



**EUROPEAN COMMISSION**  
**DIRECTORATE-GENERAL JUSTICE AND CONSUMERS**

**Director General**

Brussels, **21 AVR. 2016**  
JUST/A3/ /mg(2016) 2261060

Mr Andrea Enria  
Chairperson  
European Banking Authority  
Floor 46  
One Canada Square  
Canary Warf  
London E14 5AA  
United Kingdom

**Subject: EBA Opinion on the application of the principle of proportionality to the remuneration provisions in Directive 2013/36/EU (EBA/Op/2015/25)**

Dear Mr Enria,

I refer to the Opinion received from the European Banking Authority (EBA) on 21 December 2015 concerning the application of the principle of proportionality to the remuneration provisions in Directive 2013/36/EU<sup>1</sup> (hereafter "the Opinion"), in which EBA recommends a *"legislative amendment to the Directive 2013/36/EU to exclude certain small, non-complex institutions from the requirements to apply the remuneration principles for variable remuneration, and to limit the scope of those remuneration principles as regards staff who receive low amounts of variable remuneration"*.

In Annex I of its Opinion, EBA details its proposal for an amendment to the Directive 2013/36/EU (CRDIV), which would explicitly allow waiving the application of Article 94(1) points (l), (m) and the second subparagraph in point (o) CRDIV for small and non-complex institutions and staff who receive low levels of variable remuneration. Annex II of the Opinion provides an overview of the Member States' current implementation of the principle of proportionality in the area of the CRDIV remuneration provisions.

In order to assist its assessment of EBA's recommendations, the Commission invites EBA to deliver supplementary explanation of the information provided in the Opinion and its Annexes. Further clarification is requested in particular concerning an estimate of the number and market share of the institutions, as well as the number of identified staff currently benefiting from waivers (as per the information in Annex II of the Opinion).

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<sup>1</sup> EBA/Op/2015/25



It would be also useful to receive further clarifications about the application of the CRD remuneration rules to management companies of UCITS and AIF who are subsidiaries of CRD-regulated groups, which EBA touches upon in Annex II of its Opinion.

Moreover, an initial estimate of the number and market share of the institutions, as well as the number of identified staff that would benefit from waivers, should an amendment as suggested by EBA be pursued, would be valuable for the Commission's work.

Please find in Appendix a detailed explanation of the type of supplementary clarifications that EBA is invited to provide following its Opinion.

Although we realise the constraints under which your organisation is working, EBA is kindly invited to deliver the information requested under points I and II of the Appendix preferably by 30 June 2016.

The initial estimates requested under point III of the Appendix (in particular under points (k) and (l)) may be more difficult to deliver within the indicated deadline. EBA is therefore kindly invited to inform the Commission to what extent and within which timeframe it would be in a position to respond to the requests under point III of the Appendix.

Please also note that the initial estimates requested under point III are without prejudice to any further, more detailed assessment EBA might need to carry out in the future if we were to develop concrete exemption criteria from the CRDIV remuneration provisions.

Yours sincerely,

*Signed*

Tiina ASTOLA

Appendix: Detailed Commission request for further clarification

## APPENDIX:

In order to better appreciate the effects of the current waiver practices, as well as the effects of the changes proposed by EBA in its Opinion, the Commission would appreciate to receive the information in points I-III listed below.

The information requested under points I and III should be provided for each Member State based on a representative sample of institutions, i.e. one that covers a sufficiently large part of the market in terms of the balance sheet total and the number of institutions, and include the variety of institutions across the spectrum in terms of their size and the level of the complexity of their activities.

### **I. Current waiver practices for CRD institutions and staff**

EBA is invited to provide information, per Member State, about the institutions and staff currently benefitting from waivers from the application of the requirements of Article 94(1) points (l), (m) and the second subparagraph in point (o) CRDIV, and specifically:

- a) an estimate of the number of institutions (separately for credit institutions and CRR investment firms), which benefit from waivers from the indicated CRDIV provisions at institution level, compared to the total number of credit institutions / CRR investment firms (respectively), counted on a single institution basis;
- b) an estimate of the market share of institutions identified under point (a) (separately for credit institutions and CRR investment firms) in terms of their balance sheet total, compared to the balance sheet total of all credit institutions / all CRR investment firms (respectively);
- c) an estimate of the number of Identified Staff (separately for credit institutions and investment firms), in institutions that were identified under point (a), compared to the total number of Identified Staff;
- d) an estimate of the number of Identified Staff (separately for credit institutions and investment firms), who benefit from waivers from the indicated CRDIV provisions on the basis of the level of their individual variable remuneration (be it defined in absolute terms, or as a percentage of the total or fixed remuneration, or both), excluding the staff identified under point (c), compared to the total number of Identified Staff.

*(\* The information under points (a) - (d) listed above should be provided on the basis of the criteria for waivers currently applied in Member States.*

### **II. Current practices regarding application of CRD remuneration requirements to UCITS and AIF managers, which are subsidiaries of CRD-regulated groups**

According to the Annex II of the Opinion provided by EBA, currently in some Member States waivers on the basis of proportionality are applied to subsidiaries of CRD institutions that are not themselves subject to CRDIV (e.g. asset management companies), or else subsidiaries that fall within the scope of prudential consolidation (i.e. are not credit institutions or investment firms, but fall under the rules because of the group application) are excluded from the application of the CRD remuneration rules under national law.

To better understand the scale and nature of the current situation concerning subsidiaries within CRD-regulated groups which are UCITS and AIF managers, EBA is kindly invited to provide the following clarification concerning such entities:

- e) Member States, which under national law completely exclude UCITS and AIF manager subsidiaries that fall within the scope of prudential consolidation from the scope of application of the CRDIV remuneration provisions;
- f) Member States that do not exclude UCITS and AIF manager subsidiaries as per point (e), but in which UCITS and AIF manager subsidiaries benefit from waivers from any of the CRD remuneration provisions;
- g) for Member States identified under point (f), please indicate per Member State which remuneration provisions can be subject to a waiver;
- h) for Member States identified under point (f), please indicate per Member State and per remuneration provision, which waiver criteria are applied.

*The information under points (e) - (h) should be provided on the basis of the current Member States practices.*

### **III. Exemptions for CRD institutions and staff proposed in EBA Opinion**

In its Opinion, EBA proposes to allow waivers for certain institutions which are small, as well as for staff who receive low levels of variable remuneration. EBA is therefore invited to provide information, per Member State, about the institutions and staff who could benefit from waivers from the application of the requirements of Article 94(1) points (l), (m) and the second subparagraph in point (o) CRDIV if the amendment proposed by EBA in its Opinion were to be adopted, and specifically:

- i) an estimate of the number of institutions (separately for credit institutions and CRR investment firms), which could benefit from waivers from the indicated provisions at institution level, compared to the total number of credit institutions / CRR investment firms (respectively), counted on a single institution basis<sup>2</sup>;
- j) an estimate of the market share of institutions identified under point (i), separately for credit institutions and CRR investment firms, in terms of their balance sheet total, compared to the balance sheet total of all credit institutions / all CRR investment firms (respectively);

*(\* To collect the information under points (i) and (j) listed above EBA is invited to propose at least three different levels of the balance sheet total of a single institution, whereby institutions which fall below those thresholds could benefit from waivers from the indicated CRD provisions. Member States should then estimate the number (under point (i)) and market share (under point (j)) of institutions, the balance sheet total of which would fall under each of the proposed thresholds.*

- k) an estimate of the number of Identified Staff (separately for credit institutions and investment firms) in institutions that would be identified under each of the thresholds proposed by EBA under points (i) and (j), compared to the total number of Identified Staff;
- l) an estimate of the number of Identified Staff (separately for credit institutions and investment firms), who could benefit from waivers from the indicated provisions on the basis of their remuneration level, excluding the staff identified under point (k), compared to the total number of Identified Staff;

*(\* To collect the information under point (l) EBA is invited to propose at least two different levels of the individual variable remuneration (in either absolute amount, or percentage of fixed or total*

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<sup>2</sup> In this context, we note that in its Opinion EBA proposes to allow waivers for institutions, which are small and non-complex "and which are not subsidiaries of a significant institution". We therefore kindly ask EBA to account for this factor when providing the estimate of the number of institutions that would be exempted.

*remuneration, or both). Member States should then estimate the number of Identified Staff in institutions that exceed the thresholds proposed by EBA under points (i) and (j), who receive variable remuneration below the thresholds proposed by EBA under point (l) and would therefore qualify for waivers.*

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