UNI Europa Finance

UNI Europa Finance reply to EBA consultation paper

ON GUIDELINES ON AUTHORISATION AS CREDIT INSTITUTIONS

UNI Europa Finance, as the European trade union federation representing European finance employees working in the sector, would like to make two observations on this consultation. The first pertains to question 6, where we are a bit concerned with the way article 105 is formulated. The sentence, *'Competent authorities should pay attention to recurring cost concentrations that may reflect rigidity in the cost structure (e.g. discretionary pay costs are easier to reduce than staff salaries in case needed)'* reads to us as if staff salaries are seen as a rigid cost, which should be limited in order to increase flexibility of the cost structure of credit institutions. While this is true, comparing it to discretionary pay costs seems to indicate that institutions should favour flexible salary structures over fixed ones to be considered lower risk. This would go against the common practice advocated in other pieces of financial regulation and would if anything add to the risk profile of the institution, as variable pay structures have shown in the past to incentivize risky business practices in order for employees to reach sales targets etc. We would therefore strongly support the EBA changing the formulation of this sentence to not give the described impression.

Article 105 in full: '*The target cost structure (e.g. labor, administrative or IT costs) should be reviewed in absolute terms and, where possible and appropriate, compared to peers, being mindful of the significant negative impact that the underestimation of certain costs, in particular during the start-up phase or in stressed situations, may have on the sustainability of the business model and/or strategy. Competent authorities should pay attention to recurring cost concentrations that may reflect rigidity in the cost structure (e.g. discretionary pay costs are easier to reduce than staff salaries in case needed).*'

Our second observation pertains to article 135, b, g, 9.4.3 Remuneration policy and thereby implicity also article 170 and 171.

Our concern here is that in many European countries, especially in the Nordic region, it is not only for the competent authorities and the management body to set the remuneration policy for the institution. Remuneration structures are negotiated through collective bargaining between the social partners, management body and trade unions, who both have an interest in ensuring that the remuneration structures of the institution are equitable and appropriate for the risk profile/appetite of the institution.

We would therefore as a minimum like to see a reference to these negotiations being a part of the process and trade unions being mentioned as one side of the collective bargaining negotiations that set the framework for the remuneration structure. Without mentioning the trade union role, the risk is that some institutions would abandon collective bargaining on the issue of remuneration, which would undermine the very equitable organization model practiced in many countries, which we presume is not the intention of the EBA. And even if this is only a question of supervision, in case an issue is identified in the remuneration structure of an institution, it would not only be for the management body to correct it, but would have to be done through a dialogue with the trade unions representing the employees in that institution.

Specifically, article 135 states that: *Competent authorities should review the application, in particular the articles of association or other equivalent constitutional documents and the terms of reference of the management body, and be satisfied that the documents adequately cover the management body's roles and responsibilities, distinguishing between the duties of the management (executive) function and of the supervisory (non-executive) function. In line with this, competent authorities should in particular: (…)*

be satisfied that the responsibilities entrusted to the management body include setting, approving and overseeing the implementation of: a) the overall business strategy and the key policies of the credit institution; b) the overall risk strategy, including the credit institution's risk appetite and its risk management framework and measures to ensure that the management body devotes sufficient time to risk issues and to perform its function; c) an adequate and effective internal governance and internal control framework that includes a clear organisational structure and well-functioning independent internal risk management, compliance and audit functions that have sufficient authority, stature and resources to perform their functions; d) an adequate and effective internal governance and internal control framework, to ensure compliance with applicable requirements also in the context of the prevention of money laundering and terrorism financing; e) the amounts, types and distribution of both internal capital and regulatory capital to adequately cover the risks of the institution; f) targets for the liquidity management of the institution; g) a remuneration policy as described in paragraphs 170and171; h) arrangements on the suitability, composition, effectiveness and succession planning of the management body; i) a selection and suitability assessment process for key function holders42; h) arrangements aimed at ensuring the internal functioning of each committee of the management body, when established43; i) a risk culture which addresses the institution's risk awareness and risk-taking behaviour; j) a corporate culture and values which foster responsible and ethical behaviour, including a code of conduct or similar instrument; k) a conflict of interest policy at institutional and staff level; l) arrangements aimed at ensuring the integrity of the accounting and financial reporting systems, including financial and operational controls and compliance with the law and relevant standards;

As for article 170 and 171, they state that:

170.In respect of the outline of the remuneration policy, in addition to assessing compliance with its gender neutrality requirements under Article 92(2)(aa) CRD, competent authorities should have specific regard that the outline of the policy relating to staff members whose professional activities have material impact on the credit institution risk profile, is in line with Article 94 CRD and the EBA Guidelines on remuneration policy.

171.In particular, they should assess whether: a) the outline of the remuneration policy is in line with the institution's envisaged risk appetite, its business strategy and its long-term interests and whether it is envisaged to be maintained, approved and overseen by the management body; b) it envisages that staff who have a material impact on the institution's risk profile will be appropriately identified in line with Article 92(3) and article 94(3); c) it foresees specific remuneration requirements for that particular staff inter alia (i) a ratio between variable and fixed remuneration in line with point (g) of Article 94(1) CRD; and (ii) the pay-out in instruments, the deferral arrangements including malus and clawback) in line with points(l), (m) and (n) of Article 94(1) CRD58.