



EBA FOLLOW-UP REPORT

On the actions taken by competent authorities following the publication of the Opinion of the European Banking Authority on the application of Directive 2013/36/EU regarding the principles on remuneration policies for credit institutions and investment firms and the use of allowances

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1. Background

1.1 Background and legal basis

1. Following the adoption of Directive 2013/36/EU (CRD), additional requirements were introduced in the area of remuneration to further align incentives for staff and long-term interest of the credit institutions and investment firms (both, in the following, are referred to as ‘institutions’). In particular, a limit of the ratio between variable and fixed components of remuneration of 100% (200% with shareholders’ approval)—the so-called bonus cap—has been introduced. Member States (MS) had to implement this requirement into their national legal framework in a way that institutions would have to comply with this ratio for remuneration awarded for the performance year 2014 and onwards.
2. Following the introduction of the bonus cap, a number of institutions across the EU have changed their remuneration policies by introducing ‘role-based allowances’ (RBA) which they treat as part of fixed remuneration. The introduction of such RBA has increased the supposedly fixed remuneration, thereby widening the scope for awarding variable remuneration.
3. As part of its market monitoring and assessment tasks, and in response to a request made by the European Commission, the European Banking Authority (EBA) launched, in 2014, an investigation into the nature of these allowances and their compliance with CRD provisions. For that purpose, the EBA collected information from all competent authorities (CA) to identify and analyse the types of allowances used.
4. The analysis of the answers provided by the CA, the remuneration reports disclosed by the institutions and other information publicly available led to the publication of the EBA Opinion in October 2014, addressed to the European Commission and the CA, on the application of CRD regarding the principles on remuneration policies of credit institutions and investment firms and the use of allowances, together with an accompanying report on the analysis performed.
5. In its Opinion, the EBA considers that, in accordance with CRD, institutions’ remuneration policies have to make a clear distinction between ‘fixed’ and ‘variable’ remuneration. A clear distinction of the remuneration components is paramount when calculating the ratio between the variable component and the fixed component of remuneration.
6. In order to qualify as fixed remuneration, the conditions for the granting and amount of RBA should be predetermined, transparent to staff, permanent—i.e. maintained over

time and tied to the specific role and organisational responsibilities—not be incentivising risk taking and, without prejudice to national law, should be non-revocable.

7. The EBA is of the view that RBA that are not predetermined, are not transparent to staff, are not permanent, that provide incentives to take risks or, without prejudice to national law, are revocable, should be classified as variable remuneration in line with the letter and intent of CRD.
8. According to the above, the CA were asked to ensure that institutions' remuneration policies comply with the EBA Opinion by 31/12/2014.

1.2 Methodology

9. To follow up on the measures taken by CA to ensure that institutions' remuneration policies and practices reflect the findings of the EBA Opinion, the EBA sent an information request on 26 March 2015 to all CA in the European Economic Area (EEA). Information was requested on the steps taken to ensure the implementation of the EBA Opinion and on any market developments in this regard. CA needed to submit their responses by 15 May 2015. Thirty CA submitted their answers. One CA (Lichtenstein) did not respond to the questionnaire. Additional information was requested from five CA to gain more detailed information. In three countries (IC, PL and NO), the CRD remuneration principles were not yet fully implemented in those jurisdictions; therefore, they have not been included in the analysis of the present report.¹ The EBA also looked into the disclosures of institutions' remuneration policies in MS where the use of RBA was observed in 2014.
10. When the CA identified the use of allowances, the EBA looked into the information provided to assess the measures taken by the CA to ensure that the bonus cap was being complied with.

¹ In IC, CRD remuneration legislation was partly implemented into Icelandic legislation on 2 July 2015. In NO, CRD was partly implemented and remuneration provisions were implemented in Norwegian law as of 1 January 2015. In PL, the implementation of CRD is pending.

2. Analysis of the responses provided by competent authorities

2.1 Specific legal or supervisory measures adopted by Member States or competent authorities after the publication of the EBA Opinion.

Specific legal/regulatory measures adopted by Member States or competent authorities

11. None of the CA have adopted specific legal/regulatory instruments following the publication of the EBA Opinion on the use of allowances. It is alleged that this is mainly because the adoption of the final guidelines on remuneration, which would incorporate the criteria for fixed remuneration and would give the detailed European Union (EU) stance by the end of 2015, is awaited. Nevertheless one CA (ES) has taken into consideration the criteria developed in the EBA Opinion to define fixed and variable remuneration in the development of a binding circular, but the adoption and publication are, to date, still pending.
12. Three CA (LU, DE and SK) stated that no specific legal/regulatory measures were adopted in their MS after the publication of the EBA Opinion, as their respective legal framework was already in line with the EBA Opinion before it had even been published.

Specific supervisory measures taken by competent authorities following the publication

13. In all MS, the CA explicitly stated that the review of institutions' remuneration policies is part of the Supervisory Review and Evaluation Process (SREP). Some CA indicated that they have taken specific supervisory measures in their jurisdiction after the publication of the EBA Opinion to ensure that institutions apply the criteria set out in the EBA Opinion.
14. Three CA (BE, LV and NL) each sent a letter requesting institutions where the use of RBA had been observed in 2014, to ensure the application of the criteria set out in the EBA Opinion and, where necessary, to change their practices and remuneration policies. In two MS (BE and NL), the institutions changed their practices in order to be fully in line with the EBA Opinion. In the third MS (LV), the CA considered that the credit institution where the use of allowances was observed complied with the rules and the EBA Opinion.
15. Two CA (CY and SI) each sent a letter to all the supervised credit institutions or to the banking associations, drawing attention to the publication of the EBA Opinion and the fact that they fully reflect the EBA's view in their remuneration policies and practices.

They required the supervised institutions to inform them of whether such RBA were paid out or were intended to be paid out. All the institutions in these MS stated that they did not, and did not intend to, pay RBA.

16. One CA (DK) launched an off-site inspection in the five largest Danish credit institutions with the aim of informing the CA of the nature of the remuneration components used. Based on the answers received from the institutions, the CA determined that none of the five institutions used RBA with the characteristics mentioned in the EBA Opinion.
17. One CA (IT), in the course of a broader on-site thematic review, analysed the use of such RBA by institutions in order to ensure that the institutions applied the criteria set out in the EBA Opinion in their remuneration policies and practices. One institution has been requested to change its remuneration practice.
18. One CA (FI) has sent a stocktake to institutions, making reference to the EBA Opinion, aiming to ensure that no RBA were used as part of the fixed remuneration.
19. One CA (IE) requested that institutions conduct self-certifications regarding practices in relation to the use of RBA. The results will then be considered as part of any future reviews.
20. One CA (the UK) will change its supervisory instruments for 2015 to verify that institutions apply the criteria set out in the EBA Opinion and will take appropriate measures, where necessary, to change their remuneration policies and practices.
21. Where the other CA (18) have not taken specific measures, they have, so far, not observed any cases of RBA that are not in line with the EBA Opinion.

2.2 Use of allowances and compliance with the criteria of the EBA Opinion

22. All the following CA identified institutions using allowances with characteristics that needed to be verified in light of the criteria specified in the findings of the EBA Opinion.
23. In BE, an institution used RBA that were discretionary with regard to their amount and were calculated on the basis of the total level of remuneration. The amounts of the allowances were typically reviewed each year in order to ensure that they met the regulatory constraints of variable remuneration. The CA has reviewed the underlying documentation submitted by the institution to ensure that it reflects the findings in the EBA Opinion and asked the institution to change the characteristics of the RBA in order to classify it as fixed remuneration to be fully in line with the EBA Opinion.
24. In FI, two institutions were identified. For one institution, the CA is still reviewing the practices. For the second institution, the CA concluded that the use of allowances was in line with the criteria mentioned in the EBA Opinion.



25. In IE, eight institutions were identified in addition. Each of the institutions using RBA confirmed application of the criteria set out in the EBA Opinion; however, three out of the eight institutions made adjustments in order to bring their RBA fully in line with the EBA Opinion, specifically regarding the following criteria: permanence, irrevocability and discretion criteria.
26. In IT, CA observed the use of RBA in very few cases—only in two institutions—and liaised with them to ensure that their remuneration policies and practices reflected the findings of the EBA Opinion. In one institution, an RBA awarded to senior staff in internal control functions (risk management, compliance, internal audit, anti-money laundering) was observed and treated as fixed remuneration. These types of allowances have been considered by the CA to be in line with the EBA Opinion since they are paid on a monthly basis, are subject to the coverage of a specific managerial role, are predetermined, are permanent until the recipient changes the role for which it was granted, do not provide risk-taking incentives, cannot be revoked, and are not discretionary. In the second institution, it was observed that few new employment contracts foresaw the payment of a fixed amount of remuneration for a period of three years, with the possibility of the credit institution to revoke it at the end of the period on a discretionary basis. The CA challenged the scheme and requested that the institution ensures compliance of this payment with all applicable remuneration rules (and also included the EBA Opinion criteria).
27. In FR, the CA identified the use of RBA in three banking groups in 2014. In two of these, RBA were classified as fixed by the institutions, though they did not apply the criteria to be considered as fixed remuneration as specified by the EBA Opinion. The CA ensured that these banking groups were revising their plans to reflect the findings of the EBA Opinion and to comply with the bonus cap. In the other group, the classification of the RBA reflected the criteria set out in the EBA Opinion.
28. In LU, two institutions were identified. In one case, a contractually fixed RBA allocated to identified staff was encountered. The right to benefit from this additional amount was linked to the fulfilment of periodic working objectives. The CA asked for changes in the remuneration policy in order to reflect the criteria set out in the EBA Opinion. In the second institution, instruments were granted to members of senior management as forming part of the fixed remuneration for those employees. The CA requested that the institution re-allocate the concerned awards as forming part of the variable remuneration in its remuneration policy. As a consequence, the institution has amended its remuneration policy regarding this point.
29. In NL, where the use of RBA had been observed by CA, the institutions were requested to change their remuneration policies before 2015 and to map the RBA as fixed or as variable remuneration, taking into account the criteria of the EBA Opinion. In one case, the institution decided to reallocate the RBA awarded in 2014 from the fixed to the

variable component of remuneration. The institution was still compliant with the bonus cap.

30. In the UK, where the most frequent use of RBA was observed, the CA will ensure that institutions' remuneration policies and practices reflect the criteria set out in the EBA Opinion on the use of allowances for the performance year 2015 and onwards.

2.3 New supposedly fixed remuneration components identified

31. In AT and FI, CA identified two institutions using other forms of new supposedly fixed remuneration components.

32. In particular, one institution awarded so-called share appreciation rights (SAR) to members of the management body in its management function, selected employees and certain members of the supervisory board. The vesting conditions for the SAR include, in particular, a performance condition.

33. In the other institution, a so-called matching share programme has been identified. The management body decides which members of staff will qualify for this programme. They can be either identified staff or not. Once the staff member is informed of the decision, the programme states that for each share owned or acquired by the staff member, the staff member will be granted—at the latest in three years' time—a number of shares, and the cash amount that is needed to cover the taxes will be levied for the additional grant. The management body may decide to cut the level of grants or to be deferred. The institution considered this to be fixed remuneration that is not pensionable. The programme also includes a recommendation that the matching shares should be owned and not cashed in until the value of the shares equals the total value of the owner's annual fixed remuneration.

34. For both institutions, the CA checked the terms and conditions for the award of these forms of remuneration and liaised with the institutions. The differences between fixed and variable remuneration were discussed in light of the criteria mentioned in the EBA Opinion. Any additional grant of such instruments should be considered as remuneration and the criteria for the classification as fixed or variable should apply to all components of remuneration and not only to allowances. For the institution using the SAR, the practice is still under review by the CA. Based on the information provided, the matching share programme granting additional shares should fall under the category of variable remuneration. In this respect, the institution using the matching share programme has been requested to change its remuneration policy in line with the above.

3. Conclusion and next steps

35. All CA stated that the application of remuneration requirements, in general, is subject to supervisory review, in most cases as part of the SREP in 2015, and that the criteria mentioned in the EBA Opinion are taken into account for the supervisory assessment.

36. Where the use of allowances was observed, CA took specific measures to ensure that institutions' remuneration policies and practices reflected the criteria mentioned in the EBA Opinion and, where necessary, requested that institutions take corrective measures. Based on the supervisory actions taken, a few institutions have already changed their remuneration practices even for the performance year 2014. Some of these measures will only affect the remuneration for the performance year 2015 and onwards.

37. For the performance year 2014, in addition to the information provided by CA, the EBA analysed the disclosures of 35 institutions' remuneration policies, belonging to MS where these practices were identified, and observed that eight institutions² paid out RBA as part of the fixed remuneration after the publication of the EBA Opinion. Given the timing of the publication of the EBA Opinion in October 2014, it was not always possible for the institutions to retroactively change their remuneration policies and practices for the performance year 2014. The CA have taken measures to ensure that these practices are changed in 2015.

38. In conclusion, measures have been taken by CA to ensure that institutions apply the criteria set out in the EBA Opinion in their remuneration policies and practices, and, where necessary, implement the required changes; however, these measures will be effective mostly for the remuneration awarded for the performance year 2015 while in some cases, changes to institutions' remuneration policies and practices were made for the performance year 2014 already.

39. As a reminder, the EBA is currently finalising its guidelines on sound remuneration policies which will contain further criteria to classify remuneration components between fixed and variable ones. In line with Article 161 of CRD, the EBA is also working closely with the European Commission in reviewing the provisions on remuneration, including identifying whether the legislation requires further reinforcement in this area.

² For the other institutions, the composition of fixed remuneration was not mentioned in the report.



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