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CRD IV - Higher ratio notification procedure imposed by the CSSF

The CSSF has issued a new Circular 15/601 relating to the ratio increase notification procedure laid down in Article 94(1)(g)(ii) of Directive 2013/36/EU (CRD IV).

According to this article, the variable component of the total remuneration of staff members whose professional activities have a material impact on the risk profile of credit institutions and investment firms (so-called “Identified Staff”) shall not exceed 100 % of the fixed component of the total remuneration.

Member States may set a lower maximum percentage or allow shareholders or owners or members of the institution to approve a higher maximum level of the ratio between the fixed and variable components of remuneration provided the overall level of the variable component shall not exceed 200 % of the fixed component of the total remuneration for each individual.

The approval of such higher ratio is subject to a specific procedure described in the same article which the CSSF Circular 15/601 aims to formalise. The CSSF Circular provides furthermore that it shall enter into force with immediate effect.

Such immediate application seems nevertheless somewhat premature since the draft Luxembourg law transposing CRD IV, deposited with the Luxembourg Parliament on 28 February 2014, is still under scrutiny. Indeed, the Court of Justice of the European Union has consistently held that a directive cannot of itself impose obligations on an individual and cannot therefore be relied on as such against an individual in the absence of any national implementing measure. As a consequence, it cannot for instance be required that credit institutions and investment firms cap the variable component of the total remuneration at 100% of the fixed total remuneration of each Identified Staff member. Furthermore they cannot be requested to approve a higher maximum level of the ratio and to notify it to the CSSF.

The fact that CRD IV has not been implemented in Luxembourg does not however prevent credit institutions and investment firms from anticipating it and from deciding, as from now, to cap the variable remuneration of their Identified Staff members, provided that they make an agreement with the staff members concerned on this point if such cap would be in contradiction with the provisions of their current employment contract.

To read the CSSF Circular 15/601, **click here**.

Please contact us should you require any further information.

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