

Eurofinas response to the EBA Consultation on Draft Guidelines on Remuneration for Sales Staff

22 March 2016

ABOUT EUROFINAS

Eurofinas, the voice of consumer credit at European level, welcome the opportunity to respond to the European Banking Authority's (EBA) Consultation on Draft Guidelines on Remuneration for Sales Staff.

Eurofinas brings together associations throughout Europe that represent consumer credit providers. The scope of products covered by Eurofinas members includes all forms of consumer credit products such as personal loans, linked credit, credit cards and store cards. 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 individuals¹. By providing access to finance to individuals and households, consumer credit supports the social and economic well-being of millions of consumers across Europe.

Introductory remarks

Eurofinas supports the work of the EBA in addressing consumer detriment in the European financial sector. Against this background, we see fair commercial practices, and well-designed remuneration policies as particularly valuable for a sustained relationship between retail financial services firms and consumers based on trust.

We believe that mis-selling is primarily the result of corporate decisions taken by individual firms – which may not be shared by other market participants and can be corrected by enhanced enforcement and supervision. We feel that adding on a layer of standards may in fact be counter-productive unless sufficient flexibility is guaranteed to adjust to various business models and products.

We view the concept of “consumer interest” as very subjective and difficult to implement in practice. Although we agree that remuneration policies should be designed in line with end users’ interest, this concept cannot be used as a standard to assess remuneration policies without further clarification of the concept.

We emphasise that the draft guidelines must be sufficiently flexible to adjust to the different business models of the credit and financial institutions covered. In this regard, we draw your attention to the potential detrimental impact we believe - the EBA’s initiative will have on distribution-only models.

Specific observations

Competition /proportionality

As recognised by the EBA, the remuneration of staff is an important means by which financial institutions attract, motivate and retain employees with the skills needed for the institution’s success. In this respect, we emphasise that any regulatory framework must be designed and applied proportionately to avoid disrupting the supply of consumer credit and should not negatively affect competition within the sector.

We fear that requirements such as independent advice, effective controls and regular review will be particularly burdensome for smaller entities. These obligations are additional to adjustments to the

¹ Eurofinas 2014 Annual Statistical Enquiry

business operation that have already been made in light of existing and new requirements² in the field of remuneration policies in the context of the CRD IV. 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.

Consistency

Although we appreciate the different nature of the EBA Guidelines on Sound Remuneration Policies, and the EBA Guidelines for Remuneration for Sales Staff, we emphasise that it is of utmost importance that the different sets of rules are consistent with each other.

Any EBA Guidelines must also be consistent with “level 1” regulation. The Capital Requirements Directive does not require institutions that are not significant to establish an advisory process on remuneration policies. Yet, the EBA Guidelines at hand requires all institutions to seek independent advice on remuneration practices.

Good Faith and Responsibility

As previously mentioned by our Federation, we think supervisory policy should be based on the principle of “good faith” as opposed to “bad faith”. The objective should be to ensure that remuneration policies do not give rise to consumer detriment, and at the same time build consumer confidence.

We also strongly believe that individual responsibility should be at the heart of supervisors’ policy. We think this very much missing from the proposed guidelines and is valid for firms but also for consumers. Ultimately, the responsibility of contracting a financial agreement lies with the consumer. Regardless of remuneration contracts of sales staff, consumers are free to choose whichever product they wish. This obviously requires from consumers to compare different offers and “shop around”. The industry should not endorse the responsibility of restricted market search activity by consumers, misconduct or lack of financial education.

Consultation questions

Guideline 1: Design

1.1. The institution should design and implement remuneration policies and practices that take into account the rights and interests of consumers and prevent conflicts of interest from arising whereby relevant persons favour their own interests, or the institution’s interests, to the detriment of consumers.

1.2. When designing the remuneration policies and practices, institutions should consider whether these policies and practices introduce any risks of detriment to consumers and should mitigate such risks from arising.

² e.g. to ensure that the general principles under article 92 CRD IV and with regard to variable remuneration are met.

1.3. The human resources function of the institution should participate in and inform on the design of the remuneration policies and practices. In addition, where established, the risk and compliance functions should provide effective input for the design of the remuneration policies and practices.

1.4. For the purpose of evaluating the performance of a relevant person, the institution should define in the remuneration policy and practices the appropriate criteria to be used to assess performance, taking into account the rights and interests of consumers.

1.5. When designing the remuneration policies and practices, the institution should consider both, qualitative and quantitative criteria for determining the level of variable remuneration to ensure that the rights and interests of consumers are adequately considered.

1.6. The institution should not design remuneration policies and practices that: a. solely link remuneration to a quantitative target for the offer or provision of products and services; or b. promote, to the potential detriment of consumers, the offer or provision of a specific product or category of products over other products, such as the offer or provision of products which are more profitable for the institutions over others which are less profitable.

1.7. Where the remuneration policies and practices allow for variable remuneration, the institution should ensure that the ratio between the fixed and variable components of the remuneration is appropriately balanced and takes into account the rights and interests of consumers. Furthermore, the remuneration policies and practices in place should allow the operation of a flexible policy on variable remuneration, including the possibility to pay no variable remuneration where appropriate.

1.8. When designing remuneration policies and practices, the institution should ensure that monetary and/or non-monetary forms of remuneration do not introduce incentives for relevant persons to favour their own interests, or the institution's interests, to the detriment of consumers.

1.9. The institution should avoid unnecessarily complex policies and practices and unclear combinations of different policies and practices.

Question 1 – Do you agree with Guideline 1 on design?

Eurofinas fully agrees with the European Banking Authority that institutions should take into account the rights and interests of consumers when providing retail banking products and services to customers. In our view, it is very important that remuneration policies of our sales staff are also in line with this objective. Many of our member firms have in place balanced scorecards, which are used by managers to keep track of the execution and monitoring of activities by the staff within their control. Amongst others, these scorecards are used to ensure a high level of customer satisfaction, to monitor the performance of loans and default rates.

Any rules introduced by the EBA to further ensure consumer protection, must be proportionate and sufficiently flexible to adjust to the different business models of the credit and financial institutions covered. In this respect, we stress that that Guideline 1 may be particularly burdensome for smaller entities. Guideline 1.3 provides that the human resources function of institutions should participate in and inform on the design of the remuneration policies and practices. In practice, this would mean that those institutions that do not have a tailored human resources function – typically the smaller, less resourced ones – will be required to create such HR function. We believe that this is unnecessary, costly and excessively burdensome.

With regard to Guideline 1.6, it is important to highlight that costs and margins should not be the only factors to be taken into account to determine whether the relevant product is in the best interest of the consumer. All product characteristics are relevant in this respect, and consumer interest can only be determined on case-by-case basis. This must be reflected in the EBA Guidelines.

2. Documentation, notification and accessibility

2.1. The institution should document remuneration policies and practices, keep them for audit purposes for at least five years from the last date that they applied, and make them available to the competent authorities upon request. This documentation should include, but is not limited to: a) the objective of these policies and practices; b) the staff within scope of these policies and practices.

2.2. The institution should record how remuneration policies and practices have been implemented in practice, in order to demonstrate compliance to Competent Authorities.

2.3. Before being allowed to offer banking products or services to consumers, relevant persons should be clearly informed in a simple and transparent manner of the remuneration policies and practices that are applicable to them.

2.4. The remuneration policies and practices should be easily accessible to all relevant persons of the institution.

Question 2 – Do you agree with Guideline 2 on documentation?

Eurofinas agrees with Guideline 2 on documentation.

3. Approval and monitoring

3.1. The management body retains ultimate responsibility for the institution's remuneration policies and practices.

3.2. 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.

3.3. Where established, the compliance function should confirm that the remuneration policies and practices comply with these guidelines.

3.4. Changes to the remuneration policies and practices should only be made with the approval of the management body, or someone formally delegated from the management body.

3.5. The institution should review, at least annually, the remuneration policies and practices and confirm that they continue to be fit for purpose. Where established, the supervisory function should conduct this review.

3.6. The institution should establish effective controls to check that their remuneration policies and practices are being adhered to, and to identify and address incidents of noncompliance.

3.7. Where the institution identifies that a residual risk of consumers' detriment might arise as a result of the design of remuneration policies and practices as referred to in paragraph 1.2 of these guidelines, the institution should check at least annually, whether any of these residual risks are crystallising and causing detriment to consumers.

Question 3 – Do you agree with Guideline 3 on approval and monitoring?

In our view, it is important that institutions have in place a system to ensure that their remuneration policies remain consistent with the rights and interests of consumers. However, we do not support the requirement to seek sound independent advice, especially for our smaller members that do not have a remuneration committee. Any EBA Guidelines must also be consistent with "level 1" regulation. The Capital Requirements Directive does not require institutions that are not significant to establish an advisory process on remuneration policies. Yet, the EBA Guidelines at hand requires all institutions to seek independent advice on remuneration practices. In addition, we emphasise that Guideline 3.3 is too granular and should be removed.

Question 4 – Do you have any other comments?

Some requirements (such as on variable remuneration) overlap with the Guidelines from the EBA on Sound Remuneration Policies in the European Financial Sector. This is rather confusing and we ask the EBA to clarify any ambiguity in this respect.

Contact persons

Alexandre Giraud
Senior Legal Adviser
+32 2 778 05 64
a.giraud@eurofinas.org

Nadia Hazeveld
Junior Legal Adviser
+32 2 778 05 72
n.hazeveld@eurofinas.org

Eurofinas is entered into the European Transparency Register of Interest Representatives with ID n° 83211441580-56