Public consultation on impacts of maximum remuneration ratio under Capital Requirements Directive 2013/36/EU (CRD IV), and overall efficiency of CRD IV remuneration rules

Fields marked with * are mandatory.

INTRODUCTION

Preliminary Remark: The following questionnaire has been drafted by the Services of the Directorate General Justice and Consumers in order to collect views on the possible impact of the maximum ratio between variable to fixed remuneration, set by the Capital Requirements Directive 2013/36/EU (CRD IV), on competitiveness, financial stability, and staff in non-EEA countries. It also seeks views on the overall efficiency of the remuneration provisions of CRD IV and Regulation (EU) No 575/2013 (CRR).

This document does not reflect the views of the European Commission and will not prejudice its future decisions, if any, on further measures concerning remuneration rules for credit institutions and investment firms.

On 26 June 2013, the new regulatory and capital requirements package for banks and investment firms was adopted ("the package"). The package is made up of a Regulation (EU) No 575/2013[1] (CRR) and a Directive 2013/36/EU[2] (CRD IV). The package lays down re-enforced principles and rules for remuneration policies of institutions.

These implement international principles and standards at Union level. They aim at aligning remuneration policies with the risk appetite, values and long-term interest of credit institutions and investment firms, in order to remedy regulatory loopholes, which induced a number of managers, especially before the financial crisis, to an excessive risk-taking approach.

In CRD IV, rules on remuneration are set out in Articles 74 to 76, Articles 92 to 96, Article 104, Article 109, Article 162(3) and in recitals 62 to 69. In CRR, Article 450 and recital 97 cover rules on remuneration. One of the novelties in the package was the introduction of a rule in Article 94(1)(g) of CRD IV according to which the variable remuneration of institutions' staff whose professional activities have a material impact on their employer's risk profile ("Identified Staff") cannot exceed 100% (or 200% with shareholders' approval) of the fixed remuneration, hereafter referred to as the "Maximum Ratio Rule". The Maximum Ratio Rule aims at avoiding excessive risk taking by Identified Staff.

Further details on CRD remuneration rules, including the Maximum Ratio Rule, can be found in the Consultation Paper that was recently published by the European Banking Authority ("EBA") on the draft revised guidelines on remuneration[3]. The Regulatory Technical Standards (RTS) on Identified Staff[4] set the criteria on the basis of which institutions must identify the staff to whom CRD remuneration rules, including the Maximum Ratio Rule apply.

The Commission is called upon to review and report on the application and the impact of the remuneration rules in Directive 2013/36/EU and Regulation (EU) No 575/2013 by 30 June 2016.

More specifically, Article 161 (2) CRD IV provides that *"by 30 June 2016, the Commission shall, in close cooperation with EBA, submit a report to the European Parliament and to the Council, together with a legislative proposal if appropriate, on the provisions on remuneration in this Directive and in Regulation (EU) No 575/2013, following a review thereof, taking into account international developments and with particular regard to:*

(a) their efficiency, implementation and enforcement, including the identification of any lacunae arising from the application of the principle of proportionality to those provisions;

(b) the impact of compliance with the principle in Article 94(1)(g) in respect of:

(i) competitiveness and financial stability; and

(ii) any staff working effectively and physically in subsidiaries established outside the EEA of parent institutions established within the EEA.

That review shall consider, in particular, whether the principle set out in Article 94(1)(g) should continue to apply to any staff covered by point (b)(ii) of the first subparagraph."

The purpose of this consultation is firstly to obtain information and views from stakeholders on paragraph (b) of Article 161(2) CRD IV, namely on the possible impact of the Maximum Ratio Rule on: (i) competitiveness, (ii) financial stability, and (iii) staff in non-EEA countries. Secondly, it seeks stakeholders' views on the overall efficiency of the remuneration provisions of CRD and CRR.

The responses will be taken into account in the Commission’s assessment and report required under Article 161(2) CRD IV, in parallel with information received from EBA, the results of an independent external study carried out for the Commission and other information available.

Please note that this consultation is not intended to duplicate the work carried out by the external contractor with whom the Commission services are working (the contract was awarded to IFF - Institut für Finanzdienstleistungen e.V. after an open call for tender – Ref No. JUST/2015/MARK/PR/CIVI/0001), nor the work carried out by EBA with respect to its future Remuneration Guidelines.

Views that stakeholders would have already expressed with regard to the aspects covered by this consultation, either in the context of the survey carried out by the external contractor, or in the context of EBA's consultation on its draft Guidelines, which ran from 4 March until 4 June 2015, will be analysed and taken into account in the external contractor’s report. Thus, stakeholders are encouraged not to duplicate comments and arguments already submitted, and limit their responses to any additional new observations and evidence they can provide specifically on the points covered by this consultation.

Responses to this consultation should be concise, focused specifically on the questions raised and contain as many concrete, factual and verifiable elements as possible.

The deadline for submitting the responses is 14 January 2016.

All answers to the questionnaire should be submitted online.

For any further queries please contact us by e-mail: JUST-A3@ec.europa.eu

[1] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012

[2] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.6.2013, p. 338–436.

[3]https://www.eba.europa.eu/documents/10180/1002374/EBA-CP-2015-03+(CP+on+GLs+on+Sound+Remuneration+Policies).pdf

[4] Commission Delegated Regulation (EU) No 604/2014 of 4 March 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile

1. IDENTITY OF THE RESPONDENT

* Please provide the name of your organisation/company/public authority or your name if you reply as an individual

100 character(s) maximum

* Is your organisation registered in the Transparency Register of the European Commission?

- Yes
- No
- Not applicable - I am not an organisation

* If your organisation is registered in the Transparency Register, please provide the registration number

100 character(s) maximum

* Where are you based?

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden
- UK
- Switzerland
- Lichtenstein
- Iceland
- Norway
- North America
- Asia
- Other

Contact email address:

The information you provide here is for administrative purposes only and will not be published

50 character(s) maximum

You are responding to this questionnaire as:

* **Credit institution**

- established in the EEA
- established outside the EEA
- not a credit institution

* *If credit institution established outside the EEA:*

- *a subsidiary within a CRD regulated group (covered by CRD)*
- *not covered by CRD*

* **Investment firm**

- established in the EEA
- established outside the EEA
- not investment firm

* *If investment firm established in the EEA*

- *investment firm as defined in Art 4(1)(2) CRR (covered by CRD)*
- *investment firm that is a local firm in the meaning of Article (4)(1)(2)(b) CRR or a firm in the meaning of Article (4)(1)(2)(c) CRR*

* *If investment firm established outside the EEA*

- *investment firm as defined in Art 4(1)(2) CRR that is a subsidiary within a CRD regulated group (covered by CRD)*
- *investment firm that is not a subsidiary within a CRD regulated group (not covered by CRD)*

* *If a local firm in the meaning of Article (4)(1)(2)(b) CRR or a firm in the meaning of Article (4)(1)(2)(c) CRR*

- *a subsidiary within a CRD regulated group (covered by CRD)*
- *not a subsidiary within a CRD regulated group (not covered by CRD)*

* **Financial institution as defined in Art 4(1)(26) CRR**

- asset management company
- other than an asset management company
- not a financial institution as defined in Art 4(1)(26) CRR

* *If asset management company*

- *a subsidiary within a CRD regulated group (covered by CRD)*
- *not a subsidiary within a CRD regulated group (not covered by CRD)*

* *If other than an asset management company*

- *a subsidiary within a CRD regulated group (covered by CRD)*
- *not a subsidiary within a CRD regulated group (not covered by CRD)*

* **Individual**

- staff member who is 'Identified Staff' under CRD
- other individual
- not an individual

* **Other**

- Not applicable
- Civil society organisation
- Industry representation organisation
- Employee representation organisation
- Public authority
- Other

* If other, please explain

Important notice on the publication of responses

* Contributions received are intended for publication on the Commission's website. Do you agree to your contribution being published?
(see specific privacy statement)

- Yes, I agree to my response being published under the name I indicate *(name of your organisation/company/public authority or your name if you reply as an individual)*
- No, I do not want my response to be published

2. MAXIMUM RATIO RULE

2.1 IMPACT OF THE MAXIMUM RATIO RULE ON COMPETITIVENESS

2.1.1 The Maximum Ratio Rule applies to credit institutions and investment firms as defined in CRD in the EEA, as well as (indirectly) to their subsidiaries within the scope of prudential consolidation (including subsidiaries outside the EEA and asset management subsidiaries). ***Please indicate for which of the aforementioned type(s) of undertaking(s) your answer to the below question applies. My answer below applies to (multiple answers possible):***

- [ ] Credit institutions established in the EEA (directly subject to the Maximum Ratio Rule)
- [ ] Investment firms as defined in Art 4(1)(2) CRR established in the EEA (directly subject to the Maximum Ratio Rule)
- [ ] Non-EEA subsidiaries of EEA parent covered by CRD (indirectly subject to the Maximum Ratio Rule through the application at group level)
- [ ] EEA subsidiaries of EEA parent covered by CRD (indirectly subject to the Maximum Ratio Rule through the application at group level), such as asset management companies or other types of financial institutions

* 2.1.2 ***What impact, if any, of compliance with the Maximum Ratio Rule have you observed on the COMPETITIVENESS of the undertakings concerned?*** Please provide as much as possible factual, concrete and verifiable elements that support your answer. If you ticked more than one box above, please make sure to distinguish as relevant.

5000 character(s) maximum

2.2 IMPACT OF THE MAXIMUM RATIO RULE ON FINANCIAL STABILITY

* 2.2.1 The Maximum Ratio Rule applies to credit institutions and investment firms as defined in CRD in the EEA, as well as (indirectly) to their subsidiaries within the scope of prudential consolidation (including subsidiaries outside the EEA and asset management subsidiaries). ***Please indicate for which of the aforementioned type(s) of undertaking(s) your answer to the below question applies. My answer below applies to (multiple answers possible):***

- [ ] Credit institutions established in the EEA (directly subject to the Maximum Ratio Rule)
- [ ] Investment firms as defined in Art 4(1)(2) CRR established in the EEA (directly subject to the Maximum Ratio Rule)
- [ ] Non-EEA subsidiaries of EEA parent covered by CRD (indirectly subject to the Maximum Ratio Rule through the application at group level)
- [ ] EEA subsidiaries of EEA parent covered by CRD (indirectly subject to the Maximum Ratio Rule through the application at group level), such as asset management companies or other types of financial institutions

* 2.2.2 ***What impact, if any, of compliance with the Maximum Ratio Rule have you observed on FINANCIAL STABILITY?*** Please provide as much as possible factual, concrete and verifiable elements that support your answer. If you ticked more than one box above, please make sure to distinguish as relevant.

5000 character(s) maximum

2.3 IMPACT OF THE MAXIMUM RATIO RULE ON STAFF WORKING OUTSIDE THE EEA

* ***What impact, if any, of compliance with the Maximum Ratio Rule have you observed on staff working effectively and physically in subsidiaries established outside the EEA of parent institutions established within the EEA?***

5000 character(s) maximum

3. EFFICIENCY OF THE OVERALL CRR AND CRD IV REMUNERATION PROVISIONS

* In CRD IV, rules on remuneration are set out in Articles 74 to 76, Articles 92 to 96, Article 104, Article 109 and Article 162(3), and in recitals 62 to 69. In CRR, Article 450 and recital 97 cover rules on remuneration. The objective of the remuneration rules is to avoid that remuneration policies encourage excessive risk-taking behaviour and thus undermine sound and effective risk management of credit institutions and investment firms. They aim at aligning remuneration policies with the risk appetite, values and long-term interest of credit institutions and investment firms, in order to remedy regulatory loopholes, which enduced a number of managers, especially before the crisis, to an excessive risk-raking approach. The ultimate goal is to protect and foster financial stability within the Union.

3.1 Against this background, how would you assess the efficiency of the following remuneration rules of CRD IV and CRR? Please always back up your views with specific evidence:

3.1.1 The requirement set out in Article 94(1)(a) CRD that the ***assessment of performance*** is based on a combination of the individual's performance (taking into account financial and non-financial criteria), the performance of the business unit concerned and of the overall results of the institution; the requirement set out in Article 94(1)(b) CRD that the assessment of the performance is set in a multi-year framework

3000 character(s) maximum

* 3.1.2 The requirement set out in Article 94(1)(m) CRD to ***defer*** at least 40% of the variable remuneration.

3000 character(s) maximum

* 3.1.3 The requirement set out in Article 94(1)(l) CRD to ***pay out*** at least 50% of variable remuneration in ***instruments***, whereby there will be a balance of shares or equivalent ownership interests, subject to the legal structure of the institution concerned or share-linked instruments or equivalent non-cash instruments, in the case of a non-listed institution, and where possible other instruments adequately reflecting credit quality of the institution as a going concern.

3000 character(s) maximum

* 3.1.4 The requirement set out in Article 94(1)(n) CRD that up to 100% of the variable remuneration is subject to ***malus and claw back***.

3000 character(s) maximum

* 3.1.5 The requirements set out in Articles 94(1)(f) and 94(1)(g) that ***fixed and variable components*** of remuneration are appropriately balanced; that the fixed component should represent a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component; and that the variable remuneration cannot exceed 100% (or 200% with shareholders' approval) of the fixed remuneration.

3000 character(s) maximum

* 3.1.6 The requirement for significant institutions to establish a ***remuneration committee*** (Article 95 CRD) as well as a ***risk committee*** (Article 76 CRD) which shall assist in the establishment of sound remuneration policies and practices.

3000 character(s) maximum

* 3.1.7 The requirements set out in Article 96 CRD and Article 450 CRR on the ***public disclosure*** con cerning remuneration policy and practices.

3000 character(s) maximum

* ***3.2 How would you assess the overall efficiency of the remuneration rules of CRD IV and CRR collectively? Also, please indicate whether you have identified any lacunae in the existing rules. Please back up your views with specific evidence.***

5000 character(s) maximum