



ASSOGESTIONI

associazione del risparmio gestito

Rome, 4th June 2015

EBA – European Banking Authority
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Our ref: 203/15
Your ref: EBA/CP/2015/03

Assogestioni's reply to EBA's Consultation paper on Draft Guidelines on sound remuneration policies under Article 74(3) and 75(2) of Directive 2013/36/EU and disclosures under Article 450 of Regulation (EU) No 575/2013 (EBA/CP/2015/03)

Q4: Are the guidelines regarding remuneration policies and group context appropriate and sufficiently clear?

Assogestioni¹ welcomes the opportunity to respond to EBA's Consultation Paper on Draft Guidelines on sound remuneration policies under Article 74(3) and 75(2) of Directive 2013/36/UE and disclosures under Article 450 of Regulation (EU) No 575/2013 [EBA/CP/2015/03].

As further expressed in more details in the coming paragraphs, Assogestioni calls on the EBA to re-consider its approach on the application of remuneration policies to group context pursuant to art. 92 *et seq.* of CRD IV (directive 2013/36/UE).

As a preliminary note, we wish to highlight that it is not our position to exclude AIFMs and UCITS management companies from the application of group remuneration principles altogether. As further illustrated below (see § 4), it is for the parent company to elaborate the group remuneration policies and ensure its overall coherence, providing the necessary guidelines for its implementation and assessing it is properly applied.

However, it is fundamental that the group remuneration policies give due consideration to the specific characteristics of each undertaking. It is in this perspective that, given the existence of sectoral remuneration requirements for (AIFM and UCITS) subsidiaries and in the light of their specificities (further

¹ Assogestioni is the trade body for Italian asset management industry and represents the interests of members who manage funds and discretionary mandates around € 1.735 billion (as of April 2015).



explained below), the sectoral (AIFMD and UCITS) discipline shall prevail over the CRD IV provisions and that no CRD IV “specific” requirements “which have not been included in other sectoral legislation”² (and which are, thus, not conceived for non-CRD entities) shall be applied.

1. Equivalence and consistency of “outcomes” between CRD IV and AIFMD (and UCITS) remuneration principles

AIFMs and UCITS management companies are disciplined by sectoral remuneration rules which are equally as effective as CRD IV, pursuing the same objective to ensure that “*remuneration policies and practices are consistent with sound and effective risk management*” (Recital 24 of AIFMD, recital 2 of UCITS V directive and recital 62 of CRD IV).

Equivalence and consistency between CRD IV and AIFMD remuneration principles have been recognized by ESMA in the Guidelines on sound remuneration policies under AIFMD (ESMA/2013/232), where the European Securities and Markets Authority explicitly stated that the “*compliance with the sectoral remuneration principles by AIFMs which belong to banking, insurance, investment groups or financial conglomerates should be considered as ensuring the respect by such a group of the remuneration principles applicable to the group with specific regards to the AIFM*” (paragraph 33).

In addition, in the Q&As on AIFMD published on 17th February 2014 (ESMA/2014/163), ESMA also recognized that, in case of risk or portfolio management delegation arrangements to an entity subject to CRD rules, the delegated entities are considered subject to regulatory requirements on remuneration equally as effective as those applicable under AIFMD.

UCITS remuneration principles have been designed in strict coherence with AIFMD, largely mirroring its provisions. Moreover, UCITS V directive specifically requires ESMA to issue guidelines aligned, to the extent possible, with those for funds regulated under AIFMD (Recital 9 of UCITS V directive).

We therefore strongly encourage EBA to acknowledge the existence of a full system of equivalence and consistency between the three sets of remuneration policies. Both AIFMD and UCITS remuneration provisions should be regarded as consistent with CRD IV remuneration requirements. No material compliance with other remuneration rules should be required whenever the identified staff of the relevant entity is already subject to the remuneration provisions applicable to its specific sector.

2. The different rationale of remuneration rules under AIFMD and UCITS discipline

Without prejudice to the considerations above on equivalence of outcomes between CRD, AIFMD and UCITS remuneration principles, specific requirements exist in the

² Please refer to p. 36, paragraph 63 of the Consultation Paper.



different regimes on remuneration, because they aim at regulating the peculiarities of the activities performed by the different entities. In other words, there are different underlying rationales behind the application of remuneration rules to credit institutions and asset management companies. The different nature of the activities performed by asset management companies and CRD-entities justify the differentiation of the regimes, while ensuring equivalence of outcomes, as they are tailored to the specific characteristics of their respective activities.

AIFMs and UCITS management companies are strictly regulated in terms of their internal organization by virtue of *entity-level* directives that dictate general provisions relative to authorization and operating conditions as well as transparency requirements. In addition, UCITS management companies are also restricted by *product-level* directive to detailed rules on investment diversification and risk spreading.

The nature of professional (collective or individual) portfolio management is fundamentally different, from a risk perspective, from the activity of a CRD-entity operating on its own account. Asset management companies, be they AIFMs or UCITS management companies, do not typically take direct financial and operational risks. The identified staff of these entities does not usually perform risk-taking, speculative and short-term-oriented behaviours. Differently from banks, asset management companies do not generally take risks onto their own balance sheet and are by nature un-leveraged institutions with small balance sheets vis-à-vis those of banks. The principles governing remuneration policies for CRD- and non-CRD-entities are, thus, different: while both are conceived to ensure sound and effective risk management, it is only for the CRD remuneration principles that a prudential *ratio* is taken into account. Differently stated, while remuneration rules for CRD-entities are intended to align risks from dealing on own account with the need for credit institutions to “*rebuild their capital levels when operating within the buffer range*” (Recital 83 of CRD IV), remuneration rules for asset management companies are intended instead to improve the alignment of the interests of the portfolio manager with the interests of its clients.

The extension of CRD IV specific provisions “*which have not been included in other sectoral legislation*”³ to the identified staff of subsidiaries of a banking entity subject to AIFMD or UCITS remuneration principles does not appear to be justifiable in terms of regulatory coherence, failing to take into due consideration the inherently different nature and risks of CRD activities and asset management’s activities.

It also neglects the intention of the European legislators that have excluded for (AIFMs and) UCITS management companies’ identified staff the application of specifically CRD-tailored provisions. It cannot be forgotten that, at the time UCITS V directive was under negotiation, while the EP Committee on Economic and Monetary Affairs (ECON) had initially tabled the provision of a *ratio* requirement between fixed and variable remuneration components for the identified staff of UCITS

³ Please refer to p. 36, paragraph 63 of the Consultation Paper.



management companies, the EP Plenary expressly voted against such a provision, which was then removed from the final text of the directive.

With UCITS V being adopted after CRD IV measures, it is evident that the intent of the EU legislator was to acknowledge and give recognition to the specificities of the activities performed by asset managers and this cannot be disregarded.

For the reasons mentioned above, we call on the EBA to recognize the non-application for the identified staff of UCITS and AIFMs subsidiaries of CRD IV remuneration principles, on the basis of the different nature and complexity of the activities performed by asset management companies.

3. Guarding the operational autonomy and independence of a group subsidiary

It also has to be acknowledged that the interpretation of CRD IV provisions, as developed in the Consultation Paper, would also have the effect to hinder the independence of the subsidiary, which represents an essential element of the functioning of group entities. While pursuing common strategic objectives, it should not be forgotten that each subsidiary maintains its own operational autonomy.

The submission of subsidiaries to the logic of group's profits would not only seriously undermine their operational independence, but it could also create potential distortions to the detriment of their end-clients. The banking group strategies and policies shall adequately weigh the interests of the group with the need to safeguard and enhance the capacity of asset management companies to act in the interests of their clients.

For AIFMs and UCITS subsidiaries of a banking entity, a consistent application of the different remuneration principles does not entail the *extension* to non-CRD entities of specific requirements that are not foreseen in sectoral legislations.

The parent company shall instead take into account the existence of different and specific remuneration provisions and perform a monitoring activity to assess the consistency of the sectoral principles with the group remuneration policy, i.e. the application by each subsidiary of the sectoral requirements to its identified staff. In other words, the parent undertaking shall be responsible for ensuring the overall consistency of group-wide remuneration policies over its non-CRD subsidiaries, while recognizing the equivalence and hence the consistency of existing sectoral remuneration requirements, such as those of AIFM and UCITS specifically tailored for management companies.

CEBS "Guidelines on Remuneration Policies and Practices" of 2010 already envisaged that "*where groups carry on activities that fall outside the scope of the CRD, consideration should be given to any applicable sectoral remuneration requirements that might apply to determine how these are to be reconciled with the group-wide remuneration policy*"⁴. Moreover, "*where a group contains sectors regulated under different directives (e.g. insurance and banking), appropriate*

⁴ Please refer to p. 23, paragraph 30 of CEBS Guidelines.



*requirements should be taken into account when applying remuneration policies and practices for each type of sector. The group parent institution should oversee the remuneration policies, practices and procedures for each type of sector within its group and should ensure that each sectoral institution complies with its particular set of regulation*⁵.

4. Unlevel playing field between asset management companies being part of a group and asset management companies not being part of a group

Finally, we also wish to draw EBA's attention to the serious downturns that the approach featured in the Consultation Paper would have in terms of stability of the asset management sector. If implemented, it would create a dangerous unlevel playing field between asset management companies belonging to a banking group and companies that do not, that is neither appropriate nor justifiable in terms of consistency and coherence of financial markets regulation.

For all the reasons explained above, we invite the EBA to reconsider its conclusions around application of CRD remuneration principles to non CRD-subidiaries, making clear that the identified staff of AIFMs and UCITS management companies shall not be subject to CRD IV remuneration provisions, as they are already subject to remuneration principles equally as effective as CRD IV.

The Director General

A handwritten signature in black ink, appearing to be 'F. López', is positioned below the text 'The Director General'.

⁵ Please refer to p. 23, paragraph 30 of CEBS Guidelines.