

Milan, 8 August 2013  
Prot. 62/13

*By email at the following email address:*

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**RE: Consultation Paper on Draft Regulatory Technical Standards on criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile under Article 90(2) of the proposed Capital Requirements Directive**

ASSOSIM<sup>1</sup> welcomes the opportunity to comment on the consultation paper referred to above.

In particular, **we greatly appreciate the need to harmonise the identification process of the "Identified staff"** in order to provide for a level playing field across jurisdictions.

It is apparent, in fact, that remuneration practices and levels vary greatly across Member States as well as the identification criteria and the actual numbers of "Identified staff". The recent publication of the EBA Report on High Earners 2010 and 2011 data brings clear evidence of the most relevant of such differences.

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<sup>1</sup> ASSOSIM (*Associazione Italiana Intermediari Mobiliari*) is the Italian Association of Financial Intermediaries, which represents the majority of financial intermediaries acting in the Italian Markets. ASSOSIM has nearly 80 members represented by banks, investment firms, branches of foreign brokerage houses, active in the investment services industry, mostly in primary and secondary markets of equities, bonds and derivatives, for some 82% of the Italian total trading volume.

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In such a context we strongly believe that sound processes to identify “risk takers” should guarantee that:

- **only staff members who have a material impact on an institution's risk profile** are actually captured by the identification process;
- staff members that carry out significant professional activities at an institution but do not have a material impact on its risk profile (in particular **middle management**) are not unduly captured by the identification process.

We believe that such approach – which we expect to be broadly shared among institutions and regulators as well as fully in line with the relevant provisions of CRD IV – could preserve **the ability of institutions to adequately attract, preserve and reward excellence** among its staff to the extent it does not produce inappropriate incentives to the assumption of risks. As a result, we would expect that:

- **a relatively low number of individuals is identified** at any institution and at aggregate level;
- **such individuals fall in the highest pay bracket at Industry level.**

Hereinafter we provide comments on single provisions of the draft Regulation referring to specific questions by EBA, when appropriate.

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## Article 1(2)

In the case of groups, it is not clear if the Regulation applies at group level or at subsidiary level.

For the avoidance of doubt, it could be appropriate to specify that **the Regulation applies to groups on a consolidated basis.**

Specific provisions could be envisaged for European subsidiaries of non-EU groups of for non EU-subsiidiaries of groups.

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## Article 2

Where, notwithstanding what suggested under Article 1(2) above, the Regulation should apply at subsidiary level, **less complex individual institutions should be allowed, based on the principle of proportionality, not to apply Article 2** and to rely only on the provisions of Articles 3 and 4 in order to identify the “Identified staff”.

## Article 3(1)

Q1: the list *sub* letter (e) appears indeed to be too wide and to include functions that may not have a material impact on the risk profile of the institution: **Article 4 should apply to individuals referred to in Article 3(1)(e) as well.**

Q2: the criteria appears difficult to assess and to apply. We believe it should be in the responsibility of the institution, within the Internal identification process, to assess adequately the levels of individual or collective delegation of power that require the inclusion in the “Identified staff”. In any case a **threshold of 1% of CT1** appears more appropriate for the purposes of this provision and **a *de minimis* exemption should be provided for** (for example individual limit for own funds requirement for credit risk lower than EUR 25 million).

Q3: Idem as in Q2. Moreover the rationale of letter (g)(ii) is not clear: if the impact on CT1 has to be assumed as a measure of the impact of an individual on the risk profile of the institution, **there should be no reason to refer to a different metric in the case of use of internal models** for market risk.

Since it is apparent that the ratio of VAR to CT1 varies among institutions, such a criterion would unduly discriminate among individuals that may have the same impact on the solvency of their institution; we therefore **strongly suggest that impact on CT1 should be the only metric applied Industry-wide, irrespective of the adoption of internal models.**

In any case **a *de minimis* exemption should be provided for** (for example individual limit for own funds requirement for market risk lower than EUR 25 million).

letter (i): the provision of this letter is not clear since the individuals referred to therein should already be identified according to the Internal identification process. We suggest this letter to be eliminated.

letter (j): the scope of this letter appears too wide since it includes individuals irrespective of their actual or potential impact on the risk profile at the institution; the inclusions of such individuals in the “Identified staff” should only result by the Internal identification process. We suggest this letter to be eliminated.

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## Article 3(2)

Q4: although we appreciate that the incidence of variable remuneration may be an indicator of potential risk impact, and notwithstanding the provision of Article 4, **we believe that the thresholds indicated in letter (a) are not appropriate in that they could determine the inclusion of a large number of non-material “risk taker” individuals**; the relevant cost to identify their actual impact on the risk profile of the institution could be unnecessarily significant.

We therefore suggest that letter (a) is amended as follows:

- a. the staff member is awarded variable remuneration that exceeds both of the following amounts:
  - i. 100% of the fixed component of remuneration (including benefits);
  - ii. EUR 250 000.

Moreover **these thresholds should represent a *de minimis* exemption** in the sense that institutions should be allowed not to include among the “Identified staff” any Individual whose remuneration does not exceed both of the amounts above.

Q5: the scope of letter (b) is too wide. **The pay bracket of (i) non-executive members of the management body and of (ii) individuals responsible of control functions should not be included in the reference<sup>2</sup>**; we suggest that the last line of letter (b) is amended as follows: “ (.....) criteria in paragraph (1) letters (b), including executive members of the management body, or (d)”.

Q5 b): all reference to remuneration, here and elsewhere, should always be to **remuneration which has actually been awarded** (in the meaning of Article 3(4)).

Q6: we believe the limit of EUR 500,000 should be increased to EUR 1,000,000 in line with EBA definition of high earners.

Q7: This criterion does not seem appropriate as it has no reference to the impact on the institution’s risk profile nor has any reference to absolute levels of remuneration: the criterion of letter (c) should only be applied. Moreover **the criteria of letter (d) may result disproportionate with respect to specific institutions** as it could bring to the identification of an unduly high number of individuals, particularly in large groups; its application could also be not straightforward.

Q8: the rationale of the provision *sub* letter (a) is not clear as it would include **individuals who do not have authority to materially impact the risk profile of the institution**. The possible inclusion of these individuals should only be the result of the Internal identification process.

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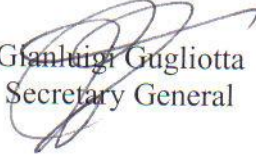
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<sup>2</sup> For instance, please refer to the provision of Bank of Italy’s Regulation dated 30 March 2011, paragraph 3.2.

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We remain at your disposal for any further information or clarification on the above.

Yours faithfully,

  
Gianluigi Gugliotta  
Secretary General