

Circular

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EBA guidelines of 27 June 2016 on sound remuneration policies (EBA/GL/2015/22)

Scope

Credit institutions, branches established in Belgium of credit institutions governed by the law of non-EEA Member States, investment firms, branches established in Belgium of investment firms governed by the law of non-EEA Member States, settlement institutions and assimilated institutions, settlement institutions and assimilated institutions established in Belgium which are branches of foreign institutions and, finally, in the context of consolidated supervision, group supervision or supplementary conglomerate supervision, financial holding companies and mixed financial holding companies.

This circular shall apply to settlement institutions and assimilated institutions in the same way as it does to credit institutions and investment firms, insofar as it does not conflict with the legal provisions governing their respective legal statuses.

Entities falling under the scope of this circular will hereinafter be referred to by the generic term 'financial institutions'.

Summary/Objectives

This circular transposes the guidelines of the European Banking Authority (EBA) of 27 June 2016 on sound remuneration policies into the Belgian prudential framework.

These guidelines were published on 27 June 2016 and will replace the CEBS Guidelines on Remuneration Policies and Practices of 10 December 2010 as of 1 January 2017. They provide guidance on the actual monitoring of the remuneration policies and practices of financial institutions, as did the CEBS Guidelines. Financial institutions should therefore, in addition to the statutory provisions on sound remuneration policies, implement and comply with these guidelines.

This circular replaces the previous circular CBFA_2011_05 of 14 February 2011 on sound remuneration policies.

Structure

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Dear Madam

Dear Sir

This circular transposes the guidelines of the European Banking Authority (EBA) of 27 June 2016 on sound remuneration policies into the Belgian prudential framework. The guidelines drawn up by the EBA are attached to this circular in their entirety. The annex to this circular is available on the website of the National Bank of Belgium (NBB).

The EBA launched a three-month public consultation on these guidelines, which ended on 4 June 2015.

This circular is applicable from 1 January 2017 and replaces circular NBB_2011_05 on the same subject. The remuneration policy regulatory framework for credit institutions is already covered extensively in the governance manual, which was published on 7 December 2015. This circular will be added to chapter 4.1.6 of the said manual ('Remuneration Policy').

1. Background

According to Article 75(2) of CRD IV, the EBA must issue guidelines on sound remuneration policies which comply with the principles set out in Articles 92 to 95 of CRD IV. These guidelines were published on 27 June 2016 and will replace the CEBS Guidelines on Remuneration Policies and Practices of 10 December 2010 as of 1 January 2017. The latter were updated to reflect changes introduced by CRD IV and the supervisors' experiences in supervising financial institutions' remuneration policies.

The EBA guidelines form an extensive and comprehensive reference document. They provide guidance for the actual monitoring of the remuneration policies and practices of financial institutions, as did the CEBS Guidelines.

Hence, the EBA guidelines form an integral part of this circular and are annexed to it in the form of a link on the NBB's website. In Belgium, this circular shall apply to settlement institutions and assimilated institutions in the same way as it does to credit institutions and investment firms, insofar as it does not conflict with the legal provisions governing their respective legal statuses.

Financial institutions should therefore, in addition to the statutory provisions on sound remuneration policies, implement and comply with the EBA guidelines.

Since 2011, the NBB has annually performed a horizontal screening of the financial institutions' compliance with the remuneration policy rules. The NBB wishes to clarify the EBA guidelines in a limited number of areas which have been identified during these screenings as areas where improvements can still be made.

2. Clarifications on the EBA guidelines

a. Documentation of the process for selecting 'Identified Staff'

As set out in paragraph 83 et seq. of the EBA guidelines, it is the financial institution's responsibility to determine which persons should be qualified as 'Identified Staff'. These include in particular the categories of staff whose professional activities have a material impact on the credit institution's risk profile.

In order to allow adequate supervision, it is important that this selection process be documented sufficiently, including in respect of staff identified solely on the basis of the level of their remuneration, but who were not ultimately included because their professional activities were considered to have no material impact on the institution's risk profile. In this regard, it is not sufficient to list the names or functions of the staff and to specify one or more selection criteria. The order should be reversed: each selection criterion should be followed by the functions selected.

b. Importance of transparency

Transparency, not only towards the supervisor but also towards the other stakeholders, is essential for the pursuit of a sound remuneration policy.

In this context, the remuneration policy of each financial institution should comply with the following requirements: (i) a precise description of the different components of the fixed and variable remuneration respectively, in accordance with the criteria laid down in paragraphs 115 et seq. of the EBA guidelines; (ii) the use of clear definitions and criteria for performance measurement and risk adjustments; (iii) a clear description of the decision-making process with regard to the remuneration of 'Identified Staff', particularly the way in which the decisions on performance measurement and risk adjustments are made; (iv) where applicable, a clear description of the interaction with the group remuneration policy when determining bonus pools for the different activities.

Furthermore, the actual decision-making process regarding performance measurement and risk adjustments must be adequately documented, in particular with respect to the interaction between the use of risk-sensitive parameters and discretionary adjustments. Although decisions are rarely formulaic and often require a qualitative assessment, decisions taken on the different levels should be recorded clearly and completely.

c. Role of the risk committee

The risk committee has a special role to play in terms of remuneration policy. More particularly, the risk committee should examine whether the incentives in terms of variable remuneration are coherent with the management of the risks (i.e. whether they do not increase the risks), of the own funds requirements and of liquidity, taking into account the profitability prospects.

It is therefore important that the risk tolerance and strategy framework be integrated into the remuneration policy. In addition, the minutes of the risk committee should show that this matter receives the necessary attention.

d. Proportionality

Financial institutions should comply with the remuneration requirements in a manner and to the extent that is appropriate to their size and internal organisation and to the nature, scope and complexity of their

activities. Paragraph 77 of the guidelines contains a list of the criteria that can be taken into account for that purpose.

On this basis, large and more complex financial institutions should pursue a more complex remuneration policy with more advanced risk measurement methods, while smaller and less complex financial institutions may pursue a simpler remuneration policy and simpler methods. The latter institutions may also request the supervisor to be exempted from the requirement to pay in financial instruments.

Additionally, staff members who were awarded a variable remuneration of less than or equal to 75,000 euros should, by way of exception, because of their limited variable remuneration, not be subjected to the specific requirements on deferred payments and financial instruments. This is without prejudice to the requirement to qualify all staff who have a material impact on the financial institution's risk profile as 'Identified Staff'. Indeed, other rules such as (ex ante) risk adjustments to performance measurement and to the calculation of variable remuneration also apply to this category of staff.

e. Group context

The remuneration rules (including the maximum ratio between fixed and variable remuneration) should be complied with on a consolidated or sub-consolidated basis. This implies, among other things, that the Belgian rules also apply to foreign subsidiaries if these subsidiaries employ staff whose professional activities have a material impact on the group's risk profile.

Conversely, the application of the Belgian rules must not be circumvented by having staff of a Belgian subsidiary paid by a foreign entity of the group without any actual services being rendered to that entity in return.

f. Deferred payment

Concerning deferred payments (both the proportion of the variable remuneration to be deferred and the duration of the deferral), paragraph 238 of the guidelines requires that these vary according to, inter alia, the activities and the level of the variable remuneration of the staff member concerned, and that they therefore not be limited to the legal minimum. In this respect, paragraph 240 of the guidelines expressly provides that significant institutions should, at least for members of the management committee and senior management, apply deferral periods of at least five years.

In accordance with paragraph 242 of the guidelines, institutions should determine the level of variable remuneration which is qualified as being a particularly high amount, of which at least 60 % should be deferred. In no case should this amount exceed € 200,000.

g. Statement on internal control by the senior management

Without prejudice to the overall responsibility of the management body as described in paragraph 23 et seq. of the guidelines, the implementation of the remuneration policy is, in Belgium, also covered in the annual assessment of the internal control measures by the senior management, in accordance with circular NBB_2011_09 of 20 December 2011. For this assessment, the senior management will be assisted by the independent control functions, specifically to assess the implementation of the remuneration policy against the policies and procedures established by the management body and to assess these procedures against the legal and other regulatory requirements regarding remuneration policy. In this respect, particular attention is paid to the avoidance of incentives for excessive risk-taking and other non-constructive behaviour.

3. Entry into force

Financial institutions should, as of 1 January 2017, comply with the EBA guidelines as transposed and clarified in Belgium, and apply them to remunerations granted from that date onwards, regardless of when the performance to which this remuneration relates, was achieved.

A copy of this circular will be sent to your institution's accredited statutory auditor(s).

Yours faithfully

Jan Smets
Governor

Annex: EBA guidelines of 27 June 2016 on sound remuneration policies (EBA/GL/2015/22)