Finansinspektionen’s Regulatory Code

Publisher: Chief Legal Counsel Eric Leijonram, Finansinspektionen, www.fi.se
ISSN 1102-7460

This translation is furnished solely for information purposes. Only the printed version of the regulation in Swedish applies for the application of the law.

FFFS 2020:30
Published on
21 December 2020

Regulations
amending Finansinspektionen’s regulations (FFFS 2011:1) regarding remuneration structures in credit institutions and investment firms;

decided on 15 December 2020.

Finansinspektionen prescribes[1] pursuant to Chapter 5, section 2, point 5 of the Banking and Finance Business Ordinance (2004:329) and Chapter 6, section 1, point 9 of the Securities Market Ordinance (2007:752) in respect of Finansinspektionen’s regulations (FFFS 2011:1) regarding remuneration structures in credit institutions and investment firms

in part that Chapter 1, section 4, Chapter 2, sections 1 and 5, and Chapter 4, sections 6–8 shall have the following wording,
in part that four new sections, Chapter 1, sections 2a and 4a, and Chapter 4, sections 6a and 7a, shall be inserted and have the following wording.

Chapter 1

Section 2a The provisions of Chapter 2, section 5 and Chapter 4, sections 6 and 7 do not apply to a firm

1. that is not a large institution as defined under Article 4(1)(146) of the Capital Requirements Regulation, and
2. the assets of which on average and at an individual level are equal to or less than EUR 5 billion for the four preceding financial years.

Section 4 In these regulations terms and expressions shall have the following meaning.

1. *Discretionary pension benefit:* A pension benefit that a firm grants to an employee on an individual basis as part of that employee’s variable remuneration. This does not include accrued benefits earned by the employee under the terms of the firm’s pension scheme.

2. *Remuneration:* All remuneration and benefits issued to an employee, e.g. cash salary and other cash remuneration, remuneration in the form of shares or equity instruments, pension provisions, severance payments and company cars.

[1]Cf. Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC) as amended by Directive (EU) 2019/878 of the European Parliament and of the Council.

3. *Remuneration policy:* The grounds and principles on which remuneration shall be determined, applied and monitored, and how the firm defines employees whose tasks have a significant impact on the firm's risk profile.

4. *Capital Requirements Regulation:* Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

5. *Control function:* The firm's function(s) for risk control, compliance and internal audit or the equivalent.

6. *Variable remuneration:* Remuneration, the amount or size of which is not determined in advance. Variable remuneration does not include commission-based salary not linked to future risk assumptions that may alter the firm's income statement or balance sheet.

7. *Senior management:* The managing director, the deputy managing director and other members of the management group or a similar body that report directly to the board of directors or the managing director.

Section 4 a *Employees whose tasks have a significant impact on the firm's risk profile* refers to the following in these provisions:

1. Directors and employees who are part of senior management.

2. Employees with management responsibilities for the firm's control functions or material business units.

3. An employee who is entitled to significant remuneration for the immediately preceding financial year if

a) their remuneration is equal to or greater than EUR 500,000 and equal to or greater than the average remuneration given to those referred to in point 1, and

b) they work within a material business unit and the position is such that it has a significant impact on the risk profile of the relevant business unit.

4. Other employees who the firm has identified in accordance with Chapter 2, section 3 or the delegated regulation the European Commission has adopted pursuant to Article 94(2) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

Chapter 2

Section 1 A firm shall have a documented remuneration policy that is in line with and promotes sound and effective risk management and counteracts excessive risk-taking. The remuneration policy shall be updated and reviewed regularly.

The remuneration policy shall encompass all employees and be gender neutral.

Section 5 A firm shall ensure that discretionary pension benefits transferred to an employee in conjunction with their retirement are subject to at least a five-year retention period during which the employee may not exercise control over the instruments.

Where the firm, due to the termination of employment, transfers discretionary pension benefits to an employee before retirement, the discretionary pension benefits shall be deferred for a period of at least five years.

The first and second paragraphs shall not be applied to an employee whose annual variable remuneration amounts to a maximum of EUR 50,000 and does not correspond to more than one third of the employee's total annual remuneration.

Chapter 4

Section 6 A firm shall ensure that at least 40 per cent of the variable remuneration for an employee whose tasks have a significant impact on the firm's risk profile, is deferred for at least four years before it is paid or ownership is transferred to the employee. The firm shall take into account the firm's business cycle, the risks of the business, the employee's responsibility, the employee's tasks and the size of the variable remuneration when determining the proportion of the variable remuneration that will be deferred and the length of the deferral period.

The length of the deferral shall be no less than five years for a director and an employee who is part of senior management of an institution that is significant in terms of its size, internal organisation and the nature, scale and complexity of its activities.

The firm shall defer at least 60 per cent of the variable remuneration for employees whose tasks have a significant impact on the firm's risk profile and who have particularly high amounts of variable remuneration.

A firm may pay deferred remuneration once a year evenly distributed over the period of time that the remuneration was deferred (pro rata). The first payment may be made at the earliest one year after the decision to grant variable remuneration.

Section 6a The deferral requirement in accordance with Section 6 shall not be applied to an employee whose annual variable remuneration amounts to a maximum of EUR 50,000 and does not correspond to more than one third of the employee's total annual remuneration.

Section 7 A firm shall ensure that at least 50 per cent of the variable remuneration for an employee whose tasks have a significant impact on the firm's risk profile, consists of

a) the firm's shares, participations or instruments linked to the firm's shares or participations, or other equivalent instruments, or

b) other instruments in accordance with Articles 52 or 63 of the Capital Requirements Regulation or other instruments in accordance with Commission Delegated Regulation (EU) No 527/2014 of 12 March 2014 supplementing Directive (EU) No 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the classes of instruments that adequately reflect the credit quality of an institution as a going concern and are appropriate to be used for the purposes of variable remuneration.

Where possible, the firm shall allow the variable remuneration as set out the first paragraph to consist of a balance of the instruments set out under point a and point b.

The first paragraph shall be applied to both the deferred portion of the variable remuneration and the portion that is not deferred.

Section 7a The shares, participations or other instruments as set out in section 7 shall not be applied to an employee whose annual variable remuneration amounts to a maximum of EUR 50,000 and does not correspond to more than one third of the employee's total annual remuneration.

Section 8 A firm shall ensure that the shares, participations and other instruments referred to in section 7 are subject to restrictions such that the employee may not exercise control over the instruments for at least one year, or longer depending on the firm's long-term interests, after ownership of the instrument has been transferred to the employee. This applies regardless whether or not the variable remuneration has been deferred.

The remuneration policy shall contain rules governing the shortest period of time the employee may not exercise control over variable remuneration paid as shares, participations and other instruments.

These regulations shall enter into force on 29 December 2020.

ERIK THEDÉEN

Sara Ehnlund Martinussen