The voice of banking
& financial services

30 August 2011

Cp46@eba.europa.eu and cp47@eba.europa.eu

Copy: remuneration@fsa.gov.uk

Dear Sirs,

EBA consultation 46 and 47: guidelines for data collection on bank remuneration practices

The British Bankers' Association ("BBA") is the leading association for UK banking and financial services for the UK banking and financial services sector, speaking for over 230 banking members from 60 countries on the full range of the UK and international banking issues. All the major banking players in the UK are members of our association as are the large international EU banks, the US banks operating in the UK and financial entities from around the world. The integrated nature of banking means that our members are engaged in activities ranging widely across the financial spectrum encompassing services and products as diverse as primary and secondary securities trading, insurance, investment banking and wealth management, as well as deposit taking and other conventional forms of banking.

The BBA is pleased to respond to the consultations.

Comments

We support the publication of guidance so that all firms and member states can apply the rulebook consistently.

The industry understands the need for appropriate transparency of remuneration across the financial services industry. While it is a positive move that the European Economic Area (EEA) is promoting further transparency it is critical that these requirements are also implemented on a global basis to ensure consistency.

The markets in financial services, especially the activities that generate salaries of EUR1m pa or above, are global. Therefore, the European Union (EU) should push for global alignment. The EU is more advanced and prescriptive in its application of the Financial Stability Board principles for sound remuneration, and a global review would help to highlight this point and hopefully encourage greater global consistency in application of the principles.

The details required and comparison across countries present a number of challenges, notably with regards to the definition of "significant institutions" and the choice of exchange rate.

The timing also is tight since firms will have to wait for national supervisory authorities to provide further guidance following the end of the consultation period, and will then have to make this data available to the relevant national supervisory authority by October 2011.

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We support the proposal that data would be collected in June each year as this aligns appropriately with the end of year salary and award process. However, we would challenge the timing of the transitional arrangements and the requirement for the first submission to local supervisors in October 2011. In line with CRD III requirements, firms have until 31 December 2011 to publish their annual remuneration disclosure. We believe that the same level of information is required for both disclosures and so some firms who are intending to publish at the end of 2011 will be put at a disadvantage.

Depending on where firms are headquartered, these proposals will have an impact on the currency they typically use to report their statutory accounts. The rationale for aggregating Euros across the EEA is clear as the Euro is the dominant currency; however, we would suggest that firms submit to their home regulators in local currency. The EBA could then mandate the appropriate foreign exchange rate to be used for each supervisor, which would remove complexity and uncertainty for firms.

We would welcome clarity on the definition of staff which should be included in annexes 1 and 2. National supervisors typically include different employee groups within the scope of requirements. For example, some supervisors consider contractors and consultants to be included. Clarification on the inclusion of non-executive directors would also be welcomed, both within annex 1 and annex 2.

The annex to our letter contains our formal response to the guidelines proposed in the consultation, and further specific observations and questions arising from the proposals.

We hope that you will find our comments useful. Please contact me by way of e-mail (irving.henry@bba.org.uk) or telephone on (0) 20 7216 8862 should you require further information.

Yours faithfully,

Irving Henry
Director, Prudential Capital and Risk

Annex

Annex 1 – Template for all staff

The content of this annex appears to be aligned to the statutory reporting undertaken by firms. We would recommend that all standard benefits and pensions are excluded from total remuneration to limit the impact of different market practice in this area. We do acknowledge the need to include any non-standard benefits within the total, so as not to disguise overall remuneration levels.

We note that the CEBS Guidelines define variable remuneration to include any "additional payments or benefits depending on performance or, in certain cases, other contractual criteria". We would welcome clarity on whether this would include forward looking long-term incentive awards, which are not solely dependent on performance within a particular performance year.

In addition, we believe it is important that disclosure of remuneration should take appropriate account of performance conditions when determining value. If there is a requirement to disclose the full face-value of the award this may overstate the level of award if performance conditions make it unlikely the employee will receive the full value of the award.

There may be other variations in valuation approach that firms could adopt, such as valuation methodologies for share option grants, or factoring in the risk of forfeiture for all deferred compensation. We would welcome guidance on what valuation approach or approaches would be appropriate.

Annex 2 – Template for Identified Staff

We believe that it would be useful to include the number of Identified Staff in each category and not limit the split to senior management and control functions. We believe it is appropriate to aggregate these figures across the firm as proposed.

As mentioned above, we would propose excluding standard benefits from total remuneration figures to reduce distortion of local market practice. Similarly, the comments above related to valuation of variable remuneration are also relevant to this section.

We would welcome clarity on whether the amount of performance adjustment should also include remuneration which has been forfeited or reduced due to performance conditions not being met.

We understand that the performance adjustment section is also intended to include the levels of ex-ante adjustment calculated by firms for the current performance year. We believe it would be difficult for firms to clearly quantify the level of adjustments made to the current year's remuneration, as the process for determining remuneration levels is complex and not purely formulaic.

It should be noted that in relation to the data to be provided, some firms with substantial cross-border operations:

- intend to use the group of employees identified as "Code Staff" under the UK FSA's Remuneration Code for the purposes of data provided for "Identified Staff"; and

- will provide data for employees on an aggregate or EU member state basis as required, but do not intend to include details of expatriate specific benefits for staff who are on international assignments. Since assignees typically receive additional benefits they would not get if on a local contract, it is felt inclusion of these amounts would skew the data.

Consultation Paper CP47 – Remuneration data collection exercise regarding high earners

Members understand that the focus of the EBA is EEA organisations and high-earners within this jurisdiction. However, we are unclear as to why global organisations headquartered in the EEA should exclude non-EU branches and subsidiaries. This would go against the normal accounting and disclosure practices and cut across the information in CP46. We also believe this may distort the comparison between EEA-headquartered organisations which may be similar in size, but have a different geographic spread.

At this point, we understand the data from national supervisors would be aggregated by the EBA. However, we are concerned that for countries where an organisation has a small number of identified staff or high earners, the anonymity of aggregation could be compromised. This could result in the determination of individual remuneration details, which is not the desired result of this data collection.

As discussed under CP46, the BBA supports the proposal that data would be collected in June each year, as this aligns appropriately with the end of year salary and award process. However, we would challenge the timing of the transitional arrangements and the requirement for the first submission to local supervisors in October 2011. In line with CRD 3 requirements, firms have until 31 December 2011 to publish their annual remuneration disclosure. We believe that the same level of information is required for both disclosures and so some firms who are intending to publish at the end of 2011 will be put at a disadvantage.

Annex 1 – template for high earners

Our comments related to the inclusion and valuation of fixed and variable under CP46 also apply equally to this high earner disclosure. We believe clarification on these factors is critical to ensure that firms are reporting on a like for like basis.

We are unclear how the proposed aggregate disclosure of high earners relates to the current draft of the CRD IV text. This currently sets out the requirement for the EBA to collect high earner information on a banded basis, rather than an absolute number. Whilst we acknowledge that CRD IV is still subject to extensive consultation and debate, regularly changing requirements related to remuneration disclosure creates uncertainty for firms.