



BNP PARIBAS

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European Banking Authority
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London EC2N 1HQ
United Kingdom

Dear Madam, Dear Sir,

We welcome the opportunity to participate to this new consultation on the draft Regulatory Technical Standard (RTS) setting criteria (qualitative and quantitative) to identify categories of staff whose professional activities have a material impact on the institution's risk profile (hereafter "material risk takers or MRT") in the framework of CRD IV.

In order to strengthen the process for MRT identification and to set rules for the whole banking industry, we concur with the proposed approach based on a combination of criteria, the internal criteria developed by institutions and other regulatory qualitative and quantitative criteria for consistency purposes.

However, we take the opportunity of this consultation to raise specifically your attention on these tentative criteria which remain significantly too numerous, difficult to implement and inappropriate to the organization of an international banking institution. Moreover, the interaction and the prioritization of all these criteria are not sufficiently clear enough.

In our view, the EBA qualitative and quantitative criteria should be set as common criteria to be applied by all institutions in addition to their own internal criteria in order to ensure the harmonization of the MRT perimeters, while taking into account the diversity of the business models and risk profiles such as recommended in the CRD IV. Analysis performed internally point out that in this draft of RTS, qualitative and quantitative criteria are so numerous and restrictive that they would prevail in practical over the internal criteria implemented by the institutions.

In particular, the articulation between the qualitative and quantitative criteria should be more detailed. Indeed, according to article 90 2) of CRD4, quantitative criteria is qualified as being "appropriate" to identify the employees whose activities have a material impact on the risk profile of the company. Nevertheless, the current draft of RTS does not seem to integrate this distinction made in the Directive to prevent from a definition of highly restrictive quantitative criteria that would deny the diversity of European Banking institutions. It is indeed questionable to impose a single quantitative threshold applicable to all European institutions without taking into account the diversity and specificities of local constraints, economic environment, job specificity or cost of living in countries and areas where these institutions are located.

It is essential to link criteria based on remuneration level to risk taking rather than on absolute terms. The use of quantitative criteria based on risk taking with the use of metrics or existing limits is unquestionable because it enables to identify a MRT perimeter following the supervision practices.

However, the use of quantitative criteria based on total remuneration level is more questionable because the link with the risk effectively taken is not obvious, the fixed salary depending for a major part on benchmarking conditions, jobs specificity and purchasing power of each country. This kind of criteria may introduce a high volatility in the perimeter without any material effect in terms of operational efficiency.

Moreover, we would like to underline that the articulation and the application of proportionality principles with regards to these criteria have to be clarified. Indeed, as stated in the background paragraph 3. of the consultation paper, "institutions comply with the following principles in a way and to the extent that is appropriate to their size, internal organization and the nature, the scope and the complexity of their activities". It is essential that the proportionality principle can be applied on some criteria in some countries outside EU to maintain level playing field with non-EU institutions and to retain key employees and competitiveness of corporate and investment banking activities.

Finally, taking into account the proportionality principle and the complex organization of the big institutions located in many countries, with various activities and which constitute Groups, it is absolutely necessary that the scope of these criteria be limited to roles and responsibilities at the highest level of the organization, i.e. exclusively at Group level, to prevent from including a large number of employees without any material impact on the risk profile of the Group and from forgetting the initial purpose of the regulation.

Moreover, considering the regulation applicable to each different activity within a banking Group, the scope of CRDIV and EBA guidelines/standards should also be clarified in order that the CRDIV and EBA guidelines apply to all activities within institutions **except to** activities which are already subject to other requirements due to their own specific regulations (AIFMD, UCITSV, Solvency, MIFiD, etc...). Indeed, should large banking organizations have to cope with many different regulations, this would create an increasing unfair level playing field with similar activities independent from global banking institutions. As an example, Asset Managers in Banking Groups would be regulated by CRDIV, but would also have to meet AIFMD/UCITS requirements, which would lead to important damages in terms of competitiveness. In this situation, proportionality principle could be used to apply the more relevant standard.

Our detailed comments on each criterion are presented below in the Questionnaire and aim at illustrating our arguments.

Article 3 – Qualitative and quantitative criteria

- (1) Staff shall be identified as having a material impact on an institution's risk profile if they meet one or more of the following criteria:
 - a. the staff member is a member of the management body;
 - b. the staff member is a member of the senior management;
 - c. the staff member is responsible and accountable to the management body for the activities of the internal risk control function, the compliance function or the internal audit function;
 - d. the staff member heads a business unit (within the meaning of Article 137(1)(3) of Regulation (EU) No xxxx/2013 [CRR]);

Article 137 (1) (3) reads: 'business unit' means any separate organizational or legal entities, business lines, geographical locations;

e. the staff member heads a function responsible for legal affairs, taxation, human resources, information technology, budgeting, economic analysis, or business continuity planning;

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

Most of heads of specific functions are already identified as regulated staff under internal criteria. However, this list of specific roles seems appropriate **in so far as the analysis remains at Group level and not at a more granular level of the organization**. If the analysis had to be performed at a more granular level, it is essential that the materiality of the impact on the risk profile of the institution of such identified employees should be prior assessed before including them in the perimeter of Group MRT. Indeed, in Group structures, key roles and responsibilities are essentially at Group level, these roles at a lower level of the organization (in some business units or geographical locations) are limited to the implementation and the management of decisions taken at Group level by heads of functions/businesses. Consequently, staff members heads such as defined in the e. above **should only be limited to significant business units, legal entity or major geographical locations at the Group level.**

(2) Staff shall be identified as having a material impact on an institution's risk profile if they meet one or more of the following criteria:

- a. the staff member is a member of **Group** management body;
- b. the staff member is a member of **Group** senior management;
- c. the staff member is responsible and accountable to the **Group** management body for the activities of the internal risk control function, the compliance function or the internal audit function;
- d. the staff member heads **of major business units** (within the meaning of Article 137(1)(3) of Regulation (EU) No xxxx/2013 [CRR]);

Article 137 (1) (3) reads: 'business unit' means any separate organizational or legal entities, business lines, geographical locations;

e. the staff member heads of **Group function** responsible for legal affairs, taxation, human resources, information technology, budgeting, economic analysis, or business continuity planning;

f. the staff member has, individually or collectively with other staff members, authority to commit to credit risk exposures of a nominal amount per transaction which represents 0.25% of the institution's Common Equity Tier 1 capital;

Q2: Can the above criteria be easily applied and are the levels of staff identified and the provided threshold appropriate?

We are satisfied with the principle of this criterion based on the authority of staff to commit to credit risk exposures which enable to identify accurately the concerned employees.

However, in our internal approach, we consider that employees who have the authority to commit the institutions to credit risk exposure are essentially those who on an individual basis have the highest absolute limit of delegations within the institutions.

Consequently, the proposed approach of a threshold expressed as a % of CET1 is relevant as CET1 is indeed the more stable indicator to ensure a consistent approach between institutions independently

of their size in terms of identification of staff involved in credit risk exposure. However, the proposed threshold of 0.25% of the CET1 does not illustrate accurately the principle of "material impact on the risk profile of the institution" such as defined in the Directive.

In this context, we consider alternatively that the most appropriate level in terms of delegations for credit risk would **be 1% of CET1**.

g. in relation to an institution to which the derogation for small trading book business under Article 89(1) of Regulation (EU) No xxx/2013 [CRR] does not apply, the staff member has, individually or collectively with other staff members, authority to commit to transactions on the trading book which in aggregate represent one of the following:

- i. where the standardized approach is used, an own funds requirement for market risks of 0.25% or more of the institution's Common Equity Tier 1 capital;
- ii. where an internal model based approach is used, 5% or more of the institution's internal value-at-risk limit for trading book exposures at a 95th percentile, one-tailed confidence interval level;

Q3: Can the above criteria be easily applied and are the levels of staff identified and the provided thresholds appropriate?

We are satisfied with the principle of this criterion based on value-at-risk (VAR) limits for market risks which enables accurately to primarily identify employees concerned for market risk. The first approach initially proposed by EBA based on an ex-post assessment of the risk taken within an aggregated approach was even more complex. Like for credit risk, delegations to employees having authority to commit to transactions on the trading book are granted to employees at desk/book level. Consequently, considering staff member who has the authority to commit transactions on the trading book, we consider that it must only apply to most senior traders of the desk (excluding in particular assistants, administrative staff and the most junior employees).

However, the proposed threshold of 5% of total VAR limit for trading books limit does not accurately illustrate the Directive principle of "material impact on the risk profile of the institution". Moreover to be more consistent with regulatory requirements, market practices and existing systems, it would be more relevant to propose a limit at a 99th percentile.

The proposed alternative is a **10% of the VAR limit** for trading books exposures at a 99th percentile.

h. the staff member has managerial responsibility for a group of staff members who have individual authorities to commit the institution to transactions, and the sum of those authorities equals or exceeds a threshold set out in point (f) or in point (g);

Qualitative criteria linked with management level and decision power is really relevant to identify employees who may have a significant impact on the risk profile of the bank and should prevail over the others.

Such criteria based on the authority of managers to commit to credit risk exposures or to commit to transactions on trading books are already used according to internal criteria to determine material risk takers, such as responsibilities as senior business members or heads of major validation committees

which are internal sponsors of risk transactions (long term transactions, transactions with leverage, structured credits, highly capital consumer's transactions).

As regards the quantitative criteria, it is important to remind that delegations are granted on an individual basis to employees, and that the sum of VAR limits or the sum of credit delegation levels is irrelevant: neither limits, nor VAR can be added, mainly due to risk diversification.

Such a sum will rapidly exceed 5% of Group VAR limit. Moreover, as an illustration, a manager of 100 employees with each of them entitle to a credit delegation of 0.0025% of CET1 (a significantly low level of delegation) would be identified as MRT, even if he/she as an individual would not have necessarily a material impact on the risk profile of the institution. Authority of managers to commit to credit risk exposures or to commit to transactions on trading books can only be appreciated according to their own delegation level, to their own VAR limit or to their responsibility within validation committee, but not as the sum of individual delegations of employees under their responsibility. Consequently this criterion such as proposed seems not to be appropriate. A more appropriate criterion would be to consider managers who have in their team at least one employee with these delegation levels.

The proposed alternative could be to consider as MRT **all managers having in their team** one or more employees whose delegation level (either credit limit or VAR) exceed thresholds previously defined.

- i. the staff member has managerial responsibility for a staff member whose professional activities have or may have a material impact on the institution's risk profile according to the internal risk identification process in Article 2;

Alternatively, a criterion considering as MRT all managers who have in their team one or more employees whose delegation levels or VAR limits exceed the above thresholds and who have been identified as MRT according to the 3.f and 3.g criteria seems more relevant.

- j. the staff member has, individually or collectively with other staff members, the authority to take, approve or veto decisions on the introduction of new products, material processes, or material systems.

We agree with a criterion based on the authority to take, approve or veto decisions as we are already considering that criteria in our internal criteria (Article 2) as employees that take strategic decisions or that have decision powers in some specialized validation committee are considered as MRT.

Meanwhile, this criterion such as defined above needs to be specified as the wording is too wide to be applicable on a consistent basis among institutions. Indeed, an extensive application could lead to capture not only employees who will take final decisions but also all employees who take part of the decisional processes (such as credit analysts, advisors, research worker...) and whose impact on the group risk profile is often not material at all.

An alternative could be to consider this criterion on an individual basis for the single employees who have a significant impact on the risk profile due to their **effective final decision powers** (chair of the appropriate committee), and to precise the definition of the operations concerned (new products, material processes or material system) in a % RWA of the Bank for example.

At this stage of the consultation, we would like to underline that even if we agree with the proposed approach based on a combination of internal criteria and other regulatory qualitative and quantitative criteria, we consider that most of the material risk takers will be identified according to the first two criteria. To our view, the quantitative criterion on remuneration should only aim at ensuring that the best-rewarded employees of the bank have been exhaustively tested with regards to their material impact on the risk profile of the bank and that they would not be fostered to take more risk in their activity to maximize their variable remuneration. On the contrary, these following four additional quantitative criteria based on remuneration on top of the previous criteria contribute to make the approach very complex.

(2) Staff shall be identified as having a material impact on an institution's risk profile if they meet one or more of the following criteria, subject to Article (4):

of the following amounts:

a. the staff member could, in accordance with the institution's remuneration policy, be awarded variable remuneration that exceeds both of the following amounts

- i. 75% of the fixed component of remuneration;
- ii. EUR 75 000;

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?

First, it is essential that in general, the assessment be made ex-post on employees who have been effectively awarded a certain amount of remuneration and not to consider employees who may receive this amount, because in this case, all employees within the Group could be in scope and a test on all group employees could not be applicable.

Then, considering the absolute level of this criterion, it does not seem to be appropriate to answer the objective of the Directive to identify the MRT within the institution. The threshold of variable compensation exceeding EUR 75 000 or 75% of the fixed remuneration set as the criterion is indeed far too low. Moreover, the amount of variable compensation can indeed differ significantly from one country to another due to local market constraints and benchmarking conditions, from one bank to another according to its organization or/and to its activities.

The number of tested employees within that criterion would be very large. Within BNP Paribas, almost 1.300 employees will be identified to be tested with this criterion. Moreover, based on internal criteria, most of them have no material impact on the risk profile of the Group and, would have been excluded as regards the article 4 of the guidelines. As a conclusion, we consider that including this criterion will have no impact on the number of MRT finally identified and will be useless.

b. the staff member has been awarded total gross remuneration in one of the two preceding financial years which is equal to or greater than the lowest total remuneration that was awarded in that year to a member of staff who performs professional activities for the same entity and who either is a member of senior management or meets one of the criteria in paragraph (1) or one of the internal criteria referred to in Article 2;

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?

Firstly, according to internal criteria and to the Directive requirements, entities must already test systematically all Group employees whose annual compensation "takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on their risk profile" such as identified according to internal/qualitative criteria and "if they have a material impact on the institution's risk profile", them must be included as MRT.

Consequently, this proposed criterion is rather consistent with the regulation. However, the reference of the two preceding year does not appear appropriate with the appreciation on a yearly basis of the performance and the risk assessment.

Moreover, the comparative analysis with the lowest remuneration of an employee identified as MRT performing his/her activity in the same entity has little sense. In case of an individual or collective low performance, most of them would not receive any variable remuneration (in accordance with the regulation); this test would result in screening all employees without any relationship to the risks that have to be considered. This could also lead to the pernicious effect not to award zero bonus to MRT already identified according to the other criteria and would go against regulation requirement, in order to avoid including many additional people in the scope.

We would alternatively suggest setting up a criterion based **on the average annual total compensation** awarded to the employees already identified as MRT **at the global level of the institution**. This criterion would enable to identify other potential MRT whose total compensation exceeds this average and test them with regard to their material impact on the risk profile of the company.

c. the staff member has been awarded total gross remuneration of EUR 500 000 or more in one of the two preceding financial years.

Q6: Can the above criterion be easily applied and are the threshold and the levels of staff identified appropriate?

Even if this absolute level of remuneration could appear to be high, it takes into account nor local market conditions in terms of remuneration levels, cost of living, specificity of jobs and purchasing powers, neither internal market practices among European countries/institutions. The perimeter of identified staff according to this absolute remuneration criterion could vary significantly from one country to another: this single criterion could have no impact in most European countries, and is far too low in some countries like in London for example, which is the main financial market place in Europe.

We should also keep in mind one of the major objective of the Directive which is to establish a link between compensation and risk-taking. Some employees can have a high level of compensation without having any impact on the risk profile of the bank (for example, commissions, advisory fees, asset management for third part ...)

Considering the absolute level of total compensation as a criterion without any test on the potential material impact on the risk profile of the bank of these employees can be pernicious in terms of level

playing field with other non EU countries for employees of some activities/businesses in which remuneration can generally exceed EUR 500 000 for a substantial number of employees due to market practices whereas this activity/business has no material impact on the risk profile of the bank.

Moreover, our view is preferably to appreciate the potential impact on the risk profile of the bank on a yearly basis, to match with the appreciation of the performance and the risk assessment, and with the important mobilities that can occur in organizations.

Consequently, an alternative criterion would be to consider level of remuneration in relative terms and in each country, and to test the employees concerned as regards their effective material impact on the risk profile of the bank.

By default, like for the other remuneration criteria, this criterion **should at least benefit from review process of article 4 whereby the institution can exclude staff with no material impact on the institutions risk profile.**

d. the staff member is within the 0.3% of staff who received the highest total gross remuneration in either the most recent financial year or in the preceding financial year.

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

According to us, this criterion is the best appropriate to capture employees who may have a material impact on the risk profile of the bank as regards their remuneration levels, as long as it is also combined with an analysis on the effective impact of the employee on the risk profile of the bank.

Even if considering a % of the highest compensated employees of the institution will enable to have a more consistent approach among institutions and assess the remuneration levels taking into account local market constraints and benchmarking conditions, we would prefer to consider this criterion on a yearly basis and to adapt it among countries. Total remuneration levels can differ significantly from one country to another, so we suggest considering the highest total gross remuneration by country.

To our view, most of material risk takers will have been identified based on internal criteria and RTS qualitative and risk quantitative criteria. This above single quantitative criterion should finally aim at ensuring that the highest compensated employees of the bank have all been effectively tested as regards their impact on the risk profile of the bank.

The criterion of total remuneration exceeding 500,000 euros must be cancelled and replaced by a single alternative criterion based, in each significant country of activity, on a test of the impact on the risk profile of each employee whose total compensation is part of the 0.3% of the highest compensation awarded, in each significant country of activity.

By default, like for the other remuneration criteria, this criterion **should at least benefit from review process of article 4 whereby the institution can exclude staff with no material impact on the institutions risk profile.**

(3) In paragraph (1), a reference to staff members having, individually or collectively with other staff members, authority to commit to transactions or exposures or to take, approve or veto a decision includes both of the following categories of staff:

- a. staff who are responsible for advising on or initiating such commitments or decisions;
- b. staff who are members of a committee which has authority to make such commitments or to take such decisions.

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

Please refer to comments in j.

We would like to stress the damages that the "contagion" principle introduced through paragraph (3) of article 3 would cause to governance process of the banks. This principle would lead to capture in the perimeter employees who give risk-management advice or participate to committees which can take decisions on risk management.

This would lead to capture employees who have no capacity to take risks and disturb useful governance processes that have been strengthened since the crisis. Employees would be incentivized to stop giving advices or participating in committees because of this contagion principle to prevent inclusion in the MRT perimeter.

This is a very bad signal to give on European banks risk management and governance.

This article should be cancelled as its negative consequences clearly outweigh its benefit in terms of definition of the MRT perimeter.

29. Almost all the firms in the survey that provided answers on costs confirmed that the main drivers of costs of the RTS had been appropriately listed in the table above. From this limited sample, it appears that for most institutions, independently of their number of employees, changes to IT systems will be one of the main drivers of costs. Changing processes is another important driver of costs, but tends to affect larger institutions. As expected, smaller institutions cited rather hiring/training new staff as an important driver of costs. Most of the institutions in the sample were not able to provide any estimate of the scale of these changes.

Q9. Could you indicate whether all the main drivers of direct costs from the RTS have been identified in the table above? Are there any other costs or benefits missing? If yes, could you specify which ones?

Q10: For institutions, could you indicate which type of costs (a, b, c, d) are you more likely to incur? Could you explain what exactly drives these costs and give us an indication of their expected scale?

It is indeed very difficult to value the cost impacts of such new processes. Nevertheless, in order to implement such complex criteria and to perform relevant analysis on a large number of employees even in some countries where our HR and compensation management tool are not operating, the cost in terms of time, human and technology resources will be very significant.

Indirect Compliance Costs – By defining the scope of the staff identified as having a material impact on the institution's risk profile, the RTS will also affect the size of the costs driven by the requirements of the directive; for instance, the costs associated with changing individual contracts for identified staff that are not compliant with the CRR or due to the disclosure requirements.

Benefits – By establishing harmonized criteria to identify staff members who have a material impact on the institutions risk profile, the RTS will ensure that institutions in different member states use the same practices to identify staff, reducing the burden to comply with different regulatory frameworks. These criteria will identify in some member states more staff as having a material impact on the institution's risk profile compared to the current national framework. By doing so, they contribute to realize the benefits sought by the CRD IV requirements *which is beside others to ensure that the remuneration of identified staff reflects more accurately the risks they generate and is more aligned with the longer term interests of the institution.*

Q11: Do you agree with our analysis of the impact of the proposals in this CP? If not, can you provide any evidence or data that would explain why you disagree or might further inform our analysis of the likely impacts of the proposals?

As a conclusion, we believe that setting rules to identify MRT applicable to all European banks will be useful to ease the comparability among institutions, to ensure a consistent implementation of the regulation on remuneration within institutions.

We consider that adding qualitative criteria and quantitative criteria on risk exposure to internal criteria seem to be appropriate to determine the staff members having a material impact on the risk profile of the enterprise and would enable to improve the consistency of the methodology implemented between institutions. However, we believe that it is essential that some criteria in particular those based on the employee functions (1) be limited to the heads of these functions at Group level, and cannot be implemented at a more granular level of the institution. Moreover, some of the other criteria have to be refined to better reflect the material impact within the organization and simplify the implementation. Combining them with a test on a quantitative criterion based on remuneration level would contribute to finalize and ease the identification of other potential material risk takers that could have been missed by institutions. However absolute quantitative criteria on remuneration levels will lack clarity, and will strengthen the gap between European rules and FSB principles that do not include any requirement on the identification of MRT and in particular based on an absolute level of remuneration. Consequently, all potential quantitative criteria based on remuneration levels **should be at least completed by a test on the material impact of the identified employees on the risk profile of the institution.**

As a reminder, the CRD4 Directive adopted in April 2013 has introduced new requirements even more binding than in the initial draft of CRD4, in particular in terms of individual cap of variable remuneration at the level of fixed remuneration, or at the level of two times the fixed remuneration with the shareholders approval according to the conditions set in the text. These requirements go far beyond FSB international principles and will contribute to penalize once again European institutions level playing field in particular in areas or countries outside European Union. European banks would likely have to face with a risk of significant turnover of the key employees in corporate and investment banking activities for the benefit of non European corporate and investment banks.

In this framework, we consider that the RTS draft should absolutely take into account the dramatic risks of level playing field breakdown between European and non European institutions operating in non EU areas or countries when defining the criteria. **Such as defined in the Directive, the criteria should be exclusively focused on an “appropriate” and “risk-oriented” definition.** Finally, in order to be operating for the 2014 performance year, due to the complexity of the criteria, the needs in terms of time, technology and resources to update our policy and processes, to implement such standards in all countries of activity (more than 70 countries) and to communicate to potential new material risk takers, we would highly appreciate that the final RTS could be issued no later than 31st December, 2013.

Yours Faithfully,



Guylaine Dyevre

Head of Group Compensation & Benefits