

Regulatory News Alert

Circular CSSF 17/658

26 June 2017

On Adoption of the EBA Guidelines on sound remuneration policies (EBA/GL/2015/22)

On 16 June 2017, the Commission de Surveillance du Secteur Financier (CSSF) issued Circular CSSF 17/658, adopting the EBA Guidelines on sound remuneration policies under Articles 74(3) and 75(2) of Directive 2013/36/EU (EBA/GL/2015/22) and repealing Circular CSSF 10/496.

This circular clarifies the CSSF's expectations toward credit institutions and investment firms with regards to remuneration requirements as defined in the EBA Guidelines (EBA/GL/2015/22). These guidelines came into force on 1 January 2017.

The main changes from the previous European guidelines (i.e., CEBS Guidelines published on 10 December 2010) are:

- The introduction of a bonus cap for identified staff who may not receive a variable remuneration that exceeds 100 percent of their fixed remuneration (200 percent upon shareholders' approval)
- The process for identifying employees whose professional activities have or may have a material impact on the institution's risk profile, which shall be conducted on an annual basis
- The requirement for subsidiaries of a consolidating institution to implement, within their remuneration policy, the policy issued by the consolidating parent institution. This means that entities falling within the scope of the Directive 2011/61/EU (AIFMD) or Directive 2014/91/CE (UCITS V) could be forced to apply the bonus cap for identified employees.
- The payment of at least 50 percent of any identified employee's variable remuneration in shares, share-linked instruments, or equivalent non-cash instruments
- The application of malus or clawback arrangements up to 100 percent of the total variable remuneration, regardless of the method used for the payment

Most institutions already know and apply these requirements as they are either transposed into national law (Law of 23 July 2015 amending the Law of 5 April 1993 on the financial sector) or contained in the EBA Guidelines.

Implications on the application of the proportionality principle

Circular CSSF 17/658 also provides clarification on the CSSF's position concerning the application of the proportionality principle.

Seeing that the issue around proportionality has been a recent hot topic, the CSSF decided to wait for new European regulations clarifying the ability for smaller and less complex institutions to neutralize certain remuneration requirements under Directive 2013/36/EU (CRD IV). In the meantime, Circular CSSF 11/505 remains applicable and the remuneration requirements mentioned in this circular could still be neutralized through the application of the proportionality principle.

Next steps

The CSSF will soon update Circular CSSF 10/497 and 11/505 in order to reflect the latest regulatory updates.

Additional info

Please click the following link for more details:

http://www.cssf.lu/fileadmin/files/Lois_reglements/Circulaires/Hors_blanchiment_terrorisme/cssf17_658.pdf

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