

EBA reports on use of role-based allowances in EU banking sector

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The European Banking Authority has found that it is incorrect to categorise role-based allowances as part of employees'

fixed remuneration and to do so circumvents the limit on variable remuneration introduced by the CRD IV Directive.

At present, performance-based bonuses in certain regulated roles are limited to 100% of the employee's fixed salary, though this can be increased to 200% with approval from shareholders.

On 15 October 2014, the EBA published an opinion and report on the compatibility of role-based allowances with the CRD IV Directive and its cap on variable remuneration. The EBA analysed data provided by national authorities to identify the types and applications of role-based allowances. It found that such provisions are commonly found where performance-based bonuses would otherwise exceed the limit.

The EBA identified that in order for an allowance to qualify as fixed remuneration and therefore legitimately fall outside of the limit on bonuses, it should be: (i) permanent, in that it is tied to the particular role rather than to performance; (ii) for a predetermined amount; (iii) non-discretionary; and (iv) non-revocable. It found that as many of the role-based allowances it analysed were discretionary and could be revoked at any time, they could not be regarded as fixed remuneration. The result of this is that many companies awarding role-based allowances will have to revise their remuneration to comply with CRD IV.

The EBA has given competent authorities a deadline of 31 December 2014 to take appropriate supervisory action to ensure that: (i) remuneration policies are amended to categorise correctly such payments as variable remuneration, and; (ii) such payments do not lead to contraventions of the bonus cap. The EBA will also redraft its own policies, with the final revised version due in 2015.

In view of this report, it is key for firms in the banking sector to review the terms of their remuneration policies to

ensure that all payments are correctly classified.

EBA Opinion (EBA/Op/2014/10)

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