



OPINION OF THE EUROPEAN CENTRAL BANK
of 23 December 2013
on variable remuneration for employees of securities traders
(CON/2013/95)

Introduction and legal basis

On 5 December 2013, the European Central Bank (ECB) received a request from the Danish Financial Supervisory Authority (FSA) for an opinion on a draft law amending the Law on financial business, the Law on securities trading and the Law on alternative investment fund managers¹ (hereinafter the ‘draft law’).

The ECB’s competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and the sixth indent of Article 2(1) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions², as the draft law relates to rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. Purpose of the draft law

The draft law introduces a prohibition on variable remuneration for employees of securities traders who provide advice on or sell financial instruments directly to retail customers³. The prohibition will only apply to that part of the variable pay component that is dependent on the employee achieving a certain sales volume of financial instruments to retail customers⁴.

The prohibition is intended to reduce the risk of conflicts of interest for the advisers and sellers of financial instruments referred to in the draft law. Securities traders are already subject to an obligation to

¹ The draft law amends the rules on supervision of data processing centres allowing the FSA to supervise undertakings that carry out significant IT operations and development for the common payment infrastructure, regardless of the ownership of the data processing centre. The draft law introduces a special supervisory provision in the Law on alternative investment fund managers, which allows the FSA to supervise depositories for an alternative investment fund. Finally, the draft law implements an inflation adjustment regarding the minimum capital requirements of reinsurance companies based on the European Commission’s notice of 23 July 2013 regarding the adaptation in line with inflation of certain amounts laid down in the Reinsurance Directive (OJ C 208, 23.7.2013, p. 4).

² OJ L 189, 3.7.1998, p. 42.

³ See Section 1(3) of the draft law which introduces a new Section 77(e) in the Law on financial business.

⁴ See the explanatory memorandum of the draft law, p. 13. The draft law is based on a recommendation from the Committee on the Causes of the Financial Crisis prohibiting such variable remuneration.

minimise the risk of conflicts of interest and address any conflicts which occur⁵. The draft law provides for further measures that should be taken in those cases where there is a link between the sales targets and the variable pay components for employees who are in direct contact with retail customers. The prohibition underlines that a pay structure that makes it possible to receive a variable pay component based on sales to retail customers is incompatible with a sound policy addressing conflicts of interest in an undertaking that has a licence to operate as a securities trader⁶.

2. General observations

The ECB notes the potential benefits of prohibiting variable remuneration that is dependent on employees reaching certain sales volumes of financial instruments to retail customers in contributing to sound and effective risk management applied by securities traders. The ECB also notes the potential gains of the prohibition in terms of avoiding conflicts of interest, establishing sound incentives and constraining procyclicality in the financial system.

This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 23 December 2013.

[signed]

The President of the ECB

Mario DRAGHI

⁵ See point 2.1.1 of the explanatory memorandum of the draft law, p. 6.

⁶ See the explanatory memorandum of the draft law, p. 13.