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

FIA European Principal Traders Group

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

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

* 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

lara.wolters@nortonrosefulbright.com

You are responding to this questionnaire as:

* **Credit institution**

- ( ) established in the EEA
- ( ) established outside the EEA
- (•) not a credit institution

* **Investment firm**

- ( ) established in the EEA
- ( ) established outside the EEA
- (•) not investment firm

* **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

* **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

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)

- (selected) 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)
- [x] Investment firms as defined in Art 4(1)(2) CRR established in the EEA (directly subject to the Maximum Ratio Rule)
- [x] 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

What impact, if any, of compliance with the Maximum Ratio Rule [bonus cap] 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.

The FIA European Principal Traders Association (FIA EPTA) represents 27 firms in Europe that trade in financial instruments using their own money. Many act as market makers in various financial instruments. Positions are backed by general clearing members and cleared with central counterparties (CCPs) and positions are carefully hedged to manage market risk. FIA EPTA members do not have clients, do not take deposits and do not hold client money.

FIA EPTA members are not credit institutions. Their revenues depend on their trading strategies and how these strategies fare across changing market conditions. As such, remuneration structures for member firms generally include low fixed remuneration (salary) with potentially high variable remuneration (bonus) that may or may not be paid depending on firm, team and/or individual performance. Member firms do not compete with credit institutions for personnel on the basis of fixed salaries but have historically attracted skilled employees due to their performance-based remuneration policies. These policies promote prudent risk management amongst all employees. As discretionary payments, member firms are able to withhold payments and strengthen their capital base in times of stress while retaining skilled personnel. Consequently, variable remuneration serves as the strongest risk control and promotes risk awareness rather than increases risks.

Most FIA EPTA members are not currently subject to the Maximum Ratio Rule (“bonus cap”). Those member firms that are subject to the bonus cap report:

- A significant increase in firm compliance costs (both for EU parents and third country subsidiaries);

- A pattern of recruitment losses to competitors such as asset managers and third country firms;

- Additional recruitment losses to (non-financial) technology firms such as Amazon, Apple, Google and Microsoft also compete for programming and quantitative talent; and

- A perverse effect such that in restricting the use of variable remuneration and requiring higher fixed remuneration, the bonus cap actually increases risk measures under Regulation 575/2013 on prudential requirements for credit institutions and investment firms (CRR) and related own funds requirements.

We note the conclusions of the European Banking Authority’s (EBA) “Report on Investment firms: Response to the Commission’s call for advice of December 2014” [EBA/Op/2015/20] (14 December 2015) and its conclusion that competition between credit institutions and investment firms in the core businesses of the former is limited. We consider the bonus cap a material competitive disadvantage for investment firms against other market participants, including alternative investment fund managers, exempt persons and third country firms not subject to the requirement.

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)
- [x] Investment firms as defined in Art 4(1)(2) CRR established in the EEA (directly subject to the Maximum Ratio Rule)
- [x] 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 F INANCIAL 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

FIA EPTA considers that compliance with the bonus cap offers no benefits with regard to financial stability. In fact, we are concerned the bonus cap precludes flexible remuneration policies that align an individual's behaviour with the risk appetite, values and long-term interests of investment firms.

"Investment firm" is a broad term extending from large institutions holding billions of client money (for whom CRD 4 and CRR provisions and risk controls are highly relevant) to smaller trading firms that trade their own capital at their own risk, yet they are subject to the same or similar provisions. The risks faced by FIA EPTA members and their societal impact of failure are, however, fundamentally different and much lower than for financial institutions holding client money or being susceptible to bail-outs.

The EBA, on foot of a mandate from the European Commission, has reviewed application of CRR in EBA/Op/2015/20. It decries the sweeping application of CRR (which is based on Article 2 CRD 4). Acknowledging the diversity of investment firms, it distinguishes investment firms within 11 categories and advocates a revised approach to applying prudential requirements to investment firms based on the nature of their business and associated risks. FIA EPTA members fall within Category 9. The EBA concludes that such firms typically do not pose systemic risk. FIA EPTA members have limited or no inter-connectedness, offer substitutable services in highly competitive markets and relatively straight-forward to resolve should they fail (holding positions in liquid instruments and short-term funded, most firms could be wound down in a matter of weeks).

Risks are short-lived as the trading and funding cycle completes in a matter of days: positions are often hedged, centrally cleared and settled and the bulk of associated trading risks lie with CCPs and clearing members (rather than the trading firms), charging haircuts to control such risks. No FIA EPTA member (or non-EU proprietary trader) has been, or is expected to be, designated systemically importance by any regulatory authority.

In addition, FIA EPTA members' business models and risk management strategies as such do not affect financial stability: MiFID 2 provides fine-grained and effective controls for operational and market risks. CRD 4 requirements to influence risk management are largely irrelevant.

We consider that the costs of applying the bonus cap to Category 9 investment firms greatly outweighs any conceivable financial stability benefit or other public policy benefit. We foresee increased risk from restrictions to variable remuneration, which is essential to member firm risk management. Low fixed pay reduces fixed costs - variable pay, provided it is true profit sharing, provides a useful capital buffer in times of stress.

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 <u>on staff working effectively and physically in subsidiaries established outside the EEA</u> of parent institutions established within the EEA?***

5000 character(s) maximum

Many European proprietary trading firms have US and Asian subsidiaries that compete with third country firms across financial markets. Applying CRD 4 requirements to those subsidiaries in the absence of similar restrictions applied in other jurisdictions significantly distorts or would distort competition between subsidiaries of institutions subject to CRD 4 and other market participants. Subsidiaries of institutions subject to CRD 4 face or would face higher costs and risks and are handicapped in competing for skilled personnel as staff are disinclined to take on roles with variable remuneration strictly limited in law.

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

FIA EPTA sees no fundamental complexities as such as long as the requirements can be applied proportionally per Recital 66 and Articles 92(2) and 94(1) of CRD 4, given the large diversity in types of investment firms, their nature, size, complexity and associated risks.

* 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

FIA EPTA supports the appropriate deferral of remuneration as a means to promote prudent risk management. However, we consider the minimum three to five year deferral period in Article 94(1)(m) to be disproportionate and inappropriate to the activity of Category 9 investment firms.

FIA EPTA Member firms deal on own account in financial instruments. The trading and funding cycle is typically completed in a matter of days. Profits and losses are realised within days, not years. Unlike asset managers and credit institutions, future risk exposures spanning multiple years does not arise. Consequently, any deferral period longer than one year would be disproportionate to the risks of the proprietary trading business model. Moreover, the requirement to defer up to 60% of variable remuneration where this may be deemed “particularly high” disproportionately impacts member firms with best practice remuneration policies

FIA EPTA advocates a practical, effective, straight forward and risk-sensitive deferral requirement appropriate for Category 9 investment firms. Remuneration policies should include the deferral of 50% of variable compensation for a one year period (i.e. half of variable remuneration for the performance year paid at end of year, half paid 12 months hence). Amounts below a given de minimus threshold should not be subject to deferral. Similar remuneration practices have been implemented and proven effective and maintainable by FIA EPTA member firms for many years.

* 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

FIA EPTA considers the legislative requirement to pay out at least 50% of variable remuneration in instruments to be disproportionate and inappropriate for Category 9 investment firms. We consider that variable remuneration in cash under a profit-sharing scheme, which remains subject to full forfeiture (malus or claw back) serves as a far more effective disincentive to imprudent risk-taking. We consider equity-based incentives to be less effective, much more complex and costly to implement.

We note the EBA's "Guidelines on sound remuneration policies" [EBA/GL/2015/22] (21 December 2015). FIA EPTA strongly disagrees and contests the EBA's assumption that institutions can create relatively simple instruments to comply the legislative requirement. While this may be the case for large listed institutions with diverse ownership and highly liquid shares, the majority of FIA EPTA members and proprietary trading firms are employee-owned and/or owner-operated firms with between 5 and 150 employees. To comply with Article 94(1)(l), these firms are or would be obliged to create equity-like instruments solely for compliance purposes. The cost and complexity of creating, administering, valuing and taxing the allocation of such instruments are significant and greatly outweigh any public policy benefit or public good from the requirement.

The same applies to the number of publicly-owned investment firms whose main business is proprietary trading. Although listed, these investment firms are substantially employee-owned or controlled by a limited number of owners and/or founders. Share issues for compliance purposes (or similar share-based incentives) dilute existing shareholdings and share repurchases are easily anticipated by the market: this is unduly expensive and may otherwise affect market prices. The restriction on dividend payment, combined with other complex required features for share-based plans, may require firms to develop new share classes and poses significant personal and corporate tax complexities, while administration is complex and costly.

FIA EPTA fully supports the desired effect of the rules and supports tangible incentives for risk-awareness and risk alignment. These principles should be practical, effective and devised mindful of the nature, scope and complexity of such investment firms in much the same manner as the ESMA draft Guidelines on sound remuneration policies under the UCITS Directive and AIFMD [ESMA/2015/1172] (23 July 2015) (see items 25. and 26.) Key principles should include:

- Variable remuneration based on sharing profits of investment firm;
- Variable remuneration paid in cash;
- Variable remuneration above de minimus threshold subject to deferral; and
- Variable remuneration subject to malus and claw back provisions.

We believe that the EBA's proposed amendments to Article 94 CRD 4 should apply to Category 9 investment firms and encourage the Commission to propose such amendments.

*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

We consider that remuneration policies adopted by member firms as best practice already encompass sufficient malus or claw back provisions to comply with Article 94(1)(n).

*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

FIA EPTA opposes applying the bonus cap to Category 9 investment firms. Arguments of systemic relevance aside, we are concerned that the bonus cap restricts the wider use of variable remuneration for effective risk management and raises fixed costs and thus risk for Category 9 investments firms. It reduces buffers and the agility in managing a firm’s cost base which is necessary and important given fluctuating profit levels. Unlike credit institutions, proprietary trading firms have no predictable revenue streams to balance an increased fixed cost base and have therefore traditionally used variable remuneration to retain flexibility. We further believe that application of the bonus cap limits the ability of Category 9 investment firms to strengthen their capital bases per Article 94(1)(b) and precludes the operation of a fully flexible policy on variable remuneration mandated under Article 94(1)(f).

FIA EPTA Member firms use variable remuneration not simply as a means of incentivising personnel but also as a means to lower fixed costs, which are the basis of risk for such firms. Member firms pay variable remuneration in good times and withhold payments in bad times and in doing so preserve their capital bases. In fact, variable remuneration functions as an additional capital buffer for such investment firms in times of stress. Forced to apply the bonus cap, FIA EPTA members and other proprietary trading firms have or would have little option but to significantly raise fixed salaries to maintain total remuneration. The use of variable remuneration as a capital buffer would be restricted. Higher fixed salaries would mean higher fixed overheads and greater risk, especially where personnel costs constitute the main fixed cost. This in turn would require investment firms to hold increased own funds per Article 92 CRR – an effect we believe would likely drive some investment firms from European capital markets. Additional costs would result in wider spreads and higher execution costs, which would be ultimately borne by retail investors.

We dispute the recommendations of the EBA with regard to the bonus cap in

"Opinion of the European Banking Authority on the application of the principle of proportionality to the remuneration provisions in Directive 2013/36/EU" [EBA/Op/2015/25] (21 December 2015). We believe that the authority has not duly considered the nature of investment firms or indeed reflected on the conclusions of EBA/Op/2015/20 and the recommendations on amendments to CRR therein. We are concerned by the EBA's casual dismissal of compliance costs associated with the bonus cap. We see no justification for applying the bonus cap to all investment firms regardless of size, scope of business and/or complexity. On the contrary, we see ample justification for amendments to Article 94 CRD 4 to disapply the cap for Category 9 investment firms.

* 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

[no answer offered]

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

3000 character(s) maximum

We consider the requirements of Article 450 CRR inappropriate for Category 9 investment firms. We see no public benefits from such disclosures for investment firms that hold no client money, have no retail clients and would not be eligible for government assistance. We do not believe that these requirements can be applied in a manner consistent with the second paragraph of Article 450(2).

* ***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

FIA EPTA considers that the CRD 4 and CRR requirements on remuneration are disproportionate and inappropriate for Category 9 investment firms such as our member firms. Given the balance of costs over benefits and the perverse effects of these requirements in terms of risk management, we consider the requirements to be inefficient overall. More fundamentally FIA EPTA believes that any implementation of the rules should remain subject to the proportionality principle included in Recital 66 and Articles 92(2) and 94(1) of CRD 4 given the high diversity of the investment firm population. Firms should be permitted to appropriately implement such provisions proportionally to the nature of their business, size and complexity as set out above.

We also believe that applying the bonus cap to investment firms regardless of their activity will ultimately undermine the regulatory regime for third country investment firms set out in Title VIII of Regulation 600/2014 on markets in financial instruments (MiFIR). No other jurisdiction has applied quantitative restrictions on remuneration to investment firms and we do not expect any jurisdiction to do so in the foreseeable future. Without such rules, we do not see how the Commission could assess the legal and supervisory arrangements for investment firms in third countries to be equivalent to those in the Union. Without such any assessment, third country firms would be precluded from engaging in investment activities or providing investment services in the Union. Thus, the competitive distortions of unilateral application of the bonus cap would not just disadvantage EU institutions and their subsidiaries abroad but would also undermine capital markets at home.

FIA EPTA supports amendments to CRD 4 and CRR that would:

1. Waive the Article 94(1)(g) CRD 4 requirement for Category 9 investment firms;
2. Disapply the Article 94(1)(l) CRD 4 requirement for Category 9 investment firms; and
3. Limit the Article 94(1)(m) CRD 4 deferral period to one year for Category 9 investment firms;
4. Include a de minimus threshold in Article 94(1)(m) CRD 4 excluding sums paid by Category 9 investment firms; and
5. Mandate appropriate and proportionate disclosures on remuneration policies under Article 450 CRR for Category 9 investment firms.

We believe such amendments would be practical, effective and proportionate and would not jeopardise financial stability. Such amendments to would serve to promote best practice remuneration policies for proprietary trading firms within the Union and abroad. Such amendments would also accord with the EBA's recommendations for a less complex prudential regime for investment firms predicated on activities and risk profiles while retaining intended effects in a much more practicable but effective manner. We encourage the Commission to propose such amendments to the legislation.

Contact

✉ JUST-A3@ec.europa.eu