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Your ref., Your message of Our ref., person in charge Extension Date

BSBV 64/Horvath 3141 13h Oct 2021

**Comments on the Consultation Paper**

**Guidelines on certain aspects of the MiFID II remuneration requirements**

The Division Bank and Insurance of the Austrian Federal Economic Chamber, as legal representative of the entire Austrian banking and insurance industry, appreciates the possibility to comment on the above cited Draft Document. We would like to note the following comments and remarks.

General comments:

We agree that the incorporation of the MiFID II rules is necessary, but anything beyond that is excessive and does not make sense at this state. The ESMA regulations in 2013 were already more detailed than MiFID regulated at that time and they have been introduced in most of the firms in recent years. From our point of view, there is no need to tighten the regulations beyond this, the introduced regulations can now also be tested for suitability and have so far proven to avoid conflicts of interest in the area of remuneration. Constant changes in the regulations would mean that introduced systems cannot prove themselves, especially since there are no indications for changes due to a higher number of complaints, damage claims or findings from supervisory audits regarding this topic.

It is noticeable that the regulation of fixed remuneration components (in addition to variable remuneration) is being proposed. However, the fixed salary of an employee is not based on changing criteria and there is no conflict of interests with customer interests, which is why the inclusion of the fixed remuneration (in the sense of the current salary) in the matter to be regulated seems excessive.

We want to highlight a few topics mentioned in the **Questions** and in the **draft** of the guidelines:

*Q1-Q2: fixed remuneration and career progression:*

*Q1: Do you agree that career progression is likely to have an impact on fixed remuneration and that, consequently, firms should define appropriate criteria to align the interests of the relevant persons or the firms and that of the clients in respect of all types of remuneration (not just in respect of variable remuneration)? Please also state the reasons for your answer.*

*Q2: Do you agree with the suggested approach on career progression? Please also state the reasons for your answer.*

A: In particular, we oppose the inclusion of all types of remuneration (also fixed remuneration) in the scope of the GL. The fixed remuneration as the ongoing salary is not used for rewarding sales results and so there’s no danger to act detrimentally to the clients’ interests. We also think that rules about collective bargaining agreements stand in the way of an extension of the regulations to fixed remuneration.

There are already parameters defining fixed remuneration, such as years of service, type of profession, etc., which already have to be transparent for the employees. This also applies to career progression. Furthermore, career progression and fixed remuneration are rather linked to training as a condition than sales objectives and this enhances the quality of the service. Career progression already falls under the application of the remuneration rules as non-financial remuneration. **Therefore, no further regulations are needed here from our point of view.**

*Q3-Q4: ex-post adjustment criteria (clawbacks and malus):*

*Q3: Do you agree that, to align the interests of relevant persons or the firms with the interests of clients on a long term basis, firms should consider the possibility to adjust remuneration previously awarded through the use of ex-post adjustment criteria in their remuneration policies and practices (such as clawbacks and malus)? Please also state the reasons for your answer.*

*Q4: Do you agree with the suggested approach on ex-post adjustment criteria? Please also state the reasons for your answer.*

A: The bonus systems have already taken qualitative criteria into account in the annual/periodical calculation of variable remuneration. If these are not met, usually no bonus at all is paid or a reduction is made. If misconduct occurs after payment or if it is discovered after payment, mostly there will be consequences under labour law or the misconduct will be taken into account in the calculation of the variable remuneration in the following period. Hence, we do not see the necessity for ex-post adjustment criteria. But it is also important to stress that in case that rules about ex-post criterias should be implemented, this necessarily have to be linked to any misconduct of the employee as the customer's profit always depends on the development of a product influenced by external factors, no matter how good the advice is in advance.

With special reference to **paragraph 27 of the draft GL** we would like to state that if ex-post adjustment mechanisms should be introduced (which we are rejecting according to our previous statement), these should be limited to those who were directly engaged in misconduct, a collective application without culpable conduct would be inappropriate.

Referring to **paragraph 29  of the draft GL** we would like to state that linking ex-post adjustment mechanisms and the deferral of remuneration to the interest of clients should not mean that the employee has to take responsibility for a negative product development, even though he cannot be accused of any misconduct. Many products have a medium or longer maturity and the question arises as to how many years a deferral can be maintained and managed in a firm.

*Q5: control functions, management body or senior management:*

*Q5: Do you agree with the added focus and suggested approach on the remuneration policies and practices for control functions and members of the management body or senior management? Please also state the reasons for your answer.*

A: No further need of regulation as there are enough regulations covering the avoidance of the described risks.

Referring to **paragraph 35 of the draft GL** we would like to comment the following:

According to regulations by the local supervisory authority (based on the ESMA Guidelines on certain aspects of the MiFID II compliance function requirements - ESMA35-36-1952) the payment of the Compliance function is already regulated in a similar way (no dependency from the quantitative commercial performance of the monitored units, decision on the bonus by the management board, consideration of qualitative criteria). There should be consistency and no contradictions between the two regulations.

*Q7: ad-hoc review:*

*Q7: Do you agree that the remuneration policy should not only be reviewed on a periodic basis but also upon the occurrence of certain ad hoc events as described in new general guideline 2? Please also state the reasons for your answer.*

A: As part of the conflict of interest management, the remuneration practices should already be taken into consideration, whenever ad hoc events occur. From our point there is no need for further regulation.

*Q8: additional access:*

*Q8: Do you agree that the persons involved in the design, monitoring and review of the remuneration policies and practices should have access to all relevant documents and information to understand the background to and decisions that led to such remuneration policies and procedures? Please also state the reasons for your answer.*

A: There is no need for further regulation, from our experience the mentioned persons have sufficient access to relevant documents and information.

Yours sincerely,

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Managing Director

Division Bank and Insurance