Prudential requirements for credit institutions and investment firms. Capital Requirements Regulation (CRR)

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The Commission presented a report on the assessment of the remuneration rules under Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (CRD) and Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms (CRR).

The Capital Requirements Directive (CRD) and the Capital Requirements Regulation (CRR) contain a number of requirements regarding the remuneration policies and practices of credit institutions and investment firms. These requirements were introduced in the aftermath of the 2008 financial crisis to ensure that remuneration policies do not encourage excessive risk-taking behaviour.

This report was prepared to meet the obligation under Article 161(2) of the CRD that requires the Commission to report on the efficiency, implementation and enforcement of the remuneration rules, and in particular on the impact of the maximum ratio between variable and fixed remuneration.

Financial incentives: the report noted that measures to restore financial stability involved unprecedented levels of public support. It is broadly recognised that financial incentives which sent the wrong signals to staff were one of the contributing factors to the crisis.

Remuneration practices in the financial services industry meant that those incentives were not in line with the long-term objectives of firms and the need for responsible risk-taking.

Internationally agreed principles and standards on sound compensation practices were adopted. One of the main differences between the EU rules and these principles and standards is the maximum ratio between variable and fixed remuneration, which is defined only in the EU.

Interpretation of the rules: the report noted concerns as regards the interpretation by Member States of the principle of proportionality that underlies the CRD remuneration rules. It has been revealed that most Member States have put in place thresholds or criteria under which certain remuneration rules do not need to be applied, which are not in line with the text.

The second issue concerns the interpretation of what is fixed and what is variable remuneration.

The report noted that another difficulty resulted from the very nature of the rules. The rules are meant to curb incentives which may send the wrong signals to individuals and thus to impact individuals behaviour. However, measuring concrete impact on individuals behaviour is very complex.

Scope of the application of the remuneration rules: an important step in ensuring the effectiveness of the remuneration rules is to correctly identify the staff, the investment firms and the groups to whom these rules should apply.

Proportionate application: specific concerns about the need for a proportionate application of the rules were stressed. While the requirements on the structure and pay-out of variable pay of staff are generally considered as effective mechanisms for linking remuneration with the long-term performance of an institution, many industry representatives and nearly all Member States and supervisors expressed serious concerns about the need for proportionate application of the remuneration rules and warned against a one size fits all approach.

Conclusions: the report concluded that this review allows for a largely positive assessment of the rules on the governance of remuneration processes, performance assessment, disclosure and pay-out of the variable remuneration of identified staff.

These rules were found to contribute to the overall objectives of curbing excessive risk-taking and better aligning remuneration with performance, thereby contributing to enhanced financial stability.

The review also revealed that the deferral and pay-out in instruments requirements are not efficient in the case of small and non-complex credit institutions and investment firms, and of staff with low levels of variable remuneration. The Commission will therefore conduct an impact assessment which will examine options for addressing this issue in particular by exempting these institutions and staff from these specific requirements. This impact assessment will also look at allowing listed institutions to use share-linked instruments under the CRD pay-out in instruments requirement. This will be part of the wider work to prepare the revision of the CRD and CRR now under consideration.

With regard to the maximum ratio between variable and fixed remuneration, the review found that for the time being there is insufficient evidence to draw final conclusions on the impact of the rule on competitiveness, financial stability and staff working for non-EEA subsidiaries. It seems that conclusive findings can only be reached once more implementation experience is gained.