

Ms. Tiina Astola
Director General, DG JUST
Rue Montoyer 59
1049 Brussel, Brussels

Brussels, 07 March 2016
B19/VH/TM

CC: Mr Jeroen Hooijer
Acting Director Directorate Civil
Justice, DG JUST

E-MAIL

EBA Opinion on the Application of the Proportionality Principle in the Area of Remuneration

Dear Ms. Astola,

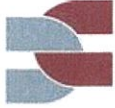
The European Association of Co-operative Banks (EACB) is highly supportive of the Opinion of the European Banking Authority from 21 December 2015 on the application of the principle of proportionality to the remuneration provisions in Directive 2013/36/EU (EBA Opinion on Remuneration). It reflects most of our concerns for proportionate rules on remuneration and rightly advises for legislative amendments of the CRD IV to accommodate them.

In particular, we fully share the EBA proposal to limit the scope of application of the remuneration principles by providing waivers for both institutions and individuals. Indeed, the application of the remuneration principles should ensure sound compensation practices, without however unnecessarily overburdening the institutions. This legal reading is also enshrined in recital 66 of CRD IV which allows for certain institutions to be exempted from certain remuneration principles. Such exemptions compensate for the effect that the percentage of material risk takers in the smallest institutions is the highest and they would therefore be hit the hardest by the remuneration rules. Additionally, they ensure that insignificant amounts of variable remuneration do not have to be deferred and paid out in instruments.

In consideration of the variety of the existing business models, the significant differences of remuneration levels EU-wide and the criteria to be applied, we believe that the European law should provide the Member States with discretionary powers to determine the *de minimis* thresholds in their jurisdictions.

Furthermore, **we share the EBA's arguments regarding cooperative banks paying out in shares**. They precisely bring forward the factual problems and the legal burdens cooperative banks would face in awarding remuneration in instruments. Therefore, we fully support the EBA proposal in this respect.

We appreciate that paragraph 68 of the Guidelines on Sound Remuneration Policies implicitly clarify that non-financial subsidiaries, which are not subject to prudential consolidation, are not subject to the said Guidelines. A more precise language of the CRD IV in this regard might be needed to avoid any doubts.



Moreover, with regard to the cooperative groups with listed institutions, we also completely agree that the use of the share-linked instruments should also be available to listed institutions, since it would avoid the unjustified necessity for such institutions to issue and/or acquire shares for remuneration purposes only. The opinion provides a good summary of the reasons why this would result in a disproportionate burden and extraordinary costs, while at the same time the effect on the ex-post-risk assessment would be very limited. The basic purpose of the instrument-requirement of CRD IV can be just as well achieved when using share linked instruments which are calculated based on the share price (market price) of the listed institution.

In the light of the aforementioned, the EACB members remain confident that the proposed legislative modifications would benefit the process of efficient implementation of sound remuneration practices without excessive burdens on the institutions. Therefore, **while giving all our support to the EBA proposals, we believe that the Commission should consider them in the ongoing review of the remuneration rules and eventually come up with a corresponding legislative proposal.**

In this respect, the EACB is available for discussions with the regulators and will gladly provide any additional input or clarifications that might be needed.

Yours sincerely,

Hervé Guider
EACB General Manager

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