

## EBA CONSULTATION GUIDELINES ON SOUND REMUNERATION POLICIES

### AMAFI's answer

**Association française des marchés financiers (AMAFI)** is the trade organisation working at national, European and international levels to represent financial market participants in France. It acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI's members operate for their own account or for clients in different segments, particularly organised and over-the-counter markets for equities, fixed-income products and derivatives, including commodities.

AMAFI welcomes the opportunity to respond to this consultation paper on EBA's Guidelines on sound remuneration policies.

### Introductory comments

Before answering the questions raised in the consultation, AMAFI would like to highlight some specific comments with regards to (i) the competitive implications of Brexit and (ii) the necessity to avoid conflicts between obligations stemming from national legislations and the EBA Guidelines.

- (i) For the European Union, Brexit means that it loses its main financial centre. The EU-27 therefore has a sovereignty issue at stake in being able to rebuild within its borders the capacity to ensure the proper financing of its economy and to meet the expectations of its savers. In an environment that is becoming highly competitive with the United Kingdom, it is therefore particularly essential to ensure that European financial players are able to attract the highly qualified staff needed to provide the quality of service that our public institutions, companies and investors expect.

Faced with this challenge, we should not be naive: remuneration policies will be a central element in this capacity to attract. At a time when various elements suggest that the rules applicable in this area in the United Kingdom are going to diverge fairly rapidly from those implemented in the EU-27, it is absolutely essential that the EBA takes account of this risk, which is one of the necessary conditions for European players to play their role effectively. The European Authority must therefore not unjustifiably raise the level of constraint on European actors. It must also monitor closely and accurately the measures that may be taken by the British authorities in this area. Especially as the implementation date of the UK prudential regime for investment firms has been delayed to 1 January 2022.

- (ii) We also would like to point out it is extremely important these Guidelines do not create conflict of laws with national social and labour legislations. This would indeed lead to a situation where actors scoped in are not able to comply both with the Guidelines and with national legislations that IFD does not amend. The content of the Guidelines should therefore not impinge on national legislations as not only would it create legal uncertainties, but it could also potentially delay members states' compliance with the legislation.

**Question 1: Are the subject matter, scope and definitions appropriate and sufficiently clear?***Paragraph 9*

We would like to emphasize that the gender pay gap definition does not take into account the type of work, nor does it include the level of responsibility or the experience etc. As such calculating a gender pay gap does not meet the purpose of gender-neutral remuneration policies.

Additionally, given the term “earnings” is not defined in the Guidelines, we would suggest replacing it by “remuneration”. Also, as “hourly” is not a common practice in the financial/banking industry, we would suggest switching with “full time annual remuneration awarded” in order to be consistent with paragraph 25.

Considering the definition of severance payments, we believe the concept of “early termination of a contract” could be clarified as the guidelines are not entirely clear to that regard. We would suggest the notion of “early” to be interpreted as (i) a contract with a predefined period (e.g. temporary contracts) terminated before its end-date and (ii) indefinite contracts terminated before the risk taker reaches legal retirement.

**Question 2: Is the section on gender neutral remuneration policies sufficiently clear?**

On this topic, we consider the EBA draft Guidelines go further than what is explicitly stated in IFD. They significantly broaden the scope of gender-neutral remuneration policies by including issues related to gender equality policies (e.g. career development, succession plans). Besides, given the scope and primary purpose of IFD we consider this Guidelines are not necessarily the most appropriate legislative vehicle to tackle in the most efficient way such an important issue.

*Paragraph 23*

We consider that the reference to “all related employment conditions that have an impact on the pay per unit of measurement or time rate should be gender neutral” goes beyond gender neutral remuneration policies and therefore should be deleted.

Besides, we would also suggest deleting the second sentence of paragraph 23 as not only does it broaden the scope of policies but also because it is not in line with the definition of “gender neutral remuneration policies”.

*Paragraph 25*

We would suggest using “working time arrangements” as unit of measurement as it is simpler and clearer than “the remuneration awarded”.

*Paragraph 26*

Rather than documenting a job description, we would recommend focusing on categories of job positions while respecting the principle of proportionality to avoid heavy constraints as it would not have a detrimental impact on the monitoring.

*Paragraph 27*

We recommend adding an item on “specific skills or competence of staff”.

Besides, point h) only concerns children excluding other family responsibilities, we would therefore suggest the following wording: “h) appropriate benefits, including the payment of additional voluntary household and other allowances to staff with dependent family members (e.g. children, other closed relatives).

**Question 3: Are the sections on the remuneration committee sufficiently clear?**

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**Question 4: Are the guidelines on the application of the requirements in a group context sufficiently clear?**

*Paragraph 70*

We call on the EBA to clarify this paragraph as specific remuneration requirements always have to be taken into account and are independent of gender neutrality provisions.

**Question 5: Are the guidelines regarding the application of waivers within section 4 sufficiently clear?**

*Paragraph 86*

We propose to delete the reference to a specific exchange rate to convert in EUR or to stress that the rate which should be used should be part of the entities remuneration policy before each yearly exercise is launched. By doing so it would avoid creating confusion for subsidiaries using the exchange rate established by each entity when reporting the remuneration information of their executives. Besides, we understand the existing system with exchange rates has worked well so far and we do not think it is worth establishing a specific exchange rate in these Guidelines.

**Question 6: Is section 9 on severance payments sufficiently clear?**

*Paragraph 156*

We would like to EBA to clarify the meaning of “additional payments” as well as the specific inclusion of “member of the management body”.

First of all, with regards to “additional payments” necessarily considered as “normal variable remuneration”, we consider that “any” additional payments in the context of the termination of the mandate of a board member should not be considered as variable remuneration. Obliging investment firms to apply variable remuneration rules to any payment made after termination if these remunerations comply with all requirements in the guidelines does not clarify the severance payment regime.

We therefore consider that paragraphs 157 to 162 are sufficiently clear with regards to the rules that should apply to severance payments.

Additionally, we recommend deleting the reference to “member of the management body” as compliance with the Guidelines would be made difficult given non-executive members of the management body have a remuneration structure that is different to more “traditional” risk takers and which do not operate on a contractual basis.

We would also suggest for the EBA not to refer to “regular end” of “a contractual period” as it would result in a new unregulated concept, different than “early” termination. Also, it is an issue in jurisdictions where indefinite contracts are widely used where contracts rarely have a “regular end”. The Guidelines would benefit in the EBA clarifying what it means by “regular end”.

*Paragraph 157*

We would recommend amending point e) as a court ruling would be necessary for each case which is not workable. Our proposed wording would avoid reducing the efficiency as a means to avoid judicial disputes:

*“e. The investment firm and a staff member agree on a settlement in case of a potential or an actual labour dispute that could potentially bring an action in front of a court lead to a court ruling, to avoid a decision on a settlement by the courts”.*

*Paragraph 162*

It should also be amended as it considers transactional severance as a variable which should be integrated in the ratio and differed.

We also ask the EBA to clarify why non-competition clauses have been included separately from other severance payments. We wonder why the EBA does not include the comprehensive list of payments for which ratio, deferral and pay out instruments as well as the severance payments for which ratio, deferral and pay out instruments is not mandatory in points b. (i).

**Question 7: Are the provisions on performance criteria sufficiently clear, which other performance indicators, e.g. regarding the performance of business units or portfolios, are used to determine the variable remuneration of identified staff?**

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**Question 8: Is the question on pay out in instruments sufficiently clear?**

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