

LEGAL UPDATE

First observations of Remuneration Policy Financial Enterprises Act

Date: 6 September 2016

In a letter dated 5 September 2016, Minister Dijsselbloem informed the Lower House of Parliament - in conformity with a motion and promises - about the first observations in practice in respect of the Remuneration Policy Financial Enterprises Act ('RPFEA').

The rules in the RPFEA aim to prevent and counter undesired and irresponsible incentives in variable remuneration packages. For instance, the RPFEA contains rules concerning the obligation to conduct a controlled remuneration policy, disclosure requirements, the bonus ceiling of 20% of the fixed annual wage, obligations to reclaim and modify variable remuneration packages and the variable remuneration prohibition in case of state-supported financial enterprises. In addition to this, the purpose of the RPFEA was to bring the existing remuneration rules for financial enterprises together in a convenient form.

The RPFEA makes provision for a number of exceptions to the bonus ceiling of 20% of the fixed annual wage. It is possible to grant a variable remuneration package that is higher than 20% (up to a maximum of 100%) to persons who do not (fully) fall under the scope of a collective bargaining agreement, provided that the maximum bonus ceiling for the entire category amounts to 20% on average. In addition to this, exceptions apply to persons who (i) work primarily outside the Netherlands; (ii) work primarily outside the EEA and (iii) work at a head office that has its official place of business in the Netherlands but primarily operates on an international level.

The introduction of the RPFEA was not plain sailing. Not in the least because the Netherlands, with its sector-wide bonus ceiling of 20% of the fixed annual wage, stands apart from other European countries. During the consultation and the parliamentary debate on the legislative proposal, concerns were therefore expressed about the possible effects of the RPFEA on the Dutch business climate, the level playing field and the competitive position.

On the basis of information provided by the Netherlands Authority for the Financial Markets (AFM), De Nederlandsche Bank (DNB), the Dutch Banking Association (NVB) and the Dutch Association of Insurers and meetings that were held with other interested parties and experts, it is clear that the variable remuneration packages in the Dutch financial sector have been scaled back significantly by the bonus ceiling. It has also become evident that financial enterprises have brought their policies into line with the RPFEA rules in 2015. Neither supervisor came across practices in 2015 that were cause for imposing penalties or other formal measures.

DNB has [analysed](#) the use of the above-mentioned possibilities of exception. On the basis of the available information it is unclear whether or not the '20% on average- exception' was only used for the exceptional situations for which it is intended (such as the specialist IT consultants referred to during the parliamentary debate). For this, it is important to know to which job categories the persons who have received a maximum variable remuneration package between 20% and 100% belong. This will be included in the evaluation of the RPFEA which will be offered to Parliament no later than 1 December 2017.

VAN BENTHEM & KEULEN

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So far, there are no signs that the dreaded negative effects on the Dutch business climate, the level playing field and the competitive position occur in practice. The first impression of the effect of the RPFEA in practice is positive, according to the Minister. However, it is too soon to draw definitive conclusions concerning the effects of the RPFEA. We will have to wait for the evaluation in order to be able to do so.

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