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Comments

Dear Sir or Madam,

We are a leading association in the German banking industry and among other things represent the German promotional banks (see enclosed brochure 'Promotional banks in Germany - Acting in the public interest'). Together with the other associations in the German Banking Industry Committee we have made comments on the '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' (see email from the German Banking Industry Committee dated 21 August 2013). In addition to these comments, we are writing now to emphasise a point which is particularly important for the promotional banks.

In Germany there are promotional banks at federal and federal state levels, which have a special structure and a clear statutory mission backed by corresponding state guarantees. This is explicitly recognised in the decision of the European Commission of 2002. This means that the tasks and business activities of the promotional banks differ significantly from the activities of commercial banks. The promotional banks are permitted to be active in only a limited number of business areas based on their special promotional mandate and they must be explicitly charged with these tasks by their competent authorities.

The criteria proposed by the EBA do not allow for consideration of the special business and risk structures of the promotional banks when identifying risk takers. Under recitals 66 and 92 of CRD IV the remuneration regulations and the regulatory Technical Standards developed by the EBA are to reflect the different circumstances in the individual institutions. They are to take into account the size and internal organisation as well as the nature, scope and complexity of the institutions and their activities in an appropriate way. The aim is to apply the remuneration regulations according to risk aspects to the institutions and members of staff adequately. However, the EBA does not apply this principle of proportionality in the proposed criteria to identify risk takers. Rather, identification according to the EBA criteria takes place without regard for an institution-specific risk analysis and without regard to the institution-specific organisational and business structures. This means that promotional banks are disproportionately affected by the consequences of the EBA criteria. The fact that promotional banks have a low-risk business model and thus a conservative total risk profile is not taken into account.


The proposed assessment to identify risk takers according to abstract qualitative and quantitative criteria disregards an institution-specific assessment and the individual risk profile of the institution. Identification under Art. 3 takes place entirely on the basis of inflexible criteria that all institutions are to apply uniformly. The consequence of the abstract criteria is that a certain number of risk takers are to be identified in each institution without the size of the institution or the nature, scope and complexity of the institution's activities playing any role. Persons are named as risk takers solely due to their position. This means that heads of certain units, e.g. legal affairs, taxation, human resources, are generally considered to be risk takers. Thus the corresponding persons would be categorised as risk takers both at a major bank with a marked risk profile as well as at a promotional bank with a conservative risk profile. For the promotional banks this gives rise to entirely inappropriate and no longer justifiable costs and time, which are not covered by the specifications of CRD IV and the proportionality principle.

In our view, the qualitative and quantitative criteria to identify the risk takers should not be formulated as generally valid criteria as this contradicts the proportionality principle. Here it must be ensured that not only the interpretation of the criteria has to be restrictive but also the organisation specific to the individual institution and the risk structure as well as the powers the members of staff actually have must shape the identification of risk takers.

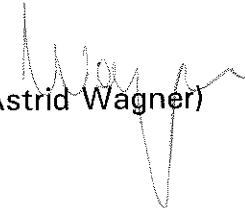
Insofar the qualitative and quantitative criteria can only serve as refutable indications for the institution-specific identification process. The institutions must be given the possibility of applying the relevant criteria on the basis of their own business structure and their total risk profile. Therefore, we do not consider the exception provided for in Art. 4 to be sufficient. In our view, Art. 4 is to be formulated in such a way that the institutions have the right to refute all qualitative and quantitative criteria.

We would be grateful if you would take our remarks into account in the ongoing consultation.

Yours sincerely
Bundesverband Öffentlicher Banken Deutschlands



(Dr. Stephan Rabe)



(Astrid Wagner)

Enclosure