



BDL Markgrafenstraße 19 10969 Berlin Germany

EBA

One Canada Square (Floor 46)
Canary Wharf
London E14 5AA | UK

Contact:

Dr. Matthias Pytlik
pytlik@leasingverband.de
Fon +49(0)30-20 63 37-21
Fax +49(0)30-20 63 37-30

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EBA/CP/2015/03: 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

Dear Sirs,

we, as the Federal Association of German Leasing Companies, the *Bundesverband Deutscher Leasing Unternehmen (BDL)*, are convinced that a constructive dialogue is the right way to establish an appropriate and expertly supervision and herewith thank you for the opportunity to explain our views concerning this matter. The BDL represents the interests of the German leasing industry, which annually generates approx. 56 billion Euros in new contracts and has a significant share in the investment supplies of German medium-sized companies.

The leasing companies in Germany do not fall under the scope of application of EBA/CP/2015/03

It is goal of EBA/CP/2015/03 to establish guidelines for a system of rules and standards aimed at obliging enterprises of the financial sector to risk-oriented and transparent remuneration systems. By reference to Directive 2013/36EU and Regulation No. 575/2013 it is made clear, that so-called CRR Institutes (Credit Institutes and Investment Firms) are the circle of addressees of this Consultation Paper. The business model of such institutes, however, clearly differs from the business model of German leasing companies. This is why German leasing companies are subject to only limited supervision and are exempt from explicit equity regulations. It is for good reason, therefore, that leasing companies are not categorized as CRR Institutions and thus do not fall into the scope of application of EBA/CP/2015/03. In view of the subsequent implementation on a national level, a corresponding clarification would be desirable.

Otherwise, there is a risk that the guidelines on sound remuneration policies are applied to leasing companies in Germany as well. This, however, would not contribute to any improvement of the stability of the financial system. Instead, it would generate substantial costs by having to adapt the established remuneration systems within the German leasing sector. Because both is contradicting the principle of proportionality, we will focus on notes regarding question No. 5 (proportionality).



Page 2

Leasing in Germany

Because the business model of leasing companies is very heterogeneous and varies according to the frame conditions of the individual EU member states, we will at first point out the relevant characteristics of the German leasing business. Proceeding from there, we will explain how the principle of proportionality is violated by applying EBA/CP/2015/03.

The business model of leasing companies is mainly dominated by small and medium-sized companies, rooted in real economy and explicitly poor in risk

Roughly 180 leasing companies, together representing more than 90 percent of the German leasing market, are organized in the BDL. More than one third of these mostly owner-managed companies have only one managing director or sole director. Half of them have less than 15 employees and about three quarters of the companies have less than 50 employees. According to the number of their employees, these companies do not have a complex but rather a transparent form of organization.

The leasing objects are the core and center of this business model. In most cases, these are investment goods for other small or medium-sized companies. The leasing companies become the owners of investment goods which they lease to their customer for use during a defined and agreed period. Legal basis is the general German tenancy law. At the end of the leasing period - the period of provisions of assets for use - the leasing companies sell their investment objects, mainly on the market, using their own established sales channels.

Because the leasing object is in the center of the leasing process, precise know-how of procurement and sales markets and the technical and economic properties of these objects are required as basis of the leasing business. Thus, the leasing companies are firmly anchored in the real economy. Although leasing companies are reliant on refinancing their leasing transactions, but as a rule, taking on liquidity risks is avoided and refinancing with matching maturities is aimed at. This is in line with the distinctive orientation of the German leasing business towards and its rooting in the real economy.

The fact that many businesses are owner-led and require specific object-related know-how has resulted in a situation where the risks of the leasing business in Germany are particularly low. Even in cases of payment disruptions or non-payment, the lessors realize no or only minor losses, due to good access to the object and the characteristic object-related and marketing/recovery competencies. This conclusion is empirically proven by representative surveys¹.

Leasing companies have transparent remuneration systems that contain no incentives for misconduct/malpractice

Incentives for misconduct are always given in circumstances where decision makers have an asymmetrical claim to remuneration that allows them to participate in a company's success or failure in

¹ Refer to Deloitte (2013): The Risk Profile of Leasing: The Role of the leased Asset.



Page 3

ways that are not balanced. In leasing companies, however, the remuneration systems are designed according to the sector's standards and in ways as to ensure balance between the employee's remuneration and the company's long-term success.

It applies to the remuneration structures of all functional areas of a leasing company that variable remuneration components are nearly exclusively based on non-speculative revenue components that were already defined upon conclusion of contract and are realized within the scheduled term of the relevant contract. Thus, the reference base of the variable remuneration does not represent a stimulus for excessive risks, but rather ensures congruent development between the employees' personal remuneration and the company's long-term success.

In addition to leasing-specific remuneration models, the medium-size character and the roots in the real economy lead up to a situation where excessive bonuses as they were observed in the financial sector are nearly excluded.

Application of EBA/CP/2015/03 to leasing companies in Germany violates the principle of proportionality

The principle of proportionality is violated because EBA/CP/2015/03 fails to do justice to the medium-sized character of the German leasing sector. A regulation for this sector is further not required because leasing companies do not - neither directly nor indirectly - represent any risk for the financial system or could transfer any specific risk to this financial system. Such application would not be appropriate even for bank-dependent leasing companies, because these companies are also typically grounded in the real economy and are characterized by the same low-risk business model. Their mere structure as a group/association of companies does not justify application of EBA/CP/2015/03.

The following aspects of EBA/CP/2015/03, in particular, are opposing the principle of proportionality:

- Articles 12 and 14 will lead to a situation where remuneration agreements of **all** employees will become more complicated. This applies in particular to the variable part of the remuneration, for which Article 12 bindingly requires three reference criteria as calculation basis.
- Article 72 provides that **all** institutes must implement an analysis of the employees to define which employees belong to the "*Identified Staff*" to which extended requirements apply. Because such an analysis must be carried out even **annually** according to Article 83, this would lead to additionally expenditure, trouble and cost that are not in proportion to the risks or the size of many institutes.
- The expansion of the obligations for significant institutes to **all** subsidiaries of such institutes according to Article 74 will lead to a situation where the circle of the concerned institutes is widely enlarged and the principle of proportionality is not taken into consideration.



Page 4

To duly satisfy the principle of proportionality, it must be ensured that German leasing companies will not fall under the scope of application of EBA/CP/2015/03. To be open also for other institutes and/or groups of institutes affected in a similar manner, regulations for exemptions to the rule (minimum sizes) and institute-specific possibilities for exemption in particular for the articles cited above should urgently be created.

With kind regards

Bundesverband Deutscher
Leasing-Unternehmen e.V.

Horst Fittler
Managing Director

Dr. Matthias Pytlik
Head of Division
Business Economics and Financing