**French banking Federation answers to the draft guidelines on sound remuneration policies**

**May 2015**

The European Banking Authority (EBA) launched on 4th March, 2015 a 3-month public consultation on its Guidelines on sound remuneration policies, answers expected by 4th June 2015 at the latest. These guidelines aiming at replacing 2010 CEBS guidelines on CRDIII should be issued in the second half of 2015 and we understand they will be applicable from 1st January 2016 for awards made in 2017 based on 2016 performance year.

French Banks fully support the EBA initiative to update the 2010 CEBS guidelines in order to enable consistent, efficient and effective implementation of the requirements by all institutions and to promote sound compensation practices for the whole financial sector.

**Nevertheless, these new draft guidelines introduce new requirements on top of CRDIV rules which go far beyond the rules applicable until now to European Institutions (which themselves go far beyond the FSB principles applied everywhere outside Europe, except for EEA Banks who must apply UE rules worldwide).** Moreover, these new guidelines do not seem consistent with the objective of CRDIV to target material risk takers, i.e. staff members who have a material impact on the risk profile of the institution.

The new rules represent for European institutions significant changes in the way they implement regulation on remuneration and **are often in contradiction with national legislation recently amended in member states following the adoption and the transposition of CRDIV rules and which take into account the proportionality principle**. In addition, the risks associated with activities such as Asset Management and Insurance are very different from the ones induced by banking activities: we therefore believe that there is a strong rationale to maintain the existing dissociation between AIFMD/UCITS, Solvency and CRD.

Finally, these new requirements would imply **significant changes and potential major impacts for French banks** in particular on the following main aspects: (i) remuneration policy and group context, (ii) interpretation of proportionality principles at individual level, (iii) remuneration structure and (iv) governance of remuneration policy.

French banks propose below alternative solutions aiming at simplifying and harmonizing the application of CRDIV requirements, whilst remaining fully compliant with the regulation.

1. **Remuneration policy and Group Context**

French Banks would request that the EBA remains the application of the proportionality principles applicable and suggest:

* Defining a single common threshold of 10 B€ of total assets at EEA level to promote a consistent application of the rules between member states
* Expressing that dispositions are applicable at Group level or solo basis level without taking into account sub-consolidated perimeter that only mirror an accounting organization.
* Exempting from the bonus cap employees working within asset management activities, or insurance company who will be identified as MRTs at Group level due to their remuneration threshold or their inclusion in a MBU for the Group , while this is not a requirement outside credit institutions. Otherwise, this would lead to major competitive distortions in the insurance and asset management industries.

1. **Proportionality principle to individuals**

French Banks would request that the EBA maintains a broader application of the proportionality principles as it was allowed within the previous CEBS remuneration guidelines, with the possible neutralization of some requirements, mainly on payment conditions (i.e. deferral and instruments), and defines a single *de minimis* threshold that could be applicable consistently to the EU banking industry, below which requirements relating to deferral, payment in instruments, retention periods could be neutralized. A threshold of 100 k€ would seem reasonable, taking into account market considerations and operational constraints in terms of management of deferral (100 k€ corresponding to annual deferred installments of 6.6 K€ in cash and 6.6K€ in instruments)

1. **Remuneration structure**

Use of instruments for the payment of variable compensation: French Banks would appreciate that EBA maintains flexibility and simplicity on the use of:

1. share-type instruments for the payment of variable compensation. Indeed, the payment into share-linked instruments can be applied uniformly on a worldwide basis, which is not the case of shares (different legal, regulatory, accounting and tax constraints and formalities depending on the countries). In the same time, it has exactly the same effect as payment into shares in terms of risk alignment with the long-term interests of the institutions and with those of the shareholders. Finally, it is operationally much less complex.
2. contingent capital instruments which are quite complex to put in place in particular for “retail” populations. The possibility to use them for specific populations should be offered but not the obligation to put them in place for the entire MRT population. It should also be possible to use synthetic instruments as for shares.

Performance-based long-term incentive plans (LTIPs): French banks suggest that EBA reexamine LTIP definition and that awards under LTIPs subject to performance conditions continue to be considered as deferred variable compensation for the purpose of the ratio calculation at their fair market value at the award date, in compliance with the previous CEBS remuneration guidelines.

Retention period: French banks would suggest that the appropriate retention period shall clearly be defined according to the current market practices as a 6-month retention period to ensure a consistent application among EEA member states, or at least inferior to one year to avoid tax penalties to employees.

Allowances: French banks consider that the definition is in contradiction with local labor law. Besides, even the base salary does not comply with the very strict definition. Indeed, it is based not only on the employee’s responsibilities but also on his/her expertise and experience. In addition, it can change, even if the job position remains the same.

1. **Governance of remuneration**

French Banks encourage the EBA to maintain the role of the remuneration committee and the supervisory board as it is defined in CRDIV, i.e. in charge of adopting and reviewing the general principles of remuneration policy and not reviewing the remuneration policy in all details.

Furthermore, French banks would like to insist on the necessity to have EBA guidelines compliant with national laws and European directive requirements and not going beyond these national and European regulations.

**Conclusion**

All the points raised in our different answers to the questions as well as other less significant changes introduced in the draft guidelines will have major impacts for all French and European Banks, increasing strongly the complexity and heterogeneity of implementation and leading to administrative burden and additional costs, without improving the risk alignment of the remuneration policies.

Moreover, these new requirements more stringent than CRDIV will extend the gap with the FSB principles applicable worldwide to all banking institutions and worsen the uneven playing field for EEA based institutions compared to their peers based in third countries.

**French Banks encourage the EBA to maintain a sufficient level of flexibility, simplification and harmonization in their Remuneration Guidelines, which would not prevent from complying with the ultimate policy objective of an appropriate alignment of risk and reward, and to be less strict on the interpretation of the proportionality principle to ensure a level playing field within the banking sector.**