



NFU reply to the DG JUST consultation on Maximum remuneration ratio under CRD 4

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

NFU considers the assessment of performance to include the three aspects as better than only considering individual performance. The global performance of an institution does not pose a problem and is already done in some countries, assessment of performance in a business unit, consisting of "identified staff", may however pose problems and it is important to determine well the business unit. Indeed, many restructurings in firms are done for purposes of controlling the maximum income in terms of analytical reporting because this ensures also the maximum bonuses. So while fostering an increased sense of responsibility for the work done in different sectors is a positive goal, doing so needs to be done in a cautious way. Furthermore, since the focus in this case is on 'identified staff', it is in NFUs opinion that a more individual focus can be adopted when dealing with performance reviews. However, when we discuss other groups of staff, with less influence on the risk for the bank, individual reviews can cause more stress, pressure and competition between employees.

Company objectives should perform in line with interests of government and society as a whole. It is essential that worker remuneration should consist primarily of fixed income.

According to affiliates of NFU, there have been experiences with some employees being dissatisfied with the way the bonuses are distributed internally in the businesses. There might be a need for a stronger distinction between high-risk takers and those that in different ways facilitates for other colleagues to do a certain job.

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

As a general rule and in order to maintain proportionality, it is important that the requirements are only applied to identified staff and not to all employees, and to exclude certain small, non-complex institutions from the requirements to apply the remuneration principles regarding deferral and payment in instruments for variable remuneration. NFU also wishes to stress the importance of the rules taking into account recital 69 of CRD 4.

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

It is important that the rule should apply, as intended, only to identified staff with a certain level of salary and that all provisions on remuneration should be without prejudice to the full exercise of the fundamental rights guaranteed by Article 153(5) of the TFEU, as to the right of the social partners to conclude and enforce collective agreements, in accordance with national law and customs.

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

NFU fully supports the fact that employees have to be adequately paid for their job and that their level of living should not be dependent on variable pay. Variable pay should be an additional income, but not the one which ensures an adequate living standard of an employee. It is essential that worker remuneration should consist primarily of fixed income. This is particularly important at income levels where most of the salary is for rent and everyday expenses.

We would also like to highlight the bonuses should not exceed a certain amount than X times as high as the average of all bonuses per employees in the company.

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

NFU is pleased that employee representation in the remuneration committee is an option if possible under national law. However, a more extensive wording would be preferred, including strong incentives for employee representation in both committees, especially in countries where there is a culture and/or practice of employee representation in the company or Member

State. Employee representation in governing bodies contributes to sound and effective corporate governance, as the employees are interested in the long-term performance of the company and thus contribute to sustainable business models and sound remuneration policies.

3.1.7 The requirements set out in Article 96 CRD and Article 450 CRR on the public disclosure concerning remuneration policy and practices

Increasing the transparency of how companies live up to the remuneration rules under CRD 4 is a positive development for NFU and thereby hopefully decreasing the somewhat negative view that some of the public may have. The essential precondition to keep in mind here though is that the personal and professional integrity of the employees are protected, i.e. specific amounts earned by individual employees etc. should not be made publicly available.

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

NFU has seen cases where the European legislators try to regulate remuneration and where this regulation may impose restrictions on the right to free collective bargaining. Social partners should be allowed to, assume the responsibility of sound and sustainable remuneration principles. It is therefore of great importance to NFU and its affiliates that the CRD 4 includes the exemption for collective bargaining under recital 69. For any review of the remuneration rules in CRD 4, NFU urges the European policymakers to keep this writing.

NFU strongly supports the idea of remuneration policies and practices that are consistent with and promote sound and effective risk management. However, for remuneration policies, the primacy of collective agreements should be respected. This, since pay is, according to art. 153.5 in the Treaty on the Functioning of the European Union (TFEU), is not exclusively for the EU to deal with. Besides under CRD 4, this has also been acknowledged in recital 10 in Directive 2014/91/EU and Recital 14 in Directive 2010/76/EU. It must thus be made clear that any legal provisions regarding remuneration policies do not apply to remuneration policies and provisions agreed in a collective agreement.

In a recent opinion, the EBA has found that if no waivers would be allowed, it would lead to a situation where many small and non-complex institutions would change their remuneration policy to pay out exclusively fixed remuneration. In addition, in some jurisdictions, the remuneration, including a small amount of variable remuneration, awarded to staff that fall under the category of "identified staff" is directly foreseen by collective agreements that cannot be changed unilaterally by institutions. The application of those requirements to these small amounts of variable remuneration would lead therefore to inappropriately high costs. Independent of the size of the institution, these requirements should be waived for staff who receive only an immaterial amount of variable remuneration. The exclusion of these staff from



the application of the rules significantly could reduce administrative costs. Waivers of the limitation on the ratio between variable and fixed remuneration should not be introduced for institutions falling under the scope of Directive 2013/36/EU. The so-called bonus cap is easy to apply and does not create additional administrative costs. The cap ensures that no inappropriate incentives for risk-taking can be provided.