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Regulatory news alert

Final Guidelines on remuneration policies and practices related to sales staff in the financial sector

10 October 2016

Overview

On 28 September 2016, the European Banking Authority (EBA) published its final guidelines on remuneration policies and practices related to the sale and provision of retail banking products and services.

The given guidelines specify requirements for the design and implementation of remuneration policies and practices, in relation to the offering or provision of banking products and services to consumers by institutions, with a view to protecting consumers from undesirable detriment arising from the remuneration of sales staff.

These guidelines will be applicable to Credit institutions, Creditors, Credit intermediaries, Payment institutions and Electronic money institutions and will enter into force as of 13 January 2018.

Rationale behind the setup of these guidelines

The EBA considers that the remuneration of staff in general, and of people directly offering or providing products or services to consumers in particular, is an important means by which financial institutions attract, motivate and retain employees.

Nonetheless, the European Authority considers that poor remuneration policies and practices have led to cases of misconduct and miss-selling by staff in financial institutions, where potential incentives might have been given to promote certain financial offerings or products over others, hence not taking into account the best interests of the consumers they were serving.

The CCP Research foundation has released a recent study which suggests that between 2004 and September 2015, 10 major global banks alone incurred cumulative conduct-related costs of around USD 210 billion equivalent to 2.8% of their revenues. More than 40% of the total costs were related to banks’ conduct with non-US consumers.

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So what applies to sales staff or people directly offering or providing products or services to consumers?

1. Remuneration policies should be designed and implemented so as to:

- enable a fully flexible policy on variable remuneration;
- take into account the rights and best interests of consumers;
- ensure that monetary and/or non-monetary forms of remuneration do not introduce incentives whereby relevant persons favour their own interests, or the institution's interests; and
- define appropriate performance evaluation criteria, both qualitative and quantitative measures to determine the variable remuneration.

2. Documentation, notification and accessibility

- Unlike CRD IV provisions, institutions should document remuneration policies and practices and keep them for audit purposes for at least five years. However, closely linked to CRD IV provisions the given documentation should include (i) the objectives of the remuneration policies and practices, (ii) relevant people falling under the scope of the specific remuneration provisions and (iii) how the remuneration principles and practices have been implemented;
- before being allowed to offer banking products or services to consumers, people in scope should be clearly informed of the remuneration provisions applicable to them; and
- the remuneration policies and practices should be easily accessible to all relevant persons of the institution.

3. The Governance of the remuneration policy shall be set up in a way where:

- the management body approves and retains ultimate responsibility of the institution's remuneration policies and practices, while seeking advice from other relevant instances / functions, such as the remuneration committee and the compliance function;
- the remuneration policy should be subject to an independent review (at least annually)

What does it mean for financial institutions already operating remuneration policies and practices as defined under CRD IV provisions?

With the newly issued guidelines by the EBA, the question arises as to how provisions set for sales staff fit into remuneration principles under CRD IV.

In regards to this, it is important to remember that remuneration policies, as well as their general principles should apply to all members of staff, with specific provisions for material risk takers. Under such circumstances financial institutions have to think about how to best integrate the different provisions into their remuneration practices. Indeed it looks like financial institutions would have to add a layer to their provisions:

- *General provisions applicable to all staff members*
- *Specific provisions applicable to material risk takers*
- *Specific provisions applicable to sales staff and people directly offering or providing products or services to consumers*

However this third layer will only have to be applied as of January 13th 2018. Nonetheless, if some of the sales staff match specific criteria as defined under the European Regulation, (EU) No 604/2014, on the identification criteria of material risk takers, they should already apply the specific provisions set for material risk takers of the institution.

Conclusion

Unlike CRD IV, these guidelines provide general principles rather than specific remuneration provisions. The major objective is to structure remuneration of sales staff in a way that does not give potential incentives as to promote certain financial offerings or products over others, hence to the disadvantage of consumers.

Even though the guidelines remain general principles, they represent another set of regulatory requirements to be taken into account by financial institutions.

Next step

- *Translation of the Guidelines into official EU languages*
- *After the translations, local regulators will have 2 months as to confirm whether they will comply (partially or totally)*
- *Entities should set-up a compliant remuneration policy including provisions as set under these guidelines by 13 January 2018.*

We are here to help

Deloitte would be happy to set up individual workshop sessions with its clients as to ensure clarity on remuneration requirements under any set of regulations.

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