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**BANKING
STAKEHOLDER
GROUP**

EBA Consultation Paper on Draft Guidelines on sound remuneration policies under Directive 2013/36/EU

Institutions have 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). Articles 74 and 75 of Directive 2013/36/EU (CRD) mandate the EBA to develop guidelines on both, remuneration policies for all staff as part of institutions internal governance arrangements and remuneration policies for identified staff.

The EBA has published guidelines on remuneration policies in 2015, which will now be updated to accommodate the changes to CRD that have been introduced by Directive 2019/878/EU:

- Gender neutral remuneration principles and equal pay for male and female workers for equal work or work of equal value
- Application of the requirements of sound remuneration policies in a group context
- Waiver to defer a part of variable remuneration and to pay part of it in instruments
- Clarification on severance pay, retention bonuses and discretionary pension benefits to avoid circumventing the bonus-cap

Q1. Are the amendments to the subject matter, scope and definitions appropriate and sufficiently clear?

Additional references are needed to give effect to the Level 1 text

The EBA has published guidelines on remuneration policies in 2015, which will now be updated to accommodate the changes to CRD that have been introduced by Directive 2019/878/EU. However, the BSG recommends additional references to give appropriate effect to the Level 1 text, as follows:

- Para 39: the HR function should also assure that the remuneration policy is consistent with obligations on gender neutrality and equal treatment of different genders;
- Para 57g: the remuneration committee should also assess the mechanisms and systems adopted to ensure gender neutrality and equal treatment of different genders;
- Para 88: should make clear that obligations on gender neutrality also apply (in a proportionate way) to all institutions;
- Para 199: variable remuneration awarded should also be consistent with a gender neutral remuneration policy;
- Para 308: an additional point g should be added. “evidence supplied by the institution as to how the remuneration policy and supporting systems and processes ensure gender neutrality and equal treatment of different genders”

Q2. Are the amendments regarding gender neutral remuneration policies sufficiently clear?

In general terms, the guidelines are clear.

Determining the value of work

Nevertheless, the BSG is of the view, that the expectations for the implementation of the aspects mentioned in para. 27 as well as the rationale behind it should be clarified. When clarifying, current discussions at European level and the rulings of the European CoJ regarding that matter (i.a. Commission Recommendation C (2014) 1405 final, para 10, or COMMISSION STAFF WORKING DOCUMENT SWD/2013/0512 final) shall be taken into account. We would recommend to refer in para 26 to the above mentioned documents to determine the equal value of work. Para 27 should be reformulated to take into account additional aspects to determine the remuneration level beyond the equal value of work. In particular we are of the opinion that the nature of the employment contract, including if it is temporary or a contract with an indefinite period (lit e.) does not provide any information as to the value of work.

Shareholders` involvement

Last, there seems to be one word missing in para 46 c. It should read: “how it is ensured that the remuneration policy is gender neutral and that equal opportunities for all genders exist;”

Q3. Are the guidelines on the application of the requirements in a group context sufficiently clear?

In general terms, the guidelines are clear.

Remuneration policies and group context

The BSG recommends amending the first sentence of the new para 73 with the following: “with no prejudice to the rights of employee representatives and trade unions under national law.” Parts of the

remuneration policy are in the scope of co-determination or collective bargaining rights, so that the consolidating institution is not in any case able to enforce the remuneration policy without undergoing the necessary procedures with the employee side.

Q4. Are the guidelines regarding the application of waivers within section 4 sufficiently clear?

In general terms, the guidelines regarding the application of waivers are clear.

Proportionality of application in the group context

The BSG suggests reviewing the wording of para 87 f where the EBA refers to an assessment of the group and the characteristics of the group to which the institution belongs to. It is not clear, to which characteristics the EBA is referring to in this context.

Severance payments

We would additionally recommend clarifying para 94 d) and amend it with the following sentence: “Severance payments covered by para 170 are not taken into account.” It is not comprehensible to not consider specific severance payments when calculating the general ratio of variable and fixed remuneration but do count it for the calculation of the ratio for the purpose of using the waivers under Art 94 (3) CRD. If the severance payment is made under one of the exemptions in para 170 this should not lead to deferral and paying in instruments of the severance payment e.g. in a case of loss of job.

Last, there seems to be a typo in para 86. It should read: “ [...] aspects of all criteria above. ~~Should be taken into account in assessing what is proportionate.~~”

Q5. Is the section 8.4 on retention bonuses sufficiently clear?

Yes, the section is clear.

Q6. Is the amended section 9 on severance payments sufficiently clear?

Severance payments

Regarding the BSG`s remarks to Q4 the BSG suggests to amend the second sentence of para 170 with the following clause after “calculation of that ratio”: “(this includes the ratio in Art 94(3) CRD)”.

Regarding the rights of trade unions and employee representatives para 170 should also be amended with point “c. severance payments which are part of an agreement between the institution and employee representatives or trade unions under national law.” It is not in any case a mandatory obligation to conclude such agreements, but if they are concluded under the procedures of national law, they should be treated like the other exemptions in para 170.

The BSG also thinks that in line with the beforehand mentioned points there is a need for clarification in para 148. Based on our suggestion for an amendment of para 170 c) we would appreciate an addition in para 148 after the last sentence: “This is not the case where pension benefits are part of agreements mentioned in para 170.”