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To: European Banking Authority

The Hungarian Banking Association welcomes the opportunity to respond to the 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.

We have shared the proposed RTS among our members and here below, we summarize their feedback. Also, part of the preparations of our feedback, we have received the EBF – European Banking Federation – review of the proposed RTS and we fully agree with the points highlighted in their review. Please, consider their viewpoints ours as well.

In alignment, but further to the EBF comments, we would like to highlight the following in relation to the proposal:

GENERAL COMMENTS

1. We challenge the idea that annual remuneration amount itself indicates the level of risk taking i.e.: higher earners are higher risk takers. Management of institutions are natural candidates for Covered EE status, however, given the different functions – especially support and control functions – that are smaller in size, have less impact, their heads, regardless being members of the top management of a given institutions, do earn less or at level with other, bigger and income generating function staff at lower hierarchy in the organizations where decision making are limited and requires approval of management.

Therefore we recommend that such drivers of identifications should be recommended only as “reality check” to ensure that all decision makers/risk takers are captured by the qualitative evaluations.

Alternatively, appropriate remuneration and/or variable ratio limits are recommended below which no explanation is required for excluding identified staff from the payout rules even if identified as such. As institutions are paying lower or no bonus due to poor performance, difficult and cumbersome administrative burdens to comply with the payout rules for amounts lower then 10% of base salary. Also, these payouts loose the remaining motivating and retention factors when further divided up and paid out in ridiculously low instalments.

2. Representing a country where the majority of institutions in scope are operating in a group structure - some legal setup required by law – where legal entities are fully managed by parents and so decision making/risk taking is not directly related to the formal management of these subsidiaries, however, they are treated as independent institutions with independent decision making bodies.

Such structures are clearly spelled out in local/group level hierarchies/decision and reporting lines.

We also highlight the need and recommend that group level considerations of decision making/risk taking bodies better be incorporated into the RTS. This recommendations ties in with the EBA comment on the RTS that is not appropriately addressing complexities, structures, significance of institutions as required by CRD IV.

3. Article 4 makes it possible to exclude Identified Staff who got on the “radar” due to their remuneration level, which is in alignment with the CRD IV approach, however, it seems that significant amount of people are captured by applying the remuneration criteria in Article 3 who are then need to be excluded resulting “much ado ‘bout nothing” but using resources to fully comply with the proposed regulations.

SPECIFIC RECOMMENDATIONS

Article 3 – Qualitative and quantitative criteria

1 (d) – “staff member heads a business unit” – as current draft RTS does not allow for proportionality, this identification of Identified Staff would extend the scope of application well within the organization. The cited CRR definition further unsettles the scope – identifying even branches (separate organizational entities, geographical locations), making e.g.: retail and commercial branch managers part of the scope – increasing the number of identified EE exponentially.

Recommend to further specify this scope targeting the economically and legally independent units.

1 (e) – “staff member heads a function” – the listed functions are very different in scope and is located at different hierarchical level within the organization. E.g.: taxation report to Finance, while BCP is part of Operation – where the appropriate decision makers are already identified. Although, they are in strong position to recommend alternative solutions to decision makers, they do not make decisions, therefore they are not risk takers in that sense. Also, the higher the risk, the decision making process – in group context – is escalated higher in the hierarchy and not decided below management level.

Recommend to merge (c) and (e) to read – “staff member head a control function or any function or business units of 1st line reporting to CEO of the institutions

1 (f) – “staff member having authority individually or collectively to commit to credit risk exposure that represent 0.25% of the institution’s Common Equity Tier 1 Capital”. The limit set for this is very low and the limit itself are different by institutions as well as it can change by the quarters.

Recommend to increase the limit or determine the limit to a more stable number which is proportionate to the institutions.

2 Entire Paragraph 2 targets to identify risk takers solely based on remuneration criteria on which we have earlier expressed our disagreement. Further to the un-level playing field it creates due to the earning level and structure in the different functions’ – resulting Identified Staff where they are not risk-takers (and later – as referred in Article 4 – they should/could be excluded taking considerable time and creating administrative burden), it completely disregards the different income levels different countries represent and so generating and/or excluding staff based on a fact which should rather be smoothed out by the RTS not further enhance.

Most of the criteria consider a 2-year interval, which could further complicate calculations due to fluctuating exchange rates so EE’s close to the limit could or could not be included without change in their income, only as a result of FX rate change.

Current proposal RTS examines actual payouts as the remuneration criteria. This results difficult situations where the institutions cannot preliminary identify the Identified Staff and apply all necessary actions

(contract, deferral notice, etc.) should the person later identified. As some variable income is due quarterly or half-yearly – payout may be executed unintended.

Apart from the fact that remuneration does not exclusively define risk taking and decision making responsibilities, it further complicates matters as ex post identification might be resulted due to a good performance of non-risk taker that take their remuneration to the same bracket to where a poor performing lower earner Identified Staff got remuneration for a given year. Such consideration will move the number of Identified Staff from one year to another creating a heavy burden on following up on related remuneration requirements. Not clear, how to treat staff falling in and out of the scope in subsequent years.

2 (b) The 2-year interval further complicates comparisons, taking into account natural movements in staff – promotions (into Identified staff positions); long leaves (i.e. maternity, sabbatical, etc.); application of malus or claw back.

Still on this criteria - it expands the number of identified staff significantly, as it covers very different functions/organizations whose impact and size could greatly differ. Especially enabling and/or control functions may have material impact by their control activities, however their earning does not come close to those of other function heads in front-end or special knowledge functions, from where 2nd line managers would make the line causing quite heavy administrative burden to exclude them later based on Article 4.

Should clear income level be a determining factor for risk-taking responsibility, we recommend to use target remuneration as opposed to actual payouts as it stays consistent and Identified Staff category will not be influenced by neither higher or lower payouts due to performance of the individual or the institution. Should actual income stay as an identifying factor, guidelines on how to treat payments made during the year must be managed to comply with the remuneration rules.

If current approach is kept, paragraph is recommended to be extended with the following ending note (in that same year) 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 in that same year

2 (c) – “staff member awarded over EUR 500K in one of the two preceding financial years” may result reporting Identified Staff who are not performing their duties due to long leaves (i.e. maternity, sabbatical)

2 (d) – “staff member is within 0.3% of highest total gross remuneration population
Recommend to apply this criterion by group level

Article 5 – Entry into force

The proposal indicates 20 days for taking effect, which we consider a very short time taking into account what it means to review the generated changes in the institutions’ life – regulations, contracts and group-level harmonization, not mentioning the technological developments it would require.

Recommend that the IT should be aligned with the CRDIV effective dates, if that is accepted in September, the latest.

Regards,



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