Staff selection dated 16 December 2013 that "subsidiaries which are not subject to the CRD on individual basis do not need to apply the CRD and consequently the RTS on a solo level, but are included in a consolidated group level assessment" (see page 39 of the final draft RTS); similar wording can be found in section 9.3 of the EBA draft guidelines on remuneration. In section 9.5., point 106, it is explicitly stated that only staff "with material impact on the institutions risk profile on the consolidated level" shall be assessed. Consequently it seems that in subsidiaries which are not themselves subject to CRD only Identified Staff of material business units from group perspective (based on consolidated assessment) have to be assessed and not (all) staff of all subsidiaries as provided for in section 7 of the EBA draft guidelines.

Q 5: All respondents are welcome to provide their comments on the chapter on proportionality, with particular reference to the change of the approach on 'neutralisations' that was required following the interpretation of the wording of the CRD. In particular institutions that used 'neutralisations' under the previous guidelines for the whole institution or identified staff receiving only a low amount of variable remuneration are asked to provide an estimate of the implementation costs in absolute and relative terms and to point to impediments resulting from their nature, including their legal form, if they were required to apply, for the variable remuneration of identified staff: a) deferral arrangements, b) the pay out in instruments and, c) malus (with respect to the

deferred variable remuneration). In addition those institutions are welcome to explain the anticipated changes to the remuneration policy which will need to be made to comply with all requirements. Wherever possible the estimated impact and costs should be quantified, supported by a short explanation of the methodology applied for their estimation and provided separately for the three listed aspects.

Proportionality/Neutralization:

In addition to our general comments we would appreciate the approach of a broad interpretation of CRD IV in order to keep the possibility of “neutralization” under previous guidelines for the whole institution and for categories of staff. Some institutions are small, do not have any complex business strategy and pay lower amounts of bonus or no bonus. These institutions would then still have the opportunity to apply a full neutralization of payout under considerations of their complexity, risk profile, risk appetite, etc.

The draft GL requires institutions to apply sound remuneration policies to all staff and specific requirements for the variable remuneration of staff whose professional activities have a material impact on the institutions’ risk profile (identified staff). Consequently the new and extensive definition of “staff” which refers to employees and management board of all subsidiaries (in connection with the new interpretation of proportionality) could potentially mean that in large credit institution groups, which might consist of hundreds of subsidiaries, many of them neither credit institutions nor investment firms and/or seated in Non-EU-Countries, the remuneration rules have to be applied in each and every subsidiary, irrespective of its importance and risk influence on the group. The implementation of all remuneration principles throughout the group would require an enormous and disproportionate amount of working time and money and we believe that such approach is not in compliance with the proportionality principle as provided for in Article 92.2 CRD.

Further the reference in the definition to “any other person acting on behalf of the institution and its subsidiaries” is unacceptable, as the scope of application is vast and unclear. In this respect, clarification is needed whether any acting for whatever reason on the basis of a power of attorney would be sufficient to qualify as “staff” (What about advisors and consultants? Does the definition refer not only to individuals, but also to legal persons? See also our answer to Question 1).

The omission of total neutralization would lead to un-proportionality between institutions and would hit small institutions really hard - demanding extraordinary organizational efforts from them (human resources for execution, purchasing and handling of remuneration software, etc). We would embrace if EBA considers differences between investment banks, retail banks and non-bank subsidiaries regarding their risk profile and the amount of their bonus payments.

Due to the highly complex regulations and the higher administrative costs involved we can notice a shifting of granting variable payment components to fixed salaries in practice. Indeed we are acquainted with cases, where even complex institutions completely renounced the payment of variable remuneration because of the intricacy of the remuneration regulations. This means that also in low-profit business years higher fixed costs incur. Small units naturally are much more influenced by higher fixed costs than larger institutions might be. This creates an evident competitive disadvantage for small credit institutions. Concurrently the motivation of the employees to perform in the field of selling goes down and this will lead to decreasing revenues. In general working in a credit institution which pays out only fixed remuneration could be less attractive in comparison to working in a firm which incentivizes its own staff with variable remuneration.

Proportionality for institutions

Recital 66 CRD IV stipulates that the remuneration provisions of CRD IV shall accommodate the different types of institutions and take the size, the internal organization and the kind, the scope and the complexity of their business dealings appropriately into account. Therefore the Art 92 - 95 CRD IV cannot be looked as “one-size-fits-all”-approach. Instead a sophisticated point of view is permitted and required.

Especially the risk profile and characteristic of non-complex institutions allows an appropriate application of the remuneration provisions right up to an entire neutralisation.

Taking recital 66 CRD IV as a basis the non-complexity of an institution should be stated by reference to the following criteria

1. Size

The considering size characteristics of an institution constitute apart from the balance sheet total the off-balance-business deals, number of staff members and branches and directly held participations.

2. Kind, scope and complexity of business activities

A fundamental component for the determination of the risk appetite of credit institutions are kind, scope and complexity of its business activities. The risk appetite of an institution should be assessed by citation of the results of the risk-bearing capacity analysis or the ICAAP for example. Early detection systems, a collective liquidity management and the mutual solidarity and assistance in the event of insolvency of an institution can be mentioned as examples in this context.

3. Neutralisation in the absence of the availability of non-cash instruments

In the case of granting variable salary components via instruments the principle of proportionality should be within the meaning of appropriateness and feasibility especially taken into account. Where certain conditions are fulfilled, a neutralization of the compulsory payment with non-cash instruments should be principally legal.

Regarding non-complex institutions a neutralization should occur at all events, because if the institution is not publicly traded, it has no alternative instruments for shares or share-linked variable remuneration. An essential element of the remuneration provisions of CRD IV is to bring staff members in a position that is comparable to ownership rights. This target cannot be fulfilled by certain non-complex banks, for instance cooperative banks.

In case of non-listed equivalent non-cash instruments (e.g. so called phantom plans) the assessment of value is based on an external assessment. In general an auditor has to be ordered, who calculates the value of assets and liabilities of the institution. These audits are usually attended with substantive costs. An assessment of value that only happens for the purpose of paying a variable remuneration would lead to an undue burden of time and resources and to unreasonable high additional expenditures. If this financial and organizational overhead is justified, has to be calculated and decided on a case-by-case basis. As a result this can lead to a neutralization of the requirement to use non-cash instruments for the payment of variable remuneration.

Cooperative shares obtain no participation of asset value and are non-tradeable. Also Tier 2 capital does not obtain a position that is comparable to ownership rights. That is why these instruments are both not fit for the purposes of paying bonuses.

Proportionality for staff members:

Recital 62 CRD IV stipulates that the remuneration principles of CRD IV shall (only) apply to staff members whose professional activities have a material impact on the risk profile of the institution. This is consistent with the target of CRD IV that only those employees should be to the strict requirements of Art 92 - 95 CRD IV who are able to take excessive risks due to their position.

Implementation costs:

For the implementation and administration of deferral and the pay out in instruments including claw-back we expect enormous efforts and costs for the Austrian banking industry. The emission of non-cash instruments would produce additional costs (i.e. for the prospect of the securities).

Changes of the remuneration policy:

If we implemented the new interpretation of CRD IV we would not expect any positive impact on the risk-profile of the institutions and the risk assumption by the staff. On one hand this is due to the business model of banks which focus on retail banking (and not on investment banking). On the other hand employees receive only small amounts of variable remuneration (on average Euros 2,000 - 3,000 per year). This shows an unfavorable cost/benefit ratio. As a result many institutions would have to review the aspect of variable remuneration in their current remuneration policies.

Impediments:

First of all the Austrian Banking Act provides - in compliance with the respective CEBS-GL - for the principles of proportionality. Therefore the institutions - among other aspects - are not required to issue non-cash instruments if their shares are not traded at the stock exchange.

We expect to continue using the respective provisions of the Austrian Banking Act because of the positive experience we have made. In accordance with the Austrian Financial Market Authority it is possible to neutralize deferral and payout in instruments: First on the level of the institution if - among other criteria - the balance sheet total does not exceed a certain amount; second on the level of identified staff if the variable remuneration does not exceed a certain amount.

We would appreciate at least the application of a threshold level regarding “neutralization” on European level approved by EBA. We suggest a threshold of EUR 150.000,- in order to have a level playing field.

In summary it is in conformity with the system of the CRD IV to differently apply the Art 92 - 95 CRD IV for different types of credit institutions (principle of proportionality). An entire neutralization should be possible if it is consistent with the risk profile, the risk appetite and the strategy of the bank. The scope of a possible neutralization should always be measured by the circumstances of the institution.

The basis for a chosen neutralization should be a transparent, comprehensible und substantial explanatory statement why the neutralization is necessary and appropriate. This scope of action must be conceded for every credit institution.

Q 6: Are the guidelines on the identification of staff appropriate and sufficiently clear?

Branches of credit institutions (point 107): The practical experience showed, that branches and subsidiaries, not only located in third countries, who identified their staff according to the RTS criteria (RTS on criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile), had to identify almost all of their staff because of their small scope. From our point of view this could not be the objective of the RTS. Therefore we ask EBA to review its formulation in point 107 regarding the statement that for small and not complex branches and subsidiaries the criteria should be applied the same way and to respect the principle of proportionality.

In particular we refer to points 4 ff of Art 3 EBA RTS “on criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile”.

When identifying the staff respectively categories of staff a clear distinction between the various business areas of an institution should be drawn on the one hand. On the other hand internal organizational workflows and responsibilities of the identified staff should be taken into account.

It is crucial in this context if an employee effectively has the ability in such an extent that he can significantly influence the risk profile of an institution as a risk taker. Decisive should also be how the business model of the business unit of the member of staff concerned is organized in detail.

Employees who due to internal rules of procedure and organization only have limited powers or work in risk-entailing business divisions of the credit institution have no material impact on the risk profile within the meaning of the present consultation paper. Thus they should not be covered by Art 92 - 95 CRD IV. Furthermore it is not the intention of the remuneration principles of the CRD IV to cover all staff members who do their jobs in business units of the institution with a certain level of risk-affinity. E.g. bank employees in minor branches who are not part of the senior management but who are regularly engaged in granting loans should also be not covered by the Art 92 - 95 CRD IV.

Besides, low bonuses which - in relation to the base salary - do not exceed a certain level do not give reasons for a special incentive for venture some risk behavior. These small bonuses are usually no danger for the financial stability and soundness of the bank. Therefore they are irrelevant for the risk profile of the concerning credit institution. In these cases there is also no significant dependency on payment of variable remuneration. As a result it would be inappropriate that such small bonuses are subject to the rigorous remuneration provisions of CRD IV.

Example:

Fixed salary: € 200.000,--; assumed level of bonus: € 20.000,--; 60 % are paid out directly: € 12.000,-- ; 40 % are deferred for 5 years: € 8.000,--; ➡ € 1.600,-- per annum

Attention should be paid to the fact that we talk about yearly gross amounts without tax deduction. The net amount of bonus paid out every year is very marginal for risk takers.

Q 8: Are the requirements regarding categories of remuneration appropriate and sufficiently clear?

The requirements to determine whether remuneration is fixed or variable, as formulated under point 117, are not sufficiently clear. Therefore we ask EBA for further clarifications of following terms:

1. “are non-revocable (point 117e) + “ the payments cannot be reduced, suspended or cancelled by the institution (point 117f): from our point of view fixed base salary components can be revoked/reduced in some European countries (e.g. Croatia) based on management decisions to lower base salaries. Other fix base salaries such as overtime or management allowances can be revoked/reduced or cancelled (e.g. in Austria). So descriptions of 117e and 117f are not appropriate.
2. to not provide incentives for risk assumption (point 117g) is not clear as in general every job position exposes a company to some kind of risk;
3. “to not depend on performance” (point 117h): proposal is to cancel or reformulate into “do not depend only on performance” since fix remuneration is typically based on elements such as experience, job, skills, performance development, commitment, et cetera

Q10: Are the requirements on the retention bonus appropriate and sufficiently clear?

Retention boni are used under extraordinary circumstances, e.g. during restructurings, in wind down or in connection with change of control situations. In such very sensitive situations when employees are worrying about their personal future and professional career, it is most important to motivate and retain the key people. It is usual market practice to grant retention boni in such situations in order to retain the key employees and ensure the successful implementation of the appropriate measures. The application of the very strict limitations relating to variable remuneration in these very special situations seems disproportionate and counter-productive, as the employees expect unconditional and immediate rewards.

In particular the application of the strict bonus cap limits the possibility to grant market adequate retention boni in due time.

Further it is completely unclear how the ex-post risk assessment shall be applied to deferred retention boni, by taking into consideration that the retention boni are typically only linked to the fact that the staff member is still employed by the institution for a pre-defined time period.

Therefore if there is a legitimate interest in awarding retention boni, these boni should be exempted from the application of the CRD IV rules relating to variable remuneration.

Q 11: Are the provisions regarding severance payments appropriate and sufficiently clear?

The CRD requires that "payments relating to early termination of a contract reflect performance achieved over time and do not reward failure or misconduct". There is no explicit requirement to apply all other CRD remuneration rules to voluntary severance payments. By taking into consideration the exceptional character of severance payments and - as also outlined by the CEBS GL on remuneration - that severance payments are meant to provide a safety net for a staff member in case of early termination, severance payments should be clearly exempted from the application of the other CRD rules relating to variable remuneration.

Q 16: Are the provisions on the award of variable remuneration in instruments appropriate and sufficiently clear? Listed institutions are asked to provide an estimate of the impact and costs that would be created due to the requirement that under Article 94(1)(l)(i) CRD only shares (and no share linked instruments) should be used in parallel, where possible, to instruments as set out in the RTS on instruments. Wherever possible the estimated impact and costs should be quantified and supported by a short explanation of the methodology applied for their estimation.

As far as we understand the paper (point 246 - 248) listed corporations should use shares instead of share-linked instruments/phantom shares in the future (under Art 94(l)(i) CRD IV). Introducing shares as an instrument in the Savings-Banks and Cooperative Banks Sector would lead to significantly higher costs. The expected increase of annual costs would be based on additional FTE capacity (in functions as for example: HR, payroll, compliance), administration costs, group-wide software implementation costs, administration of employee rights into a share plan, monitoring of potential hedging activities (by compliance team), non-trading days monitoring, et cetera.

Further, in some EU countries the tax legislation (example: Croatia) regards the moment of granting and not the moment of cash-in of actual shares as the moment for demanding personal tax income. The negative development of the share price is then a risk for the individual person as tax already paid is not returned at the moment of issuing the right to turn shares into cash.

For this reason we reject the provisions regarding the use of shares instead of share linked instruments (in concrete phantom shares which are used in the Austrian Savings-Banks

Group). However, we would agree if EBA would allow the use of both: shares and phantom shares.

Numeration 248 describes that for stock corporations shares or for non-listed in addition share-linked-instruments "are available". This statement could be interpreted as obligation to use shares or at least share linked instruments for remuneration purposes. According to the Circular Letter issued by the Austrian Financial Authority (FMA) in December 2012 ("Grundsätze der Vergütungspolitik und -praktiken; Rundschreiben der FMA zu §§ 39 Abs. 2, 39b und 39c BWG") there is clearly no obligation to issue such instruments only for remuneration purposes, if these instruments are not "available" meaning either not issued or not certificated (no physical share certificates) or not tradeable. The opinion of FMA is based on an identical statement of the Austrian Parliament when introducing the CRD rules into the Austrian Banking Act. The obligation to create shares or share-linked instruments for remuneration purposes only would result in a disproportionate burden and extraordinary costs (e.g. yearly external valuation), but the effect on the ex-post-risk assessment compared to cash-payment would be very limited or even zero. If no instruments are used, (generally) at least 60% of the variable remuneration would be deferred in cash and would be subject to the ex-post-risk assessment rules e.g. be reduced or cancelled in case of deterioration of the financial situation of the institution. This would be similarly reflected in an external valuation for "share linked instruments".

In addition based on the draft EBA GL it is not clear whether in a group context group-wide-share linked instruments can be used. The CEBS-GL (FN 24 to Note 121) stated that „in a group context non-listed subsidiary institutions could have the option to use instruments issued by the parent company“. Recital 12 of EU-Regulation 527/2014 (= RTS relating to the "Other Instruments" - see Art. 94 (1) point (l) (ii) CRD) provides that in a group context issuances of instruments, appropriate for purpose of variable remuneration, may be managed centrally within a parent undertaking. Also the FMA-Circular from December 2012 provides for the possibility to use instruments issued by the parent undertaking in the whole group. Such group-wide approach ensures consistent application of the remuneration rules throughout the group and reflects the group's capital, financial and market position when structuring the remuneration policy. Group wide share instrument plans reduce costs, ensure fair treatment of all risktakers in the group and enhance group unity (fairness, international mobility of management etc). In the draft EBA GL there is no reference to such group-wide-instruments. If such approach was no longer allowed and the issuance of instruments for each institution/subsidiary of the Group would be required, it would lead to a dramatic increase of cost expenditure for complex credit institution groups.

Also the new interpretation/requirement provided for in the EBA draft that "listed stock corporations must not use share linked instruments" (the CEBS GL did not limit the use of share linked instruments to non-listed-companies), constitutes an unforeseeable change of the regulatory interpretation and practice. It creates a disproportionate burden, as the implementation and administration of real share programmes involves significantly increased financial resources and organizational effort (e.g. complex legal limitations and approval procedures for acquisition of own shares). The basic purpose of the instrument-requirement of CRD to put the staff into an owner-like position (to incentivize the staff and align its interest with those of the stakeholders) can be as well achieved by using share linked instruments which are calculated based on the share price (market price) of the listed institution.

Other remarks

25. Repeal of CEBS GL and 26. Date of application

The Draft EBA Guidelines foresee substantial changes and their implementation would require a completely different approach compared to current practices. In this respect the application date as of 1st of January 2016 is unrealistic.

Audit and Compliance role

Generally we noted that several control functions and committees are required to perform identical tasks, e.g. chapter 6.1. - 29 and 30: Compliance and Audit are requested to perform the same kind of analysis/reviews in combination with chapter 6.4.2 - 44 (tasks of the remuneration committee).

The second issue is closely related to the above one, where we see potential conflicts of interest when audit is requested to perform operational tasks, see chapter 9.2 - 99: Internal Audit should be properly involved in the identification process, also on an ongoing basis. The same could potentially apply to the requirements regarding severance pay (see chapter 13.2 - 141) with the procedural involvement of control functions. Thus, the described roles of the GL for Audit and Compliance are unclear.

Concluding remarks

In accordance with recital 62 und 66 CRD IV we support the implementation of reasonable thresholds regarding the compulsory application of the remuneration principles of CRD IV. It is necessary to harmonize the scope throughout Europe in which a credit institution is classified as significant and complex. In this way small, non-complex credit institutions can be exempted from a disproportionate effort and the fundamental idea of proportionality is respected. Furthermore a distortion of competition can be countered.

In Austria the threshold for boni on an institutional level (€ 1 billion of total assets) as well as on an individual level (gross amount of € 30.000,- or 25 % of the annual salary) is extremely low as compared to international standards. It is often wrongly argued that these very low thresholds are justified on grounds of the size of the country. However the mere size of a country does not indicate its living costs. In comparison to Austria, in Germany the application of the remuneration principles of CRD IV is only provided for credit institutions with a balance sheet of at least € 15 billion (§ 17 Ordinance on the Supervisory Requirements for Institutions' Remuneration Systems). In the Czech Republic the remuneration principles of CRD IV shall only apply to credit institutions that have a significant market share in the CZ. In the UK the classification of banks concerning the application of the remuneration principles of CRD IV is done via different "proportional tiers" on the basis of their relevant total assets. In Finland the threshold on an individual level is € 50.000,- and in France it is € 120.000,-.

Please give our concerns due consideration.

Yours sincerely,

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