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| European Banking Authority (EBA) | **Division Bank and Insurance**  Austrian Federal Economic Chamber  Wiedner Hauptstraße 63 | P.O. Box 320  1045 Vienna  T +43 (0)5 90 900-DW | F +43 (0)5 90 900-272  E bsbv@wko.at  W http://wko.at/bsbv |

Your ref., Your message of Our ref., person in charge Extension Date

BSBV 115/Dr. Egger 3137 29 January 2021

Dear Sir or Madam,

**Re: EBA Draft Guidelines on sound remuneration policies under Directive 2013/36/EU**

With regards to the above mentioned consultation we would like to submit the following comments on behalf of the Austrian banking industry:

**● Composition of the remuneration committee (Chapter 2.4.1)**

According to **Para 55** of the draft paper in G-SIIs und O-SIIs the remuneration committee should include a majority of members who are independent and be chaired by an independent member[[1]](#footnote-1). The relevant **Article 95(1) CRD in conjunction with Article 75(2) CRD** do not provide a legal basis for such a composition requirement regarding the remuneration committee in systemically relevant institutions. Hence, EBA would **obviously go beyond its mandate** when establishing further guidance and regulations on independent members in the remuneration committee in its final version of Guidelines on sound remuneration policies.

In addition, a reference of EBA in the Guidelines to the legal basis of **Article 74(3) CRD** according to which institutions shall have robust governance arrangements cannot justify every single exceedance of a legally limited mandate.

Moreover, according to **Article 16(1) EBA Regulation**, EBA shall issue guidelines “with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of Union law”. Experience has shown that the Member States have implemented the requirements regarding independence in completely different ways, it is not very useful to require a majority of independent members for the remuneration committee. This is because these requirements will at best lead to further legal fragmentation instead of harmonisation as Article 16 (1) EBA-Regulation is aiming at.

If the remuneration committee shall be constituted in a way that it must be chaired by an independent member, a competent and independent judgment on remuneration policies and practices and the incentives created for managing risk, capital and liquidity in the sense of Article 95(1) CRD will be ensured for all significant institutions.

**In conclusion, apart from the lack of a legal basis in CRD for imposing the proposed provisions for the composition of the remuneration committee there’s also no evidence-based need to change the legal status quo.**

**● Date of application**

According to **Para 12** the adapted Guidelines shall apply from 26 June 2021. This proposed date of application is obviously **too ambitious** as the consultation runs until end of January 2021 and the final Guidelines can subsequently be expected in the first half of 2021 according to EBA. And it goes without saying that the institutions need an **appropriate timeframe for an internal implementation** of the new requirements on the basis of the revised Guidelines. This is particularly true in the context of the current COVID-19 crisis.

Hence, the date of application should be set **at least six months after the translation** of the Guidelines in all official languages of the EU.

**● Rz 23 Gender neutral remuneration policies**

Article 74 CRD V requires a "gender neutral" remuneration policy, which is defined as remuneration principles based on "equal pay". In this context, it is unclear why EBA refers to career development and succession plans, access to training and ability to apply for internal vacancies, as those are not remuneration-related.

**● Rz 46 Shareholders involvement**

Credit institutions that are subject to the information and reporting regime of the Shareholder´s rights directive relating to approval of remuneration policy and remuneration report should be excluded from the reporting requirements provided for in par. 46 to avoid conflict of rules and enhance clarity.

**● RZ 94 Waivers of variable remuneration pay-out process**

Lit 94 c): For variable remuneration relating to multi-year performance or periods, a pro-rata allocation should be possible.

Lit 94d: Please add a clarification that severance payments, which are not subject to the bonus cap and the deferral and payment in instruments requirement according to par. 170 of the EBA are not taken into consideration.

**● RZ 145 Retention Bonus (no pro-rata payment):**

Retention Bonuses are primarily used in cases where institutions are in difficult situations due to circumstances like tough market conditions or in cases of wind-down. In such cases it is especially important that key staff is kept motivated to help navigate the institution through tough times or to properly complete the wind-down process. Paying a retention bonus in full only after the retention period is concluded does not achieve that goal in our opinion. While we agree that a retention bonus should not be paid “up-front” we suggest a split where part of the retention bonus is paid to the eligible employees during the retention period while a significant amount will only be paid after the retention period is over (if all other conditions for allocating and paying the retention bonus are fulfilled), e.g. in a 2-year retention program: 30% of the retention bonus will be paid after the first year, 70% will be paid after the second year.

**Rz 260 Deferral period:**

The EBA GL require that Institutions should define what level of variable remuneration constitutes a particularly high amount, that in this context the ratio of fixed and variable remuneration should be considered and that when implementing the guidelines, competent authorities should set an absolute or relative threshold.

We suggest deleting the reference to the relative threshold, as otherwise small amounts of variable remuneration could be subject to stricter rules (deferral of 60%), which seems excessive. Further, if a relative threshold would apply, employees with lower total variable remuneration (exceeding the relative threshold, but not the absolute amount), could be subject to stricter rules than employees with higher total variable remuneration (but lower relative ratio of fixed to variable).

Yours sincerely,

Dr. Franz Rudorfer

Managing Director

Division Bank and Insurance

1. On this matter we interpret the broad reference to ‘**Independence** as set out in the EBA guidelines on internal governance and see also the joint EBA‐ESMA guidelines on the assessment of the suitability of members of the management body and key function holders’ as set out in **Footnote 19** of the EBA draft in the sense that they have to be **independent of mind and formally independent**. [↑](#footnote-ref-1)