

LEGAL UPDATE

Evaluation of Remuneration Policy (Financial Enterprises) Act

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In a previous [Legal Update](#), we discussed the initial findings on the Remuneration Policy (Financial Enterprises) Act. At the time, it was clearly still too early to draw definitive conclusions about the (feared negative) effects of this Act. That had to wait until the publication of the evaluation of the Act. Recently, the minister of Finance (finally) sent this [evaluation](#) to the House of Representatives.

The evaluation consists of three parts, which are discussed below. The first part of the evaluation concerns the question of whether the Act is achieving its aim. The most important finding is that the degree of risk appetite depends on the level of engagement with the customer. If the customer is visible to the financial professional, the risk appetite decreases. In this situation, lowering the bonus ceiling from 100% (European standard) to 20% (Dutch standard) does not significantly reduce the risk appetite. However, a higher remuneration ceiling does lead to more risk-taking if the customer is *not* visible to the financial professional. In this situation, there is therefore the risk that the motives of individual professionals (such as a bonus) can sometimes take priority over the interests of a customer.

The second part of the evaluation deals with the side effects of the Remuneration Policy (Financial Enterprises) Act in terms of employment mobility. There was an increase in the outflow of financial professionals to other sectors in 2016, but it is not clear whether this is a long-term trend or a one-off anomaly, as only data for the year 2016 are available. In addition, it is hard to determine the impact of the Act on the attractiveness of the business climate in the Netherlands for foreign financial enterprises, as other factors are also important to this and this involves opinions about possible behaviour in a hypothetical situation (rather than actual behaviour). The minister summed it up by stating that the evaluation of the side effects did not show any obvious effects.

The third and final part of the evaluation concerns the feasibility of the Act and its practical implementation with regard to remuneration. In this respect, it is observed that the law is perceived as complex and therefore involves high compliance costs. In addition, there does not appear to be any misuse of the options to deviate from the bonus ceiling. However, it has emerged that a small proportion of those employees who are not covered by a collective agreement use the option to deviate from the bonus ceiling. This is permitted by the letter of the law, but according to the minister it is not in line with the purpose of the exception. The minister will therefore discuss the use of this exception in the context of the broader consultations with the sector. There is a chance that the Act will be amended (as a result of these broader consultations) or even that the exception will be abolished. The minister will inform the House of Representatives about this at the end of 2018.

In addition to informing the House of Representatives about the outcome of the consultations with the sector, he will inform the House about his findings on three additional statutory measures relating to fixed remuneration. The [consultation](#) on these three statutory measures was started on 17 July 2018. In short, the measures are as follows:

- i. introduction of the statutory requirement to recover part of the fixed remuneration of directors when state aid is given to a bank;
- ii. introduction of the statutory requirement for personnel to retain fixed remuneration components whose value depends on the market value of their own company, such for a number of years still to be specified; and
- iii. introduction of the statutory requirement that the remuneration policy of financial enterprises should prescribe how remuneration relates to the social function of the company.

Market parties are invited to respond to the aforementioned consultation no later than on 31 August 2018. More specifically, the market is asked to respond to the questions formulated in the consultation document.

The expectation was that the evaluation would enable drawing definitive conclusions about the (feared negative) effects of the Remuneration Policy (Financial Enterprises) Act. Unfortunately, due to the limited availability of figures on the effect the Act has had on decisions of foreign banks on whether to set up a branch in the Netherlands and on employment mobility, the evaluation did not meet this expectation. The minister also acknowledges this; another evaluation will be carried out in five years' time.

This is a Legal Update from the Banking & Finance team.

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