

**Guidelines on remuneration policies and practices related to the sale and provision of retail banking products and services**

**(EBA/GL/2016/06)**

One of the competences of the European Banking Authority (EBA) is to guarantee a consistent, coherent and common application of EU Law and one of the forms in which the EBA gives effect to this mandate is by means of the issuance of guidelines addressed to financial institutions and competent authorities. Consequently, the EBA issued Guidelines on remuneration policies and practices related to the sale and provision of retail banking products and services, which further develop remuneration and internal governance requirements for institutions.

The objective of these Guidelines is to ensure that institutions implement remuneration policies and practices that:

- take into account the rights and interests of consumers and do not introduce incentives whereby relevant persons favor their own interests, or the institution's interests, to the detriment of consumers;
- request institutions to keep the necessary records relating to the policies and make them available to the competent authorities upon request;
- require that remuneration policies and practices are easily accessible by relevant persons are that they are informed of the remuneration policies and practices that are applicable to them;
- require that the remuneration policies and practices are reviewed at least annually and if the review reveals that an institution's remuneration policies and practices do not operate as intended or prescribed, they should be amended.

The EBA is of the view that these measures might reduce the number of mis-selling cases and might improve consumer protection.

The EBA published these guidelines on 13.12.2016. Banco de España's Executive Commission endorsed the guidelines on 25.01.2016.

EBA/GL/2016/06

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13/12/2016

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## Guidelines

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# 1. Compliance and reporting obligations

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## Status of these Guidelines

1. This document contains Guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010<sup>1</sup>. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions must make every effort to comply with the Guidelines.
2. Guidelines set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 to whom Guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where Guidelines are directed primarily at institutions.

## Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these Guidelines, or otherwise with reasons for non-compliance, by 13/02/2017. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website to [compliance@eba.europa.eu](mailto:compliance@eba.europa.eu) with the reference 'EBA/GL/2016/06'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

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<sup>1</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p.12).

## 2. Subject matter, scope and definitions

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### Subject matter and scope of application

5. These Guidelines specify requirements for the design and implementation of remuneration policies and practices, in relation to the offering or provision of banking products and services to consumers by institutions as defined in paragraph 17, with a view to protecting consumers from undesirable detriment arising from the remuneration of sales staff.
6. These Guidelines provide details on how financial institutions should give effect to specific provisions laid down in applicable EU Directives, such as (i) Articles 74(3) and 75(2) of Directive 2013/36/EU<sup>2</sup>, which confers the mandate on the EBA to develop Guidelines on credit institutions' governance arrangements, including remuneration policies and practices, (ii) Article 7(2) of Directive 2014/17/EU<sup>3</sup>, which requires Member States to ensure that the manner in which creditors and credit intermediaries remunerate their staff does not impede them from acting honestly, fairly, transparently and professionally, taking account of the rights and interests of consumers, and (iii) Articles 11(4) of Directive (EU) 2015/2366<sup>4</sup> and 3(1) of Directive 2009/110/EC<sup>5</sup>, which require payment institutions and electronic money institutions, respectively, to have in place robust governance arrangements, to the extent that they relate to remuneration policies and practices.
7. These Guidelines do not cover remuneration paid by institutions to credit intermediaries (often also referred to as 'commissions') and are without prejudice to the remuneration rules laid down under the Directive 2014/17/EU<sup>6</sup> and in particular under Article 7(2) of that Directive, which requires that, where creditors remunerate credit intermediaries, they must do so in a way that does not impede the creditor, credit intermediary or appointed representative from acting honestly, fairly, transparently and professionally, taking account of the rights and interests of the consumers.

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<sup>2</sup> 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

<sup>3</sup> Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p.34).

<sup>4</sup> Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p.35).

<sup>5</sup> Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p.7).

<sup>6</sup> Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p.34).

8. Relevant banking products and services are those which fall within the scope of the legislative acts under which institutions are authorised or admitted to carry out their activities as defined in paragraph 17.
9. These Guidelines are also without prejudice to the application of stricter requirements specified in applicable sectoral legislation, and in particular under Article 7(4) of Directive 2014/17/EU, in relation to the provision of advisory services on credit agreements as defined in Article 4(21) of that Directive.
10. Competent authorities may wish to consider applying these Guidelines also to entities other than institutions as defined in paragraph 17, in particular to:
  - a. intermediaries other than credit intermediaries as defined in Article 4(5) of Directive 2014/17/EU;
  - b. 'appointed representatives' as defined in Article 4(8) of Directive 2014/17/EU.
11. Competent authorities may wish to consider applying these Guidelines in relation to persons other than consumers as defined in paragraph 17, such as micro-enterprises and small and medium-sized enterprises (SMEs).
12. Finally, competent authorities may wish to consider extending the remuneration requirements set out in these Guidelines also to remuneration (also referred as to 'commissions') paid by financial institutions to credit intermediaries.
13. Where these Guidelines indicate an outcome, the outcome may be achieved through different means. Competent authorities may want to assess the appropriateness of the means used by a financial institution, taking into account its business model, size and complexity.
14. The implementation of these Guidelines is without prejudice to the credit institutions' requirement to comply with 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.

## Addressees

### Addressees of these Guidelines

15. The Guidelines are addressed to :
  - a. competent authorities as defined in Article 4(2)(i) of Regulation (EU) No 1093/2010 (the EBA authority). With respect to creditors and credit intermediaries referred to in the definition of 'Institutions' in paragraph 17 which are not credit institutions, payment institutions or electronic money institutions as referred to in that definition, the Guidelines apply to the extent that those authorities have been designated as

competent for ensuring the application and enforcement of the provisions of Directive 2014/17/EU to which these Guidelines relate; and

- b. financial institutions as defined in Article 4(1) of Regulation (EU) No 1093/2010.

#### Addressees of information requirements

16. Irrespective of whether an EBA authority is addressed under paragraph 15, where a Member State has designated more than one authority in accordance with Article 5 of Directive 2014/17/EU and one of them is not an EBA authority, the EBA authority designated under that article should, without prejudice to national arrangements adopted under Article 5(3) of Directive 2014/17/EU:

- a) inform without delay the other designated authority of these Guidelines and their date of application;
- b) ask that authority in writing to consider applying these Guidelines;
- c) ask that authority in writing to inform either the EBA or the EBA authority within two months of the notification under subparagraph (a) whether it applies or intends to apply these Guidelines; and
- d) where applicable, forward without delay to the EBA the information received under subparagraph (c).

## Definitions

17. Unless otherwise specified, the definitions provided in the legislative acts referred to in this paragraph have the same meaning in these Guidelines. In addition, for the purposes of these Guidelines, the following definitions apply:

Consumer	A natural person, who is acting for purposes which are outside his trade, business or profession.
Institutions	<ul style="list-style-type: none"><li>a) 'Credit institutions' as defined in Article 4(1) of Regulation (EU) No 575/2013<sup>7</sup>;</li><li>b) 'Creditors' as defined in Article 4(2) of Directive 2014/17/EU;</li><li>c) 'Credit intermediaries' as defined in Article 4(5) of Directive 2014/17/EU;</li></ul>

<sup>7</sup> 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 (OJ L 176, 27.6.2013, p.1).

- d) 'Payment institutions' as defined in Article 4(4) Directive (EU) 2015/2366;
- e) 'Electronic money institutions' as defined in Article 2(1) of Directive 2009/110/EC.

Banking products and/or services	<ul style="list-style-type: none"> <li>a) 'credit agreements' as defined in Article 4(3) of Directive 2014/17/EU;</li> <li>b) 'deposits'<sup>8</sup> as defined in Article 2(3) of Directive 2014/49/EU<sup>9</sup>;</li> <li>c) 'payment accounts' as defined in Article 4(12) of Directive (EU) 2015/2366;</li> <li>d) 'payment services' as defined in Article 4(3) of Directive (EU) 2015/2366;</li> <li>e) 'payment instruments' as defined in Article 4(14) of Directive (EU) 2015/2366;</li> <li>f) other means of payment, as referred to in Annex 1(5) Directive 2013/36/EU<sup>10</sup>;</li> <li>g) 'electronic money' as defined in Article 2(2) of Directive 2009/110/EC; and</li> <li>h) other forms of credit, in addition to that in point (a) above, as referred to in Annex 1(2) of Directive 2013/36/EU and in line with Article 1(5)(e) of Regulation (EU) No 1093/2010.</li> </ul>
Management body	An institution's body or bodies <sup>11</sup> , which are appointed in accordance with national law, which are empowered to set the institution's strategy, objectives and overall direction, and which oversee and monitor management decision-making, and include the persons who effectively direct the business of the institution.
Relevant persons	Any natural person who is: <ul style="list-style-type: none"> <li>a) working for an institution and directly offering or providing banking products or services to consumers; or</li> </ul>

<sup>8</sup> Deposits include all forms of deposits. The Markets for Financial Instruments Directive 2014/65/EU (MiFID2) has extended, in line with its Article 1(4), certain organisational and conduct of business rules to the subset of deposits called structured deposits, as defined in point (43) of Article 4(1) of MiFID2. MiFID2 remuneration rules, including future delegated acts setting further specifications in relation to Articles 16(3) and 24(10) of MiFID2, will apply to structured deposits and, therefore, these Guidelines will not apply to them.

<sup>9</sup> Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p.149).

<sup>10</sup> 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).

<sup>11</sup> Different management body structures can be observed in European countries. In some countries a unitary structure is common, i.e. supervisory and management functions of the board are exercised by only one body. In other countries a dual structure is common, with two independent bodies being established, one for the management function and the other for the supervision of the management function.

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b) working for an institution and directly or indirectly managing a person referred to in point (a).

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Remuneration	All forms of fixed and variable remuneration, including payments made or benefits, monetary or non-monetary, awarded directly by or on behalf of institutions to relevant persons. Non-monetary benefits may include, but are not limited to, career progression, health insurance, discounts or provision of car or mobile phone, generous expense accounts or seminars.
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## Outsourcing

18. In the event that the activity of the institution is in whole or in part outsourced to third parties, or carried out by another entity in other ways, institutions should ensure that, in doing so, they comply with the requirements established in the CEBS Guidelines on outsourcing<sup>12</sup>. This includes, in particular, CEBS guideline 2, which provides that ‘the ultimate responsibility for the proper management of the risks associated with outsourcing or the outsourced activities lies with an outsourcing institution’s senior management’.

## 3. Implementation

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### Date of application

19. These Guidelines apply from 13 January 2018.

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<sup>12</sup> [CEBS, Guidelines on outsourcing \(2006\)](#).



## 4. Guidelines on remuneration policies and practices

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### 1. Design

- 1.1. Institutions should design and implement remuneration policies and practices that take into account the rights and interests of consumers. In particular, institutions should ensure that monetary and/or non-monetary forms of remuneration do not introduce incentives whereby relevant persons favour their own interests, or the institution's interests, to the detriment of consumers.
- 1.2. When designing the remuneration policies and practices, institutions should consider whether these policies and practices introduce any risks of detriment to consumers and should mitigate such risks from arising.
- 1.3. The human resources function of institutions should participate in and inform the design of the remuneration policies and practices. In addition, where established, the risk management and compliance functions should provide effective input for the design of the remuneration policies and practices.
- 1.4. For the purpose of evaluating the performance of a relevant person, institutions should define in the remuneration policy and practices the appropriate criteria to be used to assess performance, taking into account the rights and interests of consumers.
- 1.5. When designing the remuneration policies and practices, institutions should consider both qualitative and quantitative criteria for determining the level of variable remuneration to ensure that the rights and interests of consumers are adequately considered.
- 1.6. Institutions should not design remuneration policies and practices that:
  - a. solely link remuneration to a quantitative target for the offer or provision of banking products and services; or
  - b. promote the offer or provision of a specific product or category of products over other products, such as products which are more profitable for the institutions or for a relevant person, to the detriment of the consumer.
- 1.7. Where the remuneration policies and practices allow for variable remuneration, institutions should ensure that the ratio between the fixed and variable components of the remuneration is appropriately balanced and takes into account the rights and interests of consumers. Furthermore, the remuneration policies and practices in place should allow the

operation of a flexible policy on variable remuneration, including the possibility to pay no variable remuneration where appropriate.

- 1.8. Institutions should avoid unnecessarily complex policies and practices and unclear combinations of different policies and practices.

## 2. Documentation, notification and accessibility

- 2.1. Institutions should document remuneration policies and practices, keep them for audit purposes for at least five years from the last date that they applied, and make them available to the competent authorities upon request. This documentation should include, but is not limited to:

- a) the objectives of the institutions' remuneration policies and practices;
- b) the relevant persons falling within the scope of these policies and practices;
- c) how remuneration policies have been implemented in practice, including in particular the criteria for variable remuneration where variable remuneration is granted.

- 2.2. Before being allowed to offer banking products or services to consumers, relevant persons should be clearly informed in a simple and transparent manner of the remuneration policies and practices that are applicable to them.

- 2.3. The remuneration policies and practices should be easily accessible to all relevant persons of the institution.

## 3. Approval

- 3.1. The management body approves and retains ultimate responsibility for the institution's remuneration policies and practices.

- 3.2. The management body should seek advice from the remuneration committee where established on the institution's remuneration policies and practices in relation to the fulfilment of these Guidelines.

- 3.3. Where established, the compliance function should confirm that the remuneration policies and practices comply with these Guidelines.

- 3.4. Changes to the remuneration policies and practices should only be made with the approval of the management body.

## 4. Monitoring

- 4.1 Institutions should review, at least annually, their remuneration policies and practices to ensure compliance with these Guidelines. In particular, where an institution identifies that a residual risk of consumers' detriment might arise as a result of the design of remuneration policies and practices as referred to in paragraph 1.2 of these Guidelines, the institution should assess under the review whether any of these residual risks are crystallising and causing detriment to consumers.
- 4.2 Where the review reveals that an institution's remuneration policies and practices do not operate as intended or prescribed, the institution should amend its remuneration policies and practices in accordance with these Guidelines.
- 4.3 Institutions should establish effective controls to check that their remuneration policies and practices are being adhered to, and to identify and address incidents of non-compliance with these Guidelines.