



ASSOGESTIONI'S REPLY TO ESMA'S CONSULTATION PAPER ON GUIDELINES ON CERTAIN ASPECTS OF THE MiFID II REMUNERATION REQUIREMENTS

Q1: Do you agree that career progression is likely to have an impact on fixed remuneration and that, consequently, firms should define appropriate criteria to align the interests of the relevant persons or the firms and that of the clients in respect of all types of remuneration (not just in respect of variable remuneration)? Please also state the reasons for your answer.

<ESMA_QUESTION_CPMC_1>

No, we disagree. It is important to underline that such a proposal does not find a match in the other sectorial disciplines, such as the discipline of the asset managers. In this specific regard, it is reminded that on the basis of the Guidelines on the subject of remuneration policies pursuant to the UCITS and AIFMD directives, the sectorial discipline applies to all the staff employed by the asset manager even when involved in the provision of investment services and activities. However, compliance with any applicable rules in relation to the provision of ancillary services pursuant to art. 6(3) of the UCITS Directive and 6(4) of the AIFMD must be kept ensured, including those rules referred to by Directive 2014/65/EU (so-called MiFID II) and by the 2013 Guidelines (ESMA/2013/606), that are revised in this consultation document. Therefore, such a proposal which also involves the fixed part of the remuneration would apply only in relation to the relevant personnel of the asset manager involved in the provision of ancillary services, thus creating an unlevel playing field with the personnel of the manager not concerned.

Furthermore, given that career progression certainly has an impact on fixed remuneration and that it must not be used in order to circumvent the regulations on remuneration and incentive policies and practices, it is important to point out that fixed remuneration is characterized, in each case, to have a stable and irrevocable nature and to be determined and paid on the basis of pre-established and non-discretionary criteria - such as, in particular, the levels of professional experience and responsibility - which do not create incentives to take risks and do not depend from the performance of the company. Variable remuneration, on the other hand, is that part of the remuneration whose recognition or payment may change in relation to performance objectives or other parameters, and it is for this reason that it is addressed, in all the sectorial disciplines, by specific functional rules to allow compliance with capitalization levels and avoid excessive risk-taking.

<ESMA_QUESTION_CPMC_1>



Q2: Do you agree with the suggested approach on career progression? Please also state the reasons for your answer.

<ESMA_QUESTION_CPMC_2>

See the answer above.

<ESMA_QUESTION_CPMC_2>

Q3: Do you agree that, to align the interests of relevant persons or the firms with the interests of clients on a long term basis, firms should consider the possibility to adjust remuneration previously awarded through the use of ex-post adjustment criteria in their remuneration policies and practices (such as clawbacks and malus)? Please also state the reasons for your answer.

<ESMA_QUESTION_CPMC_3>

Yes, there is general agreement on the introduction of ex post adjustment mechanisms (malus and claw back) in relation to the variable component of the remuneration, also in line with the provisions of the other sectorial regulations. Some doubts arise in relation to the proposal which does not limit the application of the ex-post adjustment mechanisms to relevant persons who have been directly engaged in misconduct, but also extends it to relevant persons whose responsibilities and roles include the areas in which the relevant events have crystallized, provided that such relevant persons have an impact, directly or indirectly, on the investment and ancillary services provided or on the business behavior of the company. In other words, there are doubts about the possibility that the adjustment mechanisms can, depending on the relevant event, be applied not only individually but also - by taking into due consideration the aforementioned “indirect” involvement - collectively. This would lead to an imputation of responsibility that would come regardless of the assessment of the subjective element of responsibility. Therefore, Assogestioni requests to limit its scope exclusively to the person who implement the misconduct.

<ESMA_QUESTION_CPMC_3>

Q4: Do you agree with the suggested approach on ex-post adjustment criteria? Please also state the reasons for your answer.

<ESMA_QUESTION_CPMC_4>

See the answer above.

<ESMA_QUESTION_CPMC_4>



Q5: Do you agree with the added focus and suggested approach on the remuneration policies and practices for control functions and members of the management body or senior management? Please also state the reasons for your answer.

<ESMA_QUESTION_CPMC_5>

Yes, we agree.

<ESMA_QUESTION_CPMC_5>

Q6: Do you believe that guideline 1 should be further amended and/or supplemented? Please also state the reasons for your answer.

<ESMA_QUESTION_CPMC_6>

Yes. Assogestioni has some doubts in relation to some examples of good practice identified in guideline no. 37 and, in particular, to the example which, in the case of “with no investment term” investments, the remuneration is deferred for a number of years or until the product is paid. The adoption of such a practice would, in fact, lead to an “indefinite” deferral and, in some cases, even beyond the duration of the employment relationship of the staff concerned with the intermediary.

<ESMA_QUESTION_CPMC_6>

Q7: Do you agree that the remuneration policy should not only be reviewed on a periodic basis but also upon the occurrence of certain ad hoc events as described in new general guideline 2? Please also state the reasons for your answer.

<ESMA_QUESTION_CPMC_7>

With regard to the review of the remuneration policy, Assogestioni asks to provide that the remuneration policy should not be reviewed on the occasion of any significant change to the activities or structure of the company, but on a periodic basis, at least annually and this in line with what already envisaged within the sectorial disciplines, including that one of the asset managers. Assogestioni also asks to clarify the hypotheses that are to be considered as a “significant change” of the business or the structure of the company.

<ESMA_QUESTION_CPMC_7>

Q8: Do you agree that the persons involved in the design, monitoring and review of the remuneration policies and practices should have access to all relevant documents and information to understand the background to and decisions that led to such remuneration policies and procedures? Please also state the reasons for your answer.

<ESMA_QUESTION_CPMC_8>



In general, Assogestioni agrees with the basic principle according to which the process of definition, monitoring and review of the remuneration policies and practices satisfies the principles of transparency and clarity towards all the parties involved. However, as regards more specifically the involvement of the persons in the definition, monitoring and review of remuneration policies and practices and the access for the persons to all the related documentation, Assogestioni believes that the respective competences of the functions concerned must be taken into account.

<ESMA_QUESTION_CPMC_8>

Q9: Do you believe that guideline 2 should be further amended and/or supplemented? Please also state the reasons for your answer.

<ESMA_QUESTION_CPMC_9>

No

<ESMA_QUESTION_CPMC_9>

Q10: Do you agree with the amendments made to guideline 3? Please also state the reasons for your answer.

<ESMA_QUESTION_CPMC_10>

Yes, we agree.

<ESMA_QUESTION_CPMC_10>

Q11: Do you believe that guideline 3 should be further amended and/or supplemented? Please also state the reasons for your answer.

<ESMA_QUESTION_CPMC_11>

Yes. In relation to what is reported as an example of good practice in par. 51, it is important to underline that generally the relationship between intermediary and advisor, between intermediary and client and between client and advisor is a continuous relationship over time. Therefore, Assogestioni believes that the qualitative verification referred to in the aforementioned par. 51, can be done at any time and not necessarily “shortly after” the completion of a sale.

<ESMA_QUESTION_CPMC_11>



Q12: Do you agree with the deletion of Section V.III. of the 2013 guidelines? Please also state the reasons for your answer.

<ESMA_QUESTION_CPMC_12>

Yes, we agree, considering that, in the context of MiFID II the rules on remuneration policies provide for specific level 1 and 2 requirements which therefore justify the supervisory authorities to implement specific supervisory actions on this subject.

<ESMA_QUESTION_CPMC_12>

Q13: Do you agree with the arguments set out in the cost-benefit analysis in Annex IV? Do you think that other items should be factored into the cost-benefit analysis and if so, for what reasons?

<ESMA_QUESTION_CPMC_13>

Yes, we agree.

<ESMA_QUESTION_CPMC_13>