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CEBS Guidelines on Remuneration Policies and Practices - CP 42

The Bank and Insurance Division of the Austrian Federal Economic Chamber legally representing all Austrian Credit Institutions would like to comment on the Consultation Paper on Guidelines on Remuneration Policies and Practices (CP 42) as follows:

General Considerations

- We are pleased that the application of the proportionality principle is expressly affirmed and can prompt full neutralisation of the restrictions with credit institutions.

- Implementation date
  CEBS's guidelines should be implemented within the same timeline as the CRD III. 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.

1.1.3 Which staff

- This definition does not add clarity, it would be helpful to have an idea of what is meant by "having significant impact on the institutions results and/or balance sheet".

- 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.

1.2.1. Proportionality in general

- The approach is highly welcomed but currently not implemented in local legislation - it would be useful to give some hard fact quantitative criteria *(such as e.g. sizes of balance sheet - Germany uses EUR 10 bn)* which can make an institution / staff category exempt from this approach.

- We welcome the application of the proportionality principle with credit institutions allowing full neutralisation of the restrictions. As clarification for the sake of national implementation, the option of defining a limit to the balance sheet sum should be available for neutralisation.

- Many of the regulations would overburden smaller institutions if applied to the full extent as regulated in the CEBS guidelines.
  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.

1.2.2. Proportionality among institutions:

We suppose that the purpose of the new remuneration rules is mitigation of the risk and protection of the institution's capital. Therefore institutions with advanced methods for measurement of capital requirements (e.g. IRB, AMA methods) should be allowed, on the basis of proportionality principle, to neutralize requirements regarding staff remuneration.

1.3. Group Context

27. The EU parent institution has a top-down influence, but subsidiaries might have local responsibilities in the implementation of remuneration policies. Any group-wide remuneration policy should take into account local regulations (e.g. fiscal or employment legislation) in the jurisdiction in which the institution's subsidiaries operate. It is the subsidiary's primary responsibility to ensure compliance with specific local requirements.

This is also a very valuable clarification, but also not implemented in local legislation drafts currently. We suppose that in cases where the Group contains also subsidiaries which are not credit institutions or investment firms (e.g. insurance company, leasing company, IT companies etc.), the group remuneration rules based on the CRD requirements need not be applied. The Guidelines should clarify this issue.

1.4.3. State support and remuneration

40. The competent authority could also require the institution not to award any variable remuneration as long as the government support is not yet paid back, or until a recovery plan for the institution is implemented/accomplished. Such measures should be limited in time.

Comment: We do not support this approach. Firstly it depends on the kind of state support an institution received as well as on the general performance of the company. The fact that a financial institution received state support should not give the right to the state authority to delete any variable compensation.

2.1.3. Shareholders' involvement

The shareholders vote in approval of the institutions remuneration policy may be either consultative or binding.

Comment: The shareholders vote shall always be consultative - at least if a remuneration committee exists.

2.2.1. Setting up a remuneration committee

52. Institutions that are significant in terms of their size, internal organisation and the nature, scope and complexity of their activities should establish a Rem Co.

Comment: The definition of significance in terms of size, internal organisation and nature, scope and complexity of activities again is vague. It should be clarified that institutions like for example a retail bank with a simple easy nature of business then would require a Remuneration committee or not.

Furthermore, more weight should be given to the proportionality principle when setting up a remuneration committee. The guidelines provide that only credit institutions that are significant in terms of their size, internal organisation and the nature, the scope and the complexity of their activities shall be subject to the referenced provision. This has also been established in the CEBS Guidelines.

2.2.2. Composition

At least one member of the Rem Com should have sufficient expertise and professional experience concerning risk management and control activities, namely with regard to the mechanism for aligning the remuneration structure to institutions risk and capital profiles.

The rule by which a member of the remuneration committee must have sufficient expertise and professional experience in risk management and control activities appears much too restrictive and praxis-oriented. Such a requirement cannot be found in the requirements under the directive either (according to the directive, the remuneration committee should be constituted such that is able to exercise competent and independent judgment on remuneration policies and practices.) An option would be to use the specialised knowledge of an expert consultant who could support the committee by providing advice without actually being a member of the remuneration committee.

4.1.2. Ratio between fixed and variable compensation

79. Consequently, an institution should set in its remuneration policy explicit maximum ratio(s) on the variable component in relation to the fixed component of remuneration.

81. The reason is that …., whereas a staff member with a more balanced ratio is less incentivized to do this.

Comment: Limiting the maximum bonus opportunity and/or the percentage to base salary leads to non-performance once the max opportunity is reached. This can endanger the institution as a whole. We would propose linking caps to certain company performance criteria. If the company performance criteria is reached the cap can be increased. In this way we still motivate people to perform without neglecting the risk effect of this performance.

4.2.4. Performance measurement

99. From a prudential point of view, relative measures pose more risks than absolute measures since they can encourage excessive risk taking. Thus, they should be used with caution and always supplemented with other metrics and controls, including the use of prudent judgmental analysis during the awarding process

Comment: Not necessarily. The individual overperformance might be no overperformance any longer when measuring against the market - and a low performance which is relative to market an overperformance still should be rewarded, since this is a clear indicator that the management of this company did better than the other - a clear performance approach!

4.4.2. Cash vs. instruments

a. Kind of instruments
122. Where appropriate and applicable, the proportion of the variable remuneration that is paid out in instruments (either upfront or deferred) must be a combination, appropriately balanced, of both categories.

- Comment: It is completely unclear what determines appropriateness and applicability in this respect. We recommend to link the payout to share/share-linked OR other instruments like hybrid capital.

- 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: Insituts-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 institution.

b. Retention periods
125. retention periods are coupled with the vesting of instruments.

Comment: A retention period on top of deferral/vesting periods for eg the immediate payout was never mentioned before. This would lead to the fact that one might have to tax the share payment without having a hand on it, which reduces the cash part to zero. Thus having still the risk that the shares will develop in a non-favourable way. A retention on top of the deferral is not acceptable.

"Malus"
129. Instruments paid upfront belong to the staff member (…) which imply that no malus clauses can be applied to them.

131. Once an initial variable remuneration component has been awarded to the staff member, and an upfront part has already been paid, the institution still will be able to adjust, by way of a reduction, the variable remuneration as time goes by and the outcomes of the staff's actions materialize.

Comment: We consider these statements as conflicting and would appreciate a clarification that the malus cannot be applied to payouts.

5.1.1. Specific and general requirements on disclosure, 146. The disclosure must be published on, at least, an annual basis and as soon as practicable. Supervisors will expect the institution's first disclosure reports in 2011; institutions can undertake an evolutionary process for the first periods:

The first disclosure report should be published in 2011, however the Guidelines set out that the institutions can undertake an evolutionary process for the first period. The Guidelines should clarify what is meant by the "evolutionary process for the first period".

Sincerely,

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