European Association of Co-operative Banks
Groupement Européen des Banques Coopératives
Europäische Vereinigung der Genossenschaftsbanken

European Banking Authority
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Brussels, 2 September 2011
VH/WSC/B18/11-115

cp46@eba.org

CP46 on EBA Guidelines on the remuneration benchmarking exercise

Dear Sir, Madam,

The European Association of Co-operative Banks (EACB) welcomes the opportunity to provide comments to CP 46 on EBA Guidelines on the remuneration benchmarking exercise.

Please find our general and specific remarks on the following pages.

We remain at your disposal for any further questions or requests for information.

Yours sincerely,

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GENERAL REMARK

The Members of the EACB acknowledge the need to benchmark remuneration trends and practices as according to Article 22 of Directive 2006/48/EC as amended by Directive 2010/76/EU. We understand that EBA wishes to provide guidelines for the data collection exercise in order to enhance the convergence of supervisory practices, to ensure the consistency of the data collected and equal conditions for credit institutions.

- ***Seemingly lack of legal mandate***

However, we are not aware of a legal mandate for EBA to draft these Guidelines in Art. 22 of Directive 2006/48/EC. In the CRD III, Annex XII, Part II, point 15(f) CRD requires Members States to disclose to the public information on the remuneration policy and practices of the credit institution for those categories of staff whose professional activities have a material impact on its risk profile in the form of aggregate quantitative information on remuneration, broken down by business area. In Article 22(3) it is laid down that the Home Member States competent authorities shall use that information to benchmark remuneration trends and practices and shall provide the data to EBA. In Art. 22(4) *in fine* it is merely stated that EBA shall use the information to also benchmark remuneration trends and practices. Therefore, we question the appropriateness, necessity and proportionality of these guidelines.

- ***Avoid double reporting at national and EU level***

In addition, it should be mentioned that in many Member States banks already have the duty/obligation to disclose to the public and to provide to the national authorities the relevant data on remuneration based on national regulation[1] which transposed CRD III. Member State authorities thus already have the necessary data to their disposal which they can provide to EBA on an aggregate basis.

These EBA guidelines should not introduce another obligation and another system of reporting. The main objective of EBA must be to avoid 'double' reporting: on the national and additionally at the European level and to avoid a double burden for banks. Therefore, we think it is necessary to clearly mention that the banks should only report once to their national supervisory authorities based on national legislation. The supervisory authority passes the information it has to its disposal to EBA on an aggregated basis without an additional request for data provision as follows from Article 22(3) and in point 15(f) of Part 2 of Annex XII of Directive 2006/48/EC.

- ***Guidelines difficult to understand***

The guidelines are difficult to understand, abstract and not precise. The guidelines introduce new concepts which do not derive from or are referring to concepts within CRD III or CEBS Guidelines on remuneration policies and practices of 10 December 2010 (hereafter referred to as CEBS Guidelines). These concepts lack a proper definition.

These guidelines can only be useful if, they provide for a proper interpretation, clarification and practical implication of the relevant provisions and concepts of the CRD III and CEBS Guidelines; they provide for a proper reasoning in the Recitals why it is introducing certain concepts; and if it stays as close as possible to the CRD III and CEBS Guidelines and take into account the existing national reporting requirements.

[1] Cf. § 7 and 8. of the German law as regards remuneration of 6 Oktober 2010 (*Institutsvergütungsverordnung:* *http://www.bundesbank.de/download/bankenaufsicht/pdf/basel3_institutsvergv.pdf*)

- ***Level of application: national level not cross- member state level***

It is necessary that the level of application should be focused on national markets. The figures are not comparable on a consolidated basis. Within the European Union, we have different markets concerning remuneration-systems and levels. If data is provided on a consolidated (and thus cross-Member State) basis different markets will be reflected in one figure, because most institutions are differently represented in the EU. Such figure would not be useful, reliable and realistic.

- ***CEBS Guidelines not properly transposed***

Finally, following the publication of CEBS Guidelines, many of our member banks indicated that Member States transposed the CRD III well before the publication of CEBS Guidelines. Many did not take into account CEBS Guidelines at national level because these 'arrived too late'. As such, certain evident features of the Guidelines were not respected by the Member States. We therefore wonder whether new and complementary guidelines would be useful if the CEBS Guidelines have not been properly transposed.

SPECIFIC REMARKS

Recitals

- ***Seemingly no legal mandate***

We are not aware of as implicit legal mandate for EBA to draft these Guidelines in Article 22 of Directive 2006/48/EC. We therefore question the appropriateness, necessity and proportionality of the guidelines.

Recital 4 is written an unclear manner and we fail to see which message is meant to be conveyed. It is for instance unclear what is meant by 'EU level of consolidation'. We suggest rephrasing the Recital.

- ***Need to integrate professional secrecy rules***

Moreover, considering that EBA will process personal data, it is necessary to take up in the Recitals the rules applicable to EBA as regards professional secrecy. It could be a suggestion to state in the Recitals that Art. 339 of the Treaty of the Functioning of the European Union, Article 70 of EBA Regulation, Art. 16 of the Staff Regulations of EBA lay out rules of professional secrecy that apply in relation to these benchmarking activities of the European Banking Authority, and Decision EBA DC 004 of the Authority's Management Board on Professional secrecy implements these rules. Also the Annex to Commission Decision 2001/844/EC, ECSC, Euratom lays down the rules on security regarding the protection of classified information.

Article 1 - Definition

We understand and welcome that EBA would like to limit the number and types of banks that should provide remuneration data.

- ***the Article is difficult to read and understand***

However, the Article is difficult to read and understand. It could fall subject to different interpretations by national supervisors and create the adverse effect: no facilitation of remuneration data collection, no consistency of the information collected and will raise even more question marks. The Guidelines should stay as close as possible to the CRD III and CEBS Guidelines.

- ***Lack of definitions of newly introduced concepts***

In addition, the guidelines introduce new concepts e.g. 'significant institutions' and 'combined group' which lack a definition. It creates the feeling that the Article comes 'totally out of the blue'. Where EBA decides to introduce new concepts for these Guidelines, it should provide a proper reasoning in the Recitals why it is introducing certain concepts that do not derive from or are referring to concepts within CRD III or CEBS Guidelines.

We wonder what is meant by 'significant' in the concept 'significant institutions' and to whom it refers: the activities, balance sheet of the credit institution as such, or the number staff of credit institution with material impact. Assuming that it refers to the activities of the bank -as we have interpreted it - it is not necessarily the case that only significantly important banks have staff with material risk takers. With regards to staff

with material impact', EACB members doubt whether this request is compatible with data protection law, especially in cases, where only a few members of staff are affected.

In addition, we also assume that the concept of 'combined group' is referring to the requirement to have aggregate quantitative information of certain group of financial institutions. If that is the case, it is necessary that the concept is more precise, accurate and should be changed e.g. into 'the combined group of financial institutions which are'.

- ***Avoid subjective interpretation***

Furthermore, we do not agree with the wording lit. b) "deemed to be significant by national competent authorities". The qualification should not depend on the subjective view of the authority. In practice, the determination is subject to national law and a self-assessment by the institutions. We would therefore prefer a more objective approach. We suggest the following wording: "all institutions which are significant according to national law".

Finally, one of the questions is whether conditions (a) and (b) of Article 1 are cumulative or mutually exclusive.

Article 2 – Information to be submitted

- ***Need for clear definition 'total remuneration'***

The term 'total remuneration' should be defined more clearly. Does it mean the paid remuneration or the earned remuneration during the reference year? The CEBS guidelines only provide in para 11 and 121 for a definition of fixed and variable remuneration and in para 67 an indication of what remuneration policy should cover: all aspects of remuneration including fixed components, variable components, pension terms and other similar specific benefits. For reporting purposes, it should be clear and precise what the total remuneration should consist of.

- ***Existence of different national definitions of 'remuneration'***

It should however be taken into account that many Member State have passed national legislation as according to CRD III before the CEBS guidelines were issued. Therefore different definitions of 'remuneration' exist based on which the respective credit institutions publish their data.

For example in Germany law e.g. the *Institutsvergütungsverordnung* includes the following definitions in § 2[2] on the basis of which German banks report.

> *"§ 2 Definitions*
> *For the purposes of this Regulation*
>
> *1. "Remuneration" means any financial payments and payments in kind, whatsoever, and services from third parties, which a manager, a business leader, a member of staff receives with regard to his or her career at the credit institution, are not considered compensation financially or remuneration in kind, granted by the credit institution by virtue of a general gauge*

[2] Cf. § 2. of the German law as regards remuneration of 6 Oktober 2010 (*Institutsvergütungsverordnung: http://www.bundesbank.de/download/bankenaufsicht/pdf/basel3_institutsvergv.pdf*)

independent and institution-wide control and have no incentive to enter into risks, especially discounts, corporate insurance and benefits, as well as employees and employees' contributions to statutory pension insurance for the purposes of Part VI of the Social Code and for occupational retirement provision as defined by the sectoral pension law;

2. "Remuneration systems" the institution's internal regulations on compensation and their effective implementation and application by the credit institution;

3. "Variable Payment" portion of the compensation, the grant amount or at the discretion of the institute or the occurrence of agreed conditions which, even including discretionary benefits for retirement;

4. "Discretionary benefits for retirement," the portion of variable compensation that is agreed upon for the purpose of pensions in relation to a specific imminent termination of employment at the institute;

5. "Fixed payment" means the part of the remuneration which is not variable as defined in section 3;"

Finally, on the one hand it is possible to break down the identified staff by business areas, but on the other hand the net profits are not accounted by business areas according to the accounting system used for regulatory reporting. Net profits are accounted by institutions.

Article 3 – Level of consolidation of the information provided

- ***Level of application: national markets***

The level of application should be focused on national markets. The figures are not comparable on a consolidated basis. Within the European Union, we have different markets concerning remuneration-systems and levels. If data is provided on a consolidated (and thus cross-Member State) basis, different markets will be reflected in one figure, because most institutions are differently represented in the EU. Such figure would not be useful, reliable and realistic.

Article 4 – Frequency of reporting and remittance dates and reference years

- ***Reporting only once per year***

The frequency of reporting should only be once per year as is set out in Annex XII, Part II point 15(f) of the CRD (amended by Directive 2010/76/EU).

- ***Avoid double reporting***

In addition, in many Member States banks already have the duty/obligation to disclose to the public and to provide to the national authorities the relevant data on remuneration

based on national regulation[3] which transposes CRD III. Member State authorities thus already have the necessary data to their disposal which they can provide to EBA on an aggregate basis. These EBA guidelines should not introduce another obligation and another system of reporting. The general objective of EBA must be to avoid 'double' reporting: on the national and additionally at the European level and to avoid double burden for banks. Therefore, we think it is necessary to clearly mention that the banks should only report once to their national supervisory authorities based on national legislation. The supervisory authority passes the information it has to its disposal to EBA on an aggregated basis without an additional request for data provision as follows from Article 22(3) and in point 15(f) of Part 2 of Annex XII of Directive 2006/48/EC.

- ***Annual remittance day after end of October***

As regards the time of reporting, we consider end of June is absolutely too early. In certain Member States, decisions regarding the rewarding and also the payment process are still running in June. Therefore, the deadline of the reporting is too early. We request that the annual remittance day should not be before the end of October.

Article 5 – Transitional Arrangements

- ***Data collection requirement starting only for remuneration of 2011***

The data collection requirement should only take effect for remunerations paid out/awarded in 2011. We suggest that the first provision of data should not be before the end of October 2012 for the remuneration paid in 2011. The institutions and authorities will need some time to clarify open questions, which will arise from this consultation and guidelines.

If necessary to provide data for remuneration paid in 2010, we consider that the remittance date should not be before the end of December 2011. It should be taken into account that the templates are not yet ready. It will be absolutely too short to collect the required data covering vast number of credit institutions and staff. Moreover, it should also be considered that the national supervisory authority needs some time to prepare their national data collection process.

[3] Cf. § 7 and 8. of the German law as regards remuneration of 6 Oktober 2010 (*Institutsvergütungsverordnung:* *http://www.bundesbank.de/download/bankenaufsicht/pdf/basel3_institutsvergv.pdf*)