

In case of discrepancies between the French and the English text, the French text shall prevail.

Luxembourg, 16 June 2017

To all credit institutions and CRR investment firms incorporated under Luxembourg law and to the Luxembourg branches of credit institutions and investment firms having their registered office in a third country

CIRCULAR CSSF 17/658

Re : Adoption of the EBA Guidelines on sound remuneration policies under Articles 74(3) and 75(2) of Directive 2013/36/EU and disclosures under Article 450 of Regulation (EU) No 575/2013 (EBA/GL/2015/22) and repeal of Circular CSSF 10/496

Ladies and Gentlemen,

This circular draws your attention to the EBA Guidelines on sound remuneration policies under Articles 74(3) and 75(2) of Directive 2013/36/EU¹ (“CRD IV”) and disclosures under Article 450 of Regulation (EU) No 575/2013² (EBA/GL/2015/22)³, which entered into force on 1 January 2017 (“EBA Guidelines”) and which the CSSF intends to observe in its capacity as competent authority, subject to point (f) below.

The EBA Guidelines set out the remuneration policy requirements applicable to all staff of institutions within the meaning of Regulation (EU) No 575/2013 (“CRR”) and the specific requirements that these institutions must apply to the remuneration policies and variable elements of remuneration of identified staff.

¹ 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.

² 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.

³ The EBA Guidelines are available on the EBA’s website at <http://www.eba.europa.eu/regulation-and-policy/remuneration/guidelines-on-sound-remuneration-policies>.

Furthermore, the EBA Guidelines repeal the CEBS Guidelines on remuneration policies and practices of 10 December 2010 that the CSSF had transposed through Circulars CSSF 10/496⁴ and 10/497⁵. The major amendments introduced by the EBA Guidelines are the following:

- a) introduction of a bonus cap in accordance with Article 94(1)(g) of CRD IV as transposed by Article 38-6(g) of the Law of 5 April 1993 on the financial sector (“LFS”): limitation of the ratio between the fixed and variable components of remuneration to 100% (up to 200% if the procedure described in point ii) of Article 94(1)(g) of CRD IV or Article 38-6(g) of the LFS, respectively, is observed);
- b) the material risk takers must be identified on an annual basis;
- c) the EBA Guidelines clarify the approach for material risk takers of non-CRR subsidiaries within a CRR group: the Guidelines specify that a non-CRR subsidiary that falls into the scope of prudential consolidation of a consolidating institution in a Member State must have remuneration policies that are consistent with the group-wide remuneration policies for all staff and comply with the requirements of Articles 92(2), 93 and 94 of CRD IV, or Articles 38-5, 38-6 and 38-7 of the LFS, respectively, at least for the identified staff whose professional activities have a material impact on the group’s risk profile. One of the consequences is the application of the limitation of the variable components of remuneration to 100% (if applicable, up to 200% with shareholders’ approval) of the fixed components of remuneration for staff of entities falling within the scope of Directive 2011/61/EU⁶ and Directive 2009/65/EC⁷ whose professional activities have a material impact on the group’s risk profile;
- d) the conditions to pay a variable remuneration, where applicable, in other financial instruments according to Article 94(1)(l)(ii) of CRD IV, or Article 38-6(l)(ii) of the LFS respectively;
- e) stricter conditions for the application of malus and clawback arrangements up to 100% of variable remuneration (cf. point 15.7.1 of the EBA Guidelines);
- f) in its consultation paper on the EBA Guidelines, the EBA sets out its legal interpretation of the application of the principle of proportionality as regards remuneration policies. According to this interpretation, the wording of Article 92(2) of CRD IV would no

⁴ Amendments to Circular CSSF 06/273 as amended, defining capital ratios pursuant to Article 56 of the Law of 5 April 1993 on the financial sector as amended: Transposition of Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies.

⁵ Amendments to Circular CSSF 07/290 as amended, defining capital ratios pursuant to Article 56 of the Law of 5 April 1993 on the financial sector as amended: Transposition of Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies.

⁶ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010.

⁷ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

longer allow the neutralisation of the requirements of remuneration policies for small and non-complex institutions. However, this new interpretation sparked intensive debate at European level since the publication of the EBA Guidelines⁸ leading the European Commission to introduce, in its draft amendment of CRD IV⁹, a proposal for an amendment of Article 94 which aims at introducing the possibility to neutralise certain requirements as regards variable remuneration for small and non-complex institutions. The CSSF therefore decided to maintain the application of Circular CSSF 11/505¹⁰, so that all the requirements that could be neutralised until now can continue to be neutralised until the application of new rules at European level.

In order to inform and guide institutions regarding certain elements of the EBA Guidelines, the CSSF plans to publish “Frequently Asked Questions” in 2017.

In order to draw up this document, any question relating to the EBA Guidelines must be sent, exclusively by email, to the CSSF to remuneration@cssf.lu.

Circular CSSF 10/496 is repealed following the publication of this circular.

Circulars CSSF 10/497 and 11/505 will be updated shortly in order to take into account recent regulatory developments.

Yours faithfully,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

Jean-Pierre FABER

Claude SIMON

Simone
DELCOURT

Claude MARX

Director

Director

Director

Director General

⁸ Please refer to the “call for advice (CfA) of 21 April 2016” of the European Commission and the EBA’s response in its letter dated 21 November 2016 (EBA/2016/D/989).

⁹ Please refer to the Proposal for a directive of the European Parliament and of the Council amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures, of 23 November 2016 (COM(2016) 854 final).

¹⁰ Circular CSSF 11/505 on details relating to the application of the principle of proportionality when establishing and applying remuneration policies that are consistent with sound and effective risk management as laid down in Circulars CSSF 10/496 and CSSF 10/497 (“CRD III Circulars”), transposing Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies (“CRD III”).