Committee of European Banking Supervisors
CEBS

10 December 2010

Feedback to the public consultation on

CEBS's Guidelines on Remuneration Policies and Practices (CP42)

1. On 8 October 2010, CEBS published its consultation paper (CP42) with regard to the Guidelines on Remuneration Policies and Practices. The consultation period ended on 8 November 2010. 39 responses were received; out of which 33 were published on the CEBS website (the others requested confidentiality). Market participants' views have also been gathered in a public hearing on 29 October 2010.

2. This paper presents a summary of the major points arising from the consultation and presents CEBS views on the received comments as well as the changes made in the guidelines to address them.

3. In many cases several respondents offered similar comments on the same issues. In these cases, the comments and CEBS' analysis have been aggregated in the feedback table at the end of the document.

General remarks

4. 39 responses from all corners of the market, i.e. trade associations, banks, investment firms, consultancies, lawyers, as well as from academia were received.

5. In general, most respondents appreciate CEBS' work in providing guidance on implementation of CRD III remuneration requirements. However, a significant number of respondents raised concerns on the super-equivalence of certain CRD III provisions to FSB principles, such as the distribution of cash and non-cash instruments over both the upfront payment and the deferral time. CEBS acknowledges all comments pertaining to the issue of differences in CRD III and other international regulations, but notes that it is outside the realm of its competence as Level III Committee to address these, as its guidelines are intended to contribute to the consistent implementation of the CRD and to the convergence of Member States' supervisory practices throughout the EU. Furthermore, it should be noted that despite some specific areas where differences occur, the EU rules are in line with FSB principles and implementation standards which serve as a blueprint for regulation also in other significant jurisdictions.

   Proportionality

6. Respondents welcome that the guidelines include the general principle of proportionality which can be applied among institutions and among categories of staff and could lead to the neutralization of some requirements, as described in annex 2 of the guidelines.

7. However, a number of respondents, in particular from the investment services industry, suggested that the guidelines should provide for possibilities to neutralize more principles for firms whose activities pose less prudential risk, e.g. in the absence of proprietary trading, underwriting of financial instruments or placing of financial instruments on a firm commitment basis.

8. The investment services industry's concerns have been taken into account by including a clarification that institutions which can benefit from the exemptions foreseen in Articles 2 or 3 of MiFID are not investment firms subject to that Directive and are thus currently not covered by the CRD and the guidelines. Furthermore, investment firms which do not deal on own account or underwrite and/or place financial instruments on a firm commitment basis will be subject to a more proportionate regime, as they present a lower prudential risk profile. In the list of requirements that can become neutralized, the requirement on the ratio between fixed and variable remuneration has been added for such firms, and furthermore, it has been clarified that the specific features of these firms can be taken into account for determining relevant performance criteria and for applying the ex-ante risk adjustment on the variable remuneration.

Specific remarks

Timeline for implementation of the guidelines

9. A number of respondents note that the envisaged implementation date of 1 January 2011 is quite ambitious for the industry. While CEBS understands this concern, it notes that the guidelines build upon the CEBS high-level principles on remuneration that were published in April 2009. Furthermore, the CRD III text has been stable since the European Parliament's reading in July 2010 and preparations to establish accordant remuneration policies have started already some time ago in many banks. Still, CEBS acknowledges that some CRD III requirements are complex to implement. To address the industry's concerns, a provision has been included in the guidelines that CEBS recognizes that implementation of some provisions may take time, in particular when shareholders' approval and/or amendments to existing private and collective agreements are required. If deemed appropriate, supervisors can take this into consideration in their supervisory responses related to the implementation of CRD III and the guidelines by 1 January 2011. However, the guidelines do not allow for explicit transitional arrangements, as proposed by some respondents, as this is not provided for in CRD III.

Application to non-EEA subsidiaries/branches

10. Respondents expressed significant concerns in view of the application of remuneration policies to non-EEA subsidiaries/branches. In light of differences between FSB and EU rules, fears of an unlevel playing field arose. CEBS appreciates the industry's concerns. However, CRD III leaves no room for exemption of non-EEA subsidiaries from the scope of group policies, as it states in annex V, Section 11, point 23 (v) 'These principles are applied by credit institutions at group, parent company and subsidiary levels, including those established in offshore financial centres.' CEBS emphasizes that the rationale behind this requirement is to prevent the circumvention of remuneration principles by outsourcing tasks/staff to non-EEA locations.

Furthermore, CEBS reiterates that despite some technical differences, the EU rules are in line with FSB principles.

11. Nevertheless, CEBS clarifies that the remuneration policies of any subsidiary should take into account the nature, scale and complexity of the activities of the subsidiary, along with the level and types of staff members working at that subsidiary. Similarly as for stand-alone or parent firms, proportionality can possibly lead to neutralization of certain provisions. This principle is introduced and clarified in the group chapter (point 1.3) of the guidelines. Together with the already stated basic assumption of a coherent group-wide remuneration policy and a clarification on the objective of a consolidated approach (i.e. not creating mechanisms to circumvent the application of the guidelines), the guidelines should now give sufficient additional guidance to alleviate some of the concerns raised. Furthermore, the guidelines were further enhanced by adding specifications on the role of supervisory colleges. However, the idea of introducing a threshold below which subsidiaries could be principally carved out from the scope of group remuneration policies, as suggested by some respondents, could not be accommodated.

Equity-linked and other instruments as part of variable remuneration

12. In particular responses from the cooperative banking sector and from the investment services industry emphasized that banks may face problems to fulfil the requirement to include shares or share linked-instruments in their variable remuneration, either because such instruments do not exist or a dilution of voting rights of existent shareholders should be avoided. Some responses suggested to allow more flexible arrangements for the variable remuneration and/or requested to give further guidance on the alternative instruments mentioned in CRD III.

13. CEBS has considered these concerns and proposals and elaborated further guidance to such alternative instruments in the 'instruments section' of the guidelines. For example, alternative instruments based on a third party's determination of the institution's value but with similar basic features to shares (i.e. loss absorbing capacity) can be used in case of unlisted companies or the absence of a market price. CEBS will monitor the regulatory and market developments regarding such alternative instruments and will, if needed, provide further guidance on the use of these instruments in the remuneration context.

Retention periods

14. A number of respondents expressed concerns whether the combination of retention periods and deferral would add value in terms of risk alignment compared to the application of a sufficiently long deferral period only. In view of these comments, CEBS further emphasizes the interrelation between deferral and retention periods in the guidelines. In particular, it is pointed out that retention periods are the only mechanism available to mark the difference between cash paid upfront and instruments awarded upfront in order to align incentives with the longer-term interests of the institution. In turn, it is made clear that retention periods can be shorter for deferred instruments. As it has already been the case in the consultation document, the approach not to specify concrete retention periods has been kept in the guidelines.

Analysis of responses to CP 42

Guidelines on Remuneration Policies and Practices

Chapter of CP42	Received Comments	CEBS analyses	New text
Legislative basis	CEBS should set a review date for the Guidelines to assess their effectiveness and impact (including unintended or adverse consequences) ahead of the April 2013 date of the Commission review.	CEBS is planning to conduct an implementation study, starting already in Q4 of 2011.	The CEBS press release will note that CEBS will be conducting an implementation study. Also, the Guidelines specify that CEBS/EBA will monitor and review the implementation of the guidelines.
	Super-equivalence criticized as causing distortions to global level playing field.	CEBS is bound by the CRD III requirements.	
Structure and goal of the guidelines	In comparison to the CRD III, the CEBS GL are more specific and detailed and very restrictive. The focus of the CEBS GL is too much on the day-to-day practices and specific details than on the process of remuneration policies.	It is CEBS' mandate to contribute to the consistent implementation of EU Directives by Member States and to the convergence of Member States' supervisory practices. Guidelines are one means to achieve this.	
	There is no clear distinction between general requirements (to be applied on an institution-wide basis) and specific requirements (to be applied to individual remuneration packages of Identified Staff). The strict character and complex structure of the CEBS GL could create considerable difficulties.	CEBS does not agree; the guidelines provide clear guidance on the distinction between general and specific requirements.	
Implementation date	The timeline does not allow for proper communication to staff and for analysis of legal issues in view of existing contracts. When implementing the CRD III requirements, financial institutions should undertake an evolutionary process for the first periods due to the short deadline for	CRD III provides for no transitional requirements and consequently, the implementation date for the guidelines has also been set on 1 January 2011.	We have added text to the Guidelines specifying that institutions must take action to start the implementation process of the Guidelines acknowledging that some steps may take time (e.g. shareholders approval and

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	implementation and legal issues linked to the fact that compensation policies might be included in labour contracts or collective agreements. The application of bonuses determined before 1st January 2011 should be subject to 'mutual agreement'.		amendments to existing private and collective agreements). Furthermore, recital 14 of CRD III has been included in the grey boxes.
	As the final CEBS guidelines will not be in place until December 2010, given the very significant uncertainty in relation to the application of these guidelines to firms, in the light of the proportionality principle, can CEBS clarify that 2010 bonus awards (even if paid in 2011) may be made without risk of retrospective regulation.	CRD III requires that member state should bring into force the regulations necessary to comply with the remuneration requirements by the 1st January 2011 and concern 2010 bonuses.	
	Respondents expressed concerns that the implementation deadline of CRD III is not realistic and that this forced timing will inevitably create an uneven playing field between different countries on pay-outs Respondents believe that smooth transition to these regulations is in the interests of both the Financial services industry and the regulators. They seek CEBS' confirmation on the ability to apply a phased approach for the employees in scope or of pay-out restrictions, in particular if firms can prove that they have made substantial progress in implementing the overall principles of the FSB.	CRD III requires that member state should bring into force the regulations necessary to comply with the remuneration requirements by the 1st January 2011.	
1.1 Scope of the guidelines	Investment services should be excluded due to different risk profiles (no on-balance sheet risks)	The scope of which institutions are covered is set by the CRD III.	The scope of application has been clarified in the guidelines, together with further guidance on the principle of proportionality for certain types of investment firms.
	Staff: Burden of proof should not lay with	CRD III says 'should include' or 'would	The wording for the last category

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	the institutions as to whether the identified staff have a material impact on the risk profile of the institution.	normally include', i.e. the institution should ideally demonstrate if they are not material risk takers.	of staff included in paragraph 16 has been slightly amended.
	Which staff: Not all high earners will be risk takers. Also, it is unlikely that low earners will necessarily be risk takers.	CEBS believes that the final test is whether a person is a risk taker regardless of what they earn.	
	Which staff: It would be useful to have more clarity on what is meant by 'having significant impact on the institution's results and/or balance sheet.' The idea of a minimum remuneration threshold under which staff is not expected to have material impact on the risk profile of an institution should be considered. It would be appropriate for the purposes of assessing "other employees/persons" to provide firms with the flexibility to exclude remuneration outliers at the bottom (e.g., then lowest 10%) of the remuneration bracket.	CEBS does not want to set thresholds within the guidelines.	
	In paragraph 16, CEBS interprets the term "risk taker" as covering not only executives and senior management, but also staff responsible for control functions, other risk takers and other employees in the same remuneration bracket. The FSB envisages that institutions should apply a special remuneration policy to a comparatively small group of staff. By broadening the interpretation of "risk taker" to cover the entire institution, this special focus is lost.	This is not a CEBS interpretation but a CRD III requirement (see point 23 Annex V). Paragraph 16 already specifies that these categories of staff must have a material impact on the institution's risk profile to be included in the scope of the remuneration requirement.	

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	Which remuneration: one comment requests that the guidelines should specifically recognize that a retention bonus is allowed when suitable controls and governance are in place.	As long as all the risk alignment requirements on variable remuneration are complied with, "retention bonuses" are allowed. These are exactly the suitable controls and governance that are required.	This is already the meaning of paragraph 12.
	Some comments ask that the guidelines fully address the cross-sector level playing field (insurance, asset management, pension funds etc).	CRD does not apply to insurance and pension funds. Guidelines cannot extend scope.	Guidelines clarify the group context in case a group undertakes activities that fall outside the CRD scope.
	Individual portfolios under MIFID: CRD applies, but proportionality should apply according to comments.	CEBS agrees, but proportionality idea was already included.	Proportionality has been elaborated in more detail in the proportionality section.
	Institutions organized as an LLP recognize they are not excluded from CRD, but proportionality is important according to them because partnership structure which naturally aligns itself to risk man principles (removing conflicts of interest)	This form of proportionality is already included in the draft guidelines.	
	Comments from private equity and venture capital argue that they do no generate systemic risk /Aspects of their incentive arrangements are unique and the objective of alignment to long term success is inherent to the business model (i.e. co-investment and carried interest). Remuneration guidelines are designed for the pay practices of banks and investment banks.	It can be made clearer that this CEBS document is indeed prudential of nature, not directed primarily to the protection of investors. Guidelines could be more specific on their applicability to investment firms: distinguish more based on the kind of investment services and activities it undertakes.	Guidelines have been changed accordingly in the introduction, in the scope and in the proportionality section.

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	Consistency between the Alternative Investment Fund Managers Directive and the CRD III: those firms whose investors/funds structures mandate executive investment in funds under management in a way which is consistent with the overall risk management objective should not also be subject to provisions requiring remunerations in the form of interest in the firm. Different treatment in EEA jurisdictions: in some of them, private equity firm are in the scope of MiFID (and hence CRD), in other they are outside the scope; however, vast majority will be subject to future AIFM, only effective in 2013.	CEBS Remuneration Guidelines are without prejudice to the national implementation of the different mentioned directives. As European legislative instruments, CRD does not apply to AIF managers neither to UCITS management companies.	In paragraph 14, it has been clarified that: Institutions which can benefit from the exemptions foreseen in Articles 2 or 3 of MiFID are not investment firms subject to that Directive and thus are not currently covered by the CRD.
	Hedge fund advisers argue that principle of remuneration policies that are consistent with and promote effective risk management already underlies the governance structure and the revenue and remuneration models utilized by them. Ask for additional neutralization flexibility because of specific features in their business for: • definition of "Identified Staff" • multi-year • ex post adjustments • ratio F/V • public disclosure	The guidelines could elaborate on neutralization for some specific firms. The requirement to identify staff can never become neutralized. Also the multi-year requirement cannot become completely neutralized, since e.g. performance and risk measurement should take into account current and future risks.	Guidelines have been changed accordingly in paragraph 20 and in the annex 2.
1.2 Proportionality	More detailed guidance is required regarding the application of proportionality within a group and under what circumstances institutions may be exempted from certain	The guidelines have been amended to allow for further neutralization of the requirement to have a fixed/variable ratio policy for certain types of	See paragraphs 20 and the group section.

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	requirements.	investment firms. Some clarification in the text regarding proportionality within a group has also been added.	
	Supervisors will need to collaborate across jurisdictions via supervisory colleges to ensure a common understanding of proportionality, especially as it applies to a parent company overall in cases where subsidiaries are subject to different local supervisors.	Remuneration is already on the agenda for college discussions. It will be useful to monitor the progress which these discussions make.	Some further detailed subjects for college discussions have been added in paragraph 31 of the guidelines.
	The guideline that 'each jurisdiction should consider applying the remuneration requirements to the staff of non-EEA branches' (paragraph 29) leaves room for uneven application and a suggestion is that his guideline be reformulated so as to further promote a level playing field.	It is essential that jurisdictions apply the remuneration requirement to branches within their jurisdictions to avoid evasion tactics by firms.	Paragraph 29 has been clarified in this respect.
	All of the remuneration principles are subject to the overarching principle of proportionality: comments questioned whether this can lead to intermediate thresholds within an institution below e.g. 50%, 40 to 60%, three to five years.	Proportionality can be applied across all the principles. However, where there are specific references to deferral levels or time horizons (the numerical criteria), proportionality cannot be applied between those levels and complete neutralization ("no partial proportionality").	This has been clarified in paragraph 19 of the guidelines.
	Neutralization of the deferral requirement should be extended to all credit institutions, including complex and publicly traded ones.	This proposal goes against the requirements of the CRD III.	
	It would be useful to have some hard fact quantitative criteria which could exempt an institution/category of staff from some of the requirements. (Germany uses size of balance sheet = EUR 10B).	CEBS is of the opinion that it is not appropriate to set threshold levels in the guidelines.	
	Retail banking/commercial banking activities should be excluded from the scope of	This suggestion goes against the spirit	

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	application of the CEBS GL.	of the CRD III.	
	We believe that most of the guidelines in respect of risk alignment should be neutralized in respect of asset managers on the basis that they are not systemically important and that these guidelines are neither appropriate, nor necessary in light of the risk presented by such businesses.	Proportionality could be applied for certain requirements for asset managers within a group if conditions are met.	Some clarification in the text regarding proportionality within a group has been added (see group section of the guidelines).
	Although we agree with the concept of neutralization, we do not agree with the proposal in Annex 2 that the requirement relating to the kind of instrument in which variable remuneration is paid can be neutralized only where the institution is noncomplex, not publicly traded and has no alternatives for equity-based variable remuneration available. The fact that an institution is publicly traded should not be a sole determinant in the assessment of how this requirement is applied proportionately. The consultation paper highlights the need for consideration of various factors holistically, and does not mandate that a single determinant should unduly influence the assessment of how to apply the requirements. We therefore fail to see justification for the proposal here, and would suggest that neutralization of this requirement is available to non-complex institutions, as per the proposal in line (q) of Annex 2.	The case of non-complex institutions that are publicly traded will be rare and CEBS is still of the opinion that such institutions should pay out part of the variable remuneration is the publicly traded instruments.	
1.3 Group context	The asset management activities within larger financial institutions should not need to change their remuneration structures unless and until equivalent remuneration regulations are implemented for these	Having an appropriate group-wide policy remains valid in this situation.	Approach clarified in the group section of the guidelines, paragraph 30.

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	businesses.		
	In order to avoid competitive distortion in non-EEA jurisdictions, for EEA groups, some recommended applying FSB requirements, as implemented by local (third country) regulations, with the CRD III provisions applying only if the FSB requirements have not been implemented locally.	According to CRD III, the remuneration rules must be applied at a consolidated level, including the non-EEA entities of the group. It is not sufficient to apply the FSB requirements in such entities.	Clarification has been provided that any group-wide remuneration policy should take into account local regulations (e.g. fiscal or employment legislation) in the jurisdiction in which the institution's subsidiaries operate.
	If the objective is to aim at the staff of entities operating in the EEA under the freedom to provide services principle, then for the sake of a level playing field within the EEA, the application of the remuneration requirements should not be left to the consideration of each jurisdiction – a common rule should apply irrespective of where the operations take place in the EEA.	CEBS plans to perform a comprehensive implementation study in the second half of 2011 to determine to what extent convergent implementation has been achieved.	
	Groups with headquarters outside the EEA: Non-EEA based staff will likely perform senior management roles for EEA-based entities as part of their job. Those non-EEA based staff should be exempted from CRD III requirements, in particular in cases where other remuneration regulations (such as Dodd-Frank) apply.	Paragraph 29 of the guidelines is clear that such exemption is not possible if this staff indeed performs services/duties within EEA institutions. Local regulations should be taken into account.	
	More clarity should be given to the fact that Guidelines requirements apply to EEA subsidiaries of non-EEA parents.	Paragraph 29 is clear enough in this respect.	
	Respondents agree with CEBS' analysis, set out in paragraphs 27 to 30 of the CP, that staff at non-EEA parent companies will fall outside the scope of the CRD III provisions, provided (broadly) that they perform their duties outside the EEA and that the firm has	The condition as set out in paragraph 28 of the guidelines is indeed that such staff should not perform services/duties for EEA-based institutions.	

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	not created special group structures or offshore entities in order to circumvent the remuneration principles.		
	When reviewing an institution's selection of employees whose activities have a material impact on the institution's risk profile, supervisors should permit multinational groups to make the assessment at a consolidated group level rather than in each individual entity.	CRD III is clear about this point: principles are applied by credit institutions at group, parent company and subsidiary levels.	Paragraph 27: the parent institution should ensure that the requirements of a group wide remuneration policy are coherently observed at group and subsidiary level (including non EEA subsidiaries), including the process for determining identified staff.
1.4 Measures	One respondent did not agree with the approach whereby the competent authority could require the institution not to award any variable remuneration as long as the government support is not yet paid back, or until a recovery plan for the institution is implemented/accomplished. The fact that a financial institution received state support should not give the right to the state authority to delete any variable compensation.	CEBS is bound by the CRD III requirements in this regard.	
	Some respondents claimed that the capital base is regulated by minimum capital ratios and that it would be unlikely that a bank would put this at risk to pay variable remuneration.	CEBS is bound by CRD III requirements in this regard.	

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	When the CRD III originally was discussed, one respondent pointed out to the Commission as well as other European institutions that the issue of the European legislator regulating remuneration is of particular interest to the Nordic countries, since this regulation may impose restrictions on the right to free collective bargaining.		Recital 14 has been introduced in the guidelines.
2.1 Management body	Two respondents claim that not all firms within the scope of the CRD III have non-executive directors within the Board; for the smaller or less complex ones, the management and supervisory functions could be one and the same, so that it is not possible to appoint non-executive and independent directors. In light of this, guidelines are required to provide further qualification on differences stemming from the legal structures of financial institutions, eventually excluding the strict application of principles on the Board composition.	The governance requirements apply according to the proportionality principle and therefore adequate flexibility is ensured to take into account the differences in the legal structure as well as the size and complexity of institutions.	
	One respondent asks to clarify that the fixed remuneration of supervisory functions (referred to in par. 47) may also be paid in shares or share-based awards.	The general principle under paragraph 47 requires people performing a supervisory function be paid only with fixed remuneration. Variable remuneration is not completely excluded; where it occurs (also in the form of shares or share-based remuneration), stringent safeguards should be respected. Broadly speaking, Guidelines (included paragraph 47) do not put any restriction	

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		concerning the forms for paying the fixed remuneration; however, it has to be clear that, where the fixed remuneration is paid differently from cash, the strict distinction between fixed and variable remuneration shall not be circumvented (e.g. whether it is paid in shares, the number of shares should be every time adjusted according to their actual market value covering the fixed amount that has to be paid). Of course, irrespectively of the form in which fixed remuneration is paid, all rules on variable remuneration remain in place and must apply without any derogation.	
2.1.3 Shareholders' involvement	Few respondents find that the guidelines on shareholders' involvement seem to be too prescriptive, since the CRD III does not directly address this issue. Proposals suggest to delete any reference to the shareholders' involvement or make clear that such involvement is only a possibility. By contrast, other comments give evidence that in some jurisdictions shareholders are required to take decision on remuneration according to national laws or regulation. In particular, some comments pose problems related to the potential "dilution effect" for existing shareholders stemming from the share-based payments; it was also suggested that shareholders should be able to forbid such instruments, in order to preserve their interests.	Paragraph 48 makes clear that the shareholders approval of the remuneration policy and managers' compensation is not prescriptive, but it is a choice remitted to each institution/jurisdiction. This guideline (representing the so called "say on pay" principle) has different rationales, it: i) gives shareholders the possibility to monitor the remuneration policy which have a direct impact on managers' incentive to take risks (and thereby on shareholders' risk/performance outcomes); ii) allows shareholders to be involved in decisions that may have a direct impact on the value of shares and shareholders rights (e.g. "dilution effects" stemming from the issuing of new shares; governance implication due to changes in the control structure, etc.); iii) takes into account that in some Member States the shareholders'	

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		involvement is already required by national laws (as mentioned in some responses); iv) is in line with CEBS' High Level Principles on remuneration as well as the recital no. 14 to the CRD III, expressly mentioning the need to preserve the shareholders rights; v) does not represent an obstacle to the prospective actions of the European legislator on this issue.	
2.2 Remuneration Committee	In some cases, it has been pointed out that it would be not appropriate for the Rem Co to provide recommendation for the highest paid individuals or senior officers in the control function that fall outside the definition of "Identified Staff".	The guidelines are flexible enough to permit each institution to properly identify the highest paid individuals whose remuneration should be covered by the Rem Co's recommendations. As regards the oversight on the senior officers heading the control function, the guidelines is a direct transposition of the CRD III requiring that "the remuneration of senior officers in the risk management and compliance functions is directly overseen by the remuneration committee" (Annex V, point 23 (f)).	
	One respondent asks to reformulate the involvement of the Rem Co in order to make clear the Rem Co duty to oversee the remuneration of the management body, in order to avoid any member of the board being involved in setting their own remuneration.	In order to clarify that the Rem Co has a role in the oversight of the remuneration of the management body (in both its supervisory and management functions) the text is amended to insert an express reference to the management body. This clarification is strictly consistent with the aim of preventing the management body to determine its own remuneration.	See paragraph 54: "The Rem Co should: be responsible for the preparation of recommendations to the supervisory function, regarding the remuneration of the members of the management body, as well as of the (...);"

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	About Rem Co's composition, some respondents consider the guidelines too prescriptive in requiring the Rem Co to be composed by non-executive, independent, and competent directors; it has been pointed that the recruitment of the members of the Rem Co may pose some practical difficulties due to the lack of candidates fulfilling those characteristics.	The guideline is strictly derived from the CRD III provisions which expressly require: i) the Rem Co to be constituted in a way that enable it to "exercise competent and independent judgement"; ii) the Chair and the members of the Rem Co to not perform any executive function. The guidelines primarily concern significant institutions which - as matter of practice - are expected to have already in place a Rem Co within the Board; such institutions are also expected to be able to recruit directors with adequate experience on risks, control activities and capital profiles (see also evidences from the CEBS Report on national implementation of the High-level principles, section 2.1.3).	
	Two respondents state that a Rem Co is not proportionate for small institutions and if a Rem Co is appointed at the parent company level, there shouldn't be a requirement to establish Rem Co in subsidiaries.	The aim of avoiding unduly burdens on small and less complex institutions is embedded in the Guidelines that clearly state that the appointment of a Rem Co is one of those provisions that can be completely neutralized, according to the proportionality principle (paragraph 52). A specific example is also given for possible exclusions from setting up the Rem Co in subsidiaries. In order to allow more flexibility and take into account the banking sectors' concerns, such example is amended to extend the exclusion to all subsidiaries (not only the "wholly owned" ones, as per now).	Paragraph 52 has been amended accordingly.

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2.3 Control functions	Some respondents find that risk management and compliance functions should not be involved in micro-design of incentive schemes, and in particular in setting "individual remuneration awards". This activity should be limited to the HR. One respondent points out that the independence of control functions may be undermined by providing these functions with the ability to influence the remuneration of most individual members of staff (which should rely on senior management, with inputs by HR).	The Guidelines set the basic principle that control functions shall be involved in the design and the monitoring of remuneration system and individual awards. Without any change to this basic principle, a drafting amendment (making the sentence more general) intends to grant more flexibility so that different market practices are properly taken into account.	See the first part of paragraph 58 ("In particular, the procedures for setting remuneration …")
	It has also been requested to clarify the notion of "finance control" used in par. 16, in respect of the reference to the CFO made in the example given in par. 57 for the identification of the control functions.	CEBS agrees with the comment and provides a clarification.	See the wording for the third category of staff in paragraph 16.
3.1 The basic principle of risk alignment	Different kinds of investment firms argue that the specific characteristics of their business should be allowed to be taken into account for their remuneration structures.	The draft guidelines already incorporated this idea of proportionality, but it could be made more explicit.	The guidelines have been changed accordingly in paragraph 20.
	Some respondents asked whether the deferral and retention mechanisms provided for in the second part of point (r) are to be considered as a general or a specific rule.	These mechanisms apply to any employee with the right to receive a discretionary pension benefit. It is reasonable to think that this employee belongs to the 'identified staff', but it might be that this is not the case.	Clarification in paragraph 6 of the guidelines: the wording "the first part of" with regard to point (r) has been deleted twice.
	Regarding discretionary pension benefits, the deferral obligation should be waved in cases of disability retirement or the survival pension for next of kin of the beneficiary.	CEBS agrees with this comment, but this situation is too specific to include in the guidelines.	
	One comment asked for much more discretion in risk alignment.	The current guidelines provide sufficient room for proportionality. More discretion would endanger the level playing field.	No need to change the guidelines (except that specific points on proportionality have been clarified -

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			see other comments).
3.2 General prohibitions	A pension will normally consists of either a defined benefit or a defined contribution. One respondent asked to clarify that such defined benefits and defined contributions are excluded from the scope of the requirements for discretionary pension benefits, because they are considered to be fixed remuneration.	Defined benefit and defined contribution pensions refer to the pension policy, not to the ratio fixed/variable. Requirement of the first part of point (r) is applicable, but not the requirements for discretionary pension benefits.	Paragraph 67 of the guidelines, end of 1st paragraph and beginning of 2nd paragraph have been changed to make clear that the pension policy (the fixed as well as the variable pension payments) should be aligned with the long term interests of the institution, and that there are some further requirements for discretionary pension benefits (as part of variable pay) only.
	Some comments argue that firms cannot ensure that all staff comply with the "no hedging" and propose a best effort formulation of this requirements.	This proposal waters down too much a requirement that is considered as a general prohibition. Institutions have to fulfill this requirement.	
	Different comments argue that guaranteed bonuses should be allowed for more than just the first year of employment	CRD III is explicit on what is allowed. Guaranteed variable remuneration for existing employees is not possible.	
	Different comments point to specific problems of potential inconsistency between the guidelines on severance payments and national requirements.	The guidelines on severance payments are without prejudice to employment law or contract law. This can be clarified in the guidelines.	Guidelines have been amended accordingly.
	Different comments argue that the guidelines go beyond CRD III with regard to severance pay: reference to 2 years fixed remuneration in the EU COM recommendation for listed companies is unnecessary strict	The draft guidelines did not require to use a 2 year period; the reference was meant as a benchmark that institutions could use. The recommendation remains valid as before for listed institutions, but has been removed in the context of these guidelines.	Guidelines have been amended accordingly and have emphasized the idea of "no reward for failure" which is the litmus test in this respect.
	One respondent proposes to allow "guaranteed retention bonuses" for existing staff in exceptional circumstances.	CEBS believes that the CRD III is very clear on this issue and guaranteed variable remuneration should only occur	

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		in the context of hiring new staff and has to be limited to the first year.	
	Further clarity is needed between the concepts of "signing on bonuses" and "guaranteed bonuses"	Irrespective of the name, these are forms of variable remuneration, and the requirements for variable remuneration should apply.	
	The guaranteed variable remuneration allowed in CEBS guidelines encourages short term moves by employees.	CEBS takes note of this comment. Guidelines can not address unintended consequences of requirements that follow literally from the provisions established in the CRDIII.	
	One comment asked whether, if an employee has deferred cash and his new employer does not operate a deferred cash scheme, would be possible to pay the cash straight away?	The risk alignment principles should be applied *mutatis mutandis* to ensure risk alignment is effectively achieved. This could mean in this case that the otherwise deferred part is paid straight away after a strict ex ante risk adjustment.	No need to change the guidelines since this is a too specific case.
4.1 Fixed versus variable remuneration	Comments supported proposal that ratio may vary across staff. Supervisor should not expect similar ratios, even with similar firms.	Different ratios are indeed not excluded	
	Requirement to set ratio undermines effectiveness of risk adjustment – inflationary pressure on fix pay when ratios differ between firms.	CRD III requires ratio.	
	Different comments argue that given their risk profile, the requirement to set appropriate ratios between fixed and variable remuneration is not proportionate to apply to asset managers. Complete neutralization for asset management and hedge funds.	Proportionality already allows that the specific characteristics of asset managers, if they fall under the field of application of the remuneration guidelines (as clarified in the final guidelines) are taking into account. For some specific types of investment firms, the final guidelines now also allow that the requirements on the ratio between	Guidelines have been amended accordingly in the proportionality section.

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		fixed and variable can become neutralized if this is reconcilable with the risk profile, risk appetite and strategy of that institution.	
	Different factors that CEBS gives will lead to a vast number of different ratios within the firm that will have to be reassessed every year.	An excess use of different ratios is indeed not advisable, but on the other hand, a single ratio for a whole institution may be much too limited to recognize that there are different categories of Identified Staff. This idea is expressed in the guidelines.	
	Different comments argue that CEBS' interpretations regarding ratio between fixed and variable remuneration: are open to misunderstanding. More fixed makes it more difficult to reduce at short notice. CEBS hints at lower variable part to avoid undesirable risk-based incentives, but low variable remuneration is not the most effective way to reach that goal. More fixed can encourage more risky strategies that generate enough returns to cover the costs.	The intention of the guidelines is not primarily directed to influence absolute levels of remuneration in either sense. The requirement to set appropriate ratios is meant to influence the relative balance between the fixed and variable component.	Some minor wording changes have been made to clarify this analysis in paragraph 78.
	Comments argue that firms should have the opportunity to justify an unusually high leverage between fixed and variable remuneration	Institutions must set and explain their own ratios. Justified exceptions are possible. The guidelines give sufficient factors that can lead to variation in the ratio, depending on the overall remuneration structure the institution	

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		uses.	
	One comment proposes that guidelines need to take more into account the interest of investors.	CEBS thinks that the prudential perspective used in these guidelines benefits indirectly also investors' interests. Furthermore, CESR plans work in the future on the investor protection aspect of remuneration.	CESR's plan has been included in the introduction.
	One comment asks CEBS to recognize that in some situations (a start up business, owner managed private companies…) the fixed remuneration can be low, what is going to affect the ratio between fixed and variable remuneration.	CEBS acknowledges this situation, but the guidelines' framework on ratio between fixed and variable can meet such a situation.	
4.2 Risk alignment of variable remuneration	One comment requires that the guidelines identify that proportionality applies to risk adjustment.	CEBS considers that this is already done in paragraph 19	
	One comment asks for establishing pay mix threshold and remuneration threshold below which the provisions do not apply regardless the size of the bank.	CEBS considers that fixing these thresholds would not be appropriate as they would vary depending on multiple factors (e.g. the business model, size and risk profile of the firm…).	
	Some comments require for neutralizing ex ante risk adjustments for asset management firms.	CEBS considers that ex ante risk adjustment can not become neutralized, but proportionality applies.	See paragraph 20. For the requirement on multi-year framework, in particular the accrual and ex-ante risk adjustment aspects of it, these investment firms can take into account the specific features of their kind of activities.
	One respondent thinks that quantitative measures of performance can be	CEBS agrees with this comment. In order to avoid manipulation CEBS	

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	manipulated.	guidelines recommend indeed the use of a combination of quantitative and qualitative measures and multi year performance periods.	
4.3 Award process	Some comments ask to clarify the distinction between "quantitative" and "qualitative" criteria used to assess performance.	CEBS thinks that paragraphs 95, 96 and 97 give a clear idea of what is considered a quantitative/qualitative measure.	
	Performance measures based on share price or earnings per share are not considered as risk-adjusted. Nevertheless this is a common practice an its revision may lead to withdrawing from long-term incentive plan	The fact that this is a common practice is not a reason not to change it.	
	Financial and non financial performance: Regarding the performance measurement, guidelines should include clear reference to company performance.	CEBS does not agree with this comment, as the guidelines refer in several occasions to the performance of the company (paragraphs 86, 89, 95...). This measure is included in the financial criteria.	
4.4. Payout process Proportionality: general remarks	Plea for more flexible neutralization possibilities in general. According to the comply-or-explain principle it is up to institutions to determine their appropriate remuneration structure.	The guidelines are already quite elaborated with regard to proportionality. Going further in this respect would endanger a level playing field.	
4.4. Payout process Proportionality: investment firms	Several comments asked for proportional application or neutralization of point (o) and point (q); in addition, proportional application or neutralization of the following requirements is asked : • (h) multi-year framework • (l) ratio fixed/variable	CEBS recognizes that certain investment firms which are covered by the CRD should be subject to a more proportionate regime, as they present a lower risk profile.	CEBS has clarified this in paragraph 14 and 20.

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	• (r) for the aspect of ex-post risk adjustment		
4.4.1. a. Time horizon and vesting	Several comments asked clarification on the implication of a multi-year accrual period on the 3-5 year threshold for deferral.	The threshold in the CRD III refers to a minimum. Therefore it is not possible to apply within an institution lower thresholds based on proportionality.	
	One comment considers the deferral rules to be too complex. It would be simpler to set a single deferral level, with the deferred part to be delivered fully in shares.	The deferral rules are included in the CRD III.	
	One comment considers deferral not necessary for co-operative banks as they would support by their nature the long-term interests of the bank.	Proportional application of the requirement of deferral can lead to neutralization, but has to be applied on a case by case basis. Therefore the requirement of principle (q) cannot be neutralized automatically for all co-operative banks in the Remuneration Guidelines.	
	One comment considers appropriate to set a threshold under which bonuses do not have to be deferred or retained.	CEBS considers that fixing this threshold would not be appropriate as it would vary depending on many factors (the business model, size and risk profile of the firm...)	
4.4.1 b. Vesting process	One comment disagrees with the CEBS interpretation of the CRD III rule regarding the pro-rata vesting.	Vesting cannot be done sooner than 12 months after the end of the accrual period and using a yearly (or longer) frequency for the vesting of deferred remuneration are good practices agreed globally among supervisors. These minima are justified as shorter periods would not allow a proper assessment of risk and performance of the employee.	
	Vesting schedules of 3-5 years and proportions deferred of between 40 and 60 % will result in a competitive race to the	CEBS takes note of this comment. Nothing can be done on this issue as the guidelines follow literally the provisions	

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	bottom. It is better to set principles.	established in the CRD III.	
	One comment states that pro rata spreading should not be more than 4 years.	The length of the period of pro rata vesting depends on the deferral period. This period is related to the time horizon of risks. A limitation to 4 years is therefore not possible.	
	One comment asks CEBS to clarify that cash awards could be notionally invested (e.g. at 5%) during the deferral period.	The employee becomes the outright owner of the award when it vests. In CEBS' opinion the yields of the award belongs to the employee from that moment.	
4.4.1. c. Proportion to be deferred	The requirement of proportion of 40% is unnecessary and too strict. Goes beyond CRD III. If at all, then the requirement should only apply to systemic important firms.	The threshold of 40-60% deferral is set in the CRD III and refers to minima. Proportionality can lead to complete neutralization, but it can only be applied on a case by case basis (Guidelines paragraph 20).	The character of minima criteria has been clarified in paragraph 19.
4.4.2. Cash vs. instruments: a. Types of instruments	Several comments have remarked that the payment with shares in listed companies can dilute shareholders interests. Another remarked that the payment in equity may create concerns for firms that are at the limit of the share pools that have been created to support these programs.	CEBS takes note of this comment. However, the payment in shares or other instruments is a requirement of the CRD III.	
	Several comments state that different instruments are an administrative burden for small firms and in the case of low bonuses. The suggestion is made to link 50% of the variable remuneration to the profitability of the institution.	The requirement of principle (o) is included in the CRD III and cannot be changed by CEBS. Proportionality can be applied on a case by case basis and can in some cases lead to neutralization of point (o).	
	Pay in equity can lead to window dressing and adverse behavior. Therefore cash based deferrals should be possible.	Principle (o) of the CRD III requires that 50% of the deferred variable payment is paid in instruments and 50% of the deferred variable payment is paid in	

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		cash.	
	One comment asks whether listed banks are allowed to use share-indexed instruments.	Listed institutions can pay out in shares or share-linked instruments.	CEBS has clarified this in paragraph 124. Furthermore, a footnote 25 has been added on indices (not a proper reference for the value of an institution).
	Several comments asked CEBS to provide more guidance on the types of instruments that would fall within the description of non-cash equivalent instruments and which can be applied by unlisted firms or non-joint stock companies.	CEBS recognizes the need for more guidance on alternatives instruments.	CEBS has clarified this in paragraph 125.
	One comment states that the pay out of share-linked payments is a problem for co-operative banks. Common equity instruments of co-operative banks dispose of many features that make them inappropriate for share-based payments.	Co-operative banks can make use of non-cash instruments instead of share-linked payments if they are not stock corporations or if there is no market price available that represents the institution's value.	CEBS has clarified this in paragraph 125.
	One comment stated that when a part of the bonus is granted in own managed funds, variable remuneration that is linked to managed assets, should be regarded as "equity/equity like"	For those institutions that have such remuneration arrangements and are in the scope of the guidelines/CRD III, this arrangements can indeed be considered as "equity/equity like" provided the overall risk alignment structure of the remuneration corresponds to the CRD III expectations.	
4.4.2. Cash vs. instruments: b. Retention	Many comments have been received regarding the retention period. In general the respondents mention that there is no need for a retention period for deferred equity instruments as the objectives are already achieved with the deferral period and	The CRD III requires an retention period for the instruments mentioned in principle (o). The retention period and the deferral period are two different elements of the pay out process and they cannot be mixed. CEBS guidelines	

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	the use of a retention period requires changes in compensation plans in a short time. One of them adds this issue is even more certain for non executive staff. Another adds that deferral and retention leads to a long period, which make it difficult to assess labour contract no longer in existence.	do not set a specific retention period, nevertheless, it is expected that both upfront and deferred instruments are subject to it in order to better align incentives with the firm's long-term interest. The length of the retention period can vary depending on multiple factors.	
	Several comments ask what the implication is for the retention period of a longer than the minimum deferral period or a multi-year accrual period.	CEBS has clarified in paragraph 129 that in those cases the retention period can be shorter.	See paragraph 129.
	Several comments stated that the retention period should be aligned with time horizon of risk rather than with materiality of risk.	The minimum retention period should be sufficient to align incentives with the longer term interests of the institution. The time horizon of risk as well as the materiality of risk is relevant for this.	
	One comment remarked that holding requirements should not last as long as deferral, because it leaves too small portion available upfront.	In paragraph 130 this is given as an example of proportionality and not applicable in all cases.	
	One comment considers appropriate to set a threshold under which bonuses do not have to be retained.	CEBS considers that fixing a threshold would not be appropriate as it would vary depending on many factors (the business model, size and risk profile of the firm...)	
	Several comments ask for exceptions to retention in order make it possible for the employee to meet fiscal obligations.	See comments under 4.4.2. c	
4.4.2. Cash vs. instruments:	Many comments disagree with the interpretation of principle (o) : 50% of the	The interpretation of principle (o) is the prerogative of the European Parliament	

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c. minimum portion of instruments and their distribution over time	upfront variable remuneration and 50% of the deferred variable remuneration should be paid in shares or other instruments. There are various comments or concerns: • There is no basis for such requirement in the CRD III. • Tax liability issue. • Will raise total levels of variable payment and fixed pay. • This requirement goes beyond the FSB requirements. Leads to unlevel playing field. • Requires redesign of compensation practices in a short period of time.	and European Commission and it is therefore out of the scope of CEBS' competences. For this reason the guidelines have followed the interpretation of the European Parliament and the European Commission.	
	One comment asked CEBS to clarify that different percentages of equity can be applicable on the deferred and non-deferred variable compensation. Another one asks whether point (o) still relevant is when institutions choose to go above the minimum threshold of 50% shares.	Different percentages can be applicable to the deferred and non-deferred part as long as these percentages are 50% or more.	
4.4.3. ex post incorporation of risk **a. explicit ex-post risk adjustments**	One comment considers it to be not always appropriate to reduce variable remuneration where there is a material downturn in financial performance (e.g. in the case of new business or a developing market --> incentives needed) or in the case of conflicts with employment law.	The performance measures should take into account the characteristics of a new business or a developing market.	

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	One comment asks CEBS to confirm that 'generally' means that certain individuals can be rewarded even when firms' performance was subdued.	This is indeed possible if all other risk alignment requirements are properly observed.	
	One comment asks if it is always necessary to reduce awards in the event of a downturn caused by elements outside the control of the staff?	In this case, the award has to be reduced as long as the contrary affects the capital base of theinstitution.	
4.4.3. ex post incorporation of risk **c. possibility of upward revisions**	Several comments consider it not clear what the risk taking implications are of the prohibition of increase of variable remuneration. They consider that risk adjustment should be able to lead to reduction OR increase.	The reason for the prohibition of increase of variable remuneration is explained in paragraph 144 of the guidelines. This is in accordance with FSB.	
5.1 External disclosure	Privately-owned firms should not be subject to public disclosure of aggregate quantitative remuneration information.	CEBS believes that this may not be possible if the institutions in question are subject to the CRD III. Proportionality will apply to their disclosures, however.	
	It is important that the remuneration package of an individual whose remuneration is not currently required to be made public should not be deduced from the disclosures to preserve commercial confidentiality and the privacy of the individual. Quantitative disclosures should be made confidentially to supervisors alone.	CRD III requires aggregated quantitative disclosures.	The guidelines have reinforced that the disclosure requirements are without prejudice to Directive 95/46/EC on the protection of individuals with the regard to the processing of personal data and the free movement of such data.
	One respondent asked CEBS to clarify to supervisors, that, if jurisdictions decide to require disclosure, not only at a consolidated level but also for 'significant subsidiaries' they should ensure that this takes due consideration of the parent company disclosure, is consistent with proportionality	Pillar 3 disclosures are in principle to be made at the consolidated level.	The guidelines have been amended accordingly.

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	as expressed by the parent company and reviewed by the relevant home company regulator, and in no case differs in the disclosure required across jurisdictions.		
	The guidelines should clarify what is meant by the 'evolutionary process for the first period.'	CEBS will leave this up to jurisdictions to determine.	The Guidelines have been amended to say that the first disclosure reports are expected during the course of 2011 and that they are expected to evolve over time to reflect developments within peer groups and in markets.
	Respondents support the need for proportionality to be applied to the disclosure of remuneration policies and practices.		Paragraph 148: small or non complex institutions could apply proportionality principle for disclosure. This has been made explicit for point 15 (g) of Annex XII, Part 2.
5.2 Internal disclosure			
Annex 1			
Annex 2	Some respondents believe that the following requirements should also be neutralized: Point (h) assessment of performance in a multi-year framework Point (l) setting of appropriate ratios between the fixed and variable component of variable remuneration Point (r) – the part that refers to vested variable remuneration	CEBS has considered this suggestion in its approach to proportionality.	The table in Annex 2 has been amended to reflect further points that can be neutralized for investment firms.
Annex 3			