EUROPEAN COMMISSION
Public consultation on impacts of maximum remuneration ratio under Capital Requirements Directive 2013/36/EU (CRD IV), and overall efficiency of CRD IV remuneration rules

AMAFI's contribution

2. MAXIMUM RATIO RULE

2.1 IMPACT OF THE MAXIMUM RATIO RULE ON COMPETITIVENESS

2.1.1 The Maximum Ratio Rule applies to credit institutions and investment firms as defined in CRD in the EEA, as well as (indirectly) to their subsidiaries within the scope of prudential consolidation (including subsidiaries outside the EEA and asset management subsidiaries). Please indicate for which of the aforementioned type(s) of undertaking(s) your answer to the below question applies. My answer below applies to (multiple answers possible):

X Credit institutions established in the EEA (directly subject to the Maximum Ratio Rule)
X Investment firms as defined in Art 4(1)(2) CRR established in the EEA (directly subject to the Maximum Ratio Rule)
Non-EEA subsidiaries of EEA parent covered by CRD (indirectly subject to the Maximum Ratio Rule through the application at group level)
X EEA subsidiaries of EEA parent covered by CRD (indirectly subject to the Maximum Ratio Rule through the application at group level), such as asset management companies or other types of financial institutions

2.1.2 What impact, if any, of compliance with the Maximum Ratio Rule have you observed on the COMPETITIVENESS of the undertakings concerned? Please provide as much as possible factual, concrete and verifiable elements that support your answer. If you ticked more than one box above, please make sure to distinguish as relevant.

Association française des marchés financiers (AMAFI) is the trade organisation working at national, European and international levels to represent financial market participants in France. It acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI has more than 120 members operating for their own account or for clients in different segments, particularly organised and over-the counter markets for equities, fixed-income products and derivatives. Nearly one-third of its members are subsidiaries or branches of non-French institutions.

Like other European countries, France waives the bonus cap ratio of fixed to variable remuneration for credit institutions and investment firms with total balance sheet assets of less than or equal to EUR 10 billion given that these entities fulfill certain criteria to avoid excessive risk-taking. In any case, these institutions and firms must identify staff whose professional activities have a material impact on the company or group's risk, and implement rules — which may not hamper the firm's capacity to strengthen its shareholders' equity or that of the group — to limit, defer and diversify payment instruments for the variable portion of remuneration for these employees in the long-term interest of the company or group.

Finally, they must set up a remuneration committee if their total balance sheet assets are higher than EUR 5 billion.

This choice is appropriate. The legitimate reason for Europe and the Member States to regulate the ratio between fixed to variable remuneration for credit institutions and investment firms is directly linked to the possibility that overly-high variable remuneration increase the likelihood of systemic risk. Indeed, we should not incentivise staff to take significant risks for their employers in order to increase their immediate variable remuneration. As the financial crisis showed, these risks may thus create systemic risk in the more or less long term requiring action from governments and financial authorities, and the use of taxpayer's money. Salaried employees at financial institutions are the only employees in Europe to be subject to rules of this kind.

This legitimacy inherently does not exist when a given institution, owing to its size and the nature of its activities, is not in a position to create systemic risk. This is especially the case when, to avoid staff taking excessive risk, it is required to apply a number of rules that oversee the conditions for awarding variable remuneration as mentioned above.

For those establishments, introducing a strict ratio between variable to fixed remuneration would only weaken their competitiveness. On average, fixed remuneration for staff targeted by this rule has increased significantly in large-scale institutions in recent years in order to contain the problem this fixed/variable ratio could represent in terms of retention and attraction of talent (even if this method does not resolve the problem entirely, especially in light of international competition with other magnets such as New York, Dubai, Singapore or Shanghai). For the smaller firms, whose business model is more dependent on work than capital, the equation is impossible to uphold (to deal with competition from other labour markets, including asset management) without also increasing fixed remuneration substantially.

Such an increase would result in higher fixed expenses for the establishments in question which, being active in very cyclical market activities, would impact their resilience, which is exactly the opposite effect sought by laying down rules on remuneration.

In a context where access to market activities involves complying with increasingly complex and numerous rules, it is thus essential to limit this requirement of a strict ratio of fixed to variable remuneration solely to institutions likely to create systemic risk. Otherwise, this would be a new factor leading to the concentration of players and an impoverished offer of services proposed by European establishments to investors and companies in the European Union. One of the risks in the long-term is to have a financial sector in Europe that mainly consists of large or very large institutions that provide services predominantly to large or very large investors or companies.

2.2 IMPACT OF THE MAXIMUM RATIO RULE ON FINANCIAL STABILITY

2.2.1 The Maximum Ratio Rule applies to credit institutions and investment firms as defined in CRD in the EEA, as well as (indirectly) to their subsidiaries within the scope of prudential consolidation (including subsidiaries outside the EEA and asset management subsidiaries). Please indicate for which of the aforementioned type(s) of undertaking(s) your answer to the below question applies. My answer below applies to (multiple answers possible):

X Credit institutions established in the EEA (directly subject to the Maximum Ratio Rule)
X Investment firms as defined in Art 4(1)(2) CRR established in the EEA (directly subject to the Maximum Ratio Rule)
Non-EEA subsidiaries of EEA parent covered by CRD (indirectly subject to the Maximum Ratio Rule through the application at group level)

X EEA subsidiaries of EEA parent covered by CRD (indirectly subject to the Maximum Ratio Rule through the application at group level), such as asset management companies or other types of financial institutions

2.2.2 What impact, if any, of compliance with the Maximum Ratio Rule have you observed on FINANCIAL STABILITY? Please provide as much as possible factual, concrete and verifiable elements that support your answer. If you ticked more than one box above, please make sure to distinguish as relevant.

For the reasons presented above in response to question 2.2.2, it is difficult to see how it would be possible for this rule to have a positive effect in terms of financial stability. It can only lead to increased fixed expenses for establishments, making it even more difficult for them to adapt their cost structure during market downturns.

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