

CEIOPS' Advice for Level 2 Implementing Measures on Solvency II: Remuneration Issues

(former Consultation Paper 50)

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1. Introduction

- 1.1. The financial crisis that has been recently affecting the financial sector at a global level has led to the need to reflect on the way undertakings that operate in the financial sector are managed. Consequently, it has also triggered a reflection on some commonly accepted and generalised principles related to internal governance.
- 1.2. One of the most prominent issues that has been attracting the attention of different stakeholders is related to remuneration practices applied to the members of the administrative, management or supervisory body and senior management of financial entities, as well as to personnel undertaking activities that involve risk-taking.
- 1.3. Since the emergence of the current financial market turbulence several documents produced by different types of entities have been published with the purpose of alerting interested parties to the need of revising remuneration policies and schemes currently in place.
- 1.4. Among these documents CEIOPS would like to mention (in chronological order) those published by the ECOFIN¹, the de Larosière group², the International Association of Insurance Supervisors (IAIS), the Organisation for Economic Co-operation and Development (OECD)³, the German *Bundesanstalt für Finanzdienstleistungsaufsicht* (BaFin)⁴, the Financial Stability Forum (FSF)⁵, the Committee of European Banking Supervisors (CEBS)⁶, the European Commission⁷, the Dutch *De Nederlandsche Bank* (DNB)⁸, the Italian *Istituto per la Vigilanza sulle Assicurazioni Private e di Interesse Collettivo* (ISVAP)⁹, the

¹ "Council Conclusions on executive pay", 7 October 2008
(http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ecofin/103205.pdf)

² Report by the High-level group on financial supervision in the EU, 25 February 2009
(http://ec.europa.eu/internal_market/finances/docs/de_larosiere_report_en.pdf)

³ "Issues Paper on Corporate Governance", draft 13 March 2009
(<http://www.oecd.org/dataoecd/43/21/42366179.pdf>)

⁴ "Circular 3/2009 - Minimum Requirements for Risk Management in Insurance Undertakings", 18 March 2009
(http://www.bafin.de/cln_109/nn_720788/SharedDocs/Veroeffentlichungen/EN/Service/Circulars/rs_0903_va_marisk_english.html#doc1455082bodyText13)

⁵ "FSF Principles for Sound Compensation Practices", 2 April 2009
(http://www.fsforum.org/publications/r_0904b.pdf)

⁶ "High-level principles for Remuneration Policies", 20 April 2009
(<http://www.c-ebs.org/getdoc/34beb2e0-bdff-4b8e-979a-5115a482a7ba/High-level-principles-for-remuneration-policies.aspx>)

⁷ Commission Recommendation on "Financial services sector pay", 29 April 2009
(http://ec.europa.eu/internal_market/company/docs/directors-remun/financialsector_290409_en.pdf) and
Commission Recommendation on "Directors' pay", 29 April 2009
(http://ec.europa.eu/internal_market/company/docs/directors-remun/directorspay_290409_en.pdf)

⁸ "Principles for sound compensation policies", May 2009
(http://www.dnb.nl/openboek/extern/file/dnb_tcm40-193380.pdf)

⁹ "Schema di regolamento relativo alle politiche di remunerazione nelle imprese di assicurazione", Documento di consultazione n. 33/2009, 11 July 2009 (in Italian)
(http://www.isvap.it/isvap/cms/docs/F28444/doc_consul_remunerazioni.pdf)

United Kingdom's Financial Services Authority (FSA)¹⁰, and the G20 summit that took place in Pittsburgh¹¹.

- 1.5. One of the facts that was underlined by some of these institutions is that the role of national supervisory authorities is rather fundamental in the definition of an appropriate regulatory framework and in the encouragement of good practices and voluntary self regulation, e.g. through principles of good governance, transparency and disclosure rules, and control rights by shareholders.
- 1.6. CEIOPS believes that the high-level principles of remuneration policies developed by CEBS are also generally applicable to the insurance sector. Some insurance related specificities should be allowed for in the implementation of such principles, notably those that are linked to the interests of policyholders and the prevention of any possible conflicts of interest. Although this Paper does not tackle directly the issue of brokers and intermediaries' remunerations, undertakings should be aware of the fact that they should define commissions and fees in a way that does not have the potential to jeopardise the interests of policyholders.
- 1.7. The same remarks are true for the Recommendations issued by the European Commission in last April, notably the ones that are specifically addressed to listed companies. In this case, CEIOPS believes that these should be extended to all (re)insurance undertakings and that some insurance-specific issues could be highlighted.
- 1.8. In its document "Lessons learned from the crisis (Solvency II and beyond)"¹², which was published with the intention of providing some reflections on the impact of the global financial crisis on the insurance sector, CEIOPS has addressed some remuneration issues that should be taken into consideration.
- 1.9. Additionally, CEIOPS' Advice for Level 2 implementing measures on the system of governance¹³ contains remuneration issues that should also be considered in the establishment of a system of governance, and it is CEIOPS' intention to further develop this when preparing its Level 3 guidance using the contents of this Paper.
- 1.10. CEIOPS believes that an adequate system of governance should include the implementation of an appropriate remuneration policy. Consequently, this issue could be tackled in the context of the implementation measures that the European Commission may propose under Article 50 of the Solvency II Level 1 text¹⁴ ("Level 1 text").
- 1.11. In this Advice CEIOPS intends to provide its contribution to the general discussion on the issues related to remuneration policies and schemes. It also

¹⁰ FSA Policy Statement on "Reforming remuneration practices in financial services", August 2009 (http://www.fsa.gov.uk/pubs/policy/ps09_15.pdf)

¹¹ The G-20 Pittsburgh Summit, 24-25 September 2009 (<http://www.pittsburghsummit.gov/mediacenter/129639.htm>)

¹² "Lessons learned from the crisis (Solvency II and beyond)", 19 March 2009 (<http://www.ceiops.eu/media/files/publications/reports/CEIOPS-SEC-107-08-Lessons-learned-from-the-crisis-SII-and-beyond.pdf>)

¹³ CEIOPS' Advice for Level 2 Implementing Measures on Solvency II: System of Governance, CEIOPS-DOC-29/09, see <http://www.ceiops.eu/index.php?option=content&task=view&id=581>)

¹⁴ <http://register.consilium.europa.eu/pdf/en/09/st03/st03643-re01.en09.pdf>.

aims at providing advice for Level 2 measures with regard to remuneration issues.

1.12. CEIOPS' Advice focuses on the following 4 areas:

- a) "Scope", where the addressees of the principles are defined;
- b) "Objectives", where the main drivers of a focus on remuneration issues are set;
- c) "Principles", where a set of general principles, as well as their applicability to the insurance sector, are established; and
- d) "The role of the supervisory authority", where the main tasks to be performed by supervisory authorities in the context of remuneration issues are described.

2. Extract from Level 1 text

ARTICLE 50 OF THE LEVEL 1 TEXT (IMPLEMENTING MEASURES)

1. *The Commission shall adopt implementing measures to further specify the following:*
 - (a) *the elements of the systems referred to in Articles 41, 44, 46 and 47, and in particular the areas to be covered by the asset-liability management and investment policy, as referred to in Article 44(2), of insurance and reinsurance undertakings;*
 - (b) *the functions referred to in Articles 44 and 46 to 48;*
 - (c) *the requirements set out in Article 42 and the functions subject thereto;*
 - (d) *the conditions under which outsourcing, in particular to service providers located in third countries, may be performed.*
2. *Where necessary to ensure appropriate convergence of the assessment referred to in point (a) of Article 45(1), the Commission may adopt implementing measures to further specify the elements of that assessment.*
3. *Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 301(3).*

3. Advice

Explanatory text

3.1. Scope

- 3.1. The revision of the remuneration policies and schemes that is currently taking place in a number of Member States was in part triggered by some practices related to the remuneration of executives, while many financial entities were receiving financial support from their respective governments.
- 3.2. Although the majority of these situations occurred in sectors other than the insurance sector, CEIOPS considers that some principles should be applied and preventive measures should be allowed for and implemented by (re)insurance undertakings.
- 3.3. The situations mentioned above raised two fundamental questions from a regulatory perspective:
 - a) Is executive pay appropriately linked to the undertaking's long-term objectives and performance?
 - b) Is the remuneration structure adverse to the policyholders' interests?
- 3.4. This issue has been connected to the remuneration policies and schemes of personnel working in other activities, such as trading, risk management, and other tasks that have an impact on the risk profile of an undertaking.
- 3.5. The remuneration policy of an undertaking should be applied to its whole organisational structure and it should contain specific arrangements that take into consideration the roles of the members of the administrative, management or supervisory body, the senior management and the personnel undertaking activities that involve significant risk-taking. Hence, the principles referred to in the Paper should be interpreted accordingly.
- 3.6. In the case of mutual undertakings, the principles should be applied taking into consideration any necessary adaptations.
- 3.7. This Advice does not deal with remuneration policies for pension funds.

3.2. Objectives

- 3.8. The main purpose of this Advice is to provide advice to the European Commission on the implementing measures that should be adopted on remuneration issues in the context of the system of governance.
- 3.9. CEIOPS intends to do this based on a set of principles that should contribute to a better alignment between overall risk management and the remuneration of personnel working in the financial sector, taking account of the specificities of the insurance sector as necessary.
- 3.10. In presenting these principles, CEIOPS does not intend to interfere in the process of determining the level of remuneration to be applied by an undertaking.

- 3.11. It is a fact that remuneration policies that excessively reward short-term profit and give incentives to take risks that are not in line with the undertaking's risk profile can undermine sound and effective risk management, exacerbate excessive risk-taking behaviour and lead to potential conflicts of interest between the undertaking's employees and the protection of policyholders. Hence, performance criteria, including non-financial performance factors, such as goals and criteria relating to effective risk management practices, should provide the right incentives.
- 3.12. The remuneration policies and schemes should support the overall business strategy and should be in line with strong risk control mechanisms. The undertaking's system of governance should imply an effective control by the administrative, management or supervisory body of the undertaking on issues that include remuneration policies in a way that serves the best interests of the undertaking, its shareholders and policyholders.
- 3.13. To ensure this, individual and the undertaking's performance should be properly and comprehensively reflected in remuneration; remuneration policies and schemes should take appropriate account of the material risks, including the relevant time horizons; and remuneration practices should be transparent and adequately disclosed.

3.3. Principles

- 3.14. The principles presented in this chapter are based on the assumption that the existence of incentives to attract and retain competent, experienced and skilled human resources is a positive thing.
- 3.15. These incentives should be appropriate to the size, internal organisation and the nature and scope of the undertaking's activities.
- 3.16. The rationale that accompanies each of these principles also tries to extrapolate their practical applicability in the case of insurance undertakings.

Principle 1

An overall remuneration policy and practice that is in line with the undertaking's business and risk strategy, risk profile, objectives, values, risk management practices, and long-term entity-wide interests and performance should be adopted.

- 3.17. For employees involved in risk-taking activities in (re)insurance undertakings (such as (re)insurance underwriting, reinsurance ceding or investment management activities), the remuneration policy should be designed so as not to encourage unauthorised or unwanted risk-taking that exceeds the level of tolerated risk of the undertaking and should be consistent with and promote sound and effective risk management. It should also be structured and managed in a way that does not allow any possibility of manipulation.
- 3.18. The design of the remuneration policy should be such that it does not have an adverse effect on the long-term interests of the undertaking and should try to align the objectives of the undertaking and its personnel with a view to the long term. Hence, the remuneration structure should be based on a long-term view of

the undertaking's financial performance rather than on short-term results. In the case of insurance business the long term plays a very important role.

- 3.19. In the development of a remuneration policy, the following aspects could also be considered:
- a) The overall strategy of the undertaking;
 - b) The broader performance management framework of the undertaking;
 - c) The compliance culture that is implemented in the undertaking;
 - d) The undertaking's ethics;
 - e) The impact of the remuneration policy and practices on policyholders and beneficiaries; and
 - f) The measures implemented in order to avoid conflicts of interest between the employees and the undertaking as a whole.

Principle 2

The remuneration policy applies to the undertaking as a whole in a proportionate and risk-based way and contains specific arrangements that take into account the respective roles of the administrative, management or supervisory body, key functions, senior management and personnel undertaking activities that involve significant risk-taking.

- 3.20. In the definition of the undertaking's remuneration policy, the whole organisational structure should be covered. However, a focus should be put on those roles where the individual interests and those of the undertaking are more likely to raise potential conflicts. Any remuneration policies from other undertakings within the group have to be taken in to account.
- 3.21. In the case of personnel responsible for/engaged in activities that involve significant risk-taking, undertakings may wish to reward them adequately in order to attract and retain skilled individuals. Notwithstanding this fact, the remuneration should be aligned with the achievement of the objectives of their functions and not just in relation to the performance of the business areas they belong to. Similarly, the individual business areas have to take account of the undertaking's overall performance.
- 3.22. The remuneration of employees in risk management, actuarial, compliance and internal audit functions should be designed in a way that ensures skilled personnel can be attracted and retained. In order to avoid potential conflicts of interest, their remuneration should be determined independently of business areas they review. These specified functions should have performance metrics based principally on the achievement of the objectives of those functions.
- 3.23. Additionally, in the particular case of the actuarial function, the employees performing this function should not be remunerated according to assumptions that incentivise an excessive risk-taking or an underestimation of the existing risks.

Principle 3

There should be a clear, transparent and effective governance structure around remuneration, including the definition of the remuneration policy and its oversight.

Depending on the nature, scale and complexity of the undertaking's activities, a remuneration committee should be created.

- 3.24. In the context of the undertaking's system of governance, the responsibilities related to the definition and management of remuneration issues have to be very clear. In particular, the definition, approval and overview of the undertaking's remuneration policy should be addressed.
- 3.25. In order to ensure the adequateness of the process, the undertaking's shareholders should be involved in the approval of the remuneration policy in the aspects related to the remuneration of the administrative, management or supervisory body¹⁵ provided this is possible under national law. The administrative, management or supervisory body should define the remuneration applicable to the key functions, senior management, personnel undertaking activities that involve significant risk-taking and other staff.
- 3.26. The remuneration policy should be subject to a regular (at least annual) and independent internal review, with specific attention to preventing incentives for excessive risk-taking and the creation of conflicts of interest between the employees and the undertaking as a whole, and generally not undermining sound and effective risk management. In this review, the appropriateness of the basis on which the variable component of remuneration is set, as well as its proportion, should be assessed and recommendations should be provided when appropriate.
- 3.27. This oversight could be performed by a remuneration committee.
- 3.28. In any case, the final responsibility for the remuneration practices in place in the undertaking would always be attributed to the undertaking's administrative, management or supervisory body.
- 3.29. At least one of the participants involved in the definition and management of remuneration issues should have expertise in the field of remuneration, i.e. know how to design a remuneration policy with due regard to risk management issues in an insurance undertaking.
- 3.30. When an undertaking receives advice from third parties, the third party should disclose any conflict of interest that may arise.

Principle 4

When remuneration schemes include both fixed and variable components, these should be appropriately balanced so that the fixed component represents a sufficiently high proportion of the total remuneration to avoid that the employees are overly dependent on the variable components and allow the undertaking to operate a fully flexible bonus policy.

¹⁵ The level and form of participation of shareholders may differ according to the legal framework of each Member State and the governance structure in place (one-tier or two-tier system).

The variable component should be based on a combination of the assessment of the individual and the collective performance, such as the performance of the business area and the overall results of the undertaking or group.

The payment of the major part of a significant bonus, irrespective of the form in which it is to be paid, should contain a flexible, deferred component that considers the nature and time horizon of the undertaking's business.

- 3.31. If the remuneration includes fixed and variable components, these should be appropriately balanced in order to allow the undertaking to operate a fully flexible bonus policy, with the ability to pay no bonus if appropriate, and allow the undertaking to pay employees a rate that they deem necessary for their services, given the market rate.
- 3.32. In case a variable component exists, it can be materialised in several different ways apart from cash, such as shares or appropriately priced stock-options. The underlying objective should always be to align the individual interests of the employee and those of the undertaking, although some conditions could be imposed. In particular, a vesting period could be defined regarding the possibility of selling shares or exercising options and the individual could be required to retain a predefined number or proportion of those shares or options.
- 3.33. When a variable component based on performance criteria exists, the undertaking could set a maximum limit and have the possibility to withhold bonuses where the situation of the undertaking deteriorates significantly. Additionally, in relation to the members of the administrative, management or supervisory body, it could be able to receive back all or part of the variable remuneration paid if the data on which this was based proves to be manifestly misstated or, as an alternative, be allowed to make proper adjustments in subsequent years.
- 3.34. Attention should be paid to remuneration schemes that involve a long-term liability to the undertaking concerned, even after the employee has left the undertaking.
- 3.35. In this context, the attribution of "golden parachutes"¹⁶ is particularly relevant and their use should be limited beforehand – in terms of amount and/or duration –, if not totally removed from compensation packages. The EU recommendation of 30 April 2009 on directors' remuneration points to the use of a reference of two years of salary, on the basis of only the non-variable component of the annual remuneration.
- 3.36. If existing, this method of termination payment should reflect properly and comprehensibly the real contribution of individuals to the undertaking's performance, and should be prohibited in relation to personnel in undertakings who have performed poorly. It ought not to be attributed in cases where the termination of the contract is due to inadequate performance.
- 3.37. The deferment of the payment of the major part of a significant bonus should take into account the underlying risks of the business in which the individual is

¹⁶ This is an agreement between an undertaking and an employee, specifying that the employee will receive certain significant benefits if employment is terminated.

engaged, as well as the performance of the business area of the individual¹⁷, and should be effected in several instalments.

- 3.38. However, in the particular case of an undertaking performing life insurance business this might not be adequate, as this is by nature a business with long-term results. Hence, the variable component in this case should be aligned with objectives that take into consideration an adjustment for current and future risks.

Principle 5

When defining an individual's performance, not only financial but also non-financial performance should be considered.

The measurement of performance, as a basis for bonus awards, should include an adjustment for current and future risks, taking into account the undertaking's risk profile, and cost of capital for members of the administrative, management or supervisory body, the holders of key functions, the senior management and the personnel undertaking activities that involve significant risk-taking.

- 3.39. The measurement of individual performances is central to a sound remuneration policy. Defining the pay-out should not be a purely mechanical process based on measurable performance criteria, but should include the ability to exercise judgement.
- 3.40. For individual performance measurement, whilst financial aspects may be one dimension of determining performance, other non-financial factors could also be considered, such as acquired skills, personal development, compliance with the undertaking's internal rules and procedures, compliance with the standards governing the relationship with policyholders and contribution to the performance of the whole unit or department.
- 3.41. Additionally, the performance measures to be used should reflect an adequate balance between short and long term objectives, notably taking into consideration the specificities of the business, as referred to above.
- 3.42. For example, the remuneration of non-executives could take into account other factors, such as their personal involvement (e.g. regular attendance at board or committee meetings) and their respective responsibilities.
- 3.43. The measurement of performance used to calculate bonuses or bonus pools for members of the administrative, management or supervisory body, the holders of key functions, the senior management and the personnel undertaking activities that involve significant risk-taking should include an adjustment for current and future risks and take into account the cost of the capital employed and the liquidity required. This risk-adjusted return measure should be based upon economic capital calculation and take proper account of a range of risks, including liquidity risk.

¹⁷ CEIOPS is aware that the practical implementation of this concept is not straightforward namely in relation to long tail business. Furthermore, care should be taken not to create new barriers for people to move jobs.

Principle 6

The remuneration policy should be transparent internally and adequately disclosed externally.

- 3.44. The remuneration policy should be accessible to all employees, in order to allow them to know in advance the criteria that will be used to determine their remuneration. The appraisal process should be properly documented and transparent to the employee concerned.
- 3.45. Whilst respecting confidentiality, relevant information on the remuneration policy – which may not include the amounts paid – should also be disclosed in a clear and easily understandable way to relevant external stakeholders, along with the remunerations of the administrative, management or supervisory body.
- 3.46. In particular, the following information related to the remuneration policy should be disclosed¹⁸:
- a) Principles of the remuneration policy, in particular sufficient information on the linkage between remuneration and performance;
 - b) Explanation of the relative importance of the variable and non-variable components of remunerations;
 - c) Sufficient information on the performance criteria on which any entitlement to share options, shares or variable components of remuneration is based;
 - d) A description of the main characteristics of supplementary pension or early retirement schemes for the members of the administrative, management or supervisory body or senior managers.
- 3.47. The information on the remuneration policy and the principles governing it should permit shareholders, policyholders and other stakeholders to evaluate the incentive effect of the policy from the perspective of enhancing the performance or inducing excessive risk taking.
- 3.48. In the context of the requirements to be fulfilled by the system of governance, the undertaking should report its remuneration policy to its supervisory authority, upon request.

3.4. The role of the supervisory authority

- 3.49. Supervisory authorities will play a significant role in the proper application of the principles set out above.
- 3.50. Among the supervisory tasks to undertake in the context of the supervisory review process, supervisory authorities should review the remuneration policies and practices in place in the undertakings analysed and assess their potential impact on the risk profile and solvency.

¹⁸ This information should be disclosed under the Solvency and Financial Condition Report (SFCR) as part of the description of the system of governance. See CEIOPS' Advice for Level 2 Implementing Measures on Solvency II: Supervisory Reporting and Public Disclosure Requirements, CEIOPS-DOC-50/09 (see <http://www.ceiops.eu/index.php?option=content&task=view&id=609>).

- 3.51. In order to accomplish this task, the undertaking will have to make the remuneration policy available to the supervisory authority upon request and the supervisory authority may request and have access to all the information that is necessary to evaluate the remuneration policy and practices¹⁹. The detailed content of this reporting will be addressed by CEIOPS in future Level 3 guidance.
- 3.52. If the supervisory authority considers that the remuneration policies or practices in place could jeopardise the integrity of the system of governance and the solvency situation of the undertaking concerned, the undertaking could be required to reassess them.

CEIOPS' advice

- 3.53. An overall remuneration policy and practice that is in line with the undertaking's business and risk strategy, risk profile, objectives, values, risk management practices, and long-term entity-wide interests and performance shall be adopted.
- 3.54. The remuneration policy applies to the undertaking as a whole in a proportionate and risk-based way and contains specific arrangements that take into account the respective roles of the administrative, management or supervisory body, key functions, senior management and personnel undertaking activities that involve significant risk-taking.
- 3.55. There shall be a clear, transparent and effective governance structure around remuneration, including the definition of the remuneration policy and its oversight.
- 3.56. Depending on the nature, scale and complexity of the undertaking's activities, a remuneration committee shall be created.
- 3.57. When remuneration schemes include both fixed and variable components, these shall be appropriately balanced so that the fixed component represents a sufficiently high proportion of the total remuneration to avoid that the employees are overly dependent on the variable components and allow the undertaking to operate a fully flexible bonus policy.
- 3.58. The variable component shall be based on a combination of the assessment of the individual and the collective performance, such as the performance of the business area and the overall results of the undertaking or group.
- 3.59. The payment of the major part of a significant bonus, irrespective of the form in which it is to be paid, shall contain a flexible, deferred component that considers the nature and time horizon of the undertaking's business.
- 3.60. When defining an individual's performance, not only financial but also non-financial performance shall be considered.
- 3.61. The measurement of performance, as a basis for bonus awards, shall include an adjustment for current and future risks, taking into account the undertaking's risk profile, and cost of capital for members of the administrative, management or supervisory body, the holders of key functions, the senior management and the personnel undertaking activities that involve significant risk-taking.

¹⁹ In accordance with the requirements set for the Report to Supervisors (RTS). See CEIOPS' Advice for Level 2 Implementing Measures on Solvency II: Supervisory Reporting and Public Disclosure Requirements (ref. footnote 18).

3.62. The remuneration policy shall be transparent internally and adequately disclosed externally.