

European Banking Authority’s Consultation Paper on Draft Guidelines on Sound Remuneration Policies

Eumedion’s online response dated 1 June 2015

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

Several Member States, for example the Netherlands, have imposed the remuneration requirements of the Capital Requirements Regulation (CRR) and the Capital Requirements Directive IV (CRD IV) on undertakings that do not directly fall within the scope of CRR and CRD IV. From the perspective of an institutional investor with a Europe-wide investment portfolio it is important to have a common interpretation and/or application of the remuneration requirements of CRR and CRD IV. It should not make any difference whether those requirements are applied by institutions that fall under the scope of CRR and CRD IV or by other undertakings that should apply those requirements according to national law. The consistent application and interpretation of the remuneration requirements of CRR and CRD IV is only safeguarded if also those undertakings have to comply with the EBA guidelines on sound remuneration policies that interpret the remuneration requirements of CRR and CRD IV that they have to apply. We would like to suggest to reflect this position in the final guidelines.

Q 3: Are the guidelines regarding the shareholders’ involvement in setting higher ratios for variable remuneration sufficiently clear?

Eumedion welcomes that the guidelines extend and strengthen the guidance on shareholders’ involvement. Eumedion agrees with the approach as proposed in draft guideline 36. However, Eumedion is not sure whether the word ‘institution’ in the first sentence of draft guideline 36 (b) will give sufficient legal certainty about the situations in which 36 (b) should be applied. We experience that some of the largest Dutch listed financial institutions tend to interpret the wording of 36 (b) literally. Eumedion believes that the general assembly of shareholders of the parent undertaking of an institution, should – in the end – have the final say on the increase of the maximum level of the ratio between variable and fixed remuneration within the subsidiary of the institution regardless whether the parent undertaking itself is an institution. Another interpretation of 36 (b) would undermine the role of the general assembly of shareholders of the parent undertaking of the institution, would impair the intended – external – shareholder oversight on (excessive) risk taking by executives and certain employees of financial institutions and would leave room for circumvention of the CRD IV rules (the result of inserting a parent

undertaking which is not an institution would result in the non-applicability of draft guideline 36 (b)). To avoid this uncertainty Eumedion suggests considering an alternative wording of the first sentence of 36 (b). One possible alternative would be replacing the word 'institution' by: 'parent undertaking'. This should also be reflected in draft guideline 36 (d).

Furthermore, Eumedion would like to make a minor remark regarding the wording of draft guideline 36 (c). Eumedion believes that in case draft guideline 36 (b) (ii) is applied, the information mentioned in draft guideline 36 (c) should also be provided to the general assembly of shareholders of the parent undertaking in advance of the shareholders meeting mentioned in 36 (b) (ii).

Q 4: Are the guidelines regarding remuneration policies and group context appropriate and sufficiently clear?

Eumedion concurs with the proposed approach. Eumedion would like to make a minor remark regarding the wording of draft guideline 68. Eumedion believes that the approval of the maximum level of the ratio between variable and fixed remuneration within an institution in a third country should also be subject to the requirements of draft guideline 36 (b). Therefore Eumedion suggests to add the underlined text in the last sentence of draft guideline 68: *'Where these branches want to implement a ratio between the variable and fixed components of remuneration higher than 100 %, they should demonstrate to the competent authority that the shareholders of the institution, or where applicable the shareholders of the parent undertaking, in the third country have approved the higher ratio.'*

Q 8: Are the requirements regarding categories of remuneration appropriate and sufficiently clear?

Draft guideline 117 gives criteria to determine whether a component of remuneration should be considered as fixed remuneration. The fixed remuneration may consist of different elements: cash and non-cash elements. Eumedion believes that fixed remuneration should include regular payments in the form of shares (where such shares are awarded without consideration of any performance criteria and the number of shares is predetermined). We would like to suggest to reflect this position in the guidelines of section 11 (this should also be reflected in draft guideline 162 (d)).

Q 16: Are the provisions on the award of variable remuneration in instruments appropriate and sufficiently clear? Listed institutions are asked to provide an estimate of the impact and costs that would be created due to the requirement that under Article 94(1)(l)(i) CRD only shares (and no share linked instruments) should be used in parallel, where possible, to instruments as set out in the RTS on instruments. Wherever possible the estimated impact and costs should be quantified and supported by a short explanation of the methodology applied for their estimation.

Q 17: Are the requirements regarding the retention policy appropriate and sufficiently clear?

CRD requires that at least 50% of the variable remuneration comprise a balance of shares, equivalent ownership rights, share linked or equivalent non-cash instruments, in the case of a non-listed institutions

and, where possible, certain eligible other instruments. Eumedion concurs with the proposed approach of EBA that institutions should prioritise the use of instruments rather than award variable remuneration in cash (draft guideline 258). The institution itself is primary responsible to determine the right balance between the different types of instruments (draft guideline 258) thereby taking into account the interests of shareholders, creditors, bondholders and other stakeholders (draft guideline 252). The right balance may vary from institution to institution. It is rather difficult for competent authorities to determine in general what the best balance is. Eumedion therefore believes that the competent authorities should not be too prescriptive in this respect. Eumedion concurs with EBA that competent authorities should not limit the possibility to use instruments to such an extent that institutions cannot establish an appropriate balance between instruments of article 94(1)(l) of CRD. This is without prejudice to the requirement that at least 40% of the variable remuneration component should be deferred over a period which is not less than three to five years and is correctly aligned with the nature of the business, its risks and the activities of the member of staff in question (this is comparable to the requirements of article 94 (1) (m) CRD IV) and to the requirement that the shares shall be subject to an appropriate retention policy designed to align incentives with the longer-term interests of the institution (article 94 (1) (l) CRD IV and draft guidelines 259-264).