

EBA/GL/2016/06

28/09/2016

Final Report

Guidelines

on remuneration policies and practices related to the sale and provision of retail banking products and services

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1. Executive Summary

The remuneration of staff in general, and of persons directly offering or providing products or services to consumers in particular, is an important means by which financial institutions attract, motivate and retain employees with the skills needed for the institution's success.

However, developments in recent years have shown significant cases of misconduct and mis-selling by staff in financial institutions, with poor remuneration policies and practices having been identified as a key underlying driver. The impact of mis-selling has been considerable, in that it has caused detriment to consumers as a result of inappropriate, unsuitable or excessively priced products; has resulted in unfair pressure exerted on sales staff; has impacted negatively on financial institutions as a result of fines, penalties, settlements, redress, compensation payouts and litigation; has undermined confidence in financial institutions and markets; and has created economic costs to society through the misallocation of resources.

While the EBA has so far issued a number of regulatory requirements to protect consumers and address conduct risks, the EBA identified a need for the development of requirements specific to the remuneration policies and practices related to the sale and provision of retail banking products and services. The Guidelines apply to remuneration paid to staff employed by credit institutions, creditors, credit intermediaries, payment institutions and electronic money institutions, when selling mortgages, personal loans, deposits, payment accounts, payment services and/or electronic money. They are aimed at providing a framework for financial institutions to implement remuneration policies and practices that will improve links between incentives and the fair treatment of consumers and reduce the risk of mis-selling and resultant conduct costs for firms.

The draft Guidelines were subject to a three-month consultation period between December 2015 and March 2016. The EBA received 27 responses to the CP (CP), 21 of which gave permission for the EBA to publish them on its website. While the majority of respondents were supportive of these Guidelines, some respondents suggested that the scope of the Guidelines should be expanded to cover performance management systems, while several other respondents, by contrast, expressed concerns about the wide definition of remuneration, in particular the inclusion of non-monetary benefits, which in their view creates difficulties for institutions to demonstrate compliance at the level of the individual employee. Other comments requested further clarification about the application of the proportionality principle and the scope of information that should be recorded in order to demonstrate compliance to NCAs.

The EBA assessed the main arguments presented in the responses, with a view to deciding on whether amendments were required before issuing the final Guidelines. The changes and clarifications that the EBA has made as a result of this assessment include splitting the former Guidelines on approval and monitoring into two dedicated separate sets of Guidelines for approval and monitoring, respectively, amending guideline 1.6.b in order to better emphasise the

link to consumer detriment, merging former Guidelines 2.1 and 2.2 for greater clarity on the scope of information to be recorded, amending Guidelines 3.1 and 3.4 to clarify that delegation by the management body is possible to the extent that it retains ultimate responsibility for the institution's remuneration policies and practices and amending guideline 3.2 to restrict the need for advice on remuneration policies and practices to institutions where a remuneration committee is established.

Next steps

The Guidelines will be translated into the official EU languages and published on the EBA website. The deadline for competent authorities to report whether they comply with the Guidelines will be two months after the publication of the translations. The Guidelines will apply from 13 January 2018.

2. Background and rationale

2.1 Background

1. The remuneration of staff in general, and of persons directly offering or providing products or services to consumers in particular, is an important means by which financial institutions attract, motivate and retain employees with the skills needed for the institution's success.
2. However, developments in recent years, both at a European and international level, have shown significant cases of misconduct and mis-selling by staff in financial institutions, with poor remuneration policies and practices having been identified as a key underlying driver.
3. Recent research suggests that, between 2004 and September 2015, 10 major global banks alone incurred cumulative conduct-related costs of around USD 210 billion¹, equivalent to 2.8% of their revenues. More than 40% of the total costs were related to banks' conduct with non-US consumers. The potential risks to the financial system of widespread misconduct by financial institutions have also been identified and analysed in various reports by European authorities². These reports identify an increase in the number and magnitude of incidents of mis-selling of financial products, and remuneration policies and practices as one of the underlying drivers. Some national authorities have also carried out in-depth analysis in their own jurisdictions and arrived at similar conclusions³.
4. In order to address some of these conduct risks, the EBA has already developed detailed Guidelines on product oversight and governance arrangements for retail banking products, which were published on 15 July 2015⁴.
5. In addition, the EBA identified a need for the development of requirements specific to the remuneration of sales staff. Therefore, the EBA has decided to develop these Guidelines to address numerous undesirable remuneration policies and practices that can lead to misconduct and mis-selling by staff and that the EBA wishes to prevent in the future. These include, but are not limited to, the following:

¹See CCP Research Foundation (2014), Conduct Costs Project; <http://conductcosts.ccpresearchfoundation.com/>; also: Autonomous (2014), Global Banks - Litigation Costs Update. Figure includes conduct costs incurred for reasons other than mis-selling.

² EBA (2014), Consumer Trends Report 2014; EBA (2014), Risk Assessment of the European Banking System, EBA / ESMA / EIOPA (2014), Joint Committee Report on Risks and Vulnerabilities in the EU Financial System.

³ See Bank of England (2014), *Financial Stability Report - June*, Financial Conduct Authority (2014), *Risk Outlook 2014*; UK FSA at <http://www.fsa.gov.uk/library/communication/speeches/2012/0905-mw.shtml>; and Central Bank of Ireland (2014) at <http://www.centralbank.ie/press-area/press-releases/Pages/CentralBankinspectionhighlightsinsufficientqualitycontrolsforincentivespaidtosalesstaff.aspx>.

⁴ <https://www.eba.europa.eu/regulation-and-policy/consumer-protection-and-financial-innovation/Guidelines-on-product-oversight-and-governance-arrangements-for-retail-banking-products>

- The strategic goals of a financial institution focus solely on the total volume of banking products offered or provided to consumers. The remuneration policy is in line with these strategic goals, is based mainly on the total volumes of banking products offered or provided to consumers and does not take into account consumers' rights and interests.
 - Relevant persons receive a remuneration linked to one or several specific banking products offered or provided to consumers. As a result, they offer or provide those products irrespective of the consumers' rights and interests.
 - Incentives increase as the number of sales increases in a particular time period (a so-called 'accelerator feature'), so that relevant persons are highly incentivised to offer or provide banking products irrespective of the consumers' rights and interests.
 - A financial institution organises competitions where members of staff of relevant persons are incentivised to outperform their peers or to meet challenging thresholds in a short timeframe, in order for them to receive financial or non-financial remuneration.
 - Managers adjust non-monetary forms of reward of relevant persons solely according to the volume of banking products offered or provided to consumers, for instance when dealing with promotions, training opportunities and annual leave requests.
6. On 22 December 2015 the EBA launched a consultation on the draft Guidelines on remuneration policies and practices related to the sale and provision of retail banking products and services, which ended on 22 March 2016. The EBA received 27 responses to the CP, 21 of which gave permission for the EBA to publish them on the EBA website.

2.2 Rationale

7. The EBA has assessed all of the responses and has arrived at the main conclusions set out below with regard to the requirements that do and do not require amendments. They are being presented using the structure of the Guidelines: they start with general comments received on the scope and definitions, followed by comments received on the Guidelines, related to the design, documentation, notification, accessibility, approval and monitoring of remuneration policies and practices. This is followed by the EBA's feedback on the application date of the Guidelines in relation to recent developments in the EU regulatory framework. Additional, more detailed, feedback is provided in the feedback table contained in chapter 4.2.

Scope of the Guidelines

8. While a large majority of respondents supported the objectives of these Guidelines, two respondents indicated that the definition of remuneration should be expanded so as also to cover performance management systems. Several other respondents, by contrast, expressed concerns about the wide definition of remuneration, in particular the inclusion of non-monetary benefits, which in their view creates difficulties for institutions to demonstrate compliance at the level of the individual employee. Consequently, these respondents suggested narrowing down the definition of remuneration to monetary remuneration only, focusing on the variable remuneration.
9. The EBA assessed the merits of these contrasting responses and has concluded that, in line with paragraph 12 of the rationale section of the CP, the EBA should retain a broad definition of 'remuneration', as the EBA recognises that incentives may arise not only from direct monetary payments, such as bonuses, but also through other means, such as career progression. This is to prevent institutions from shifting the pressure on staff away from pure monetary remuneration incentives to using performance management as a vehicle to promote sales targets or other behaviours that prioritise the interests of the financial institution to the detriment of consumers instead.
10. The EBA also underlines that the definition of remuneration in the separate EBA Guidelines on sound remuneration policies under the CRD IV (EBA/GL/2015/22) also includes non-monetary benefits.
11. Taking the above into account, the EBA believes that the definition of remuneration as consulted addresses the comments raised by the respondent in relation to performance management systems. The EBA has therefore not amended the definition for that purpose. However, in order to make a better distinction between monetary and non-monetary benefits in the remuneration definition, the EBA corrected an oversight by deleting the reference to 'allowances' in the examples of non-monetary benefits.

12. Several respondents also noted that the multitude of new regulatory rules in recent years has resulted in a number of separate provisions for the remuneration practices of different employee categories or different services offered by financial institutions. Against this background, these respondents suggested the alignment of the EBA Guidelines for sales staff with other EU Level-1 requirements, such as the Markets in Financial Instruments Directive (MiFID), the upcoming revised MiFID (Directive 2014/65/EU, also referred to as MiFID2), the Mortgage Credit Directive (Directive 2014/17/EU) or other, existing Guidelines regarding remuneration policies and practices, such as the EBA Guidelines on sound remuneration policies (EBA/GL/2015/22) under the CRD IV (Directive 2013/36/EC (CRD)), or the ESMA Guidelines. One respondent noted that the MCD clearly set rules regarding the remuneration paid by financial institutions to credit intermediaries.
13. The EBA concurs with the views expressed by the respondents in support of consistency between regulations applicable to remuneration policies and practices. In this context, the EBA underlines that the separate EBA Guidelines on sound remuneration policies applicable to credit institutions and investment firms⁵ are aimed at ensuring that remuneration policies regarding staff whose activities have a material impact on the risk profile of institutions are based on sound governance processes, take into account the risk strategy and profile of the institutions and align incentives of this type of staff with the interests of the institutions, shareholders, investors and other stakeholders in the institution, as well as the public. Furthermore, the EBA Guidelines on remuneration for sales staff are applicable to institutions other than credit institutions and aim to align remuneration incentives with the interests of consumers, in order to avoid remuneration becoming a driver of mis-selling and consumer detriment.
14. The EBA has ensured that none of the present Guidelines are in conflict with the EBA Guidelines on sound remuneration policies, and none of the respondents provided any example of inconsistency. The EBA can therefore confirm that, in respect of the obligations of credit institutions, the implementation of these Guidelines is without prejudice to their compliance with EBA/GL/2015/22, and this has been clarified in the 'Subject matter and scope of application' section of the final Guidelines accordingly. The EBA also provided further clarifications on the application of these Guidelines to credit institutions in relation to the EBA Guidelines on sound remuneration policies in the detailed feedback table provided in chapter 4.2.
15. With regard to the consistency of the present Guidelines with the ESMA Guidelines on remuneration (ESMA/2013/606), the EBA confirms that it has ensured consistency between the two sets of Guidelines. Given that the respondents had not provided any examples of inconsistency, the EBA was unable to assess the substance of the comments and has therefore not made any amendment.

⁵ As defined in Article 4.1(1) and (2) of Regulation (EU) No 575/2013.

16. For the avoidance of doubt, with regard to the remuneration of credit intermediaries, the EBA underlines that these Guidelines do not cover remuneration (also referred to as 'commissions') paid by financial institutions to credit intermediaries. However, these Guidelines are without prejudice to the remuneration rules laid down under the MCD and in particular under Article 7(2) MCD, which requires that, where creditors remunerate credit intermediaries, they must take into account the rights and interests of consumers. The EBA is therefore of the opinion that, where institutions rely on credit intermediaries for the provision of retail banking products and services, they should not use credit intermediaries as a way to circumvent these Guidelines. Furthermore, the EBA may, in the future, review these Guidelines and extend them to cover commissions paid to credit intermediaries.
17. Some respondents also expressed concern that the proportionality principle had not been respected in the Guidelines, given that the wording is the same for large and small firms, and suggested that the Guidelines be redrafted so that SMEs and sole-trader intermediaries could comply with them.
18. The EBA assessed the merits of these concerns and concluded that, as stated in paragraph 16 of section 3.2 of the CP, the NCAs will apply these Guidelines in a proportionate manner as a general principle of EU law. However, the EBA underlines that all financial institutions should comply with these Guidelines and should ensure at all times the alignment of their remuneration incentives with the fair treatment of consumers. Where these Guidelines indicate an outcome, the outcome may be achieved by the financial institution through different means. The appropriateness of the means used by the financial institution will be assessed by competent authorities, taking into account the business model, scale and complexity of the financial institution.
19. The EBA therefore believes that the concern of the respondents is sufficiently addressed and did not amend the Guidelines. Additionally, more detailed clarifications are provided in the feedback table in chapter 4.2 with regard to the application of particular Guidelines in relation to small entities.

Design of the remuneration policies and practices

20. Several respondents expressly agreed with the content of the Guidelines on the design of remuneration policies, with no particular concern expressed. One respondent, however, suggested that, where necessary, institutions should change the design of their remuneration policies and practices so as to mitigate any risks of consumer detriment identified during their monitoring assessments or to address any actual detriment experienced by consumers.
21. Having assessed the merits of this comment, the EBA concurs with the view of the respondent and has, therefore, clarified further the requirements in relation to monitoring by:
 - a. splitting the former Guidelines on approval and monitoring into two dedicated separate sets of Guidelines for approval and monitoring, respectively; and

- b. including a new requirement in relation to monitoring, specifying that ‘Where the review reveals that the remuneration policies and practices do not operate as intended or prescribed, the institution should amend the remuneration policies and practices in accordance with the present Guidelines.’
 22. Several respondents also underlined that remuneration policies might also have to comply with requirements that are not specific to financial services, such as collective agreements governing the duties and responsibilities of employer and employee in the workplace. Against this background, these respondents suggested that the EBA amend the Guidelines so as expressly to recognise that collective agreements should not be subject to these Guidelines.
 23. By way of response, the EBA underlines that these Guidelines, like any other Guidelines, apply notwithstanding any other applicable rules, including social and labour law, and therefore do not prevent the right for collective agreement to take place. The EBA observes that the respondents did not provide any example of any collective agreement that would be inconsistent with the objective set out in these Guidelines. Against this background, the EBA was unable to assess the relevance of the comments and did not make any changes.
 24. Several respondents, while agreeing with the content of guideline 1, asked for further clarification regarding Guideline 1.6.b in the CP, which states that ‘institutions should not design remuneration policies and practices that promote, to the potential detriment of consumers, the offer or provision of a specific product or 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’.
 25. In the respondents’ view, there may be circumstances in which it is appropriate to differentiate between categories of product, for example reflecting the time or effort to discuss and fulfil a product with a customer. These respondents believe that this would help to ensure that product categories that are simple and quick to fulfil are not preferred to those that require more time to explain the features and complete paperwork.
 26. In response to this concern, the EBA underlines that the intention of guideline 1.6.b is not to prevent institutions from providing more remuneration to sales staff based on the time needed to provide advice on the product or services and fulfilling the subsequent contractual agreement. Rather, these Guidelines aim to prevent remuneration policies and practices that would provide incentives for staff to offer one specific product or category of products that is more profitable for the institutions than another, to the potential detriment of consumers.
 27. In order to address the respondents’ comment, the EBA amended guideline 1.6.b in order better to emphasise the link to consumer detriment. The guideline now reads: ‘The institution should not design remuneration policies and practices that: [...] promote the offer or provision of a specific product or category of products over other products, such as products which are more profitable for the institutions, to the detriment of the consumer.’
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Documentation, notification and accessibility

28. Several respondents agreed with the content of guideline 2, with no particular concern expressed. However, some respondents were of the view that the guideline was unclear about the scope of information that should be recorded in order to demonstrate compliance to NCAs. In particular, some respondents questioned whether a general/high-level statement of implementation would be sufficient or whether institutions would need to record all individual monetary and non-monetary benefits provided to all sales staff, which in their view would be too costly.
29. By way of response, the EBA clarifies that the drafting of this guideline was left deliberately open so that institutions have flexibility to determine the scope of information to be recorded, so as to take into account the proportionality principle when demonstrating compliance with the Guidelines. The EBA believes that the proportionality principle should be as open as possible, so as to give institutions the necessary flexibility to determine the scope of information to be recorded according to the business model, scale and complexity of the institution and its remuneration policies and practices.
30. The EBA further underlines that institutions will need to provide sufficient justification for the decisions taken when NCAs assess whether financial institutions are compliant with the Guidelines.
31. Against this background, the EBA decided not to amend the content of the guideline but decided to merge Guidelines 2.1 and 2.2 for greater clarity. Regarding the scope of the type of staff covered, the EBA confirms that institutions will be required to keep a record of remuneration policies and practices only for relevant persons, which the Guidelines define as any natural person working for an institution and who is a) directly offering or providing banking products or services to consumers or b) directly or indirectly managing a person referred to in point a).

Approval and monitoring

32. Several respondents agreed with the content of the Guidelines on approval and monitoring, with no particular concern expressed. However, some respondents requested clarification as to whether the requirement for the management body to approve changes to remuneration policies could be delegated to an appropriate body or committee. Similarly, another respondent requested clarification as to whether or not institutions that are part of a group can delegate or outsource any part of the internal governance of remuneration policies and practices to group-wide functions, such as a remuneration committee at group level and group control functions.
33. The EBA concurs with the view of the respondents that the Guidelines do not prevent the management body from delegating the monitoring of remuneration policies and practices to an appropriate body or committee. The EBA understands that the specific reference to

delegation by the management body in guideline 3.5 may give the impression that such delegation is not possible for other Guidelines.

34. Against this background, the EBA recognises that delegation by the management body is possible as a general principle, to the extent that the management body retains ultimate responsibility for the institution's remuneration policies and practices. In order to address the concern expressed, the EBA therefore amended:
 - a. guideline 3.1, in order to underline that [emphasis added] 'the management body approves and retains ultimate responsibility for the institution's remuneration policies and practices' and
 - b. guideline 3.4, in order to delete the specific reference to delegation by the management body.
35. Several respondents also requested clarification as to what is meant by 'independent advice', and in particular whether this required an institution to seek external advice, or if an internal independent assessment could also be considered outside the Remuneration Committee. Many of these respondents were concerned that the requirement to seek independent advice was too burdensome for smaller entities, particularly where institutions do not have a remuneration committee.
36. Having assessed this response, the EBA concurs with the view of the participants that a requirement to seek independent advice could be too cumbersome for small entities. Against this background, the EBA amended the guideline to restrict the need for advice on the remuneration policies and practices to institutions where a remuneration committee is established.

Date of application of the Guidelines

37. The CP envisaged 3 January 2017 as an implementation date for the Guidelines. The date of 3 January 2017 was chosen in particular so as to facilitate the implementation of these Guidelines into national regulatory frameworks by aligning it with other conduct-related requirements that need to be implemented, such as MiFID2.
38. However, some respondents to the CP raised concerns about the implementation deadline, citing as main reasons the negotiations with employee unions and changes to Board arrangements that would be required as a result of the Guidelines. Against this background, one respondent proposed January 2018 as the application date, while another respondent requested not less than 12 months after the issuance of the final Guidelines.
39. Against this background, the EBA came to the conclusion that, in order to facilitate the national implementation of these Guidelines and give enough time for market participants to perform the necessary changes to their remuneration policies and practices, the application date of these Guidelines should be postponed from 3 January 2017 to 13 January 2018, which will also align the Guidelines with the revised application date of MiFID2 that was agreed by the EU Commission, Parliament and Council in May 2016 as well as with the application date of Directive (EU) 2015/2366 (also referred as to 'PSD2'). The Guidelines have been amended accordingly.
40. The EBA, however, invites the addressees of these Guidelines to start initiating the necessary changes as from their publication in order to be compliant with these Guidelines.

3. Guidelines

EBA/GL/2016/06

28/09/2016

Guidelines

on remuneration policies and practices
related to the sale and provision of retail
banking products and services

1. Compliance and reporting obligations

Status of these Guidelines

1. This document contains Guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010⁶. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions must make every effort to comply with the Guidelines.
2. Guidelines set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 to whom Guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where Guidelines are directed primarily at institutions.

Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these Guidelines, or otherwise with reasons for non-compliance, by [dd.mm.yyyy]. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website to compliance@eba.europa.eu with the reference 'EBA/GL/xxxx/xx'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

⁶ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p.12).

2. Subject matter, scope and definitions

Subject matter and scope of application

5. These Guidelines specify requirements for the design and implementation of remuneration policies and practices, in relation to the offering or provision of banking products and services to consumers by institutions as defined in paragraph 17, with a view to protecting consumers from undesirable detriment arising from the remuneration of sales staff.
6. These Guidelines provide details on how financial institutions should give effect to specific provisions laid down in applicable EU Directives, such as (i) Articles 74(3) and 75(2) of Directive 2013/36/EU⁷, which confers the mandate on the EBA to develop Guidelines on credit institutions' governance arrangements, including remuneration policies and practices, (ii) Article 7(2) of Directive 2014/17/EU⁸, which requires Member States to ensure that the manner in which creditors and credit intermediaries remunerate their staff does not impede them from acting honestly, fairly, transparently and professionally, taking account of the rights and interests of consumers, and (iii) Articles 11(4) of Directive (EU) 2015/2366⁹ and 3(1) of Directive 2009/110/EC¹⁰, which require payment institutions and electronic money institutions, respectively, to have in place robust governance arrangements, to the extent that they relate to remuneration policies and practices.
7. These Guidelines do not cover remuneration paid by institutions to credit intermediaries (often also referred to as 'commissions') and are without prejudice to the remuneration rules laid down under the Directive 2014/17/EU¹¹ and in particular under Article 7(2) of that Directive, which requires that, where creditors remunerate credit intermediaries, they must do so in a way that does not impede the creditor, credit intermediary or appointed representative from acting honestly, fairly, transparently and professionally, taking account of the rights and interests of the consumers.

⁷ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC

⁸ Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p.34).

⁹ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p.35).

¹⁰ Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p.7).

¹¹ Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p.34).

8. Relevant banking products and services are those which fall within the scope of the legislative acts under which institutions are authorised or admitted to carry out their activities as defined in paragraph 17.
9. These Guidelines are also without prejudice to the application of stricter requirements specified in applicable sectoral legislation, and in particular under Article 7(4) of Directive 2014/17/EU, in relation to the provision of advisory services on credit agreements as defined in Article 4(21) of that Directive.
10. Competent authorities may wish to consider applying these Guidelines also to entities other than institutions as defined in paragraph 17, in particular to:
 - a. intermediaries other than credit intermediaries as defined in Article 4(5) of Directive 2014/17/EU;
 - b. 'appointed representatives' as defined in Article 4(8) of Directive 2014/17/EU.
11. Competent authorities may wish to consider applying these Guidelines in relation to persons other than consumers as defined in paragraph 17, such as micro-enterprises and small and medium-sized enterprises (SMEs).
12. Finally, competent authorities may wish to consider extending the remuneration requirements set out in these Guidelines also to remuneration (also referred as to 'commissions') paid by financial institutions to credit intermediaries.
13. Where these Guidelines indicate an outcome, the outcome may be achieved through different means. Competent authorities may want to assess the appropriateness of the means used by a financial institution, taking into account its business model, size and complexity.
14. The implementation of these Guidelines is without prejudice to the credit institutions' requirement to comply with the EBA Guidelines on sound remuneration policies under Articles 74(3) and 75(2) of Directive 2013/36/EU and disclosures under Article 450 of Regulation (EU) No 575/2013.

Addressees

Addressees of these Guidelines

15. The Guidelines are addressed to :
 - a. competent authorities as defined in Article 4(2)(i) of Regulation (EU) No 1093/2010 (the EBA authority). With respect to creditors and credit intermediaries referred to in the definition of 'Institutions' in paragraph 17 which are not credit institutions, payment institutions or electronic money institutions as referred to in that definition, the Guidelines apply to the extent that those authorities have been designated as

competent for ensuring the application and enforcement of the provisions of Directive 2014/17/EU to which these Guidelines relate; and

- b. financial institutions as defined in Article 4(1) of Regulation (EU) No 1093/2010.

Addressees of information requirements

16. Irrespective of whether an EBA authority is addressed under paragraph 15, where a Member State has designated more than one authority in accordance with Article 5 of Directive 2014/17/EU and one of them is not an EBA authority, the EBA authority designated under that article should, without prejudice to national arrangements adopted under Article 5(3) of Directive 2014/17/EU:

- a) inform without delay the other designated authority of these Guidelines and their date of application;
- b) ask that authority in writing to consider applying these Guidelines;
- c) ask that authority in writing to inform either the EBA or the EBA authority within two months of the notification under subparagraph (a) whether it applies or intends to apply these Guidelines; and
- d) where applicable, forward without delay to the EBA the information received under subparagraph (c).

Definitions

17. Unless otherwise specified, the definitions provided in the legislative acts referred to in this paragraph have the same meaning in these Guidelines. In addition, for the purposes of these Guidelines, the following definitions apply:

Consumer	A natural person, who is acting for purposes which are outside his trade, business or profession.
Institutions	<ol style="list-style-type: none"> a) 'Credit institutions' as defined in Article 4(1) of Regulation (EU) No 575/2013¹²; b) 'Creditors' as defined in Article 4(2) of Directive 2014/17/EU; c) 'Credit intermediaries' as defined in Article 4(5) of Directive 2014/17/EU;

¹² Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p.1).

	<p>d) 'Payment institutions' as defined in Article 4(4) Directive (EU) 2015/2366;</p> <p>e) 'Electronic money institutions' as defined in Article 2(1) of Directive 2009/110/EC.</p>
Banking products and/or services	<p>a) 'credit agreements' as defined in Article 4(3) of Directive 2014/17/EU;</p> <p>b) 'deposits'¹³ as defined in Article 2(3) of Directive 2014/49/EU¹⁴;</p> <p>c) 'payment accounts' as defined in Article 4(12) of Directive (EU) 2015/2366;</p> <p>d) 'payment services' as defined in Article 4(3) of Directive (EU) 2015/2366;</p> <p>e) 'payment instruments' as defined in Article 4(14) of Directive (EU) 2015/2366;</p> <p>f) other means of payment, as referred to in Annex 1(5) Directive 2013/36/EU¹⁵;</p> <p>g) 'electronic money' as defined in Article 2(2) of Directive 2009/110/EC; and</p> <p>h) other forms of credit, in addition to that in point (a) above, as referred to in Annex 1(2) of Directive 2013/36/EU and in line with Article 1(5)(e) of Regulation (EU) No 1093/2010.</p>
Management body	An institution's body or bodies ¹⁶ , which are appointed in accordance with national law, which are empowered to set the institution's strategy, objectives and overall direction, and which oversee and monitor management decision-making, and include the persons who effectively direct the business of the institution.
Relevant persons	Any natural person who is: <p>a) working for an institution and directly offering or providing banking products or services to consumers; or</p>

¹³ Deposits include all forms of deposits. The Markets for Financial Instruments Directive 2014/65/EU (MiFID2) has extended, in line with its Article 1(4), certain organisational and conduct of business rules to the subset of deposits called structured deposits, as defined in point (43) of Article 4(1) of MiFID2. MiFID2 remuneration rules, including future delegated acts setting further specifications in relation to Articles 16(3) and 24(10) of MiFID2, will apply to structured deposits and, therefore, these Guidelines will not apply to them.

¹⁴ Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p.149).

¹⁵ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p.338).

¹⁶ Different management body structures can be observed in European countries. In some countries a unitary structure is common, i.e. supervisory and management functions of the board are exercised by only one body. In other countries a dual structure is common, with two independent bodies being established, one for the management function and the other for the supervision of the management function.

	b) working for an institution and directly or indirectly managing a person referred to in point (a).
Remuneration	All forms of fixed and variable remuneration, including payments made or benefits, monetary or non-monetary, awarded directly by or on behalf of institutions to relevant persons. Non-monetary benefits may include, but are not limited to, career progression, health insurance, discounts or provision of car or mobile phone, generous expense accounts or seminars.

Outsourcing

18. In the event that the activity of the institution is in whole or in part outsourced to third parties, or carried out by another entity in other ways, institutions should ensure that, in doing so, they comply with the requirements established in the CEBS Guidelines on outsourcing¹⁷. This includes, in particular, CEBS guideline 2, which provides that ‘the ultimate responsibility for the proper management of the risks associated with outsourcing or the outsourced activities lies with an outsourcing institution’s senior management’.

3. Implementation

Date of application

19. These Guidelines apply from 13 January 2018.

¹⁷ [CEBS, Guidelines on outsourcing \(2006\)](#).

4. Guidelines on remuneration policies and practices

1. Design

- 1.1. Institutions should design and implement remuneration policies and practices that take into account the rights and interests of consumers. In particular, institutions should ensure that monetary and/or non-monetary forms of remuneration do not introduce incentives whereby relevant persons favour their own interests, or the institution's interests, to the detriment of consumers.
- 1.2. When designing the remuneration policies and practices, institutions should consider whether these policies and practices introduce any risks of detriment to consumers and should mitigate such risks from arising.
- 1.3. The human resources function of institutions should participate in and inform the design of the remuneration policies and practices. In addition, where established, the risk management and compliance functions should provide effective input for the design of the remuneration policies and practices.
- 1.4. For the purpose of evaluating the performance of a relevant person, institutions should define in the remuneration policy and practices the appropriate criteria to be used to assess performance, taking into account the rights and interests of consumers.
- 1.5. When designing the remuneration policies and practices, institutions should consider both qualitative and quantitative criteria for determining the level of variable remuneration to ensure that the rights and interests of consumers are adequately considered.
- 1.6. Institutions should not design remuneration policies and practices that:
 - a. solely link remuneration to a quantitative target for the offer or provision of banking products and services; or
 - b. promote the offer or provision of a specific product or category of products over other products, such as products which are more profitable for the institutions or for a relevant person, to the detriment of the consumer.
- 1.7. Where the remuneration policies and practices allow for variable remuneration, institutions should ensure that the ratio between the fixed and variable components of the remuneration is appropriately balanced and takes into account the rights and interests of consumers. Furthermore, the remuneration policies and practices in place should allow the

operation of a flexible policy on variable remuneration, including the possibility to pay no variable remuneration where appropriate.

- 1.8. Institutions should avoid unnecessarily complex policies and practices and unclear combinations of different policies and practices.

2. Documentation, notification and accessibility

- 2.1. Institutions should document remuneration policies and practices, keep them for audit purposes for at least five years from the last date that they applied, and make them available to the competent authorities upon request. This documentation should include, but is not limited to:

- a) the objectives of the institutions' remuneration policies and practices;
- b) the relevant persons falling within the scope of these policies and practices;
- c) how remuneration policies have been implemented in practice, including in particular the criteria for variable remuneration where variable remuneration is granted.

- 2.2. Before being allowed to offer banking products or services to consumers, relevant persons should be clearly informed in a simple and transparent manner of the remuneration policies and practices that are applicable to them.

- 2.3. The remuneration policies and practices should be easily accessible to all relevant persons of the institution.

3. Approval

- 3.1. The management body approves and retains ultimate responsibility for the institution's remuneration policies and practices.

- 3.2. The management body should seek advice from the remuneration committee where established on the institution's remuneration policies and practices in relation to the fulfilment of these Guidelines.

- 3.3. Where established, the compliance function should confirm that the remuneration policies and practices comply with these Guidelines.

- 3.4. Changes to the remuneration policies and practices should only be made with the approval of the management body.

4. Monitoring

- 4.1 Institutions should review, at least annually, their remuneration policies and practices to ensure compliance with these Guidelines. In particular, where an institution identifies that a residual risk of consumers' detriment might arise as a result of the design of remuneration policies and practices as referred to in paragraph 1.2 of these Guidelines, the institution should assess under the review whether any of these residual risks are crystallising and causing detriment to consumers.
- 4.2 Where the review reveals that an institution's remuneration policies and practices do not operate as intended or prescribed, the institution should amend its remuneration policies and practices in accordance with these Guidelines.
- 4.3 Institutions should establish effective controls to check that their remuneration policies and practices are being adhered to, and to identify and address incidents of non-compliance with these Guidelines.

4. Accompanying documents

4.1. Cost-benefit analysis / impact assessment

Problem identification

1. The market for financial services such as retail banking products is prone to failures¹⁸ and the market outcome is influenced by behavioural biases¹⁹. Recent research has shown that EU consumers perceive the market for banking services as the worst performing segment of the internal market²⁰. Poorly designed and overseen policies and practices for remuneration of sales staff can play an important role in the misconduct and mis-selling of retail banking products²¹ by financial institutions.
2. Conflicts of interest and misalignment of the incentives of sales staff with consumers' interest have the potential to exacerbate principal-agent problems inherent in the market for financial services²². In particular, variable remuneration elements entail a significant risk of the sales staff exploiting, rather than alleviating, information asymmetries prevalent in credit intermediation²³. The problem is aggravated by the observation that the majority of consumers are not provided with information about the remuneration structure of the sales person²⁴. Mis-selling of retail banking products has recently led to significant consumer detriment²⁵. Beyond the consumer protection perspective, significant deterioration in consumer confidence in the market for financial services and losses incurred by credit institutions as a result of misconduct-related costs are of concern also from a prudential perspective²⁶.

¹⁸ Europe Economics (2007), *An analysis of the issue of consumer detriment and the most appropriate methodologies to estimate it – Final report for DG SANCO*.

¹⁹ Chapter et al. (2010), *Consumer decision-making in retail investment services – A behavioural economics perspective*.

²⁰ European Commission (2013), *Monitoring consumer markets in the European Union*.

²¹ European Commission (2009), *Staff working document on the follow up in retail financial services to the consumer markets scoreboard*.

²² Synovate (2011), *Consumer market study on advice with the area of retail investment services – Final report for DG Health and Consumer Protection*,

²³ Europe Economics (2009), *Study on credit intermediaries in the Internal Market – Final report for DG Internal Market and Services (2009)*.

²⁴ European Commission (2012), *Special Eurobarometer 373 – Retail Financial Services*.

²⁵ EBA (2015), *Consumer Trends Report (2015)*.

²⁶ EBA (2015), *Risk Assessment of the European Banking System (June 2015)*; Joint Committee of the ESAs (2015), *Report of Risks and Vulnerabilities in the EU Financial System (March 2015)*; ESRB (2015), *Report on Misconduct Risk in the Banking Sector (2015)*.

B. Policy objectives

3. In general terms, these Guidelines aim to improve the protection of consumers and the functioning of the market for retail banking services in the EU²⁷. More specifically, the requirements have been developed with a view to facilitating a closer alignment of the incentives of sales staff with the interest of consumers of retail banking services.
4. At the operational level, these Guidelines should ensure that the design, documentation, approval and oversight of remuneration policies and practices for staff selling retail banking products improve links between incentives and the fair treatment of consumers, and reduce the level of risk and potential for mis-selling²⁸.

C. Baseline scenario

5. Without regulatory intervention, the risk of consumers experiencing detriment and problems in the functioning of the market for retail banking services identified above would most likely persist. More precisely, incentives of sales staff could continue to be misaligned with consumers' interest, and biased remuneration policies and practices could cause mis-selling of products.²⁹

D. Options considered

6. In developing these Guidelines, a number of technical options are considered regarding the:
 - Necessity of EBA regulatory intervention
 - Option 1.1: Abstaining from regulatory intervention;
 - Option 1.2: Developing and issuing Guidelines on remuneration policies and practices related to retail banking products.
 - Coverage of remuneration elements
 - Option 2.1: Focusing on monetary remuneration elements;
 - Option 2.2: Including non-monetary remuneration elements.
 - Proportionality in the context of these Guidelines:

²⁷ EBA (2015), *EBA Work Programme*; EBA (2014), *Annual Report*.

²⁸ European Commission (2009), *Recommendation on remuneration policies in the financial services sector*.

²⁹ European Commission (2014), *Conference on emerging challenges in retail finance and consumer policies – final report*.

Option 3.1: Requiring compliance in outcome, leaving freedom of means according to business model, scale and complexity;

Option 3.2: Prescribing specific means, but only requiring compliance of certain categories of more relevant institutions.

E. Cost-Benefit Analysis and preferred options

7. Generally, the incremental costs and benefits of these Guidelines – one-off as well as on-going – predominantly affect consumers of retail banking products, institutions and the sales staff providing those services and the wider market for retail banking products in the EU.
8. Regarding the necessity of EBA regulatory intervention, the Commission's *Monitoring of Consumer Markets*³⁰ (2013 edition) reveals that EU consumers perceive the market for banking services (constituted of loans, credit and credit cards, mortgages, investment products, private pensions and securities, and bank accounts) as the poorest-performing segment of the internal market. Investment products, private pensions and securities, and mortgages are the two poorest rated amongst the entire selection of services in the view of experienced consumers. EU consumers particularly express a very low level of trust and expectation in the banking services market, which is combined with an above-median percentage of problems and complaints. In addition to the adverse financial impact on purchasing-experienced consumers, the low levels of trust and expectation could in the end dampen market activity in retail banking.
9. The Commission's Eurobarometer (Special 373) indicates that, when purchasing a financial product, most consumers are not told whether the sales person receives a bonus or any other form of additional remuneration if they take a particular product. That lack of transparency towards consumers as regards staffs' sales incentives is particularly prevalent in the distribution of mortgages, current bank accounts, personal loans and credit cards. With regard to the European mortgage market, Article 15(2) and (3) of Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property has addressed this lack of transparency by imposing transparency requirements on commissions received by credit intermediaries when providing credit agreements to consumers.
10. According to recent ESRB estimates (ESRB 2015), a sample of 20 major globally active banks has incurred misconduct costs of around EUR 200 billion since 2009. Half of that amount (EUR 100 billion) is estimated to be related to mis-selling (to retail or professional customers). Misconduct costs of EU banks are estimated to represent a quarter of the total amount (EUR 50 billion).

³⁰ For the purpose of these Guidelines, the term 'banking services' is defined slightly differently from the referred study.

11. Analysis conducted by EBA staff for a sample of 56 major EU banks resident in 21 jurisdictions based on public statements estimates litigation and misconduct costs amounting to EUR 75 billion since 2009. The EBA's assessment confirms remuneration policies and practices and misaligned incentives of sales staff to be a relevant driver of conduct risk in the banking sector.
12. More specifically, one national authority reported that by end July 2015 (since January 2011), banks in that Member State had paid out approximately EUR 27.8 billion in refunds and compensation as a result of mis-selling of payment protection insurance. According to the same source, in the first half of 2015 almost 740 000 new complaints were opened in relation to banking and credit card products. Almost 280 000 of those complaints were related to the advising, selling and arranging of those products³¹.
13. Taking into account the large amounts of direct and indirect costs related to mis-selling for consumers as well as providers of retail banking products observed in recent years, and the causal link with sales incentives and remuneration policies and practices, the development and issuance of Guidelines on the EBA's own initiative is expected to create net benefits for consumers and the market for retail banking services in the EU and is thus the preferred option (Option 1.2).
14. Regarding the coverage of remuneration elements, remuneration of staff selling retail banking products consists of monetary and non-monetary elements. According to a study conducted for the EU Commission's DG Internal Market, non-financial incentives tend to be more long-term oriented, strengthen the retention of staff and provide the supplier with the possibility of using tax advantages³². By nature, they are less transparent to consumers than financial incentives. Although it is difficult to precisely estimate the proportion of non-monetary elements in staff's total remuneration packages, for staff selling financial products in the EU it is estimated to lie between 1% and 2% of total remuneration. Based on this analysis, it is preferred that these Guidelines cover monetary and non-monetary remuneration elements to restrict circumvention and facilitate effectively achieving the policy objectives stated above (Option 2.2). This approach is consistent with remuneration requirements for sales staff in other areas of financial services^{33,34}.
15. Regarding proportionality in the application of these Guidelines, requiring compliance with these Guidelines only from a specific category of institutions, for instance systemically important institutions (SIIs), would be inappropriate and insufficient to address the risks

³¹ FCA (2015), *Complaints data* (June 2015); FCA, *Monthly PPI payouts* (July 2015)

³² Institut fuer Finanzdienstleistungen (2013), *Study on remuneration structures of financial service intermediaries and conflicts of interest – Final report*.

³³ Europe Economics (2010), *Study on costs and benefits of potential changes to distribution rules for insurance investment products and other non-MiFID packaged retail investment products – Final Report for DG Internal Market and Services*.

³⁴ EU Commission (2011), *Impact assessment accompanying the proposal for a Directive and Regulation on the Markets in Financial Instruments*.

described above. The potential for mis-selling and consumers experiencing detriment in retail financial services is, amongst others, a function of the institutions' market share more than of their size or complexity. In addition, market shares in retail banking can change quite dynamically over time.

16. Furthermore, depending on national specificities, national markets for retail banking services may exhibit a rather low degree of concentration with many players active, including small and fast growing 'challenger institutions'³⁵. The protection of EU consumers of retail banking services is going to be fostered more effectively by requiring general compliance with these Guidelines from all institutions as defined above. However, proportionality is achieved by ensuring that, where the Guidelines indicate an outcome, the outcome may be achieved by the institution through different means.

³⁵ ECB (2014), Banking Structures Report.

4.2. Feedback on the responses received to the public consultation and on the Opinion of the EBA Banking Stakeholder Group

The EBA publicly consulted on the draft proposal contained in this paper. The consultation period lasted for 3 months and ended on 22 March 2016. Twenty-seven responses were received, of which 21 were published on the EBA website.

This chapter presents the EBA's feedback on the Opinion of the EBA Banking Stakeholder Group, as well as feedback responses received on the consultation, the analysis and discussion triggered by these responses, and the actions taken to address them if deemed necessary. In some cases, industry bodies made similar comments, or the same body repeated its comments, in response to different questions. In such cases, the response and the EBA's feedback were included in the section of this paper where the EBA considers them most relevant.

Summary of key issues raised by the BSG and the EBA's response

The BSG broadly supported the Guidelines under consultation but believed that these Guidelines should be enhanced by including additional requirements which can be summarised as follows:

a) Design

As part of the design of remuneration policies and practices, the BSG believes that institutions should consider mechanisms for risk management and controls to monitor any risks which might arise from their policies and practices relating to consumer protection.

The EBA concurred with the view of the BSG but believes that the concerns raised are already addressed by guideline 3 on 'Approval and monitoring', and in particular Guidelines 3.5, 3.6 and 3.7. Against this background, the EBA did not amend the Guidelines.

The BSG also suggested that institutions should change the design of their remuneration policies and practices so as to mitigate any risks of consumer detriment identified during their monitoring assessments or to address any actual detriment experienced by consumers.

The EBA concurred with the view of the BSG and clarified further the requirements in relation to monitoring by:

- splitting the former Guidelines on approval and monitoring into two dedicated separate sets of Guidelines for approval and monitoring, respectively; and
- including a new requirement in relation to monitoring specifying that 'Where the review reveals that the remuneration policies and practices do not operate as intended or prescribed, the institution should amend the remuneration policies and practices in accordance with the present Guidelines.'

b) Documentation, notification and accessibility

The BSG suggested to the EBA that institutions should be required to disclose in their annual report the risks they have considered which arise from their remuneration policies and practices alongside the action they have taken to mitigate them, including how they have complied with these Guidelines.

The EBA does not concur with the view of the BSG. Indeed, competent authorities are expected to duly supervise the implementation of these Guidelines. As part of the supervisory process, institutions might be requested to provide supervisors with information on their remuneration policies and practices and how they carried out the periodic review. If supervisors find poor practices, institutions will be requested to change or improve their practices. Competent authorities are expected to duly supervise the implementation of these Guidelines. Consequently, the EBA is of the view that supervision itself might help reduce the risks noted by the BSG and, therefore, has not included the suggested additional requirements.

The BSG also suggested that any concerns about bias or excessive pressure placed on staff to sell products caused by the institution's remuneration policies and practices which have been raised by staff through whistleblowing or other monitoring procedures should be included in the documentation referred to under guideline 2.1.

The EBA concurred with the view of the BSG but believes that the concerns raised are already addressed by the final guideline 4.3, which requires that institutions establish effective controls to check that their remuneration policies and practices are being adhered to, and to identify and address incidents of non-compliance. Against this background, the EBA did not amend the guideline.

c) Approval and monitoring

The BSG finally suggested that institutions should check whether residual risks are crystallising on a continuous rather than on an annual basis, record what action is taken in response and make changes to remuneration policies and practices as a result.

The EBA understands that the scope of the annual review will depend, according to the proportionality principle, on the business model, scale and complexity of the institution and its remuneration policies and practices. According to this proportionality principle, the EBA clarifies that, where the business model, scale and remuneration policies and practices of the institution are complex, the institution should put in place processes to check more frequently whether any of these residual risks are crystallising and causing detriment to consumers. However, the EBA also recognises that, where the business model, scale and remuneration policies and practices of the institution are not complex, the EBA believes that an annual review of remuneration policies and practices should be sufficient.

Against this background, the EBA did not amend the Guidelines which require that the compliance review of the remuneration policies and practices takes place at least on an annual basis for all institutions.

The EBA's detailed assessment of the BSG and other responses is presented in the table below.

Feedback on the responses received to the consultation

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Feedback on general comments received			
Subject matter, scope and definitions	<p>Two respondents indicated that the definition of remuneration should be expanded to also cover performance management systems.</p> <p>On the other hand, several respondents expressed a concern about the wide definition of remuneration, in particular the inclusion of non-monetary benefits, which will be difficult for institutions to demonstrate compliance with on individual employee level. Consequently, the respondents suggested narrowing down the definition of remuneration to monetary remuneration only, focusing on the variable remuneration.</p>	<p>As explained in paragraph 12 of the rationale section of the CP, the EBA has retained a broad definition of ‘remuneration’, as the EBA recognises that incentives may arise not only from direct monetary payments, such as bonuses, but also through other means, such as career progression.</p> <p>This is to prevent institutions from shifting the pressure on relevant persons away from pure monetary remuneration incentives and making use instead of performance management as a vehicle to promote sales targets or other behaviours that prioritise the interests of the financial institution to the detriment of consumers.</p> <p>Against this background, the EBA believes that the definition of remuneration as consulted address the comments raised by the respondent in relation to performance management systems and has therefore not amended the definition for that purpose.</p> <p>With regards to the comments in favour of narrowing down the definition of remuneration to monetary benefits, the EBA did not agree with the views expressed by the respondents for the reasons expressed above. The EBA also underlines that the definition of remuneration retained in the Guidelines on sound remuneration policies (EBA/GL/2015/22) also includes non-monetary benefits. However, in</p>	Deletion of the term ‘allowance’ in the list of non-monetary benefits examples included in the remuneration definition.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		order to better distinguish between monetary and non-monetary benefits in the remuneration definition, the EBA corrected an oversight by deleting the reference to ‘allowances’ in the examples of non-monetary benefits.	
Subject matter, scope and definitions	One respondent requested clarification on the proposed territorial scope of the Guidelines, and to what extent provisions enacted by national competent authorities would be applicable to all subsidiaries of EU headquartered institutions.	The EBA clarifies that the scope of application of the Guidelines relates to the scope of application of the underlying EU legislative acts which the Guidelines further develop as defined in the ‘Subject matter and scope of application’ section of the present Guidelines.	None.
Subject matter, scope and definitions	<p>One respondent expressed the view that for credit institutions, the present Guidelines should only apply to ‘material risk takers’ or ‘identified staff’ defined under CRDIV and suggested the EBA to amend the Guidelines accordingly.</p> <p>Another respondent expressed the view that institutions compliant with the provisions of CRD IV and the EBA Guidelines on sound remuneration [EBA/GL/2015/22] should be considered to be compliant with the present Guidelines as soon as they consider the impact of remuneration on the consumers.</p>	<p>The EBA clarifies that :</p> <ul style="list-style-type: none"> - the present Guidelines apply to institutions as defined in paragraph 17, which go beyond ‘Credit institutions’ as defined in Article 4(1) of Regulation (EU) No 575/2013 (CRDIV); - the present Guidelines apply to all ‘relevant persons’ as defined in paragraph 17, and so are not restricted to risk takers or identified staff under the CRD IV. <p>Against this background, the EBA does not concur with the view of the respondent that only staff falling under the category of material risk takers or identified staff under CRDIV should be subject to the present Guidelines and has therefore not amended the Guidelines submitted for consultation.</p> <p>The EBA also clarifies that for credit institutions, the</p>	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		<p>compliance with these Guidelines is without prejudice to the compliance with the EBA Guidelines on sound remuneration policies under Articles 74(3) and 75(2) of Directive 2013/36/EU and disclosures under Article 450 of Regulation (EU) No 575/2013. Institutions will therefore have to comply with both the Guidelines on sound remuneration and the present Guidelines.</p>	
<p>Subject matter, scope and definitions</p>	<p>One respondent suggested that the customer definition should be harmonised at European level in order to ensure a level playing field.</p> <p>One respondent required confirmation that within the framework of the MCD and the current EBA draft Guidelines, the focus lies on consumers which, the respondent understands, is a subset of 'clients' since the latter category also includes cooperative customers and SMEs.</p> <p>Another respondent suggested that the scope of the Guidelines should be extended to micro-enterprises and SMEs since these entities can also be subject to the risk of mis-selling.</p> <p>On the other hand, several respondents noted that giving competent authorities' flexibility to apply the Guidelines to SMEs could create competition distortions and suggested the EBA to limit the scope of the Guidelines to consumers only by deleting paragraph 8 of the 'Subject matter and scope of application' section.</p>	<p>The EBA recognises that there are various definitions of 'consumer' in EU legal framework.</p> <p>For the purposes of these Guidelines, the EBA has defined a consumer as 'a natural person, who is acting for purposes which are outside his trade, business or profession'.</p> <p>The EBA has included within the scope of the Guidelines the flexibility for competent authorities to expand the scope of application of these Guidelines to other persons, such as micro-enterprises or intermediaries other than credit intermediaries.</p> <p>The EBA deems that the expansion of the scope of consumers should be at the discretion of competent authorities because they may already have expanded the scope of consumers with regard to other conduct of business rules.</p>	<p>None.</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Subject matter, scope and definitions	One respondent expressed a concern that the definition of ‘relevant persons’ was too vague.	Given that the respondent did not provide any rationale for the clarification, the EBA was not able to consider the relevance of this comment. Therefore, no amendment has been made.	None.
Subject matter, scope and definitions	<p>One respondent noted that the MCD clearly set rules regarding the remuneration paid by financial institutions to credit intermediaries and that the Guidelines should not be extended to cover commissions paid to credit intermediaries.</p> <p>Another respondent also requested confirmation on whether or not all credit intermediaries are included in scope as dealers or agents.</p>	<p>As stated in paragraph 9 of Section 3.2 of the CP, the EBA underlines that ‘with regards to the remuneration of credit intermediaries, these draft Guidelines do not cover remuneration (also referred to as ‘commissions’) paid by financial institutions to credit intermediaries. However, these draft Guidelines are without prejudice to the remuneration rules laid down under the MCD and in particular under Article 7 (2) MCD which requires that where creditors remunerate credit intermediaries, they must take into account of the rights and interests of consumers. The EBA is therefore of the opinion that where institutions rely on credit intermediaries for the provision of retail banking products and services, they should not use credit intermediaries as a way to circumvent these draft Guidelines. Furthermore, the EBA may, in the future, review these draft Guidelines and extend them to cover commissions paid to credit intermediaries’.</p> <p>The EBA also underlines that as defined in paragraph 17 of the Guidelines, credit intermediaries are defined as in Article 4(5) of Directive 2014/17/EU.</p>	None
Background and rationale	One respondent expressed the view that paragraph 15 of section 3.2 of the CP, in particular the use of the term linear, reveals the possibility for institutions to have a variable remuneration policy.	The EBA clarifies that the paragraph referred to by the respondent aims at providing examples of good remuneration policies and practices that the present Guidelines aim at developing. The EBA underlines that	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>Two respondents also suggested the EBA to add ‘cliff edges’ (where sales staff receive high awards for thresholds and cliff-edges where the reward for making additional sales increases dramatically) and performance management to the undesirable remuneration practices it is seeking to prevent.</p>	<p>these examples are not part of the Guidelines and therefore does not entail any legal effect. Against this background, the EBA considers that it was unnecessary to amend them.</p> <p>The EBA also clarifies that the term ‘linear’ in the paragraph referred to should be understood as ‘progressive’, so that as a good practice, if a variable remuneration is implemented, it should be progressive rather than being dependent on meeting a predefined ‘all or nothing’ target.</p>	
<p>Consistency with other regulations on remuneration</p>	<p>Several respondents noted that the multitude of new regulatory rules in recent years has resulted in a number of separate provisions for the remuneration practices of different employee categories or different services offered by financial institutions.</p> <p>Against this background, these respondents required the alignment of the present Guidelines with other Level 1 regulations (Markets in Financial Instruments Directive (MiFID), Mortgage Credit Directive) and other existing or future Guidelines regarding remuneration policies and practices such as the EBA Guidelines on Sound Remuneration Policies (EBA/GL/2015/22) and the ESMA Guidelines which aim to protect the clients’ interests.</p> <p>On the other hand, one respondent underlined that in his view, the objectives of the present EBA Guidelines were consistent with the objectives of the EBA Guidelines on Sound Remuneration Policies and ESMA Guidelines for remuneration policies, even if these Guidelines are not identical in terms of scope</p>	<p>The EBA concurs with the views expressed by the respondents in support of consistency between regulation applicable to remuneration policies and practices.</p> <p>The EBA underlines that:</p> <ul style="list-style-type: none"> - the EBA Guidelines on sound remuneration are aimed at ensuring that remuneration policies regarding staff of credit institutions are based on sound governance processes, take into account the risk strategy and profile of the credit institutions and align incentives to the interests of all the stakeholders. - the present Guidelines are applicable to institutions that go beyond the scope of credit institutions and are aimed to align remuneration incentives with the interest of consumers, in order to avoid that remuneration can be a driver of mis-selling and consumer detriment. 	<p>Chapter 2 amended to clarify that the implementation of these Guidelines is without prejudice to the credit institutions’ compliance with the EBA Guidelines on sound remuneration policies.</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>of intermediaries, products and services.</p> <p>One respondent finally called for greater consistency across global jurisdictions to create a level playing field, especially across G20 countries in Asia.</p>	<p>The EBA has ensured that none of the present Guidelines are conflicting with the EBA Guidelines on sound remuneration practices and observes that the respondents did not provide any example of inconsistency.</p> <p>Against this background, the EBA clarifies that the implementation of these Guidelines is without prejudice to the credit institutions' compliance with the EBA Guidelines on sound remuneration policies and amended chapter 2 'Subject matter, scope and definitions' of the final Guidelines accordingly.</p> <p>With regards to the consistency of the present Guidelines with the MIFID provisions or ESMA Guidelines on remuneration [ESMA/2013/606], the EBA confirms that it has ensured consistency between these requirements and observes that the respondents did not provide any example of inconsistency. Against this background, the EBA was unable to address the relevance of the comments. Therefore, no amendment has been made.</p> <p>With regards to consistency across global jurisdictions, the EBA takes note of the comment but since no specific inconsistency was provided by the respondent, the EBA was not able to consider the relevance of this comment. Therefore, no amendment has been made.</p>	
Background and rationale	Several respondent were of the view that the CP seems to suggest that banks design their own remuneration policies -especially regarding variable remuneration - with the aim of encouraging certain	The remuneration of staff in general, and of persons directly offering or providing products or services to consumers in particular, is an important means by which financial institutions attract, motivate and	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	own sales interests to the detriment of the clients' interests.	<p>retain employees with the skills needed for the institution's success.</p> <p>While the EBA does not assume that financial institutions design remuneration policies that deliberately encourage mis-selling by staff, developments in recent years have shown significant cases of misconduct and mis-selling by staff in financial institutions, with poor remuneration policies and practices having been identified as a key underlying driver.</p> <p>In order to address this issue, the EBA is issuing the final Guidelines on remuneration policies and practices related to the sale and provision of retail banking products and services.</p>	
Background and rationale	<p>Several respondents were concerned that deferring the variable remuneration payment as identified in paragraph 15 of the rationale section of the CP appears disproportionate for retail banking sales staff receiving low variable remuneration and suggested removing this requirement.</p> <p>On the other hand, one respondent suggested requiring deferred payments of reward in the design of remuneration policies to mitigate the risk whereby reward is paid before the risk arising from mis-selling has abated.</p>	The EBA clarifies that the paragraph referred to by the respondents aims at providing examples of good remuneration policies and practices that the present Guidelines aim at developing. The EBA underlines that these examples are not part of the Guidelines and therefore does not entail any legal effect.	None.
Subject matter, scope and definitions	Two respondents suggested that a more precise definition of 'management body' be given.	The EBA underlines that the management body definition is identical to the definition provided in Directive 2013/36/EU.	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		<p>The EBA also clarifies that different management body structures can be observed in European countries. In some countries a unitary structure is common, i.e. supervisory and management functions of the board are exercised by only one body. In other countries a dual structure is common, with two independent bodies being established, one for the management function and the other for the supervision of the management function.</p> <p>When implementing the present Guidelines in relation to credit institutions, national competent authorities will clarify which function of the ‘management body’ shall be referred to according to the national corporate framework.</p>	
Scope of the Guidelines and definitions	<p>One respondent believes that it is not within the competence of the EBA to define legally binding Guidelines for remuneration, despite acknowledging that EBA Guidelines are not technically legally binding, they fear interference with Article 153(5) of the TFEU and Art 28 of the EU Charter of Fundamental Rights. Given the remit for EBA Guidelines to financial institutions the respondent believes the Guidelines cannot address other natural or legal persons.</p> <p>Another respondent requested the EBA to elaborate on the legal basis for issuing, as well as the EBA’s mandate to issue, Guidelines on remuneration policies and practices related to the sale and provision of retail banking products and services. In addition, the scope of persons included in the</p>	<p>The EBA clarifies that these Guidelines are issued pursuant to Article 16 of Regulation (EU) No 1093/2010.</p> <p>These Guidelines provide details on how financial institutions should give effect to specific provisions laid down in applicable EU Directives, such as (i) Articles 74(3) and 75(2) of Directive 2013/36/EU which confers the mandate on the EBA to develop Guidelines on credit institutions’ governance arrangements, including remuneration policies and practices, , (ii) Article 7(2) of Directive 2014/17/EU , which requires Member States to ensure that the manner in which creditors and credit intermediaries remunerate their staff does not impede them to act honestly, fairly, transparently and professionally, taking account of the rights and interests of</p>	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>definition of ‘relevant persons’ is unclear – third part staff such as agency staff could be deemed included by the current definition.</p> <p>One respondent finally recommended that the Guidelines are applicable to all institutions i.e. including firms outside traditional banks that are engaged in providing banking-related services and products, including intermediaries, appointed representatives and outsourcing</p>	<p>consumers, and (iii) Articles 11(4) of Directive (EU) 2015/2366 and 3(1) of Directive 2009/110/EC that require payment institutions and electronic money institutions, respectively, to have in place robust governance arrangements, to the extent that they relate to remuneration policies and practices.</p> <p>The EBA has amended the ‘Subject matter and scope of application’ section of the final Guidelines accordingly.</p> <p>The Guidelines are addressed to :</p> <p>a. competent authorities as defined in Article 4(2)(i) of Regulation (EU) No 1093/2010 (EBA authority).; and</p> <p>b. financial institutions as defined in Article 4(1) of Regulation (EU) No 1093/2010.</p> <p>In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions must make every effort to comply with the Guidelines.</p> <p>In addition, competent authorities may wish to consider applying these Guidelines also to entities other than institutions as defined in paragraph 17, in particular to:</p> <p>a. intermediaries other than credit intermediaries as defined in Article 4(5) of Directive 2014/17/EU;</p> <p>b. ‘appointed representatives’ as defined in</p>	

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		<p>Article 4(8) of Directive 2014/17/EU.</p> <p>EBA finally underlines that in the case where the activity of the institution is in whole or in part outsourced to third parties, or carried out by another entity in other ways, institutions should ensure that, in doing so, that they comply with the requirements established in the CEBS Guidelines on outsourcing. This includes, in particular, CEBS guideline 2, which provides that ‘the ultimate responsibility for the proper management of the risks associated with outsourcing or the outsourced activities lies with an outsourcing institution’s senior management.</p>	
Proportionality	<p>One respondent welcomed the reference to the principle of proportionality but was concerned that the principle had not been respected in the Guidelines given the wording is the same for large and small firms, and suggested that the Guidelines be redrafted so that SMEs and sole trader intermediaries could comply with them.</p>	<p>As stated in paragraph 16 of section 3.2 of the CP, the National competent authorities will apply these draft Guidelines in a proportionate manner as a general principle of Union law.</p> <p>However all financial institutions should comply with these draft Guidelines and should ensure at all time the alignment of their remuneration incentives with fair treatment of consumers.</p> <p>Where these draft Guidelines indicate an outcome, the outcome may be achieved by the financial institution through different means. The appropriateness of the means used by the financial institution will be assessed by competent authorities, according to the business model, scale and complexity of the financial institution.</p>	None.
Impact assessment	<p>Respondent believes that the impact assessment does not consider the cost to institutions of non-</p>	<p>The EBA acknowledges that staff of financial institutions needs to be incentivised adequately. In the</p>	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	incentivised staff.	area of sales, the EBA views that indicators such as customer satisfaction are relevant benchmarks to measure staff performance against. Although customer satisfaction could in a second step translate into an increase in sales volumes, the EBA considers the risk inherent in volumes-based incentive schemes to outweigh any potential risk of 'unincentivised staff'.	
Feedback on responses to Question 1			
Design	<p>Four respondents expressly agreed with the content of guideline 1 with no particular concern expressed.</p> <p>One respondent particularly underlined that this guideline will enable financial institutions to implement remuneration policies and practices that will improve links between incentives and the fair treatment of consumers, reducing the risk of encouraging mis-selling.</p>	The EBA takes note of the support of the respondents with the suggested Guidelines on design.	None.
Design	<p>One respondent, while agreeing with the content of the guideline, suggested including some practical examples which could be used as a background for the institutions.</p> <p>The respondent in particular suggested to include some guidance on the sales practices such as those addressing sale of payment protection insurance (PPI) in UK.</p> <p>In addition, the same respondent underlines that the</p>	<p>The EBA takes note of the respondent's comment referring to specific national provisions regulating sales practices. The EBA however underlines that such regulations are outside the scope of the present Guidelines which address specifically remuneration practices.</p> <p>With regards to the cross-selling of products, the EBA</p>	<p>None.</p> <p>None.</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>most important aspects to protect the customer's interest is that the distribution of an accessory product such as insurance, which the financial institutions can carry out, does not depend on financial objectives which may take priority over the interests of the customer.</p>	<p>underlines that the ESMA Guidelines on cross-selling practices (ESMA/2015/1861) addresses the comment of the respondent in relation to the offering of an investment service together with another service or product as part of a package or as a condition for the same agreement or package.</p> <p>In particular, guideline 9 requires that 'competent authorities supervising firms which distribute tied or bundled packages should require firms to ensure that suitable remuneration models and sales incentives encouraging responsible business conduct, fair treatment of clients and avoidance of conflicts of interest for staff selling the tied or bundled package are in place and are monitored by senior management.'</p>	
Design	<p>One respondent broadly supported the Guidelines under section 1 but suggested enhancing them by requiring institutions to consider mechanisms for risk management and controls to monitor any risks which might arise from their remuneration policies and practices relating to consumer protection. In the respondent's view, these mechanisms should include sales quality monitoring and root cause analysis to assess the patterns of and reasons for complaints made by consumers to determine whether regulatory requirements are being met.</p> <p>The same respondent underlined that where necessary; institutions should change the design of their remuneration policies and practices so as to mitigate any risks of consumer detriment identified</p>	<p>The EBA believes that the concerns raised by the respondent in relation to risk control mechanisms are already addressed by Guidelines 3 on 'Approval and monitoring', and in particular Guidelines 3.5, 3.6 and 3.7. Against this background, the EBA did not amend the Guidelines.</p> <p>The EBA concurs with the view of the respondent and clarified further the requirements in relation to monitoring by:</p>	<p>None.</p> <p>Separation of Guidelines on Approval and monitoring in two subsections and a new guideline 4.2 introduced to specify what</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	during their monitoring assessments or to address any actual detriment experienced by consumers.	<ul style="list-style-type: none"> - splitting the former Guidelines on approval and monitoring into two dedicated separate sets of Guidelines for approval and monitoring respectively; and - including a new requirements in relation to monitoring specifying that 'Where the review reveals that the remuneration policies and practices do not operate as intended or prescribed, the institution should amend the remuneration policies and practices in accordance with the present Guidelines. 	action should be taken by the institution in case the annual review of the remuneration policies and practices reveals risks for consumers.
Design	Two respondents indicated that where institutions move away from quantitative targets to entirely discretionary remuneration policies and practices they should ensure that the reasons for awarding discretionary bonuses are documented clearly and that discretionary remuneration is not being used to indirectly reward sales or to put excessive pressure on staff to sell products.	The EBA believes that this concern is addressed by guideline 2 on 'Documentation, notification and accessibility', and in particular Guidelines 2.1 and 2.2 that apply to any form of remuneration policies including discretionary remuneration. Against this background, the EBA did not amend the Guidelines.	None
Design	Several respondent underlined that remuneration policies have also to comply with external regulation and where applicable collective agreements. Against this background, the respondents suggested to add a similar provision as in BRRD, recital 35, such as: 'Where applicable, collective agreements, or other arrangements provided for by social partners, as well as national and Union law on the involvement of trade unions and workers' representatives should be complied with...'.	<p>The EBA clarifies that these Guidelines, as any other Guidelines, apply notwithstanding any other applicable rules, including social and labour law and therefore do not prevent the right for collective agreement to take place.</p> <p>The EBA observes that the respondents did not provide any example of any collective agreement that would be inconsistent with the objective set out in these Guidelines. Against this background, the EBA was unable to address the relevance of the comments.</p>	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Design	One respondent also suggested that the EBA Guidelines should include additional requirements in relation to remuneration policies to ensure for example that minimum wage levels are implemented in those countries where they exist, that the fixed remuneration has an appropriate level in order to provide for the basic needs of the employees, especially important when allowing for an absence of variable remuneration as foreseen under guideline 1.7, as well as gender equality.	The EBA considers the respondent's comment to be outside the scope of the EBA mandate.	None.
Guideline 1.1	One respondent considered the wording of this guideline as too general and required to clarify whether the bank may decide by itself how to measure that the sales person acts to the detriment of the customer.	<p>The EBA clarifies that this guideline does not require institutions to measure whether each sales person acts to the detriment of the customer. Instead, the present Guidelines require that institutions should :</p> <ul style="list-style-type: none"> - ensure that monetary and/or non-monetary forms of remuneration do not introduce incentives whereby relevant persons favour their own interests, or the institution's interests, to the detriment of consumers. - consider whether these policies and practices introduce any risks of detriment to consumers and mitigate such risks from arising. <p>In order to provide further clarity, the EBA merged guideline 1.1 with guideline 1.8 as consulted.</p>	Guideline 1.8 merged with guideline 1.1.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Guideline 1.2	<p>One respondent considered the term ‘any risk of detriment’ as a very wide indeterminate juridical concept, which makes it very difficult to assess. The respondent suggested the following 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’.</p>	<p>The EBA believes that institutions shall perform their own analysis with regards any risk that their remuneration policies and practices may cause to the consumers and should mitigate these risks accordingly. The EBA does not concur with the view of the respondent that such analysis should be limited by adding terms such as ‘reasonably’ and ‘objective and quantifiable detriment’. Against this background, the EBA did not amend the guideline.</p> <p>The EBA underlines that where the institution identifies that a residual risk of consumers’ detriment might arise as a result of the design of remuneration policies and practices, the institution should check at least annually, whether any of these residual risks are crystallising and causing detriment to consumers.</p>	None.
Guideline 1.3	<p>While agreeing with the content of the guideline, one respondent stressed that that guideline 1 may be particularly burdensome for smaller entities. In particular, the respondent underlined that guideline 1.3 would mean that those institutions that do not have a tailored human resources function – typically the smaller, less resourced ones – will be required to create such HR function, which would be in his view unnecessary, costly and excessively burdensome.</p>	<p>The EBA clarifies that these Guidelines refer to human resources ‘function’, which does not require any particular structure to be established.</p> <p>As stated in paragraph 16 of section 3.2 of the CP, the national competent authorities will apply these draft Guidelines in a proportionate manner as a general principle of Union law. Against this background, depending on the scale and complexity of the institution considered, the human resources function can be composed of the person responsible for human</p>	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		<p>resources.</p> <p>Against this background, the EBA did not amend the Guidelines.</p>	
Guideline 1.3	<p>One respondent underlined that the compliance function may not have the right to give effective input on this topic in all EU Member States since this is not regulated well at either at EU or at national level.</p>	<p>The EBA has analysed the comment of the respondent but was not able to find any evidence of Member States where the compliance function, where established, would be prevented from providing an effective input for the design of the remuneration policies and practices.</p> <p>Since the respondent did not provide evidence of such inconsistency, the EBA was unable to address the relevance of the comments.</p>	None
Guideline 1.6.b	<p>Several respondents, while agreeing with the content of guideline 1, asked for further clarification regarding guideline 1.6.b. which states that ‘institutions should not design remuneration policies and practices that promote, to the potential detriment of consumers, the offer or provision of a specific product or 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.’</p> <p>Indeed, in the respondents’ view, there may be circumstances when it is appropriate to differentiate between categories of product, for example reflecting the time or effort to discuss and fulfil a product with a customer. The respondents believe that this would help to ensure that product categories that are simple and quick to fulfil are not</p>	<p>The EBA clarifies that the intention of guideline 1.6.b is not to prevent institutions from providing more remuneration to sales staff based on the time needed to provide advice on the product or services and fulfilling the subsequent contractual agreement. Instead, the Guidelines aim at preventing remuneration policies and practices that would provide incentives for staff to offer a specific product or category of products which are more profitable for the institutions over others to the potential detriment of consumers.</p> <p>Therefore, in order to address the respondents’ comment, the EBA agreed to amend guideline 1.6.b in order to better emphasise the link with the consumer detriment. The guideline now reads: ‘The institution should not design remuneration policies and practices that: [...] promote the offer or provision of a specific</p>	Guideline 1.6 b amended to clarify the link with the issue of consumer detriment.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>preferred over those that require more time to explain the features and complete paperwork.</p> <p>One of these respondents suggested the following amendment:</p> <p>‘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.’</p> <p>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.’</p> <p>Another respondent suggested that the EBA considers re-phrasing guideline 1.6 so as to allow institutions to promote specific products as long as such products, to the best of the institutions’ knowledge and based on information provided by the customer, is the most beneficial alternative for the customer.</p>	<p>product or category of products over other products, such as products which are more profitable for the institutions or for a relevant person, to the detriment of the consumer.’</p> <p>The EBA concurs with the view of the respondent, but considers that the present Guidelines do not prevent institutions from promoting specific products as long as such products are the most beneficial alternative for the customer.</p> <p>Indeed, if a product is the ‘most beneficial alternative for the customer’, the risk of potential detriment to the consumer does not exist and therefore, guideline 1.6.b does not apply.</p>	None.
Guideline 1.6	One respondent indicated that the wording of	The EBA clarifies that guideline 1.6 does not limit the	None

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>guideline 1.6 of the CP seems to impose a limitation of institutions' right to award variable remuneration pursuant to the CRD IV. Against this background, the respondent suggests that the EBA clarifies that the draft Guidelines do not in any way operate to limit institutions' right to award inter alia sign-on bonuses in connection with the hiring of new staff.</p>	<p>possibility for institutions to offer variable remuneration as long as the design of the variable remuneration complies with the present Guidelines.</p> <p>Since the respondent did not provide any rationale behind the comment, the EBA was unable to address the relevance of the comment and did not amend the guideline.</p>	
Guideline 1.7	<p>While acknowledging the importance of using qualitative and quantitative parameters to determine variable remuneration, several respondents indicated that the requirement for an appropriate balance between fixed and variable pay was however unclear about what proportion or mix of fixed and variable pay would be considered as appropriate.</p> <p>One of these respondents suggested that the Guidelines should give firms the flexibility to set the balance between fixed and variable pay after taking into account factors such as market practice (which can vary by region/country), deferral structures in place and the ability to apply ex-ante and ex-post risk adjustments such as malus and/or clawback. This would enable firms to set commercially appropriate fixed/variable pay balance for the group/region/country taking into account specific market circumstances of the group/region/country and its internal remuneration policy and variable pay structure/practice.</p>	<p>The EBA clarifies that the drafting of this guideline was left deliberately open so that institutions have flexibility to determine the level of fix and variable remuneration.</p> <p>The EBA underlines that institutions will need to provide sufficient justification of the decisions taken in that respect to the national competent authority when the latter carries out a review of the implementation of the Guidelines.</p> <p>The EBA considers that deferral structures or the ability to apply ex-ante and ex-post risk adjustments such as malus and/or clawback will be part of the justification to be considered by national competent authorities when performing their review.</p> <p>However, the EBA does not concur with the view of the respondent suggesting that current market practice can be taken into account by competent authority when considering compliance with the present Guidelines, unless these market practices are themselves compliant with the present Guidelines.</p>	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
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Guideline 1.7	<p>One respondent suggested that the guideline includes a provision allowing banks not to apply the provisions of the guideline in application of the proportionality principle, where low amounts of variable remuneration are paid to relevant persons; it appears justified to apply a waiver from the provisions of the guideline.</p>	<p>As stated in paragraph 16 of section 3.2 of the CP, the national competent authorities will apply these draft Guidelines in a proportionate manner as a general principle of Union law.</p> <p>However the EBA considers that all institutions should comply with these draft Guidelines and should ensure at all time the alignment of their remuneration incentives with fair treatment of consumers. Against this background, the EBA did not amend the guideline.</p> <p>The EBA underlines that where these draft Guidelines indicate an outcome; the outcome may be achieved by the financial institution through different means. The appropriateness of the means used by the financial institution will be assessed by competent authorities, according to the business model, scale and complexity of the financial institution.</p>	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Guideline 1.7	<p>In relation to guideline 1.7, one respondent indicated that it could be interpreted as either leading to some overlaps with the EBA Guidelines on Sound Remuneration Policies, or as introducing an additional balance test exclusively for the sales staff without clear indications of its features and without reference to the legal base.</p> <p>Furthermore, the same respondent noted that Article 94 (1) (g) CRD IV has already introduced a general ceiling governing on the ratio between fixed and variable remuneration components, the so-called 'maximum remuneration ratio'. In the respondent's view, the draft guideline 1.7 may result in additional burdens for the banks as they will be forced to apply additional criteria when deciding on the ratio of fixed and variable components of the remuneration, even if the maximum remuneration ratio is not exceeded.</p>	<p>The EBA first clarifies that the scope of the present Guidelines goes beyond to institutions subject to CRD IV legal framework.</p> <p>For credit institutions, the implementation of these Guidelines is without prejudice to the credit institutions' compliance with the EBA Guidelines on sound remuneration policies (EBA/GL/2015/22).</p> <p>In relation to guideline 1.7, the EBA has not identified any inconsistency between obligations deriving from the EBA Guidelines on sound remuneration policies and the present Guidelines. The EBA confirms that guideline 1.7 requires credit institutions to apply additional criteria when deciding on the ratio of fixed and variable components of the remuneration, even if the maximum remuneration ratio is not exceeded</p>	None
Feedback on responses received to question 2			
Documentation, notification and accessibility	<p>Several respondents agreed with the content of guideline 2 with no particular concern expressed.</p> <p>One of the respondent indicated that he believed that this guideline encompasses all of the key aspects that will ensure appropriate documentation of remuneration policies and practices to reduce the risk of poor customer outcomes.</p>	The EBA takes note of the support of the respondents with the suggested Guidelines on Documentation, notification and accessibility.	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Accessibility	<p>Two respondents suggested that institutions should be required to disclose publicly the risks they have considered which arise from their remuneration policies and practices alongside the action they have taken to mitigate them, including how they have complied with these Guidelines in the operational risk disclosures of their annual report. One of this respondent suggested requiring the disclosure of remuneration policies and practices to consumers, for example via a link to the institution website, so that the consumer is aware of the potential seller incentives.</p>	<p>Competent authorities which will be compliant with these Guidelines are expected to duly supervise their implementation. As part of the supervisory process, institutions might be requested to provide supervisors with information on their remuneration policies and practices and how they carried out the periodic review. If supervisors find poor practices, institutions will be requested to change or improve their practices.</p> <p>Consequently, the EBA is of the view that supervision itself might help reduce the risks noted by these respondents and, therefore, has not included the suggested additional requirements.</p>	None.
Guideline 2.1	<p>One respondent indicated that it was rather unclear, if all staff members who offer banking products to (potential) clients shall be documented or only those staff members, who receive a variable remuneration.</p> <p>For the avoidance of unnecessary administrative burdens on institutions, and also to ensure clarity in relation to members of staff, one respondent also suggested that it should suffice to prepare documentation in accordance with the CRD IV and EBA Guidelines on sound remuneration (EBA/GL/2015/22) – according to which institutions are obliged to document their remuneration policies and practices and ensure that the relevant staff is clearly informed of these policies and practices.</p>	<p>The EBA confirms that remuneration policies and practices should be documented for all staff subject to the provisions in the Guidelines, including staff receiving only fixed remuneration.</p> <p>As explained above, the implementation of these Guidelines is without prejudice to the credit institutions' compliance with the EBA Guidelines on sound remuneration policies.</p> <p>The present Guidelines do not prescribe that credit institutions should document their remuneration policies and practices separately from the documentation required under the EBA Guidelines on sound remuneration (EBA/GL/2015/22). Against this background, the EBA confirms that credit institutions</p>	None. None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Guideline 2.1	<p>While acknowledging the need to document remuneration policies and practices, informing employees and making them accessible to relevant stakeholders, several respondents underlined that current records are not kept in all markets for 5 years. In the respondents' views, retaining documentation of practices for 5 years would therefore entail additional costs for institutions, which can sometimes be disproportionate for non-monetary benefits (such as recognition awards, recognition certificates, Thank you cards).</p> <p>Two respondents finally suggested that the documentation referred to under guideline 2.1 should include any concerns about bias or excessive pressure placed on staff to sell products caused by the institution's remuneration policies and practices which have been raised by staff through whistleblowing or other monitoring procedures. The same respondent suggested that this report should</p>	<p>have the flexibility, in order to avoid unnecessary administrative burdens, to document their remuneration policies and practices in one single document, as soon as this single document allows them proving compliance with both the EBA Guidelines on sound remuneration (EBA/GL/2015/22) and the present Guidelines.</p> <p>The EBA analysed the comment of the respondents but did not identify any country where regulations governing payroll and salaries minimum record retention would be inconsistent with the 5 years minimum required in the present Guidelines.</p> <p>Since the respondents did not provide any example of country where such retention period would be inconsistent with the 5 years minimum, the EBA was unable to address the relevance of the comment and did not amend the guideline.</p> <p>Regarding to the comment related to the possible disproportionate cost of keeping record of non-monetary benefits, see the EBA analysis under Guidelines 2.2.</p> <p>The EBA concurs with the view expressed by the respondents but clarifies that the monitoring of issues raised by staff should be part of the institution obligation set out under the final guideline 4.3, which requires that institutions establish effective controls to check that their remuneration policies and practices are being adhered to, and to identify and address incidents of non-compliance. Against this background,</p>	<p>None.</p> <p>None.</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	include how these concerns were investigated and whether any changes to policies and practices were made as a result.	the EBA did not amend the guideline.	
Guideline 2.2	<p>Several respondents considered that the guideline was unclear about the scope of information that should be recorded in order to demonstrate compliance to competent authorities. In particular, some respondents questioned whether a general/high level statement of implementation would be sufficient or whether institutions would need to record all individual monetary and non-monetary benefits provided to all sales staff, which in their view would be too costly.</p> <p>Additionally, one respondent believes that the current wording creates uncertainties as to whether such documentation could be also discretionary requested for staff members not covered by the EBA draft Guidelines.</p>	<p>The EBA clarifies that the drafting of this guideline was left deliberately open so that institutions have flexibility according to the proportionality principle to determine the scope of information to be recorded to demonstrate compliance with the present Guidelines.</p> <p>The EBA believes that the proportionality principle should be as open as possible to give institutions the necessary flexibility to determine the scope of information to be recorded according to the business model, scale, complexity of the institution and its remuneration policies and practices.</p> <p>The EBA underlines that institutions will need to provide sufficient justification of the decisions taken in that respect to the national competent authority when the latter carries out a review of the implementation of the Guidelines.</p> <p>If supervisors find that the scope of information recorded does not allow the institution to demonstrate compliance with the present Guidelines, institutions will be requested to change or improve their recording practices.</p> <p>Again this background, the EBA did not amend the content of the guideline but decided to merge Guidelines 2.1 and 2.2 for greater clarity.</p> <p>Regarding the scope of staff covered by the present Guidelines, the EBA confirms that institutions will only</p>	No amendment of the content of the guideline 2.2 but Guidelines 2.1 and 2.2 were merged for greater clarity.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		be required to keep record of remuneration policies and practices for relevant persons defined in the Guidelines as any natural person working for an institution and who is a) directly offering or providing banking products or services to consumers; or b) directly or indirectly managing a person referred to in point a).	
Guideline 2.3	One respondent suggested that the EBA further clarifies how the institution should inform their staff about the remuneration policies and practices that are applicable to them.	The EBA clarifies that the drafting of this guideline was left deliberately open so that institutions have flexibility according to the proportionality principle to determine how they should communicate to relevant persons the remuneration policies and practices that are applicable to them. The EBA understands that this can be done by different means, such as for example including them in the employment contract, sending them via mail or e- mail with acknowledgement of receipt. Against this background, the EBA did not amend the guideline.	None.
Guideline 2.4	One respondent suggested that the documentation required under guideline 2.4 be also accessible to the social partners for purposes of collective bargaining, since the 'relevant persons' includes natural persons directly offering financial products or services and their managers who are covered by collective bargaining. Against this background, the respondent believes that the relevant trade unions should therefore have access to this information in the same manner as the relevant persons themselves.	The EBA considers the comment of the respondent as outside the scope of the EBA mandate since these Guidelines do not interfere with the right for collective agreement to take place (see also the EBA's analysis on the issue of collective agreement on the comment on design).	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
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Feedback on responses received to question 3			
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Approval and monitoring	<p>Several respondents agreed with the content of approval and monitoring with no particular concern expressed.</p> <p>Another respondent agreed with Guidelines on approval and monitoring, but suggested EBA to include additional form of independent audit every 2-3 years to ensure compliance with the Guidelines.</p>	<p>The EBA takes note of the support of the respondents with the suggested Guidelines on Documentation, notification and accessibility.</p> <p>With regards to an additional audit every 2-3 years by an independent audit suggested by one respondent, the EBA clarifies that national competent authorities are expected to duly supervise the implementation of these Guidelines and considers therefore that the annual review by the management body is sufficient.</p>	None.
Approval	<p>Several respondents requested clarification as to whether the requirement for the management body to approve changes to remuneration policies could be delegated to an appropriate body or committee. Similarly, another respondent requested clarification as to whether or not institutions part of a group can delegate or outsource any part of the internal governance of remuneration policies and practices to group-wide functions, such as a remuneration committee at group level and group control functions.</p>	<p>The EBA concurs with the view of the respondent that the Guidelines do not prevent the management body from delegating the monitoring of remuneration policies and practices to an appropriate body or committee.</p> <p>The EBA understands that the specific reference to delegation by the management body in guideline 3.5 gives the impression that such delegation is not possible for other Guidelines.</p> <p>In order to address this concern, the EBA amended:</p> <ul style="list-style-type: none"> - Guideline 3.1 to underline that [emphasis added] ‘the management body <u>approves</u> and retains ultimate responsibility for the institution’s remuneration policies and practices.’ - Guideline 3.4 to delete the specific reference to 	Guidelines 3.1 and 3.4 amended to ensure that delegation by the management body is possible as a general principle, to the extent that the management body retains ultimate responsibility for the institution’s remuneration policies and practices.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		<p>delegation by the management body.</p> <p>Against this background, the EBA recognises that delegation by the management body is possible as a general principle, to the extent that the management body retains ultimate responsibility for the institution's remuneration policies and practices.</p>	
Guideline 3.1	<p>One respondent noted that while the Guidelines apply to the population within the scope of the consultation, Guidelines 3.1 and 3.2 suggest that the management body should review the institution's remuneration policies and practices as a whole and that the management body should not be responsible for its own remuneration.</p>	<p>The EBA clarifies that as for all Guidelines under consultation, Guidelines 3.1 and 3.2 should indeed be interpreted according to the scope of relevant persons as defined in section 2 of the final Guidelines, so that the review by the management body under the present Guidelines should only cover the institution's remuneration policies and practices applicable to relevant persons.</p> <p>However, as explained above, the EBA also clarifies that the implementation of these Guidelines is without prejudice to the credit institutions' compliance with the EBA Guidelines on sound remuneration policies.</p> <p>The EBA also clarifies that the management body should review the remuneration of relevant persons participating in the management body.</p>	None.
Guideline 3.2	<p>Several respondents requested clarification as to what is meant by 'independent advice', and in particular whether this required an institution to seek external advice, or if it an internal independent assessment could also be considered outside the Remuneration Committee.</p>	<p>The EBA concurs with the view of the participants that an independent advice could be too cumbersome for small entities. Against this background, the EBA amended the guideline to restrict the need for advice on the remuneration policies and practices to institutions where a remuneration committee is</p>	<p>Guideline 3.2 amended to restrict the need for advice on the remuneration policies and practices to institutions where a remuneration committee is established.</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	Many of these respondents were also concerned that the requirement to seek independent advice was too burdensome for smaller entities, particularly where institutions do not have a remuneration committee.	established.	
Guideline 3.3	One respondent noted that guideline 3.3 is too granular and should be removed.	EBA considers that the guideline includes the necessary level of detail to achieve the aims of the Guidelines or some wording to that effect. Given that the respondent has not provided any rationale for his comment, EBA was not able to address it.	None.
Guideline 3.3	One respondent requested that the EBA clarify & differentiate between the role of compliance function in remuneration policies & that of the internal audit function to align with EBA Guidelines on Internal Governance.	<p>The EBA clarifies that :</p> <ul style="list-style-type: none"> - the responsibilities of the compliance function, as part of the so-called 'second line of defence', should be to assist senior management in managing effectively the compliance risks faced by institutions and should advise the management body on laws, rules, regulations and standards the institutions need to comply with and assess the possible impact of any changes in the legal or regulatory environment on the institution's activities (regulations, rules, related self-regulatory organisation standards, and codes of conduct applicable to its activities). - the independent internal audit function as the third line of defence, conducts risk-based and general audits and reviews that the internal governance arrangements, processes 	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Guideline 3.3	One respondent questioned the consequences where the compliance function does not confirm that remuneration policies and practises comply with the Guidelines.	<p>and mechanisms are sound and effective, are implemented and consistently applied. The internal audit function is in charge also of the independent review of the first two ‘lines of defence’.</p> <p>Against this background, the EBA confirms that, where established, it is the responsibility of the compliance function to confirm that the remuneration policies and practices comply with these Guidelines as set out in guideline 3.3.</p> <p>The EBA clarifies that management body retains ultimate responsibility under guideline 3.1 for the institution’s remuneration policies and practices, and as such will be responsible to take any remedial action if the compliance function does not confirm compliance with the Guidelines.</p>	None.
Guidelines 3.5/3.7	<p>Two respondents noted that it was too burdensome and costly for small institutions to review remuneration policies on an annual basis.</p> <p>On the other hand, two respondents suggested that institutions should check whether residual risks are crystallising on a continuous rather than on an annual basis, and record what action is taken in response and make changes to remuneration policies and practices as a result.</p>	<p>The EBA understands that the scope of the annual review will depend, according to the proportionality principle, on the business model, scale, complexity of the institution and its remuneration policies and practices.</p> <p>Against this background, the EBA believes that the annual review of remuneration policies and practices should not require the mobilisation of significant resources where the business model, scale, and remuneration policies and practices of the institution are not complex.</p>	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		<p>According to the same proportionality principle, the EBA clarifies that where the business model, scale, and remuneration policies and practices of the institution are complex, the institution should put in place processes to check more frequently whether any of these residual risks are crystallising and causing detriment to consumers.</p> <p>Against this background, the EBA did not amend the Guidelines which require that the compliance review of the remuneration policies and practices takes place at least on an annual basis for all institutions.</p>	
Feedback on responses received to question 4			
General	<p>One respondent suggested prescribing in the Guidelines the use of specific customer satisfaction indexes to determine the variable remuneration for relevant persons and also for senior executives not under the scope of these Guidelines.</p> <p>Another respondent stressed that the Guidelines should recognise that profit-sharing schemes are positive as they show to employees that they are valuable to the company. The same respondent proposed to require institutions to ask their own sales staff for their views on their remuneration policies, sales targets and performance measures.</p>	<p>The EBA clarifies that the drafting of these Guidelines was left deliberately open so that institutions have flexibility to determine, according to the business model, scale and complexity of the institution, the remuneration policies and practices to be implemented in compliance with the present Guidelines.</p> <p>With regards the use of specific customer satisfaction indexes, the EBA considers the comment supportive of the desired outcome of these Guidelines but did not include any additional requirements to avoid being too prescriptive in the means to be deployed by institutions to achieve compliance with the present Guidelines.</p> <p>In relation to profit-sharing schemes, the EBA clarifies</p>	None

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
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		that it considers such comment as falling outside the scope of the present Guidelines.	
<p>Responses to question 5 have been incorporated in General comments above</p>			

