EFAMA's response to the EBA Draft Guidelines on sound remuneration policies under Directive (EU) 2019/2034

17 March 2021

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EU transparency register: 3373670692-24

# EFAMA's response to the European Banking Authorities Draft Guidelines on Sound Remuneration Policies Under IFD

# Key Messages

* Broadly speaking, while we agree with the approach to involve the proportionality principle as guiding principle for those guidelines, we believe it could be further strengthened in particular in how it applies to the structure of remuneration (Section III).
* EFAMA believes the guidelines are very complex to read. We would suggest an overview or a table as an Annex of the guidelines that shows whom each guideline should apply to (such as to identified staff only or also to all staff members on a mandatory or voluntary basis) with references to the legal requirements and each paragraphs of the guidelines could be very helpful (along the same lines of the ESMA remuneration guidelines under the AIFMD).
* Guidelines are based on hard quantitative threshold which are not the appropriate way to apply remuneration rules of Asset Managers holding a MiFID license. The banking approach is not designed to properly consider the specificities of different business models of investment firms and the risk associated to their categories of staff.

# Specific Comments To The Draft Guidelines

**Q1: Are the subject matter, scope and definitions appropriate and sufficiently clear?**

* The remuneration policies and practices shall apply to all staff – Article 30 IFD - could be read in such a way that only identified staff should be covered so clarification is needed on this point.
* The reference to the definition of financial institution of the EBA Delegated Regulation and the MiFID II definition of investment firms is very far reaching. The scope should be clearly limited to investment firms in the meaning of Article 2 IFD (authorised and supervised under MiFID II).
* On implementation, as we have already mentioned in our previous submission to the June 2020 EBA consultation paper on on the implementation measures of the new regulatory framework for investments firms, there is lack of clarity on the implementation of application of rules related to the remuneration of material risk takers (MRTs). We believe it would be helpful if the guidelines made clear that these transitional timelines apply to the remuneration requirements of the IFD itself, as well as these EBA guidelines.

**Q2: Is the section on gender neutral remuneration policies sufficiently clear?**

* We believe the section on gender neutral remuneration policy is sufficiently clear. However, the requirement that the remuneration committee must be gender balanced (para. 50) is far reaching and setting up such committee could be problematic (i.e. unjustified burden).

**Q3: Are the sections on the remuneration committee sufficiently clear?**

* We would welcome a clearer definition of proportionality and clarification that as this provision is a way to address conflicts of interest, other alternative measures can be taken, as long as these are efficiently addressing this risks. The following sentence can be added “*Where the investment firms do not comply with the strict majority rule of independent members, they should implement other measures that mitigate risks for conflicts of interest and ensure that decisions are made with due consideration of these risks*.”
* In our view, it is not necessary for a member of the risk committee to participate in all meetings of the remuneration committee and vice-versa. It should be clarified that the member of the risk committee should have the possibility to participate when appropriate. And all questions regarding to the tasks of the remuneration committee should be discussed within the remuneration committee where a member of the risk management committee can provide input.

**Q4: Are the guidelines on the application of the requirements in a group context sufficiently clear?**

* While the level 2 proposals (such as the draft RTS on identified staff) lack concrete guidance on how to deal with subsidiaries with sector-specific remuneration rules, we support the EBA approach to these entities (cf. para. 85, 113 of the draft guidelines).
* We would like to point out however that the EBA terminology of ‘subsidiaries’, ‘investment firms as subsidiaries’, ‘consolidating parent investment firm’, ‘consolidating institution’, ‘EU parent investment firm’ do not comply with the definitions and scope of the prudential consolidation of IFD/IFR framework, hence suggest a review.

**Q5: Are the guidelines regarding the application of waivers within section 4 sufficiently clear?**

* EFAMA agrees with the proposed application of waivers within section 4. However, we would like to request the EBA to review and amend the terms used in the group context. Not every parent company of an investment firm group is an investment firm. The determination of the effective ratio between the variable and fixed remuneration is limited to identified staff.

**Q6: Is section 9 on severance payments sufficiently clear?**

* Retention bonusesare solely based on performance whereas the current practise relates such relations also to other factors (i.e. staying at the firms for a given period of time). Clarification is needed on this point.

**Q7: Are the provisions on performance criteria sufficiently clear, which other performance indicators, e.g. regarding the performance of business units or portfolios, are used to determine the variable remuneration of identified staff?**

* In general, the provisions on performance criteria are sufficiently clear.

**Q8: Is the section on the pay out in instruments sufficiently clear?**

* On retention policy, we note the proposal mirrors the retention period set out in the EBA Guidelines on Sound Remuneration Policies under CRD. However, we do not support the minimum 12-month retention period. Setting a minimum 12-month retention period contradicts the flexibility provided by paragraphs 270, 271 and 272 and that, in some scenarios, a lower retention period (such as six months) may be more appropriate. Indeed, the ESMA Guidelines on Sound Remuneration Policies under UCITS and AIFMD do not mandate a minimum 12-month retention period, and only require firms to make sure that the retention period is sufficient to align incentives with the longer-term interest of the firm, of the funds it manages, and of its investors. We also note that some NCAs recommended a minimum six-month retention period under UCITS and AIFMD.

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