

**Response from the Italian Banking Association  
to the EBA consultation document**

**Draft Guidelines  
on remuneration policies and practices related to the sale and  
provision of retail banking products and services**

March 2016



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The Italian Banking Association is grateful for the opportunity to contribute to the definition of the guidelines for sound remuneration policies related to the sale and provision of retail banking products and services.

## PRELIMINARY REMARKS

Prudential regulations for the banking sector (Directive 2013/36/EU, CRDIV) already contain cogent provisions for the design of staff remuneration policies, with specific rules governing the protection of consumers' interests.

In order to ensure that institutions have sound remuneration policies in place, it is appropriate to specify clear principles for the governance and structure of remuneration policies. In particular, remuneration policies should be aligned with the risk appetite, values and long-term interests of the credit institution or investment firm. For this purpose, assessment of the performance-based component of remuneration should be based on long-term performance and take account the current and future risks associated with that performance. Competent authorities shall ensure that [...]

*"The remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking that exceeds the level of tolerated risk of the institution"* (CRDIV, art. 92, para. 2, letter a)).

*"The remuneration policy is in line with the business strategy, objectives, values and long-term interests of the institution, and incorporates measures to avoid conflicts of interest"* (CRDIV, art. 92, para. 2, letter b)).

Remuneration policies and practices should be designed in such a way as to guarantee respect for legal and regulatory provisions. Especially if they relate to internal or external distribution networks, incentive mechanisms cannot be based solely on commercial indicators, but should also be inspired by criteria of fairness in customer relations, legal and reputational risk control, client protection and loyalty.

In this respect, the ESMA Guidelines on remuneration policies and practices (MiFID) add specific rules for the design of remuneration policies, so as to prevent conflicts of interest between companies, staff and clients in relation to provision of the investment services (listed in Section A of Annex I of MiFID and the ancillary services listed in Section B thereof).

The purpose of the ESMA guidelines is to ensure the consistent and improved implementation of the existing MiFID conflict of interest and conduct of business requirements in the area of remuneration.

The ESMA guidelines apply to investment firms (as defined in Article 4(1)(1) of the Markets in Financial Instruments Directive 'MiFID'), including credit institutions when providing investment services, UCITS management companies and external Alternative Investment Fund Managers (AIFMs) when they provide individual portfolio management investment services or non-core services (within the meaning of Article 6(3)(a) and (b) of the UCITS Directive and Article 6(4)(a) and (b) of the AIFMD).

According to the ESMA Guidelines, *“when designing or reviewing remuneration policies and practices, firms should consider the conduct of business and conflicts of interest risks that may arise. A firm’s remuneration policies and practices should be aligned with effective conflicts of interest management duties (which should include the avoidance of conflicts of interests created by those remuneration policies and practices) and conduct of business risk management obligations, in order to ensure that clients’ interests are not impaired by the remuneration policies and practices adopted by the firm in the short, medium and long term (Guidelines on remuneration policies and practices” (MIFID), para. 13).*

*“Remuneration policies and practices should be designed in such a way so as not to create incentives that may lead relevant persons (Persons who can have a material impact on the service provided and/or corporate behaviour of the firm) to favour their own interest, or the firm’s interests (for example in the case of self-placement or where a firm promotes the sale of products that are more lucrative for it), to the potential detriment of clients” (Guidelines on remuneration policies and practices (MIFID), para. 14).*

Therefore, the CRDIV and the ESMA Guidelines contain specific provisions about the design of remuneration policies for internal or external distribution networks. The principles in the EBA Guidelines confirm these provisions and do not generally represent an additional obligation for institutions.

## CONSULTATION QUESTIONS

### Question One: Do you agree with Guideline 1 on design?

The EBA Guidelines are addressed to:

- *competent authorities as defined in Article 4(2)(i) of Regulation (EU) No 1093/2010 (EBA authority). With respect to creditors and credit intermediaries<sup>1</sup> referred to in the definition of ‘Institutions’ in paragraph 13, which are not credit institutions, payment institutions or electronic money institutions as referred to in that definition, the guidelines apply to the extent that those authorities have been designated as competent for ensuring the application and enforcement of the provisions of Directive 2014/17/EU to which these guidelines relate;*
- *financial institutions as defined in Article 4(1) of Regulation (EU) No. 1093/2010.*

The banking products and services considered are credit agreements, deposits, payment accounts, payment services, payment instruments, other means of payment, electronic money, other forms of credit and credit agreements in line with Article 1(5)(e) of Regulation (EU) No. 1093/2010.

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In designing remuneration policies and practices, intermediaries apply the same principles, taking into account all the risks of a conflict of interests between company, staff and clients - for all products and services (investment, payment or financing).

Even if there is a different scope in term of intermediaries, products and services with respect to the CRDIV and the ESMA Guidelines, ABI believes that the EBA Guidelines do not propose a different design for remuneration policies.

Therefore, in order to avoid conflicts of interests between company, staff and clients, ABI agrees with the design proposed: all companies operating in the same market should respect the same rules, governing investment and banking services.

#### **Question Two: Do you agree with Guideline 2 on documentation?**

The CRDIV and the ESMA Guidelines contain specific provisions about the documentation to be produced for public disclosure and supervision.

The principles in the EBA Guidelines are coherent with these provisions and do not generally represent an additional obligation for institutions. It seems appropriate to confirm these provisions in terms of their scope and application to the banking products and services.

However, documentation has to be kept for at least five years from the last date that it applied. The ESMA Guidelines do not contain the same provision. It is necessary to align the two regulations, as they apply, in many cases, to the same institutions.

#### **Question Three: Do you agree with Guideline 3 on approval and monitoring?**

On approval and monitoring, CRDIV and the ESMA Guidelines have the same provisions.

The principles in the EBA Guidelines are coherent with these provisions and do not generally represent an additional obligation for institutions.

Paragraph 3.2 says "*The management body should seek a sound independent advice on the institution's remuneration policies and practices in relation to the fulfilment of these guidelines. Where established, the remuneration committee may provide this independent advice.*"

In order to avoid any doubt, ABI asks for specifying that, such independent advice should be provided by an independent internal control function, or by an independent internal body, or, where established, by the Remuneration Committee of the bank - instead of by an external body.

#### **Question Four: Do you see a need for any additional requirements?**

No additional requirements seem to be necessary.

**Question Five: Do you have any other comments?**

Chapter 2, point 8 says "*Competent authorities may wish to consider applying these guidelines in relation to persons other than consumers as defined in paragraph [13], such as micro-enterprises and small and medium-sized enterprises (SMEs).*"

ABI deems it appropriate the pursuit of maximum harmonization on this item, concentrating on target of consumers.

In addition, ABI highlights that freedom to rule on this specific point creates different solutions and distortive effects from a competitive point of view. For this reason, ABI suggests deleting point 8.

For the same reason ABI suggests deleting point 9, chapter 2 "*Finally, competent authorities may wish to consider extending the remuneration principles set out in these guidelines also to remuneration (also referred as "commissions") paid by financial institutions to credit intermediaries.*"

\* \* \*

ABI asks for using the definition of "remuneration" as provided in the EBA Guidelines on sound remuneration policies, published on 21st December 2015.

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As far as the definition of "remuneration" is concerned, ABI suggests specifying how to assess non-monetary forms of remuneration.

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ABI suggests that career progression should not be included in the definition of remuneration, preserving the current definition provided in the EBA Guidelines on sound remuneration policies, published on 21st December 2015.

Career progression is not directly linked to remuneration policies, but rather to the tasks assigned and then typified by applying specific legal, contractual, management and organizational rules. Further, the effects of career progression have a stabilizing nature and are more linked to the notion of fixed remuneration.

Where considered appropriate, it would be possible to evaluate the definition of a principle confirming that career progression depends on skills and responsibilities and is not a way to compensate results and performance that are subject to remuneration policies.