

Feedback statement from comments received on Opinion on the supervision of remuneration principles in the insurance and reinsurance sector

Introduction

EIOPA would like to thank all the participants of the public consultation for their comments on the draft Opinion on the supervision of remuneration principles in the insurance and reinsurance sector.

The input received provided important guidance for EIOPA to finalise the Opinion. All of the comments submitted were given careful consideration by EIOPA. The individual comments received and EIOPA's response to them are published as a separate document.

Aim and rationale of the Opinion

The Opinion aims to enhance supervisory convergence by focussing on the supervision of the remuneration principles as set out in the Delegated Regulation (Commission Delegated Regulation (EU) 2015/35). The Opinion is addressed to the national supervisory authorities (NSAs) and gives them guidance on how to challenge the application of certain principles by supervised undertakings. The Opinion focuses on the application of the principles to a reduced scope of staff, which are identified as potential higher profile risk-takers.

The Opinion does not add any new requirements or create administrative burden. The guidance included in the Opinion should promote the convergence of national supervisory practices when applying a risk-based approach and supervisory judgement in the supervision of remuneration principles.

The thresholds or examples included in this Opinion should be considered for the purposes of triggering supervisory dialogue between the supervisory authority and the supervised undertaking and should not be treated in any case as hard targets reflecting the practical implementation of the remuneration principles.

In this spirit thresholds or examples mentioned in this Opinion do not preclude the NSAs from having stricter practices to trigger a supervisory dialogue with

undertakings if it is deemed appropriate considering the risk-based approach and at the same time NSAs may also adopt a proportionate and more flexible approach in the supervision of the remuneration principles when undertakings are categorised as 'low risk'.

Main comments received and how EIOPA addressed them

Legal hook

Stakeholders expressed doubts regarding the necessity for such an Opinion, questioned if the Opinion is in line with the level 2 text, considered the Opinion as too detailed and not in line with a principle-based regulation and in some cases even challenged the existence of a legal basis for such an Opinion.

It is EIOPAs duty to contribute to high quality common regulatory and supervisory standards and practices in particular by providing opinions (Article 29(1)(a) EIOPA Regulation).

The remuneration principles defined in article 275 of the Delegated Regulation being 'principles' by nature are high level requirements. EIOPA gained insight into the national measures and supervisory practices introduced on the bases of the principles and concluded that supervisory engagement with insurance undertakings differs significantly from jurisdiction to jurisdiction. This hampers supervisory convergence in this field. To enhance convergence the Opinion gives guidance to NSAs on how and when to challenge the application of certain remuneration principles to a specific sub-set of identified staff as defined in paragraph 3.1 of the Opinion.

The Opinion does not add any new requirements or create administrative burden. The guidance included in the Opinion should promote the convergence of national supervisory practices when applying a risk-based approach and supervisory judgement in the supervision of remuneration principles.

The thresholds or examples included in this Opinion should be considered for the purposes of triggering supervisory dialogue between the supervisory authority and the supervised undertaking and should not be treated in any case as hard targets reflecting the practical implementation of the remuneration principles.

Criteria to define scope of the Opinion

Stakeholders argued that the reference to Key Function Holders (KFH) and administrative, management or supervisory body (AMSB) with a variable remuneration that exceeds EUR 50,000 and represents more than ¼ of that staffs member's total annual remuneration was not in line with thresholds used in the banking regulation (Capital Requirements Directive CRD V (EU Directive 2019/878) which refers to 1/3 of the total annual remuneration.

EIOPA has amended the criteria defining the scope of the Opinion from 1/4 to 1/3 of staffs member's total remuneration.

Thresholds

Stakeholders argued that Art. 275 (2) (a) of the Delegated Regulation does not require a certain ratio between fixed and variable remuneration that sets a limit for the variable component. They believe that regulating remuneration has an impact on the insurance undertakings' freedom of enterprise. Any restriction of this freedom must therefore be necessary and appropriate. The national NSAs could request the mechanical application of the mentioned thresholds, which would unduly restrict the undertakings' flexibility to make their entrepreneurial choices related to the remuneration policies.

The thresholds or examples included in this Opinion should be considered for the purposes of triggering supervisory dialogue between the supervisory authority and the supervised undertaking and should not be treated in any case as hard targets reflecting the practical implementation of the remuneration principles.

In this spirit thresholds or examples mentioned in this Opinion do not preclude the NSAs from having stricter practices to trigger a supervisory dialogue with undertakings if it is deemed appropriate considering the risk-based approach at the same time that NSAs may also adopt a proportionate and more flexible approach in the supervision of the remuneration principles when undertakings are categorised as 'low risk'.

Composition of variable remuneration

Stakeholders argued that the 50% of variable remuneration to be awarded in shares has no legal basis in the Delegated Regulation.

EIOPA acknowledges that the principle is in fact not reflected in the Delegated Regulation and concluded that the section should therefore be deleted from the Opinion. EIOPA is discussing if such a principle should be proposed to the European Commission as part of Solvency II 2020 Review (to be in line with the CRD V (EU Directive 2019/878)).

Termination payments

Stakeholders believe that termination payments are a form of remuneration, and therefore subject to the remuneration policy, however, they should not be viewed as a form of variable remuneration. In addition termination payments are regulated by domestic labor law. They also identified that the section on termination payments was not principle nor trigger based.

EIOPA agrees that the approach under this section could be improved and the section has been adapted, further shortened and simplified, focusing on the supervisory dialogue.

Expected consequences of issuing the Opinion - FAQ

In order to facilitate a better understanding by all stakeholders of the content of the Opinion and its consequence for both undertakings and supervisors, EIOPA prepared some frequently asked questions and answers.

Does my company needs to review the remuneration policy?

Remuneration policies are to be revised according to the review standards each company has implemented internally and in line with System of Governance requirements. It is assumed that the remuneration policies in place in insurance undertakings have taken duly consideration of the principles set down in Delegated Regulation and would not need to be amended as a result of the Opinion.

It is however expected that undertakings with riskier remuneration policies are challenged in a convergent way by supervisors and, if adequate and not already done, are required to adequately justify their policies in light of the principles.

Do I need to contact my supervisor?

Supervision of remuneration policies is performed by NSAs under the Supervisory Review Process and following a proportionate and risk-based approach. It is not expected that this Opinion triggers a contact from undertakings to NSA. It is however expected that NSAs take the Opinion into consideration when establishing the scope, frequency and intensity of supervision of remuneration policies.

What am I expected to do? Can my company have different ratios from the ones referred in the Opinion? And different deferral times for variable remuneration?

Undertakings are expected to revise the remuneration policies according to the review standards each company has implemented internally and in line with System of Governance requirements. Higher and lower ratios than 1:1 are acceptable as well as deferral amounts higher or lower than 40% and deferral times longer than 3 years, as long as the different ratios used by each undertaking are justified as:

- balanced, so that the fixed component represents a sufficiently high proportion of the total remuneration to avoid employees being overly dependent on the variable components,
- allowing the undertaking to operate a fully flexible bonus policy, including the possibility of paying no variable component; and
- aligned with the undertaking's business and risk management strategy, its risk profile, objectives, risk management practices and the long-term interests and performance of the undertaking as a whole.