



16/08/2013

European Banking Authority

EBA-CP-2013-11@eba.europa.eu

## **Consultation paper on draft Technical Standards for the definition of material risk takers for remuneration purposes**

The Swedish Bankers' Association appreciate the opportunity to comment on the draft technical standards. In general we believe that the standard is too detailed and risk creating an un-level playing field. The degree of details will also increase the administrative burden and as a consequence impose additional administrative costs.

### **Article 2 Institution's internal identification process**

Similar to CRD III, a person whose professional activities could have a *material impact on the institution's risk profile* should be defined as Identified Staff. According to Article 2 in the RTS, institutions should develop internal criteria based on the result of risk assessment processes. The internal criteria should fully reflect all risks to which the institution or group is or may be exposed, such as credit risk, market risk, interest rate risk, operational risk, reputational risk and liquidity risk.

### **Article 3 Regulatory qualitative and quantitative criterion set by EBA**

The *qualitative* criteria target key areas and functions where EBA considers the impact on the institutions risk profile always to be material. The *quantitative* criteria are based on levels of remuneration. EBA assumes that employees meeting the determined levels of remuneration are risk takers, however, in some cases opens up for the institutions to argue against material impact in each individual case.

### **Comments to article 2 and 3**

As an overall comment, financial institutions have already identified all staff whose professional activities have or may have a material impact on the institution's risk profile considering the institution's risk profile in relation to all risks to which the institution is or may be exposed, including credit risk, market risk, interest rate risk, operational risk, reputational risk and liquidity risk. Detailed qualitative and quantitative criteria which do not considering the institution's characteristics and the internal identification process will most certainly targeting staff that has no material impact on the institution's risk profile. Furthermore, such a degree of detail would



also add a costly and bureaucratic process with no discernible difference to the institutes risk management.

In cases where an institution already has categorized all staff who receive variable compensation, above the nationally-set limit, as risk takers and where they already are subject to the more stringent compensation rules, i.e. by the institution's remuneration policy, there should be no requirement to make further categorization in accordance with the draft standard. An introduction of an extended categorization in these cases would only increase the administrative burden without any effect on the institution's risk profile.

The quantitative criteria will in general generate different impact between countries and business areas due to market practice in terms of general national and industry-specific remuneration levels etc. This difference combined with Article 4 allowing for exceptions contradicts the overall purpose of ensuring a level playing field.

We believe the national Financial Supervisory Authorities (FSAs), understanding the financial institutions in their market, should provide more detailed advice and guidance and thereby support the financial institutions in ensuring that relevant staff is identified. This can then be supported by European benchmarks (as currently conducted by EBA), providing FSAs with guidance on how they are positioned in a European context.

Furthermore, to avoid an un-level playing field this RTS must be aligned with regulations targeting other parts of the financial industry such as AIFMD and (drafts of) UCITS V.

**Q1 Is the list of specific functions listed appropriate or should additional functions be added?**

We believe that the list is appropriate although there is a need for clarification regarding criteria d. – geographical location. It should be clarified that e.g. heads of branch offices, sales offices and representative offices are not seen as material risk takers only due to geographical location.

**Q 2 Can the above criteria be easily applied and are the levels of staff identified and the provided threshold appropriate?**

The criterion as such is relevant and balanced. Challenges relates to financial institutions' different legal setups:

- This criteria will differ between institutions that operates through one legal entity with a branch setup and institutions operating through subsidiaries under local supervision (each with a lower Common Equity Tier 1 capital);





- If operating through subsidiaries: Staff members with the same authorities in terms of credit risk from a group functional organisation perspective might be impacted differently depending on the Common Equity Tier 1 capital of their employing legal entity.

**Q 3: Can the above criteria be easily applied and are the levels of staff identified and the provided thresholds appropriate?**

Yes, we believe that the criteria can easily be applied. The wording 'individually or collectively' should though be revised or at least clarified. Staff should be identified if they individually can take on risk positions of a certain size and/or if they are heading a trading unit that collectively can do so. Just being employed in a trading unit that collectively can take on a certain size of risk should not imply identification.

When it comes to the criterion in article 3 (1) j (introduction of new products etc.) the scope should be defined to new products of *material importance* for the institution otherwise the requirement will hit any new proposals despite the size of the product and regardless of any risk classification of the product.

**Q4 a) Is this criterion appropriate to identify risk takers?**

**Q4 b) Are the thresholds set in the criterion appropriate?**

**Q4 c) What would be the number of staff members identified in addition to all other criteria within the RTS?**

**Q4 d) What would be the additional costs of implementation for the above criterion if an institution applies Article 4 in order to exclude staff from the group of identified staff?**

As an overall comment, our opinion is that remuneration as such is not a good indicator when identifying staff whose professional activities have or may have a material impact on the institution's risk profile as the level of remuneration is a consequence of market practice, determined by country and industry.

There has to be a balance between the present standards and the requirements presented in the CRD III/CEBS/CRD IV. The draft has widen the scope significantly and includes several individual employees who cannot be argued to belong to a risk categories of staff such as non-managing positions within Sales & Research, Asset Management and Corporate Finance.

The requirements will significantly increase the number of Identified Staff and will have different impact between countries depending on general remuneration levels. If the criterion is maintained in the final RTS we strongly suggest that the threshold should be set at minimum 100% of the fixed component of remuneration and minimum EUR 250.000 in fixed remuneration.



**Q5 a) Can the above criterion be easily applied?**

**Q5 b) Would it be more appropriate to use remuneration which potentially could be awarded as a basis for this criterion?**

**Q5 c) What would be the difference in implementation costs if the potentially awarded remuneration would be used as a basis?**

It is unclear what is meant by "entity", does the word relate to a legal entity, a business area or a lower level. Whatever the definition, the criterion will cause significant additional costs for the institutions when grouping the legal entities into entities. From the view of the employees it is reasonable that they, when entering the earning year, know if they will be considered as identified staff or not based on the level of remuneration.

We believe it would be more appropriate to measure remuneration in relation to risk by using potential remuneration. The outcome of variable remuneration is not determined by risk mandates etc. but is linked to performance. Institutions providing zero in variable remuneration to a risk taker is forced, as a consequence, to identify additional staff retroactively in the same entity as risk takers because the threshold is reduced. Applying a potential remuneration will instead support a consistent identification over time as oppose to having a situation where some employees are identified as risk takers in some year(s) and not in other years due to changes in total remuneration to employees in the benchmarks.

**Q 6 Can the above criterion be easily applied and are the threshold and the levels of staff identified appropriate?**

As mentioned above we do not believe that the remuneration level in general is a good criterion for the identification process. The meaning of "awarded gross remuneration" must be clarified in relation to defined benefit plans, as pension reservations often vary significantly over time. Having a monetary cap might also have different impact in different countries as general remuneration levels are different. The level of EUR 500.000 is, as an example, a very high level in any Baltic country while it is relatively far less in e.g. Norway, Luxembourg or the UK.

**Q7 Can the above criteria be easily applied and are the levels of staff identified appropriate?**

We believe that the impact of this criterion is expected to be very limited, given institution's internal identification process and other qualitative and quantitative criteria of this RTS.





**Q8 Are there additional criteria which should be used to identify staff having a material impact on the institutions risk profile?**

We believe the criterion in article 3 (3) significantly complicates the process of defining identified staff. The criterion expanding the definition and include not only staff members, individually or collectively, who has the authority to commit transactions etc. but also employees without formal mandates and thereby requires a far more discretionary and ad hoc-driven process than looking at mandates, titles, hierarchy and remuneration levels. It is further unclear how many steps the "responsibility for advice" must be considered – only those providing the actual advice or also those who have been part of the analysis resulting in the final advice.

Responsibilities in an institution are given to the most appropriate function. The target function is staffed with employees seen as being able to take on that responsibility. In risk taking areas it is natural to categorise such employees as identified staff. The definition in article 3 (3) goes beyond this basic principle where employees are given responsibilities/mandates and in parity with the mandate accountability. It is further difficult to anticipate in advance who will in the future provide advice to decision makers (committees etc.). The conclusion will be that the identification process defining identified staff might need to partly be made retroactively.

**Article 4 Staff with no material impact on the risk profile**

The ambition with the standard is to ensure a level playing. In line with that it is inappropriate to establish a system where employees on one hand are classified as identified staff only due to their remuneration and on the other hand allow the institutions to make exemptions. Such a system will split institutions into two groups:

- Those applying Article 4 and thereby have far fewer identified staff and thereby are able to have more flexible staff cost structures but also more costly administrative processes for complying with this standard.
- Those not applying Article 4 and thereby are forced to introduce bonus caps and deferrals to a wider group of employee categories in bonus areas.

SWEDISH BANKERS' ASSOCIATION

  
Thomas Östros

  
Åsa Arffman