

## Regulatory News Alert

### Overview on the proportionate application of remuneration requirements across the EU

**29 November 2016**

#### **Overview**

On 21 November 2016, the European Banking Authority (EBA) published additional information on the application of the proportionality principle to the remuneration provisions laid down in the Capital Requirements Directive in response to a request for advice from the European Commission.

The information included in the EBA report is a follow-up to the Opinion on the application of proportionality, issued in December 2015, where the EBA called for a harmonized and consistent approach on the proportionate application of remuneration requirements across the European Union. In particular, the Opinion recommended that the CRD be amended to allow for waivers regarding the application of deferral arrangements and the pay out in instruments for small and non-complex institutions and for identified staff that receive only a low amount of variable remuneration when specific criteria are met.

#### **Rationale behind the setup of this document**

The European Commission invited the EBA to provide information as to how different EU, and if applicable, non-EU Member States, set up criteria as to define eligibility to the application of the proportionality principle, either on (i) the institutional level or (ii) at the individual level.

The application of the proportionality principles allows institutions to waive the application of the requirements set out under Article 94(1) points (l), (m) and the second subparagraph in point (o) of the DIRECTIVE 2013/36/EU (CRD IV):

- Payment in instruments
- Differed variable remuneration, including malus and clawback provision
- Provisions on discretionary pension benefits

## **Which criteria were used to review a possible harmonized approach?**

Based on the conducted analysis by the EBA, it was observed that different approaches across Member States are used to define eligibility to the proportionality principle. Most Member States allow for the application of waivers, either using thresholds based on the balance sheet total or the amount of variable remuneration or by making case-by-case assessments, taking into account the size, the internal organization, and the nature, scope, and complexity of the institutions' activities.

For the purpose of identifying the most appropriate approach to proportionality to be used, the European Commission invited the EBA to propose at least three different levels of criteria whereby institutions, which would meet the given criteria, could benefit from waivers from the indicated CRD IV provisions.

## **EBA proposal to the Commission**

- **Proportionality at the institutional level**

Based on the gathered data, the EBA conducted an analysis as to define potential criteria that would depend on three different total balance sheet thresholds. Based on the balance sheet total of single/solo credit institutions, the EBA calculated the potential effect of waivers at EUR 1.5 bn, EUR 5.0 bn and EUR 10.0 bn. Institutions of that size would have around 290 (EUR 1.5 bn), 690 (EUR 5.0 bn), or 1 260 (EUR 10.0 bn) staff members leading respectively to an aggregate market share of 2.8 percent (EUR 1.5 bn), 6.8 percent (EUR 5.0 bn), or 10.2 percent (EUR 10.0 bn).

- **Proportionality at the individual level**

The EBA argued it would be difficult to apply such a uniform binding criteria to determine a low level of variable remuneration suitable for all Member States, given in particular the differences between the total level of remuneration and use of variable remuneration components. Under such circumstances no proposal on individual criteria to be used across Member States has been submitted by the EBA to the European Commission.

## Deloitte's view: What would it mean for Luxembourg?

- **Proportionality at the institutional level**

The following impacts have been highlighted in the EBA's document:

The case of a threshold set at balance sheet total EUR 1.5 bn, hence 290 staff members

Excluded institutions of certain provisions on variable remuneration*	Share of balance sheet total excluded	Identified Staff excluded in %
35.1%	3.1%	22.7%

\*Data collected for 111 credit institutions

The case of a threshold set at balance sheet total EUR 5 bn, hence 690 staff members

Excluded institutions of certain provisions on variable remuneration*	Share of balance sheet total excluded	Identified Staff excluded in %
48.6%	9.5%	37.8%

\*Data collected for 111 credit institutions

The case of a threshold set at balance sheet total EUR 10 bn, hence 1,260 staff members

Excluded institutions of certain provisions on variable remuneration*	Share of balance sheet total excluded	Identified Staff excluded in %
58.6%	20.1%	49.3%

\*Data collected for 111 credit institutions

In this context, we believe EBA's additional information in respect to proportionality could be seen as quite positive. Indeed, only one out of the three proposed thresholds (EUR 1.5bn) would be of disadvantage, as the current threshold in Luxembourg is fixed at EUR 5bn.

- **Proportionality at the institutional level**

Even though no proposal has been submitted by the EBA to define harmonized criteria for the application of proportionality at the individual level, data observations have shown that thresholds based on variable remuneration range from EUR 8,000 in Lithuania to EUR 100,000 in France, Luxembourg, and Malta. Even if we will have to wait for the final position from the European Commission, we note that Luxembourg is not the sole Member State applying a threshold fixed at EUR 100,000. However, considering the huge difference between the Member States, it would be quite complicated to determine an absolute amount that would be applied uniformly.

## **Next Steps**

The EBA has submitted this report to the Commission to inform the review of the application of the proportionality principle to the remuneration provisions within CRD.

The European Commission is expected to provide its opinion in regards to the given report.

## **We are here to help**

Deloitte would be happy to set up individual workshop sessions with you to ensure clarity on remuneration requirements under any set of regulation and envisage any potential impacts.

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