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SPECIALISED CONSUMER CREDIT PROVIDERS IN EUROPE

Leaseurope
The Voice of Leasing and Automotive Rental in Europe

Eurofinas/Leaseurope response to the EBA Consultation on Draft Guidelines on Sound Remuneration Policies

Eurofinas and Leaseurope, the voices of consumer credit and leasing at European level, welcome the opportunity to respond to the European Banking Authority's (EBA) Consultation on Draft Guidelines on Sound Remuneration Policies.

Before answering to the specific issues posed in the consultative document, our response describes the important role that leasing and consumer credit providers play within the European economy as well as the main characteristics of these firms, the EU regulatory environment for such players and how they are positioned within the EU financial system.

In 2014, consumer credit providers that are members of Eurofinas helped support European consumption by making more than 356.3 billion EUR goods, services, home improvements and private vehicles available to individuals[1]. By providing access to finance to individuals and households, consumer credit supports the social and economic well-being of millions of consumers across Europe.

In 2014, the leasing firms represented through Leaseurope's membership helped European businesses invest in assets worth more than 274.2 billion EUR[2]. Leasing is used by more European SMEs than any individual category of traditional bank lending taken altogether[3] and is also extremely popular amongst larger corporates[4].

In Europe, leasing and consumer credit firms either can be banks, bank-owned subsidiaries, independent firms or the financing arms of manufacturing companies (known as captive companies). When they are banks or belong to a banking group, leasing and consumer credit companies are required to apply EU prudential regulation, either directly at legal entity level or through the inclusion of their activities in the requirements that are applied to the group at consolidated level. Also, depending on the Member State, EU prudential regulation may be applied to financial institutions. The EBA guidelines at hand are therefore not only likely to apply to our member credit institutions, as well as their subsidiaries, but also to non-bank, members.

[1] Eurofinas 2014 Annual Statistical Enquiry
[2] Leaseurope 2014 Annual Statistical Enquiry
[3] Leaseurope; Eurostat; "The Use of Leasing Amongst European SMEs" by Oxford Economics, Nov 2011
[4] Access to Finance of SMEs, ECB survey

It is important to stress that the major share of the leasing and consumer credit industry is owned by banking groups. Leasing and consumer credit entities themselves are not deposit taking institutions[5]. **As these firms do not receive repayable funds from the public they do not pose a threat to depositors**. Added to which, unlike other finance products, for loans and leases to consumers and businesses, the risk lies with the finance company rather than the consumer.

Whether bank-owned, captive or independent, European consumer credit, asset finance and leasing organisations rely heavily on the banking sector to fund their operations. With all European credit institutions required to apply European prudential regulations, **the exposures that banks are able to take on in relation to consumer credit, asset finance and leasing providers are limited in size and closely monitored**.

Leasing and consumer credit providers have specialist expertise, perform prudent collateral valuation and have in-depth knowledge of their customers with which they manage the risks that are part of their business. It is worth stressing that the specialised nature of consumer credit firms and lessors means that they have a unique understanding of their clients and asset markets and are able to track the level of risk they are exposed to very carefully.

General observations

Eurofinas and Leaseurope support the work of the EBA in promoting sound remuneration policies in the European financial sector. We agree that remuneration policies of credit institutions must be consistent with and promote sound and effective risk management. They should also not encourage risk-taking that exceeds the level of tolerated risk of these institutions. It is important that, in the process of achieving such framework, no issues with regard to legal certainty will or can arise. In this respect, Eurofinas and Leaseurope believe that the guidelines at hand do not provide sufficient clarity with regard to their scope of application. Further clarification should therefore be provided.

We share the view of the EBA that the remuneration requirements laid down in the Capital Requirements Directive (CRD) and thus the EBA Guidelines, must be applied in a manner and to the extent that is appropriate to the institutions' size, internal organisation and the nature, scope and complexity of their activities.

Application of the principle of proportionality is extremely important. Smaller organisations should not be treated the same way as large systemically important financial institutions. Firms that are only involved in low-risk activities, such as consumer credit, asset finance and leasing transactions, should also not be subject to the same rules as institutions involved in investment type of activities that, due to their very nature, can impact the sector in its entirety.

Flexibility

We believe that the definitions of 'staff', 'identified staff' and 'remuneration' should be further specified. Though we understand that sufficient flexibility is needed to catch the diversity of the different types of financial intermediaries in the European financial sector, their staff and remuneration, such flexibility should not lead to legal insecurity/uncertainty for obliged firms.

[5] Unless they have made the decision to opt for a banking license precisely in order to be able to take deposits, in which case they are subject to Basel standards through the EU legislation as any other bank. However, deposit taking providers remain the exception in most EU countries.

Scope

We find the application of the principle of proportionality to the remuneration requirements in the CRD and the EBA guidelines very important. We think these requirements have been designed principally for high risk-taking, internationally active and systemically important institutions.The economic roles played by the consumer credit, asset finance and leasing industries (supporting private consumption, business investment, and the manufacturing and distribution of goods) must not be hampered by any ill-suited regulatory initiative. In particular, any regulatory framework must be designed and applied proportionately to avoid disrupting the supply of consumer credit and leasing products and should not negatively affect competition within the sector.

Consumer credit, asset finance and leasing providers support the real economy and their activities are, by their very nature, low-risk. In line with the aim of the guidelines, to prevent excessive risk-taking in the European financial sector, we believe such firms should be out of the scope of the CRD requirements and EBA guidelines.

Smaller entities and/or firms involved in less risky type of activities should be out of the scope of the EBA guidelines. Should EU authorities nevertheless decide that such firms should be in scope, we would recommend that certain remuneration requirements be neutralised. Also, we think specific staff members should be specifically excluded from the guidelines.

Questions

Q 1: Are the definitions provided sufficiently clear; are additional definitions needed?

Staff

We think the definition of staff should be further clarified.

‘Identified staff’ is defined as ‘those staff whose professional activities have a material impact on the institutions risk profile’. It is unclear what is meant by ‘a material impact on the institutions risk profile’. We ask the EBA to clarify what such impact would entail, preferably with quantitative indications.

‘Normal’ staff is defined by the EBA as ‘all employees of an institution and its subsidiaries, including subsidiaries not subject to the CRD, all members of the management bodies within that scope and any other person acting on behalf of the institution and its subsidiaries’.

We are strongly concerned by this definition which seems to cover all staff irrespectively of functions and profile. Non-financial functions or where there is no link to the core business of a relevant credit and financial institution should be excluded from this definition. Additionally, we think remuneration policies of business partners that act on behalf of an institution should also be left out of the scope. We are worried by the potential operational consequences of such a definition.

Subsidiaries of significant institutions

The EBA guidelines fittingly impose more and stricter obligations on significant institutions than on institutions that are not significant. However, it is unclear whether subsidiaries of such institutions that would not classify as significant should also be treated as significant institutions.

Section 6.4 of the draft guidelines provides that significant institutions at individual, parent company and group level must establish a remuneration committee. Eurofinas and Leaseurope strongly believe that subsidiaries should not (automatically) be treated as their mother company. Subsidiaries typically have different business models, which necessarily respond to different risk strategies and remuneration policies. This would be consistent with the objectives of the CRD provisions on sound remuneration to treat subsidiaries of significant institutions only as a significant when justified by the institutions' size, internal organisation and the nature, scope and complexity of their activities.

We ask the EBA to specify in its definition of 'significant institution' that subsidiaries of significant institutions are, in principle, not regarded as 'significant', unless the size or nature of the subsidiary's activities suggests otherwise. Alternatively, we ask the EBA to include such a specification in a definition of 'non-significant institutions'.

Q 5: All respondents are welcome to provide their comments on the chapter on proportionality, with particular reference to the change of the approach on 'neutralisations' that was required following the interpretation of the wording of the CRD. In particular institutions that used 'neutralisations' under the previous guidelines for the whole institution or identified staff receiving only a low amount of variable remuneration are asked to provide an estimate of the implementation costs in absolute and relative terms and to point to impediments resulting from their nature, including their legal form, if they were required to apply, for the variable remuneration of identified staff: a) deferral arrangements, b) the pay out in instruments and, c) malus (with respect to the deferred variable remuneration). In addition those institutions are welcome to explain the anticipated changes to the remuneration policy which will need to be made to comply with all requirements. Wherever possible the estimated impact and costs should be quantified, supported by a short explanation of the methodology applied for their estimation and provided separately for the three listed aspects.

Neutralisation

It is clear from Article 92(2) and 94 CRD that remuneration requirements are not meant to be applied in the same way to all institutions. Recital 66 CRD also provides that institutions may dis-apply certain remuneration requirements insofar as these are disproportionate.

We think that there are no substantial changes between the CRD III and the CRD IV provisions on proportionality. We therefore do not believe there is a need to deviate from the existing interpretation.

We think that, taken altogether, these provisions allow for the neutralisation of remuneration requirements. This is in line with the European Securities and Markets Authority's (ESMA) and several national supervisors' interpretation of the CRD III and/or CRD IV.

We understand that the European Commission recently provided an opinion on article 92(2) CRD according to which all remuneration requirements have to be applied to each institution[6]. We disagree with this reading of the text. We note that the opinion was provided by the Directorate General for Justice and Consumers. We hope that the Directorate General for Financial Stability, Financial Services and Capital Markets Union will also be given an opportunity to contribute to this discussion.

We would also like to point out that some national supervisors already opted for the neutralisation of certain requirements. For example, in Germany, the provisions in points (l), (m) and (n) of article 94(1) CRD, namely the deferral of variable remuneration, its pay-out in instruments and malus are not applied to small and non-complex institutions under the threshold of 15 billion EUR total balance sheet. This is also the case in France where institutions or groups under the threshold of 10 billion EUR total balance sheet benefit under strict conditions from adjustments from the CRD4 remuneration requirements,

Against this background, Eurofinas and Leaseurope believe that the requirements for variable remuneration regarding material risk-takers should be neutralised for small institutions, as well as for institutions with only small amounts of variable remuneration. We believe that the general framework ensures that the remuneration is in line with the risk profile, values and the strategy of the company. Further requirements would prove disproportionate and excessively burdensome for consumer credit, asset finance and leasing providers especially given the low risk nature of their activities.

Remuneration policies cannot exclusively be addressed from the perspective of corporate governance, and risk-taking. It should also be recognised as a key component of firms' recruitment packages and attractiveness for prospective staff. It is important that, as a result of these new standards, smaller entities are not placed at a disadvantage in the labour market thereby affecting their ability to compete with larger operators.

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[6] See European Commission's 23 FEB 2015 letter to the European Banking Authority on Article 92(2) CRD