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Groupement Européen des Banques Coopératives
Europäische Vereinigung der Genossenschaftsbanken

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VH/WSC/B18/11-116

CP47 on EBA Guidelines on Remuneration data collection exercise regarding high earners

Dear Sir, Madam,

The European Association of Co-operative Banks (EACB) welcomes the opportunity to provide comments to CP 47 on EBA Guidelines on Remuneration data collection exercise regarding high earners.

Please find our general and specific remarks on the following pages.

We remain at your disposal for any further questions or requests for information.

Yours sincerely,

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GENERAL REMARK

The Members of the EACB acknowledge the requirement for conducting a remuneration data collection exercise as regards high earners as according to Article 22, paragraph 5 of Directive 2006/48/EC as amended by Directive 2010/76/EU. We understand that EBA wishes to provide guidelines for this data collection exercise in order to enhance the convergence of supervisory practices, to avoid double reporting request by the home and host member state, to ensure the consistency of the data collected and equal conditions for credit institutions.

- ***EBA 'may' to draft guidelines***

However, there is a possibility for EBA to draft these Guidelines cf. 'may' in Article 22 paragraph 5 Directive 2006/48/EC and no obligation, we therefore consider that these EBA Guidelines should be proportionate, restricted to the minimum and be as concise, clear, concrete and precise as possible.

- ***Avoid double reporting at national and EU level***

In addition, it should be mentioned that in many Member States banks already have the duty/obligation to disclose to the public and provide to their national authorities the relevant data on remuneration based on national regulation[1] which transposes CRD III. Member State authorities thus already have the necessary data to their disposal which they can submit on an aggregate basis to EBA. These EBA guidelines should not introduce another obligation and another system of reporting. The general objective of EBA must be to avoid 'double' reporting: on the national and additionally at the European level and to avoid an unnecessary double burden for banks. Therefore, we think it is necessary to clearly mention that the banks should only report once to their national supervisory authorities following national legislation. The national supervisory authority passes the information it has to its disposal to EBA on an aggregated basis without an additional request for data provision from banks.

- ***Need to stay close to CRD III***

Regarding these draft guidelines as such, we regret that the guidelines are too abstract and not precise. The guidelines should provide for a proper interpretation, clarification and practical implication of the relevant provisions of the CRD III and CEBS Guidelines of 10 December 2010 (hereafter referred to as CEBS Guidelines). It is necessary to stay as close as possible to the CRD III and CEBS Guidelines as possible. Where EBA decides to introduce new concepts for these Guidelines in the data collection, it should provide a proper reasoning in the Recitals why it is introducing certain concepts that do not derive from or are referring to concepts within CRD III or CEBS Guidelines.

- ***Level of application: national level not cross- member state level***

The level of application should be focused on national markets. The figures are not comparable on a consolidated basis. Within the European Union, we have different markets concerning remuneration-systems and levels. If data is provided on a consolidated (and thus cross-Member State) basis different markets will be reflected in one figure, because most institutions are differently represented in the EU. Such figure would not be useful, reliable and realistic.

[1] Cf. § 7 and 8. of the German law as regards remuneration of 6 Oktober 2010 (*Institutsvergütungsverordnung:* *http://www.bundesbank.de/download/bankenaufsicht/pdf/basel3_institutsvergv.pdf*)

- ***CEBS Guidelines not properly transposed***

Finally, following the publication of CEBS Guidelines on remuneration policies and practices of 10 December 2010, many of our member banks indicated that Member States implemented the CRD III but many did not transpose the CEBS Guidelines at Member State level. As such, certain evident features of the Guidelines were not respected by the Member States. We therefore wonder whether new and complementary guidelines would be useful if the CEBS Guidelines have not been properly transposed.

SPECIFIC REMARKS

Recitals

- ***EBA 'may' to draft guidelines***

There is no obligation for EBA to draft these Guidelines cf. 'may' in Article 22 paragraph 5 Directive 2006/48/EC but a possibility. We consider that these EBA Guidelines should be proportionate, restricted to the minimum and be as concise, clear, concrete and precise as possible. Furthermore, we think that it is necessary in Recital 2 to state more precisely that the specific legal basis for EBA's mandate is the possibility (cf. 'may') to draft guidelines in paragraph 5 of Article 22 of Directive 2006/48/EC as amended by Directive 2010/76/EU.

- ***Need to integrate professional secrecy rules***

Moreover, considering that EBA will use personal data, it is necessary to take up in the Recitals the rules applicable as regards professional secrecy for EBA. It could be suggestion to state in the Recitals that Art. 339 of the Treaty of the Functioning of the European Union, Article 70 of EBA Regulation, Art. 16 of the Staff Regulations lay out rules of professional secrecy that apply in relation to these activities of the European Banking Authority, and Decision EBA DC 004 of the Authority's Management Board on Professional secrecy implements these rules. Also the Annex to Commission Decision 2001/844/EC, ECSC, Euratom lays down the rules on security regarding the protection of classified information.

Article 1 - Definitions

- ***Need to stay close to CRD III***

We wonder why EBA introduces the concept of 'high earner'. In the CRD III and CEBS Guidelines the concept staff with material impact' exists already which is lacking a definition. It is necessary to stay as close as possible to the CRD III and CEBS Guidelines as possible. The guidelines should provide for a proper interpretation, clarification of the existing concepts in the CRD III and CEBS Guidelines. Where EBA decides to introduce new concepts for these Guidelines in the data collection, it should provide a proper reasoning in the Recitals why it is introducing certain concepts that do not derive from or are referring to concepts within CRD III or CEBS Guidelines.

- ***Need to introduce a threshold for reporting***

For most cooperative banks there are few or possibly only one person per division which can be called "high earner" e.g. CEO, head of investment banking, etc. We consider the provision of this information to national competent authorities and EBA is a direct inference in the private data of these persons. This seems unacceptable. It is therefore necessary to introduce a threshold that it is only necessary to participate in the reporting, if the institution or group of institutions has more than "x" (e.g. 5) has high earners.

- ***Need to integrate professional secrecy rules***

With regards to data on 'high earners, EACB members doubt whether this request is compatible with data protection law. This is especially in cases, where only a few members of staff are affected. Therefore, it is necessary to take up in the Recitals the rules applicable as regards professional secrecy for EBA. It could be suggestion to state in

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Article 2 – Information to be completed and submitted

- ***Need for clear definition 'total remuneration'***

The term 'total remuneration' should be defined more clearly. Does it mean the paid remuneration or the earned remuneration during the reference year? The CEBS guidelines only provide in para 11 and 121 for a definition of fixed and variable remuneration and in para 67 a indication of what remuneration policy should cover: all aspects of remuneration including fixed components, variable components, pension terms and other similar specific benefits. For reporting purposes, it should be more clear and precise what the total remuneration should consist of.

- ***Existence of different national definitions of 'remuneration'***

It should however be taken into account that many Member State have passed national legislation as according to CRD III before the CEBS guidelines were issued. Therefore different definitions of 'remuneration' exist based on which the respective credit institutions publish their data.

For example in Germany law e.g. the *Institutsvergütungsverordnung* includes the following definitions in § 2[2] on the basis of which German banks report.

> *"§ 2 Definitions*
> *For the purposes of this Regulation*
>
> *1. "Remuneration" means any financial payments and payments in kind, whatsoever, and services from third parties, which a manager, a business leader, a member of staff receives with regard to his or her career at the credit institution, are not considered compensation financially or remuneration in kind, granted by the credit institution by virtue of a general gauge independent and institution-wide control and have no incentive to enter into risks, especially discounts, corporate insurance and benefits, as well as employees and employees' contributions to statutory pension insurance for the purposes of Part VI of the Social Code and for occupational retirement provision as defined by the sectoral pension law;*
>
> *2. "Remuneration systems" the institution's internal regulations on compensation and their effective implementation and application by the credit institution;*
>
> *3. "Variable Payment" portion of the compensation, the grant*

[2] Cf. § 2. of the German law as regards remuneration of 6 Oktober 2010 (*Institutsvergütungsverordnung: http://www.bundesbank.de/download/bankenaufsicht/pdf/basel3_institutsvergv.pdf*)

amount or at the discretion of the institute or the occurrence of agreed conditions which, even including discretionary benefits for retirement;

4. "Discretionary benefits for retirement," the portion of variable compensation that is agreed upon for the purpose of pensions in relation to a specific imminent termination of employment at the institute;

5. "Fixed payment" means the part of the remuneration which is not variable as defined in section 3;"

Furthermore, on the one hand it is possible to break down the identified staff by business areas, but on the other hand the net profits are not accounted by business areas according to the accounting system used for regulatory reporting. Net profits are accounted by institutions.

In order to ensure a level playing field, it is necessary that all institutions at EU level deliver the same figures to the EBA therefore the required information to be submitted should be defined more clearly and more precise.

Article 3 – Scope of information provided

- ***Level of application: national markets***

We consider that it is necessary that the level of application should be focused on national markets. The figures are not comparable on a consolidated basis. Within the European Union, we have different markets concerning remuneration-systems and levels. If data is provided on a consolidated (and thus cross-Member State) basis different markets will be reflected in one figure, because most institutions are differently represented in the EU. Such figure would not be useful, reliable and realistic.

Article 4 – Member State of the high earner

We agree the information should be provided to the Home Member State.

In addition, it is necessary that the level of application should be focused on national markets. The figures are not comparable on a consolidated basis. Within the European Union, we have different markets concerning remuneration-systems and levels. If data is provided on a consolidated (and thus cross-Member State) basis different markets will be reflected in one figure, because most institutions are differently represented in the EU. Such figure would not be useful, reliable and realistic.

Article 5 – Frequency of reporting and remittance dates, and reference years

- ***Reporting only once per year***

The frequency of reporting should only be once per year as is set out in Annex XII, Part II point 15(f) of the CRD (amended by Directive 2010/76/EU).

- ***Avoid double reporting***

In addition, it should be mentioned that in many Member States banks already have the duty/obligation to disclose to the public and to provide to the national authorities the relevant data on remuneration based on national regulation[3] which transposes CRD III. Member State authorities thus already have the necessary data to their disposal which they can provide to EBA on an aggregate basis. These EBA guidelines should not introduce another obligation and another system of reporting. The general objective of EBA must be to avoid 'double' reporting: on the national and additionally at the European level and to avoid double burden for banks. Therefore, we think it is necessary to clearly mention that the banks should only report once to their national supervisory authorities based on national legislation. The supervisory authority passes the information it has to its disposal to EBA on an aggregated basis without an additional request for data provision as follows from Article 22(3) and in point 15(f) of Part 2 of Annex XII of Directive 2006/48/EC.

- ***Annual data remittance day after end of October***

As regards the time of reporting, we consider end of June is absolutely too early. In certain Member States, decisions regarding the rewarding and also the payment process are still running in June. Therefore, the deadline of the reporting is too early. We request that the annual remittance day should not be before the end of October.

Article 6 – Transitional Arrangements

- ***Data collection requirement starting only for remuneration of 2011***

The data collection requirement should only take effect for remunerations paid out/awarded in 2011. We suggest that the first provision of data should not be before the end of October 2012 for the remuneration paid in 2011. The institutions and authorities will need some time to clarify open questions, which will arise from this consultation and guidelines.

It should be also remarked that at Member States'level until present for prudential purposes only the details as regards remuneration policies were in the focus including the determination of the ratios between fixed and variable remuneration components.
Therefore, it seems unacceptable to make these queries.

If necessary to provide data for remuneration paid in 2010, we consider that the remittance date should not be before the end of December 2011. It should be taken into account that the templates are not yet ready. It will be absolutely too short to collect the required data covering vast number of credit institutions and staff. Moreover, it should also be considered that the national supervisory authority needs some time to prepare their national data collection process.

[3] Cf. § 7 and 8. of the German law as regards remuneration of 6 Oktober 2010 (*Institutsvergütungsverordnung:* *http://www.bundesbank.de/download/bankenaufsicht/pdf/basel3_institutsvergv.pdf*)