

European Banking Authority
Floor 46, One Canada Square
London E14 5AA
STORBRITANNIEN

Att. Chairperson Andrea Enria

Sent by e-mail to: info@eba.europa.eu and andrea.enria@eba.europa.eu

4 June 2015

Review of guidelines on remuneration policies

The Danish Employers Federation for the Financial Sector, FA, has taken note of the EBA consultation on a review of the guidelines on remuneration policies. We have given input to the EBF reply to the consultation, to which we refer. Further we write to raise two issues of concern.

DOK. NR.:
FAID-6-32810
SAG. NR.:
FAID-6-32775
clr

The CRD IV does not restrict social partners in concluding collective agreements

The first point is an issue of principal concern for us as social partners.

We negotiate the general collective agreements in the Danish financial sector and represent approximately 200 companies employing 80% of financial sector staff in Denmark.

At the hearing on 8 May 2015 at the EBA premises, we understood that the EBA has taken the view that social partners can conclude collective agreements on pay only to the extent that the collective agreements do not collide with the EBA guidelines on remuneration.

We must refer to Article 153(5) of the TFEU that gives the social partners the prerogative to negotiate collective agreements on pay. We must also refer to recital 69 of the CRD IV. It is our view that the fundamental rights as stated in Article 153(5) in the TFEU cannot be set aside by any directive. The CRD IV recital 69 clearly supports that it is not the legislator's intention to limit the fundamental right of the social partners. We therefore ask the EBA to clarify that social partners in the financial sector can conclude collective agreements on pay.

If the social partners agree that an allowance is fixed pay, EBA guidelines cannot overrule this agreement.

Example: *An allowance is determined by the collective agreement to be part of the fixed salary. It is described in the collective agreement as an allowance*

that the employer can award as fixed salary for a period of time. The collective agreement gives the employer discretion to decide if an employee is to be awarded this allowance. Once awarded the employer can decide to stop the allowance with a set notice. In this case the collective agreement must not be set aside by the EBA guidelines, even if the EBA guidelines would consider such an allowance variable remuneration where no collective agreement covers the employment relation. The EBA guidelines must respect the will of the legislators as put in recital 69 to the CRD IV, and the TFEU article 153(5).

This would apparently not be the result of the proposed guidelines, if the EBA position stated at the public hearing on 8 May 2015 is correct. We find it difficult to believe that the EBA would disregard the fundamental rights of the social partners as stated in the TFEU and the recital of the CRD IV.

It is our firm opinion, that the social partners are not limited by EBA guidelines when they conclude collective agreements on pay. We suggest the EBA consults with the relevant services of the European Commission in matters concerning the labour market and the fundamental rights of the social partners.

Proportionality and legal certainty

We must also ask the EBA to consider how the review of the remuneration guidelines correspond with the fact that companies have complied with previous guidelines and established their remuneration policies in accordance with them. The announced change of interpretation and the dis-application of proportionality leaves companies with no legal certainty in this matter.

We refer to the EBF comments to the EBA draft guidelines on sound remuneration policies for further details.

Yours sincerely



Claus Rye