



Financial Services Reward

French rules implementing the Capital Requirements Directive V ('CRD V'): impact on CRD firms' remuneration policies as of performance year 2021

Key points to know

- On 7 June 2019, the finalised CRD V was published in the Official Journal of the European Union ('EU'). National legislators had until 28 December 2020 to implement the requirements of CRD V into local law.
- CRD V has been transposed in French law and entered into force on 29 December 2020.
- The French regulator ('ACPR') has not yet published guidelines in relation to these updated rules.
- However, credit institutions and other affected firms should review their remuneration policies in respect of these new prudential rules, which will apply to remuneration awarded in relation to performance years starting on or after 1 January 2021.

Background

On 7 June 2019, the final CRD V and Capital Requirements Regulation ('CRR II') were published in the Official Journal of the EU. The legislation entered into force on 27 June 2019 and Member States had until 28 December 2020 to amend their local CRD remuneration rules in order to reflect the new CRD V provisions. The changes to the remuneration disclosure provisions under CRR II will take effect in June 2021.

The Directive has been transposed into French law by a Government Ordinance n°2020-1635 completed by a Ministerial Order and entered into force on 29 December 2020 to take effect for performance year starting on or after 1 January 2021.

New provisions applicable to investment firms (implementing the EU Investment Firm Directive and Investment Firm Regulation) will enter into force on 26 June 2021.

In addition, French law has been adapted to take account of the entry into force of CRR II on 28 June 2021.

Key changes impacting all CRD firms subject to French rules:

- In applying the proportionality principle, it will still be possible for CRD firms in relation to Material Risk Takers ('MRT') to disapply certain rules relating to variable remuneration and discretionary pension benefits, in particular, deferral and payment in instruments requirements.
- Amended firm-wide proportionality thresholds for the disapplication of deferral, payment in instruments and discretionary pension benefits requirements.
- New individual proportionality threshold significantly lowered compared to current French market practice.

- Clarification in the scope of application of CRD V in a group context, confirming that subsidiaries which are not themselves subject to CRD V are not subject to the remuneration rules on a consolidated basis (for example, subsidiaries which are insurance or asset management companies in the EU or outside the EU). CRD V also introduces anti-circumvention provisions which allow local rules on remuneration to be applied individually to staff members of subsidiaries active in the asset management sector or offering certain investment services, when these individuals would be identified as Material Risk Takers of institutions within the group.
- The obligation to adopt and implement a gender-neutral remuneration policy.
- An amended quantitative test for identifying Material Risk Takers (which supplements the separate Regulatory Technical Standards on Material Risk Taker identification published by the European Banking Authority).
- A one-year increase in the minimum deferral period (from three years to four years) during which a significant portion of the variable compensation, in no case less than 40%, must be deferred. For members of the management body and senior management of significant institutions, a minimum five year deferral period must be applied. In addition, the deferred portion must be increased to 60% for particularly high amounts of variable remuneration.
- Some specific French rules already implemented under CRD IV remain unchanged; notably, share-linked instruments for listed companies were already allowed under French law.
- A retention period is still not required for CRD firms in France.

Deloitte's view

France has transposed CRD V aiming to strengthen and clarify prudential rules on remuneration for credit institutions.

As of performance year 2021, these updated remuneration rules could significantly affect a larger number of identified staff on account of changes in the application of the proportionality principle, both at firm and individual level.

CRD firms will need to review and update their remuneration policies and the new rules will apply to remuneration awarded in respect of performance years starting on or after 1 January 2021. We will follow up on any upcoming guidelines published by the French regulator and provide further update in due course.

Who to contact

If you would like to discuss this further, or have any questions, please speak to your usual Deloitte contact or any of the contacts listed below:

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