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ASSOCIATION FRANCAISE DE LA GESTION FINANCIERE

**Answer to EBA's consultation 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) N°575/2013**

EBA/CP/2015/03

The Association Française de la Gestion financière (AFG) represents the France-based investment management industry, both for collective and discretionary individual portfolio managements. More than 600 management companies are based in France. Many of them are entrepreneurial, often small in size; others are part of banking or insurance group, often bigger in size. AFG members manage 3,400 billion euros, making the Paris fund industry a leader in Europe for the financial management of collective investments (with 1,700 billion euros managed from France, i.e. 16% of all EU assets managed in the form of investment funds). In the field of collective investment, our industry includes – beside UCITS – the whole range of AIFs, such as: employee savings schemes, regulated hedge funds/funds of hedge funds, private equity funds, real estate funds and socially responsible investment funds. AFG is an active member of the European Fund and Asset Management Association (EFAMA) and of PensionsEurope. AFG is also an active member of the International Investment Funds Association (IIFA).

Introduction

The AFG has considered carefully the European Banking Authority's Consultation Paper on Draft Guidelines on sound remuneration policies, issued under Directive 2013/36/EU (CRD4), and is pleased to provide its answer here below.

AFG fully supports EBA's initiative to update the 2010 CEBS guidelines in order to promote sound compensation practice in the financial services industry, and its efforts to harmonize remuneration rules across national regulatory frameworks in the EU.

AFG notes, though, the increasing length of the Draft Guidelines, and regrets that there is not an update of the previous guidelines, but rather a full re-writing. More generally, AFG would prefer guidelines to be designed with a long-term perspective, and updates to capitalise on seasoned earlier rules.

AFG has a specific approach in its answer below, as it is representing the French asset management industry, a sector which is not the primary object of EBA's proposed remuneration guidelines.

However, AFG noted that EBA is considering extending significantly the scope of its rules to encompass whole or part of the EU's asset management industry (and indeed, potentially its non-EU subsidiaries and branches).

Given the very different business models between asset management and banking, and the corresponding very different risks[1] and regulatory frameworks, AFG does not believe that a one size-fits-all remuneration regulation will be workable throughout the EU financial industry, without severely hampering its competitiveness across all its sectors.

AFG notes that there is already a huge challenge in ensuring minimal consistency between financial regulation, labour and tax law in each country. As a result, it seems essential that new, fairly invasive rules be not rushed, without leaving the time for various other rule-setting institutions to learn and adapt.

AFG also notes that ESMA has designed carefully a new remuneration framework very well adapted to the asset management industry, enforced with its February 2013 AIFMD remuneration guidelines (soon to be propagated to the UCITS framework), and considers that a blanket application of EBA's banking rules would likely strongly destroy value for -and employment in- the EU asset management industry.

Thus, AFG thinks it is highly important that it voices clearly the points it believes are essential to maintain the EU asset management industry's competitiveness. AFG would like to point this industry's remarkable success, achieved to date.

Indeed, asset management's single rule book in the EU has been carefully designed, maintained and expanded for more than 30 years, and its comprehensive regulatory framework (with notably UCITS and now AIFMD as cornerstones) is widely acknowledged as a brilliant and adapted European construct, a world standard indeed.

[1] Risks are different. CRD IV addresses the systemic risk while asset management regulation addresses the risk alignment of interests between investors and portfolio managers.

AFG considers there are 5 main issues it would like to comment in EBA's proposal:

1. **Proportionality**

AFG has noted the exchange of letters with the EU Commissioner, and the debate reflected in the consultative paper, and has very strong concerns about the substance of the points made by both EBA and the EU Commissioner. Indeed, AFG observes that there seems to be a worrying evolution on the sense of purpose in this debate on proportionality. The purpose of a rule is not the rule itself, but what it brings to make our industry better, and more generally, our society better off. There is no risk alignment gain in making mandatory three year deferral of 40% of small bonuses, including in entities with some higher bonuses. It is obvious that "from a policy perspective", a meaningless rule would have to be revisited, per the law itself (i.e. in 2016).

Besides, it is fully clear to us (and to ESMA on similar language), that *"In particular it would not be proportionate to require certain types of investment firms to comply with all of those principles. »* (CRD4 recital 66), simply means what it says about complying with all principles in a framework of proportionality.

This being said, we note that national competent authorities have addressed the materiality / proportionality issue (ie defining a threshold of variable remuneration below which deferral, instruments, maluses and claw backs would not be required), in a very heterogeneous manner across the EU, creating unnecessary costs, complexity, and barriers to the proper functioning of the EU internal market.

AFG recommends that –via the guidelines- a single, absolute amount of variable remuneration be applied EU-wide, at a medium level between the various current national practices, noting that £167 000 is currently used in the UK's Remuneration Code. It would improve the level-playing field across the EU, while being usefully simple and cost-effective.

2. **Scope of the Guidelines in a Banking Group – subsidiarity principle**

AFG welcomes para. 104 of the consultation, which sets a clear role to the consolidating institution: namely, "ensuring the overall consistency of the remuneration policies".

AFG notes that Identified Staff caught in the EBA guidelines are exclusively those who have a material impact on the risk profile of the group (para. 63), and –together with further proportionality rules already defined in the 4 March 2014 RTS on MRTs (notably, on Material Business Units), believes it does provide for a clear divide between applicable regulatory frameworks in a Bank financial Group.

AFG also notes that EBA identifies and implements a principle of subsidiarity between applicable regulatory frameworks, e.g. in its para. 63 and 39.

AFG would like this subsidiarity principle between applicable regulatory frameworks to be more clearly and often stated in the EBA guidelines. It is indeed crucial that overlaps between regulatory frameworks are avoided as much as possible, and that a clear, transparent, simple and foreseeable regulatory architecture is harmoniously and progressively pursued in the EU financial services industry.

All this is all the more important since asset management and banking models differ strongly (see Introduction to this answer).

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In points 3 to 6 below, in spite of the fact that the EBA guidelines will not be relevant for asset management entities in general[1]*, AFG is making its comments below:*

(i) as general ones on the production of regulation of remuneration in the EU, and
(ii) as specific ones, when there may be some commonality with the regulatory framework applicable to asset management.

3. Complexity and administrative burden & costs

AFG noted, in EBA's Draft Guidelines, a number of instances where there seems to be unjustified complexity, leading to excessive administrative burden and dangerous increases in costs. Notably in section 9, identification of staff. Other instances are (for example):

- ➔ Para 34: too lengthy and detailed shareholders' disclosures on incentive structures[2] would prove awkward, as "the devil is often in the details" and could work against the sense of responsibility of boards and remuneration committees which are the most suitable bodies to monitor these incentive structure effectively;
- ➔ Para. 155, requiring controls on absence of hedging (rather than self-certification);
- ➔ Para 189 (notably 189b), requiring "clear and complete documentation" of discretionary judgement;
- ➔ Para 248, forbidding listed entities to use share linked instruments;
- ➔ Para 257, the relinquishing of the former CEBS obligation to have the same ratio of instruments in the upfront and the deferred part of variable remuneration is welcome, but then **AFG encourages EBA to go one step further in the simplification process**, and only require a minimum of 50% in instruments in the total variable remuneration, **and a higher share** of instruments **in the deferral** component **than in the upfront** component. This would enable to award deferrals fully in instruments, and thus allow for maximisation of the LT alignment of interests. Currently, the text makes it mandatory to have at least 50% of the upfront component of the variable remuneration in the form of instruments.

4. Governance

AFG is concerned that the missions assigned to the supervisory function are often excessive, in their executive dimension.

For example in para 44.h, the requirement "to assess the achievement of performance targets and the need for ex-post risk adjustment, including the application of malus and claw backs arrangements" is not specific enough in terms of scope, and could be construed as too executive a role for the Remuneration Committee.

[1] *, as asset management entities are in general outside of the scope of CRD4 (cf. article 4 of CRR 575/2013). In addition, usually, asset management subsidiaries are relatively small in proportion of their parent banking group (hence not a Material Business Unit).*

[2] *« The institution provides [the shareholders] with adequate information regarding the remuneration policy designed to* ***help them assess the incentive structure and the extent to which risk-taking is being incentivised and controlled****,* ***as well as the overall cost*** *of the remuneration structure »*

Having a supervisory function vested with excessive executive authority is widely accepted to be contrary to good governance, and AFG urges EBA to carefully define assignments given to the supervisory function taking this consideration into account.

5. Risk alignment

AFG welcomes para. 268 and 269, which are helpful in structuring efficient and healthy remuneration policies and practice.

In para 263, though, AFG considers that excessively long deferral and retention periods will become costly and impracticable over time. In AFG's opinion, only in exceptional cases should deferrals and retention periods altogether be longer than five or six years.

6. Other comments

In addition to the 5 key points above, AFG would like to make the following comments:

- Para 25: only heads of control functions should be concerned, not "senior managers".
- Para 80: this paragraph needs rewording / merging into para. 81: (i) all proportionality factors should be mentioned (size, internal organization, nature, scope and complexity of activities, as indicated in para 81); (ii) actually, "large and more complex institutions" may have simple remuneration policies and risk measurement approaches (and smaller and less complex firms may have by nature of their activities, more sophisticated remuneration policies…°).
- Para 120 a: *Again, though not concerned strictly speaking,* AFG considers that the cap should be applied at award date, to ensure optimal risk aligned incentive. This paragraph is unclear, as it seems to make confusion between award and vesting date. Also, AFG disagrees with the definition of Long Term Incentive in the Draft Guidelines: generally speaking, a LTIP has an initial (unique) award date, followed by one or several vesting dates.

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