

21 March 2016

EBF comments on the EBA draft GL on remuneration of sales staff

General comments (answer to questions 1-4):

The European Banking Federation (EBF) would like to thank the European Banking Authority (EBA) for the opportunity to respond to this consultation paper.

According to the Consumer International report entitled “*Risky business: The case for reform of sales incentives schemes in banks*”, different authorities have identified some problems related to consumer protection, and by extension an operative risk.

We note that the draft Guidelines have been issued by the EBA on its own initiative in order to give effect to several pieces of legislation. However, to some extent it is difficult to understand the rationale for the draft Guidelines, as similar consumer protection provisions are already incorporated in various EU rules. In particular, the current draft Guidelines seem in some parts to duplicate the ESMA Guidelines on Remuneration policies and practices under MiFID. There is, however, a much broader scope of application with regards to covered institutions and products under the draft EBA Guidelines as well as more detailed requirements regarding documentation, approval and monitoring. Therefore, we consider that if the scope remains this broad the Guidelines should be issued by a joint-EBA/ESMA/EIOPA committee and not just the EBA. Moreover having in mind that there are a lot of business models where the same person, as sales staff, offers diverse types of products (i.e. insurance, current accounts, UCITs, etc.) we consider reasonable that remuneration policies and practices should not be regulated in different ways in various Guidelines issued by different European Supervisory Authorities (ESMA, EIOPA and EBA). Maximum convergence is needed on this subject.

What is more, we fear that this additional layer of rules may essentially create a disproportionate administrative burden. In particular, we consider that the requirements related to auditing and record-keeping are too burdensome and should be simplified.

Besides, we believe that the scope of incentives taken into account in the draft Guidelines is too large. Indeed, it is impossible to materialize the link between mis-selling of products and conflict of interest on the one hand and such elements as career progression or benefits on the other hand. We would suggest limiting the scope of these Guidelines to monetary reward. We would also like to underline that variable remuneration should be considered as the main lever in case of mis-selling or conflict of interest, since fixed salary cannot be reduced and thus does not offer any flexibility.

Finally, the draft Guidelines indicate that the application date should be 3 January 2017. Considering that the final Guidelines may require changes to remuneration policies, formalization and validation up to Board level, as well as negotiations with employees’

representatives depending on the countries, we consider that a transitional period could be proposed in the guidelines for allowing the implementation of the changes, and that the application date should be set for 1 January 2018, or later, depending on the date of issuance of the final Guidelines.

Specific comments (answer to question 5):

Paragraph 15 of the Rationale part

The second indent of this paragraph suggests that under the Guidelines, the remuneration of sales staff should be deferred and paid in several instalments. We would like to point out that requirements related to deferral are included in CRD IV in relation to Material Risk Takers, for whom such a mechanism may be considered as appropriate given their significant impact on risks and their level of variable remuneration. On the contrary, it appears totally disproportionate for retail banking sales staff, with low variable remuneration levels. Furthermore this requirement is not explicitly mentioned in the actual guidelines. Therefore, we consider that this reference should be removed.

Subject matter and scope

We consider customer definition should be harmonized at European level, avoiding the possibility of National Competent Authorities applying divergent criteria on the matter, to ensure a level playing field and cross-border coherence. For the sake of enforceability of the Guidelines, it might notably be advisable to limit the scope of application to clients - natural persons (cf.p.8 of subject matter which allows competent authorities to extend the scope to clients – SMEs).

Moreover, regarding the scope of the guidelines we would very much appreciate having confirmation on whether or not all “credit intermediaries” are included in the scope, as “dealers” or “agents”.

Definitions

The scope of the guidelines covers both fixed and variable remuneration also including non-monetary benefits. According to the definition this may include career progression, health insurance, discounts, expense accounts, etc.

Regarding the wide definition of remuneration including benefits, we would like to highlight the fact that, while institutions may be compliant globally, it will be difficult to demonstrate compliance on individual employee level. Consequently, we request that the definition of remuneration is narrowed down to monetary remuneration only, focusing on the variable remuneration.

In that context we also note that social partners have the prerogative to negotiate collective agreements on pay. This right – embedded in TFEU – cannot be set aside by these guidelines.

Paragraph 1.2 of the draft Guidelines

Regarding this paragraph we would like to highlight that the preferences of the client, or a balanced portfolio distribution, may coincide with the interest of the institution, and at the



same time with the interest of the client, although analysed by product, or by cost only, the valuation could be different. It is not only a matter of costs but about customers' preferences and balance.

Besides, "any risk of detriment" is a very wide indeterminate juridical concept, which makes it very difficult to assess. Moreover, it may include any type of circumstances, for instance, even the fact of having better remuneration policies for staff offering the same product in a channel less convenient for the customer. Entities should be able to compensate their staff according to their business models, always avoiding real, objective and quantifiable detriment for consumers.

Because of the above, and given that the client is adequately protected, we propose a new wording: "When designing the remuneration policies and practices institutions should consider whether these policies and practices may reasonably introduce an incentive to provoke an objective and quantifiable detriment to consumers".

Paragraph 1.6 of the draft Guidelines

Item (b) of this paragraph forbids remunerating differently for the sale of different products or categories of products, because this could lead to potential detriment to customers.

First, higher promotion of a specific product does not have to be detrimental to the customer, especially when the sale process contains verification of matching of the offer to the needs of the customer. Therefore the Guideline should rather state that such activity is allowed as long as it is not harmful or detrimental to the customer.

Secondly, this statement overlooks the basic characteristics of the products. For example a simple bank account does not require preparing a sophisticated offer, or very special competences or work relating to its service. On the other hand, there are mortgage loans, credit card functionalities (like additional limits with instalments) or packages of products (like account, loans, credit cards and insurance), which require more attention and higher engagement of the sales person. In fact this provision impairs the sense of the bank's commission system.

Therefore, we would suggest the following amendment:

"b. promote, to the potential detriment of consumers, the offer or provision of a specific product **within a category** of products over other products, such as the offer or provision of products which are more profitable for the institutions over others which are less profitable." For this purpose, by "category" is meant the group of products which address a common client's need (e.g. current account, savings, investment funds, capitalization insurance, mortgage loans, consumer loans, commercial credit, leasing, factoring, guarantees, credit cards, debit cards, insurance), differentiated by term (short vs medium/long term), collateral and type of insurance risk covered.

Paragraph 1.7 of the of the draft Guidelines

We agree that firms should ensure that the ratio between the fixed and variable components of the remuneration is appropriate in order to take into account the best interests of their



clients, but we consider that firms should be able to define their own appropriate level, according to their organization and to the nature of their activities, etc. Indeed, remuneration policies can affect the competitiveness of firms and the variable remuneration in some competitive business environments should be considered, taking into account the nature, scale and complexity of the businesses and the nature and range of investment services and activities. In such a context, the word “balanced” could be misleading and we would suggest using a more general word such as “*an appropriate proportion*” to enable firms to keep a certain level of flexibility, as used in the ESMA Guidelines on Remuneration policies and practices under MiFID.

Paragraph 2.2 of the draft Guidelines

This paragraph mentions that institutions should record how remuneration policies and practices have been implemented in practice, in order to demonstrate compliance to Competent Authorities. However, it is not clear what actions would be required from institutions in order to comply with this requirement. It is not clear whether a general/high level statement of implementation would suffice or whether institutions would need to perform more detailed analysis. The EBF notes that a requirement to draft individual statements regarding all sales staff will be extremely burdensome without adding significant value for the Competent Authorities. The EBF considers that this paragraph should be rephrased.

Paragraph 3.2 of the draft Guidelines

The EBF would like to point out that only significant institutions are obliged to establish remuneration committees. Therefore, we would welcome clarification from the EBA on what the requirement to seek independent advice on the remuneration policies and practices means in practice. Application of this requirement could constitute a substantial burden for smaller banks. Therefore, we believe that this requirement, as well as the all other requirements in these Guidelines should be applied proportionally.

Paragraph 3.3 of the draft Guidelines

We consider that this paragraph should be redrafted as follows: “Where established, the compliance function should *participate and* confirm that the remuneration policies and practices comply with these guidelines.”

Paragraph 3.4 of the draft Guidelines

As there are different national approaches to what is considered “formally” delegated it would be appropriate to eliminate this term.

Also we consider that only changes to key remuneration policies and practices should require the approval of the management body. Requiring approval for changes to all policies and practices may place unnecessary burden on the management.

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