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UNI Europa Finance reply to the EBA consultation on sound remuneration policies under Article 74(3) and 75(2) of Directive 2013/36/EU and disclosures under Article 450 of Regulation (EU) N° 575/2013 (EBA/CP/2015/03)

General remarks

UNI Europa Finance welcomes the consultation on sound remuneration practices and disclosures. The present comments take into account UEF's previous comments on remuneration benchmarking, the guidelines on the data collection regarding high earners and the criteria to designate "identified staff".

The present Guidelines represent an update of the previous CEPS version of the remuneration guidelines and take into account the changes introduced in 2013 under the above mentioned Directive and Regulation and the subsequent RTS. They also take into account the EBA assessment on the use of allowances.

Firstly, it is important to stress that far the greatest part of the employees in the financial sector do not receive excessively large bonuses or other kinds of variable remuneration which gives rise to systemic issues.

UNI Europa Finance supports the idea of remuneration policies and practices that are consistent with and promote sound and effective risk management and supports the present Guidelines for a variety of reasons:

1. Academic studies show that the excessive remunerations in the finance sector have contributed to rising inequality in income structures as such[1]. In addition, a study of wages in the finance industry in the US since 1908 and 2006 shows that high wages and financial complexity were interrelated in the 20's, before the first great depression, and after the 80's. The thesis of Philippon and Reshef is that financial deregulation and corporate activities linked to IPOs and credit risk increase the demand for skills in financial jobs[2].
2. Moreover, the extensive use of external benchmarks such as market indexes used by consulting firms (Hay, Towers Watson, Hewitt, Mercer) in the setup of remuneration in

[1] Olivier Godechot, "Finance, an Inequality Factor", *La Vie des idées*, 15 April 2011.
[2] Thomas Philippon, Ariell Reshef, Wages and Human Capital in the U.S. Financial Industry: 1909-2006; 2008.

the financial sector also contributes to an increase in individualisation and non-comparability of remuneration and a disconnection with risk policy[3].

However, as a basic principle, UEF supports for remuneration policies the absolute primacy of collective agreements. It must thus be made clear that any legal provisions regarding remuneration do not apply to remuneration policies and provisions agreed in a collective agreement.

This is also stated in Recital 69 in CRD4 which reads: *The provisions on remuneration should be without prejudice to the full exercise of fundamental rights guaranteed by Article 153(5) of the TFEU, general principles of national contract and labour law, legislation regarding shareholders' rights and involvement and the general responsibilities of the management bodies of the institution concerned, as well as the rights, where applicable, of the social partners to conclude and enforce collective agreements, in accordance with national law and customs*.

An explicit reference to recital 69 should therefore be included in the Guidelines.

Questions for consultation

Q 1: Are the definitions provided sufficiently clear; are additional definitions needed?

In general, the definitions are clear, apart from the definition (m) 'vests'.

The definition of "vests" (m) should be clarified in relation to the definitions of "retention period" (q) and 'clawback' (s). If a remuneration is legally owned (vested), how can it be retained, as the retention period is defined as a period when a remuneration cannot be sold or accessed and may not be paid out if the staff leaves? In addition, if remuneration is subject to clawback, it may happen that it does not get paid out at all.

Q 2: Are the guidelines in chapter 5 appropriate and sufficiently clear?

As stated under the general remarks (3.), the use of external benchmarks in order to retain staff contributes to a disconnection of the objectives of the institution regarding risk strategy, corporate culture and values and the long term interests of the institution. These factors are not mentioned in the Guidelines under chapter 5.

There should also throughout the chapter, and in the paper as such, be a somewhat sharper distinction between the treatment of normal wages for ordinary employees on the one hand, and the remuneration of high ranking risk takers and managerial staff on the other. This relates both to the involvement of e.g. compliance, as well as shareholders. In relation to ordinary wages there are no special systemic or other special issues that makes it relevant for detailed involvement of compliance, shareholders etc. A more general oversight should be appropriate for this part of the wage structure. Likewise, this also makes it more difficult to see any need to recommend voluntary expansions of the rules for identified staff to ordinary employees.

Under chapter 6 'Governance', §20, the statement is made that "conflicts of interest between remuneration policy and remuneration awarded should be identified". This is not totally clear. Does this mean that a discrepancy between theory (policy) and practice (award) should be avoided?

Q 3: Are the guidelines regarding the shareholders' involvement in setting higher ratios for variable remuneration sufficiently clear?

[3] Nathalie Nagel, 2015, Les référentiels de « marché », Impacts et limites de la méthode Hay, CDFDT Cadres, Mars 2015, p. 39 – 46.

The provisions regarding shareholders involvement are clear. However, UEF regrets that no mention is made of stakeholders' involvement, and specifically the involvement of trade unions or employee representatives in the decision of this issue.

Q 4: Are the guidelines regarding remuneration policies and group context appropriate and sufficiently clear?

We are pleased to see that EBA under para 42 refers to employee representation in the remuneration committee. We would however prefer a more extensive wording than as currently written; a possibility only if provided by national law. Employee representation in governance bodies such as remuneration committees should be possible also if there is a culture and/or practice of employee representation in the company or Member State.

Q 5: All respondents are welcome to provide their comments on the chapter on proportionality, with particular reference to the change of the approach on 'neutralisations' that was required following the interpretation of the wording of the CRD. In particular institutions that used 'neutralisations' under the previous guidelines for the whole institution or identified staff receiving only a low amount of variable remuneration are asked to provide an estimate of the implementation costs in absolute and relative terms and to point to impediments resulting from their nature, including their legal form, if they were required to apply, for the variable remuneration of identified staff: a) deferral arrangements, b) the pay out in instruments and, c) malus (with respect to the deferred variable remuneration). In addition those institutions are welcome to explain the anticipated changes to the remuneration policy which will need to be made to comply with all requirements. Wherever possible the estimated impact and costs should be quantified, supported by a short explanation of the methodology applied for their estimation and provided separately for the three listed aspects.

Firstly, it is important to stress that far the greatest part of the employees in the financial sector do not receive excessively large bonuses or other kinds of variable remuneration which gives rise to systemic issues. Also, it is not unusual that variable remuneration in a bank is only used for staff at or above the "identified staff" level.

As a basic principle, the possibility for collective bargaining should not be hampered by the inclusion of too vast a number of employees, including those in middle management functions which are not immediately concerned by risk taking. This is an issue of proportionality, especially in small or medium sized institutions which do not have a significant market activity.

For example, in Belgium there has been a case of a minor financial institution where the guidelines on remuneration were interpreted so broadly that all professional and managerial staff were asked to sign an accord if which they agreed on a clawback procedure. This was in terms of an interpretation by the bank itself of the Belgian law which implement European legislation. After consultation with a trade union and through that trade union's research department who had contacted the National Competent Authorities (Ministry and Supervisor), the bank agreed to narrow down the application of those rules.

While the interpretation itself is too broad an interpretation both of the scope of European and of Belgian legislation, it shows the need to provide a clear indication of scope.

There are also examples of very small financial institutions with one or a few employees that have to appoint risk and compliance officers and report detailed information on e.g. remuneration rules to the supervisory authorities. This is all together is a huge administrative burden for very small financial institutions.

Q 6: Are the guidelines on the identification of staff appropriate and sufficiently clear?

It would be easier to understand the Guidelines if the RTS on identification criteria (Commission Delegated Regulation (EU) N° 604/2014) were clearly referenced in the text or attached in an annex to the Guidelines.

Q 8: Are the requirements regarding categories of remuneration appropriate and sufficiently clear?

We positively remark the mentioning of collective bargaining under §117.e. However, as mentioned under our general remarks, it must be stressed that according to TFEU Art. 153, 5, and as stated in CRD 4, Recital 69, the EU cannot interfere with collective bargaining.

Q 11: Are the provisions regarding severance payments appropriate and sufficiently clear?

Although we are aware that the severance payments mentioned under this paragraph may have a different scope, the provisions regarding severance payments should include a reference to national law. Generally, severance payments/payment of early termination of contracts are regulated under labour law.

Q 18: Are the requirements on the ex post risk adjustments appropriate and sufficiently clear?

No. This is due to the initial definitions of vested, awarded. For example under §266, it is not clear how 100% of the variable remuneration can be clawed back, especially if it has been paid out already.

Q 20: Are the requirements in Title VI appropriate and sufficiently clear?

In order to have a full image on disclosure requirements, a reference to all the applicable guidelines would be helpful. They should include requirements under Article 75(1 and 3) of Directive 2013/36/EU (CRD IV) (mentioned only under §321) and the Guidelines on the applicable discount rate and Guidelines on the supervisory review process (mentioned under §311).

This could be done either at the beginning of the chapter, or in an annex, so that references to additional guidelines and the articles in the CRR and CRD are sufficiently clear. The annex 1 of these Guidelines is helpful in this respect.

About UNI Europa Finance

UNI Europa Finance is the European-level trade union body for the finance sector. It represents 100 unions with 1.5 million workers in the banking and insurance industries. It is part of UNI Global Union and recognised by the European Union as a social partner. UNI Europa Finance is also part of UNI Europa, representing 7 million workers in the services and communication sectors. UNI Europa is member of the ETUC.