Stricter rules on pay for EU banks – are you ready?

The CRD V remuneration rules may apply from as early as 1 January 2021.

They'll have a material impact on any bank relying on the “proportionality principle” to disapply any of the remuneration rules under CRD IV.

Here are the main rules, their impact and some key “tricky areas” to watch out for.

### Main CRD V changes

<table>
<thead>
<tr>
<th>CRD V rule</th>
<th>Impact on how you structure pay</th>
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<tr>
<td><strong>“Bonus cap” of 1x (or 2x) fixed pay</strong></td>
<td>The cap will apply to all banks, and will limit the variable pay of MRTs to 1x fixed pay (but can be increased to 2x fixed pay). You may have less than 18 months to adapt your pay structures to this. The bonus cap cannot be disapplied at all.</td>
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<td><strong>Malus and clawback</strong></td>
<td>All banks will have to comply with the full CRD V rules on malus and clawback. This will mean amending policies to reflect the full regulatory requirements. You’ll need to set appropriate criteria, revise documents, and ensure you can enforce the rules.</td>
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<td><strong>Pay-out process: deferral, non-cash instruments and retention</strong></td>
<td>Many banks will be subject to the full CRD V pay-out process rules, because there are harmonised rules on using proportionality to disapply them. You’ll need to deliver at least 50% of variable pay in non-cash instruments (these can now include share-linked instruments), and defer 40%-60% of variable pay over four to five years (or over at least five years for your management team).</td>
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<td><strong>Disapplying the pay-out process rules: asset test</strong></td>
<td>There are strict, harmonised limits on the ability to use proportionality to disapply these rules. You should be able to disapply if you’ve got balance sheet assets of €5bn or less. Member States may increase this limit to €15bn.</td>
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<td><strong>Disapplying the pay-out process rules: de minimis</strong></td>
<td>This exemption, allowing some staff to be outside the pay-out process rules, is very restrictive. It will only apply to individuals who receive variable pay of less than €50,000, if this is less than 1/3 of their total pay.</td>
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<td><strong>Public / regulatory disclosures</strong></td>
<td>Banks may need to disclose more information on pay than currently, both publicly and to the regulators. This will include information on so-called “high earners” in your organisation.</td>
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### What this means for you

*If you're such a bank, you should now review and plan for the impact of the CRD V changes on your pay arrangements.*

*If you have other MiFID investment firms or asset managers in your wider banking group, the Investment Firms Directive is also relevant.*

It could have a big impact on pay for those entities, including for asset management teams. See this for details.
**Key “tricky areas”**

- Navigating the rules for increasing the “bonus cap” to 2x fixed pay.
- Identifying what constitutes fixed pay and using role-based allowances to increase it.
- Applying the rules to groups operating in several Member States.
- Scoping your CRD regulatory consolidation group and which pay rules apply.
- When (and how) to apply malus and clawback and ensuring enforceability.
- Preparing public / regulatory disclosures, particularly on a pan-European basis, and considering internal implications of the disclosures.
- Ensuring consistency in fixed pay across roles in your organisation.
- Identifying / structuring pay for your MRTs, and agreeing changes with them.
- Working out if and how you can disapply the pay-out process rules, and for whom.

*These are issues that larger banking groups already face and on which we regularly advise. We have the depth of experience to draw on for banks operating across the EU which will be subject to the bonus cap and the full malus, clawback and pay-out process rules.*

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**Benefit from our expertise**

*Expertise in this area is scarce – but we can help you to manage the impact of CRD V on your pay arrangements. We advise 14 of the top 20 global investment banks on pay and compliance with the different regulatory regimes.*

*So you’ll get the most current, best practice in the market, plus how to avoid getting caught out by the more complex aspects of the rules. If you’ve got cross-border roles, you’ll get clear, relevant and targeted advice identifying the key differences between national regimes that you’ll need to consider, including due to Brexit.*

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