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CEBS-Guidelines on Remuneration Policies and Practices - CP 42

The Austrian Bankers' Association representing all Austrian commercial banks would like to comment the Consultation Paper on Guidelines on Remuneration Policies and Practices (CP 42) as follows:

Main points of concern:

- Implementation** **date**

The CEBS guidelines should be implemented within the same timeline as the CRD III.¹

Retroactive implementation might cause civil claims by employees versus banks as the terms and conditions of bonuses to be paid out in 2011 were already agreed upon in 2010. Therefore a clarification that the application to bonuses determined already earlier than 1/1/2011 are subject to "mutual agreement" would be helpful.
- Scope of the Guidelines – Which institutions?**

The CEBS-Guidelines refer to the CRD III (credit institutions and investment firms) without sufficiently - with regard to practical use - adopting the principle of proportionality that is outlined by the CRD III². Many of the regulations would overburden smaller institutions if applied to the full extent as regulated in the CEBS guidelines.

¹ CRD III (22)Moreover, in order to safeguard the objectives pursued by this Directive, especially the effective risk management, in respect of periods still characterised by a high degree of financial instability, and in order to avoid any risk of circumvention of the provisions on remuneration laid down in point 1 of Annex I to this Directive during the period prior to their implementation, it is necessary to apply such provisions to remuneration awarded, but not yet paid, before the date of effective implementation in each Member State, for services provided in 2010.....

² CRD III (4)..... The principles recognise that credit institutions and investment firms may apply the provisions in different ways according to their size, internal organisation and the nature, scope and complexity of their activities.....

Including the principle of proportionality explicitly into the CEBS- guidelines would help to strengthen this principle in the transformation process to local law whereby the local regulators will strongly rely on the guidelines issued by CEBS.

In some of the member countries, differentiating approaches have been chosen. For example the German regulators (Institutsvergütungsverordnung, 6/10/2010, Sec 1 para 2) chose total assets of institutions as indicators for the classification as "important institute" (=bedeutendes Institut): Total assets of on average 10 bn € during the last 3 years along with the self-assessment qualify as important institute; from an average of total assets of 40 bn € over the last 3 years it is seen as probable that the institute is important.

Such indicators would help to clarify the scope and guarantee a EU-wide consistent interpretation.

• **Scope of guidelines – Which staff?**

CEBS guidelines grant considerable room for adopting the principles to various business models and remuneration schemes. Nevertheless including low earners seems problematic. Low earners will generally be beneficiaries of low bonuses which are not appropriate to be submitted to a deferral scheme and to being split up in cash and financial instruments.

Because of the low probability that low earners are risk takers with considerable influence on the overall risk of the financial institutions it would avoid misunderstandings if they were excluded from the scope in the first place.

• **Kind of instruments**

For smaller financial institutions and for such where bonus payments are overall considerably low the administrative burden of issuing and monitoring financial instruments might be relatively heavy. It might be an acceptable alternative to link a proportion of minimum 50% to the profitability of the financial institute using other performance indicators as ROE, Cost-Income-ratio etc. which are agreed with the local regulator beforehand. The German legislator chose a similar solution: Instituts-Vergütungsverordnung, 6/10/2010, Sec 5 para 2, sub-para 5: 50 % of the upfront part and 50 % of the deferred part shall depend on the sustainable

value development of the institute... (=von einer nachhaltigen Wertentwicklung des Instituts abhängen.

- **Legal nature of the draft CEBS guidelines on Remuneration Policies and Practices**

The discussed draft CEBS guidelines on *Remuneration Policies and Practices (CP42)* will be adopted according to the old, currently existing supervisory framework (**non-binding guidelines** (Article 3 CEBS), comply-or-explain mechanism (Article 14 CEBS)) as well as based on the current regulatory framework (Recital 1,2,13,19 CRD III and Article 22 CRD III).

In the context of the reform of the EU supervisory architecture, envisaged to be in power as of 01 January 2011, an amendment to the CRD is envisaged. As set down in the so called Omnibus Directive (latest, publically available version 13780/10, dated Brussels, 29 September 2010), Article 150 is amended in the following way:

(30) Article 150, the following paragraph is added:

"3. The **European Supervisory Authority (European Banking Authority)** shall

develop draft **implementing** technical standards **to ensure uniform application of this Directive with respect to:**

(a) the conditions of application of points 15 to 17 of Annex V;

(b) the conditions of application of point 23(l) of Annex V as regards the criteria to determine the appropriate ratios between fixed and the variable component of the total remuneration and of point 23(o)(ii) of Annex V to specify the classes of instruments that satisfy the conditions laid down in that point.

- (c) the conditions of application of Part 2 of Annex VI in respect of the quantitative factors referred to in point 12, the qualitative factors referred to in point 13 and the benchmark referred to in point 14;

The **European Supervisory Authority (European Banking Authority)** shall submit those draft **implementing** technical standards to the Commission by 1 January 2014.

Power is conferred on the Commission **to** adopt the draft **implementing** technical standards referred to in the first subparagraph in accordance with the procedure laid down in **Article 7e** of Regulation **(EU) No .../2010 [EBA]**.

The above provision would imply that - once the new supervisory architecture is enacted – CEBS – or then the EBA – would be empowered to adopt draft implementing technical standards as regards the provisions set down in point 23(l) and (o)(ii), which would be **legally binding** once empowered by the Commission.

Clarification on the implications that this provision might have on the current guidelines would be welcomed. Once that the new supervisory architecture is up and running, what will be the way forward regarding these guidelines (will they be transferred into new implementing technical standards, will they be replaced by totally new implementing technical standards or will they remain to be applied but supplemented by new guidelines of binding nature?)

Sincerely,

Maria Geyer
Secretary General