

Comments

on the EBA Consultation Paper on
*Draft guidelines on remuneration policies and
practices related to the sale and provision of
retail banking products and services*
(EBA/CP/2015/29)

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Berlin, 18 March 2016

The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent approximately 1,700 banks.

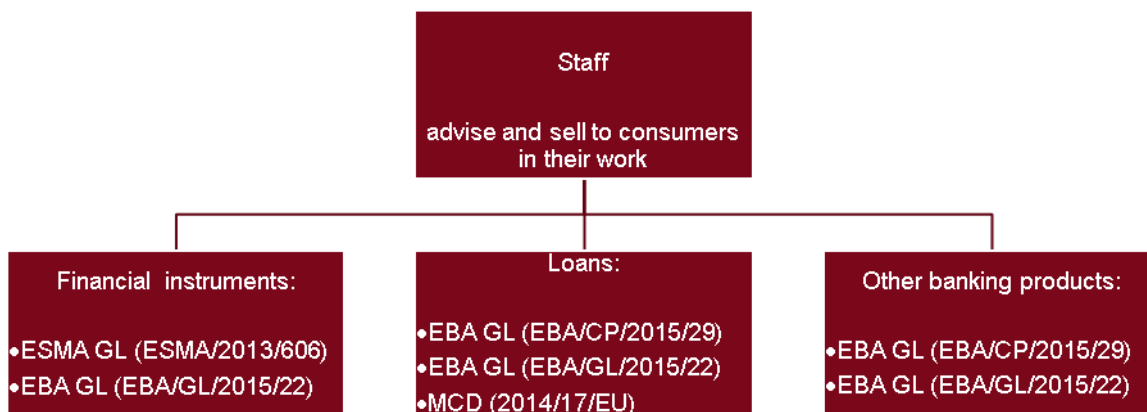
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Comments on EBA CP on draft guidelines on remuneration for sales staff

I. General comments

We agree, in principle, with the aim pursued by the EBA in the present draft guidelines, namely that qualitative criteria for safeguarding the interests of consumers should be taken into account in the design of remuneration policies for the retail banking sector.

If a financial institution's sales staff work both for consumers (in the sense of retail clients) and corporate clients and/or if they sell differently regulated products and services, the institution will have to comply with various sets of regulatory requirements in future when designing remuneration policies. This is illustrated by the following diagram:



In several areas, the partly overlapping requirements diverge from one another and definitions sometimes vary. So it is not only because it is around 260 pages long that the relevant regulation imposes a virtually unmanageable compliance burden on small and medium-sized institutions. In the medium term, the requirements in this area should therefore be consolidated to form a single consistent framework.

II. Specific comments

1. Rational and background

- 1.1.1. According to **paragraph 3.2.15, second indent**, variable remuneration should be paid out over a period of time (*"in several tranches over an appropriate time period"*). This basically corresponds to the deferral requirement in the *EBA Guidelines on sound remuneration policies* (EBA/GL/2015/22). It should be borne in mind in this respect that under the concept behind the *EBA Guidelines on sound remuneration policies*, the strict payout arrangements (e.g. deferral) apply only to risk takers. The draft guidelines now presented for the retail banking sector do not differentiate between all staff and identified staff, but apply to the staff selling retail products and services. These will in many cases not be risk takers within the meaning of Commission Delegated Regulation (EU) 604/2014.

An argument against adopting the deferral approach in the *EBA Guidelines on sound remuneration policies* for the sale of retail products and services is also that variable remuneration in this area is normally low both in percentage and absolute terms compared to fixed remuneration. There is

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no material dependence on variable remuneration in this area. The burden that deferred payment would impose on institutions would be disproportionate to the level of variable remuneration. There is no recognisable benefit. The establishment of complex remuneration policies called for in this area would encourage the abandonment of variable remuneration elements or their transformation into fixed remuneration. The acknowledged positive steering effect of variable remuneration elements would be lost.

Furthermore, the adoption of the deferral requirement for the retail banking sector is at odds with the *EBA Opinion on the Application of Proportionality* of 21 December 2015 (EBA/Op/2015/25). In this document, the EBA explicitly calls for CRD IV to be amended to exclude small, non-complex institutions from the deferral requirement in view of the disproportionate burden it would impose and the modest amounts involved. Any deferred payment of remuneration is an issue that should in any case be left to the *EBA Guidelines on sound remuneration policies*.

Should the approach adopted in the draft guidelines be adhered to nonetheless, staff whose total annual variable remuneration does not exceed a threshold of EUR 75,000 would have to be excluded from the scope. To avoid any unreasonable unequal treatment among staff, only the portion of variable remuneration exceeding this threshold should be paid out on a deferred basis.

- 1.2 According to the example of good remuneration policy given in the **penultimate indent of paragraph 3.2.15**, a sample of customers who have purchased a retail product covered by the guidelines should be contacted by staff independent from the “relevant persons” within the meaning of the guidelines. This example appears problematic for several reasons: Firstly, the customer satisfaction tested by such contact is a scarcely measurable or in fact unmeasurable criterion when it comes to designing remuneration policies appropriately with the interests of consumers in mind. This is because the type of customer feedback depends on many factors which are mostly not connected in any way with the remuneration of the staff concerned. Secondly, setting a restriction with regard to the staff who are to contact customers would impose a heavy and unjustified extra burden on institutions. Either staff would have to be trained separately or external manpower would have to be entrusted with contacting customers. Even though this is only meant to be an example of supposedly good practice, it would be helpful if the problems it raises were also to be addressed.
- 1.3 According to **section 3: Implementation, paragraph 15**, the guidelines, which are addressed to banks as well, are to apply from 3 January 2017. Banks will not be able to comply with the guidelines on an ad-hoc basis. A substantial period of time will be needed beforehand to amend (where legally permissible) existing contracts or company agreements that are not in line with the guidelines. An additional factor is that the final requirements will only be known once the guidelines are published. With this in mind, banks should be given an **adequate transitional period to implement the new requirements** so that these are complied with no later than 12 months after publication of the guidelines.

2. Guidelines

- 2.1 According to **paragraph 1.1**, remuneration policies should be designed so that they take into account the rights and interests of consumers and prevent conflicts of interest. This requirement needs to be reviewed for two reasons: Firstly, **the design of a remuneration policy will not be able to stop conflicts of interest from arising**. The *EBA Guidelines on product oversight and*

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governance arrangements for retail products (EBA/GL/2015/18) were developed for this purpose. In keeping with paragraph 26 of the *EBA Guidelines on sound remuneration policies*, the regulatory requirement for the design of remuneration policies should therefore read as follows: “*Conflicts of interest with regard to the remuneration policy and remuneration awarded should be identified and appropriately mitigated, including by establishing objective award criteria based on the internal reporting system, appropriate controls and the four eyes principle.*”

Secondly, paragraph 1.1 fails to reflect the fact that **remuneration policies are also an instrument for steering companies in the desired direction**. Focusing solely on the rights and interests of consumers does not take this point into account. It is important that a remuneration policy is also geared towards achieving the objectives of the institution’s business and risk strategy (see also paragraph 16 of the *EBA Guidelines on sound remuneration policies*).

- 2.2 The requirement in **paragraph 1.6, point b)** should be reviewed. The decisive factor should be whether or not a product or service meets the wishes or needs of the consumer. As in other industries, it should be **immaterial whether a particular product or service is more profitable than another or how profitable it is**. Profitability for a business undertaking should on no account be portrayed as something negative in itself. Otherwise the legitimate interest of business undertakings in “*operating profitably within the scope of the customer’s interests*” would be unduly handicapped.
- 2.3 The requirement in **paragraph 1.7** that – where an institution’s remuneration policy allows variable remuneration – the ratio between fixed and variable remuneration should be appropriately balanced and should take into account the rights and interests of consumers does not appear necessary. The appropriateness of remuneration is already ensured by the ceiling imposed under CRD IV (“*maximum remuneration ratio*” in Article 94 (1) (g) of Regulation 2013/36/EU). Additional complementary remarks on the measurement and design of an appropriate remuneration ratio are contained in the *EBA Guidelines on sound remuneration practices* (see page 61). It already follows from the requirement in paragraph 1.1 of the draft guidelines that the rights and interests of consumers have to be taken into account. In addition, the impact and effectiveness of the maximum remuneration ratio has been examined by the European Commission. Until the results of this study are presented, no requirements going beyond the existing maximum remuneration ratio should be set.
- 2.4 According to **paragraph 3.2**, the management body should seek independent advice on the design of remuneration policies and practices. Whilst in significant institutions this task could be performed by the remuneration committee or remuneration officer, the question is raised as to how this requirement would have to be handled in less significant institutions. For proportionality reasons, there should be no requirement to employ an external consultant. This would impose an unduly heavy extra burden on the institutions in question. It should also be borne in mind that “independent” advice cannot generally be expected from external consultants as their earnings are likely to be in direct proportion to the complexity of the remuneration policy.

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- 2.5 **Paragraph 3.5** raises the question of how the requirement for an institution or its supervisory function (in the case of a dual board system like that in Germany, this presumably means the supervisory board) to review, at least annually, the remuneration policies and practices governing the sale of retail products is to be implemented in practice. Where significant institutions are concerned, the supervisory board can use the remuneration officer who already supports it in performing its duties in regard to designing and monitoring all remuneration policies and practices. In the case of less significant institutions, this requirement would impose a further extra burden on the supervisory board. For proportionality reasons, remuneration policies and practices should therefore not be reviewed annually but only where necessary in a given case.

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