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EU'S FINAL CRD V DIRECTIVE REVISES REMUNERATION PRINCIPLES

By Mercer's Richard Symons, Fiona Webster and Stephanie Rosseau
1 Aug 2019

EU member states will have to implement the finalized EU capital requirements directive (CRD V) by 28 Dec 2020. Until then, CRD IV and current guidelines issued by the European Banking Authority (EBA) — the EU's regulatory authority — remain in force. The directives include several remuneration principles impacting bankers' bonus payments and payouts, including malus and clawbacks, bonus deferrals, and a requirement to pay a portion in shares or instruments.

REVISED REMUNERATION PRINCIPLES

CRD V aims "to promote the sound and effective risk management of institutions by aligning the long-term interests of both institutions and their staff whose professional activities have a material impact on the institution's risk profile (material risk takers)." Highlights of the new directive impacting remuneration include:

- Material risk takers who could materially impact an institution's risk profile are listed, including the functions they perform. The EBA will draft regulatory technical standards by 28 Dec 2019 for the European Commission.
- The maximum ratio between fixed and variable remuneration — the so-called bonus cap — will continue to apply to all risk takers in all institutions. The bonus cap remains at 100% of an individual's basic salary, or up to 200% of salary with shareholder approval.
- A revised proportionality principle will exempt smaller institutions and certain staff members from the directive's provisions on instruments, retention and deferral. This applies to:
  - An institution, subject to European Banking Authority (EBA) guidelines, with assets under €5 billion over the four-year period immediately preceding the current financial year
  - A staff member whose annual variable remuneration doesn't exceed €50,000 and one-third of the member's annual total remuneration

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- The minimum deferral periods will increase to four-to-five years, up from three-to-five years.
- Listed institutions will be allowed to use share-linked instruments to fulfil the requirement of paying a portion of remuneration in instruments. Under CRD IV, only unlisted institutions could do this.
- Remuneration policies will need to be gender-neutral and based on equal pay for women and men for equal work or work of equal value. The EBA will issue guidelines for institutions.
- Remuneration principles won't necessarily apply to subsidiaries on a consolidated basis. However, a subsidiary's employees whose professional services to the group would qualify them as material risk takers should still be identified under the group structure.

RELATED RESOURCES

Non-Mercer Resources

- Directive (EU) 2019/878 on Capital Requirements Directive (EurLex, 20 May 2019)
- Directive 2013/36/EU (EurLex, 26 Jun 2013)

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- EU Agrees on Remuneration Rules for Financial Sector — 'CRDV' (20 Mar 2019)

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