



Verband der Auslandsbanken · Savignystr. 55 · 60325 Frankfurt

The Committee of European  
Banking Supervisors  
Tower 42  
25 Old Broad Street  
London EC2N 1HQ  
United Kingdom

Contact:

Dr Martin Schulte

+49 69 975850 0 (TEL)  
+49 69 975850 10 (FAX)  
martin.schulte@vab.de  
www.vab.de

Via e-mail : CP42@c-eps.org

8 November 2010\MS

### **Consultation of Guidelines on Remuneration Policies and Practices (CP42)**

Dear Mr Carosio,  
Dear Mr Vossen,  
Dear Mr Haben,  
Dear Madam or Sir,

We appreciate the opportunity to provide input to the referenced consultation paper. As a representative of globally operating institutions we welcome the Guidelines as a major step toward a level playing field. A consistent implementation of the Guidelines by the national legislators thus seems of vital importance. However, to eliminate competitive disadvantages entirely, remunerations systems should be coherently regulated not only within the EEA but also on a global level. We thus hope that the international committees will soon reach an agreement at least on the fundamental pillars of prudential regulation of remuneration systems so that international groups can apply similar rules within all branches and subsidiaries.

Generally speaking, the key for any reasonable regulation is to provide institutions with the necessary flexibility to react on the overall economic environment as well as on the current situation of the firm. As a consequence, categorically encouraging or forcing market participants to increase fixed remuneration and to simultaneously lower variable remuneration will most likely cause financial problems for the institution in times of stress. Therefore, as outlined in section 4 of the CP, a set ratio between fixed and variable remuneration should by no means be part of any national regulation inside the



EEA. It should thus be taken into account that rather a higher than a lower percentage of variable remuneration allows proper risk alignment, since an employee who creates losses due excessive risks-taking would then only be paid the smaller fixed part of his or her salary.

The design of sensible remuneration policies cannot be detached from an efficient risk management and compliance structures to avoid conflicts of interest. The idea that variable remuneration necessarily induces excessive risk taking rather stems from the experience of the collapse of large institutions in recent history, when – due to insufficient risk management and policies to avoid conflicts of interest - for the first time the dangers of far too complex derivatives had materialised to a systemically relevant degree and when the problem of moral hazard was not sufficiently identified in politics as well as inside the institutions. Since all major institutions – in their own best interest – have substantially improved their risk management and compliance structures in the past two years and will make further considerable improvements e.g. under Basle III esp. with regard to increased own funds and rules on exposure, there is little danger that so-called risk-takers create systemic risks induced by bonuses. As a consequence, prudential regulation of remuneration systems should not be treated isolatedly or generally prevent or produce barriers for institutions to pay their employees in accordance with the economic situation of the company in good times as well as in times of stress but rather carefully consider other new regulatory achievements.

Since prudential regulation of remuneration interferes with individually negotiated private contractual relations, sufficient legal authority must exist for such intervention. The further prudential rules limit the freedom of contract (which is a constitutional right in various member states), the more clearly must such legal authority be established.

Finally we would like to emphasise that the approach chosen by the German legislator in the Ordinance on Remuneration Systems for Institutions (*Instituts-Vergütungsverordnung*) as of 8 October 2010, which provides a system of different levels of regulation for significant and for non-significant institutions, determined by the balance sheet total, seems to be a very reasonable solution.

Please find attached our further suggestions to the CP. We hope that our views are helpful for the final reconsideration of the Guidelines.

Yours sincerely,

Dr Oliver Wagner

Dr Martin Schulte

## Position Paper on Guidelines on Remuneration Policies and Practices (CP42)

---

### 1.1.3. Which staff? / 1.3. Group Context (Guidelines for Supervisors/31)

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. This is because the employees in the single entities are not able to produce the same risk impact toward the institution as employees in a similar function in companies that operate on a standalone base. For groups of financial institutions, the prudential assessment of remuneration policies should thus be coordinated between the supervisors of each member state where the institution has a subsidiary or branch and the member state or third country of the head office.

We would also like to highlight that the proposed guidelines should be reviewed by taking into account that international groups frequently relocate staff from outside the EEA into the EEA. Remuneration policy requirements should not produce an obstacle to such practices and thus potentially prevent qualified employees from working in the EEA. For these cases we would encourage exceptionally applying/maintaining the prudential regulation of the third country where the respective employee comes from, potentially with the consent of the supervisor of the EEA country where the employee is relocated to.

We also see a competitive disadvantage where EEA-offices compete for qualified employees with non-EEA institutions. To avoid such imbalances we would also encourage the option of exemptions as described in the previous paragraph.

## 4. Specific requirements on risk alignment

### 4.1.2. Ratio between fixed and variable remuneration

We welcome the approach not to require a set ratio between fixed and variable remuneration. For the reasons stated above we believe that even a high leverage between fixed and variable remuneration may be appropriate in special cases. Institutions should thus have the opportunity to substantiate the reasons for an unusually high leverage toward the supervisor. Generally speaking, supervisors should not operate with pre-set schemes regarding the ratio.

#### **4.2.2. Common requirements for the risk alignment process**

While a retention period to payout variable remuneration generally seems reasonable, we believe that a prescribed long deferred payout of equity components might contravene the interest of the shareholders that their rights attached to the shares are not diluted. In the event that a certain percentage of equity-based remuneration is prescribed, institutions should thus not be required to apply long deferral periods for these instruments in order to avoid uncertainties for shareholders with regard to the specific rights vested in their shareholding.

#### **4.4.2. Cash vs. Instruments**

##### **a. Kind of instruments (122)**

We believe that the wording of the Guidelines with regard to shares and “other instruments” in no. 122 lacks clarity. Since not all institutions will be able to offer other instruments in the sense of Article 66 of the CRD III, there should be no general requirement to combine both categories. It seems sufficient to state that institutions may use shares and/or other instruments as a part of the variable remuneration.

##### **b. Retention periods**

We welcome the approach that retention periods are generally flexible but it seems unnecessary to strictly require 40 percent of the variable remuneration to be deferred, especially in combination with additional vesting periods. If such requirement was maintained we would support the approach to limit this requirement only to systemically relevant institutions as under the above mentioned German act.

#### **5. Disclosure**

Disclosure of remuneration policies is a very sensitive matter and must be limited by data protection and confidentiality rules as enacted in the member states. Due to protection of privacy we would rather prefer a solution to disclose such information only to the supervisor rather than to the general public. By no means, the public should be able to identify individual remuneration packages by such disclosure so that every employee can decide individually whether to disclose his or her remuneration or not.