

June 4<sup>th</sup> 2015

**UniCredit reply to EBA consultation  
on Draft Guidelines on remuneration policies under Article 74(3) and 75(2) of  
Directive 2013/36/EU and disclosures under Article 450 of Regulation (EU)  
No 575/2013.**

UniCredit is a major international financial institution with strong roots in 17 European countries, active in approximately 50 markets, with circa 7,500 branches and over 130,000 employees. UniCredit is among the top market players in Italy, Austria, Poland, CEE and Germany.

**EXECUTIVE SUMMARY**

*UniCredit generally agrees with the principles set forth in the Draft Guidelines. In the meantime some clarifications are needed with regard to governance topics (roles of functions/bodies in the remuneration processes) and to risk takers identification approach.*

*Moreover UniCredit generally believes that proportionality topic should be addressed and re-considered reckoning also with local regulations provisions and local specificities in order to provide an harmonized approach.*

*At last, some other topics may need further clarifications: among the others, the LTIPs impact into the cap 1:1/1:2 calculation.*

**ANSWERS TO SELECTED QUESTIONS**

**Q 1. Are the definitions provided sufficiently clear; are additional definitions needed?**

UniCredit deems clear the definitions provided. In any case could be useful to include also a definition of “institution” (although the scope of the guidelines §2, p. 21 is clear) for the purpose of the guidelines.

**Q 2. Are the guidelines in chapter 5 (remuneration policies for all staff, including identified staff) appropriate and sufficiently clear?**

UniCredit believes that the guidelines set forth in this chapter are appropriate. However UniCredit asks this Authority to clarify wheter the statement regarding the “pension policy” included in point 9 (“remuneration policy should specify all components of remuneration and include also the pension policy”) just refers to “discretionary pension benefits” or more widely to other topics regarding pensions (e.g. pension provisions mandatory by law etc.).

**Q 3. Are the guidelines regarding the shareholders’ involvement in setting higher ratios for variable remuneration sufficiently clear?**

UniCredit believes that the guidelines are sufficiently clear. However it is actually not clear what is the meaning of the provision under point 36 g) “institutions should set their internal policies regarding “representation” for the purpose of this vote”.

At last, with reference to point 44, i) this Authority is asked to clarify what kind of evaluation is expected by the Rem. Co regarding the scenarios of policy’s reaction to external events.

As regards principles on *Governance* set out in paragraph 6.1 of the Guidelines, UniCredit highlights what follows.

With reference to point 24, it is worth highlighting that Compliance and Risk functions – each one for the respective competence – operate to oversight the risks relating to remuneration topics. Compliance through formal checks and issuance of general principles overviews the set up phases of remuneration policies of business in a compliance perspective. UniCredit believes that the role EBA is requesting to Compliance in the Guidelines is already performed as described. Thus an active Compliance role in “setting of bonus pool, performance criteria and remuneration awards...” could be in part outside of Compliance perimeter, as described under point 29.

With reference to point 29 UniCredit believes that the role requested to Compliance functions corresponds to what is currently provided by Italian domestic regulation – see Bank of Italy Circular 285: *"In order to guarantee a correct application of the provisions of the present Chapter, the competent company functions – in particular – risk management, compliance, human resources, strategic planning - are adequately involved in the process of remuneration and incentive policies definition in such a way to guarantee and effective contribution and preserve the judgemental autonomy of functions in charge for controls – also ex post; consequently the involvement of compliance in this phase consists in expressing an evaluation on the compliance with regulations of remuneration and incentive policies [...]. The company control functions of the banks cooperate, each one in the respective competence, and – referring to investment services and activities - in compliance with the criteria set forth in the Bank of Italy – Conaob joint Communication of March 8<sup>th</sup> 2011, to ensure the adequacy and the compliance to this regulation of the adopted remuneration and incentive policies and their correct functioning. Compliance function verifies, among the others, that the company incentive system is coherent with the objectives of compliance with regulations, statute or any other codes of ethic or conduct standards applicable to the bank, so that legal and reputational risks, mainly embedded in the relations with customers are duly contained"*.

UniCredit Compliance function, in performing the above mentioned role, takes also into account:

- possible “local”/country regulatory provisions or country specific requirements;
- regulators’ publications/opinion issuance (eg: Faq on EBA, opinion on role based allowance) and/or inspections;
- risks detections tied to the compliance verifications.

In light of the above, UniCredit asks clarifications and details on the possible request of a wider Compliance role in the governance process on remuneration. This mainly taking into account the requirement set forth in point 29 including risk identification and “finding” concepts, versus the CEBS 2010 Guidelines on remuneration in which such concepts were not present (ref: Guidelines 2010 *“Guidelines for institutions - 2.3.1. Definition and roles - 58. [...]The compliance function should analyze how the remuneration structure affects the enterprise’s compliance with legislation, regulations and internal policies”*; Draft Guidelines 2015 *“6. Governance of remuneration - 6.1. Responsibilities, design, approval and oversight of the remuneration policy - [...] 29.The compliance function should analyze how the remuneration policy affects the institution’s compliance with legislation, regulations, internal policies and risk culture and should report all identified compliance risks and issues of non-compliance to the management body, both in its management and supervisory functions. The findings of the compliance function should be taken into account by the supervisory function during the approval and review procedures and oversight of the remuneration policy”*).

With reference to point 17, this Authority is asked to clarify the meaning of *“subsequent material exemptions”*.

With reference to point 26 - footnote 10 - it would be worthwhile to specify that the independent assurance functions (internal audit and external audit) are independent of the business and corporate functions.

**Q 4. Are the guidelines regarding remuneration policies and group context sufficiently clear?**

UniCredit believes that the guidelines on remuneration policies and group context are sufficiently clear. Anyway, it is worth highlighting that application of more restrictive rules as per CRDIV to staff pertaining to Business Units to which sectorial regulation applies (e.g. UCITS – AIFMD) could rise competitive unbalances with independent firms subject to such regulations and operating in the same markets.

\*\*\*\*

As regards the chapter concerning the *control functions* (6.6.), with reference to the point 58, UniCredit deems important to add a note for specifying that for the Internal Audit function the independence is an attribute standard, mandatory under the International Professional Practices Framework (IPPF): “*The internal audit activity must be independent, and internal auditors must be objective in performing their work*” (1100 – “Independence and Objectivity”).

With reference to point 52, chapter 6.5, UniCredit deems advisable to allow that, in a Group, also significant institutions which are subsidiaries may rely on the review performed by the consolidating institution where the review covers the overall remuneration policies, practices and processes, includes the significant institution and where the results are available to the supervisory function of the institution.

**Q 5. All respondents are welcome to provide their comments on the chapter on proportionality, with particular reference to the change of the approach on ‘neutralisations’ that was required following the interpretation of the wording of the CRD. In particular institutions that used ‘neutralisations’ under the previous guidelines for the whole institution or identified staff receiving only a low amount of variable remuneration are asked to provide an estimate of the implementation costs in absolute and relative terms and to point to impediments resulting from their nature, including their legal form, if they were required to apply, for the variable remuneration of identified staff: a) deferral arrangements, b) the pay out in instruments and, c) malus (with respect to the deferred variable remuneration). In addition those institutions are welcome to explain the anticipated changes to the remuneration policy which will need to be made to comply with all requirements. Wherever possible the estimated impact and costs should be quantified, supported by a short explanation of the methodology applied for their estimation and provided separately for the three listed aspects.**

UniCredit believes that guidelines’ provisions regarding proportionality are sufficiently clear. In any case, it is worth highlighting that should be considered the opportunity to allow the definition of particularly low variable remuneration thresholds under which no deferral/cash-shares mechanisms apply. This mainly considering the direct relation between the amount of variable remuneration (both in absolute and relative terms vs. fixed pay) and the “incentive” to the employee to take risks; this could be considered the main “rationale” of the deferral.

Moreover, UniCredit believes that small-dimensioned/not listed firms should be allowed not to pay identified staff’s variable remuneration in instruments. This is currently allowed in some cases by local regulations. Application of payment in instruments for such a kind of institutions should entail burdensome consequences in payout management, also for tax and bureaucratic aspects.

**Q 6. Are the guidelines on the identification of staff appropriate and sufficiently clear?**

The Authority is asked to clarify the extent of keeping assessment results “*updated all times during the year*”. In the specific it is not clear if the statement refers to a formal assessment that should be done on an ongoing basis all over the year for all the population. UniCredit believes that the requirement should ask for a formal assessment to be done “at least once per year” (It is worth highlighting that UniCredit performs 2 cycles of identification, covering almost all the exercise). This however should not prejudice the case in which a company hires a person impacting one of the EBA qualitative/quantitative criteria in the course of the year; in this case, all features regarding remuneration as per CRDIV should apply *ex nunc*, apart from the identification in the formal cycle. At last, it is worth highlighting that guidelines should better clarify the extent of point 97, g) (further clarifications are needed on the meaning of “ongoing” supervision of identification process).

With particular reference to the notification pursuant to art 4(4) EBA RTS - where no changes in the role/activity of the persons subject of the notification arise and no need to re-hiterate notification is then envisaged - this Authority is kindly asked to clarify the time of validity of the first notification.

As regards requests for prior approval – in cases where exclusion is accepted and no changes in the role/activity of the employee concerned have arisen – UniCredit deems appropriate not to provide the necessity to re-hiterate the request for prior approval in the following financial year.

UniCredit deems appropriate to specify - in case the prior approval is denied - that application of remuneration criteria pursuant to CRDIV to population subject of the prior approval starts from the following financial year of that in which the exclusion is requested.

As far as concerns the role of the Risk Committee under provision no. 99 - (“In particular where a risk committee is established, it should be involved in the identification process without prejudice to the task of the remuneration committee”) UniCredit would suggest to amend the statement as follows: “In particular where a risk committee is established, it *may* be involved in the identification process without prejudice to the task of the remuneration committee”. In any case the extent of risk committee involvement should be clarified.

This mainly in order to take into account that some national Regulators have already issued rules on remuneration matters in compliance with CRD IV, which do not provide any specific involvement of the Risk Committee in the identification process and - also - in order to avoid any possible overlapping between the tasks of two relevant committees of the management body.

With reference to point 99, UniCredit deems advisable not to make reference to Internal Audit function amongst the “internal control functions” that should be “properly involved” in the identification process. Internal Audit function should not have an active role in the identification process in order to minimise potential conflict of interest in performing the central independent review.

This is also in line with the disposal of Bank of Italy (Circ. 285/2013, VII update of November 2014) in which no involvement of the Internal Audit function in the identification process is expected.

#### **Q 7. Are the guidelines regarding the capital base appropriate and sufficiently clear?**

UniCredit deems the guidelines on capital base appropriate and sufficiently clear.

#### **Q 8. Are the requirements regarding categories of remuneration appropriate and sufficiently clear?**

As regards the impact calculation of LTIPs in the cap between fixed and variable parts of remuneration, UniCredit kindly asks this Authority to clarify the statement in the guidelines under point 120 a). In the specific, UniCredit asks clarification on the appropriate timing for cap calculation where actual award is made once the “accrual” (within the meaning of the guidelines) period elapsed, for incentive deferred “at a later stage” and paid in instruments. In these cases the effective amount of the award is acknowledgeable only at the final stage and not in the “accrual” period, so the appropriate exercise of cap calculation should be made - in UniCredit view - *ex ante* (considering the n. of instruments vs. their theoretical value

at the time) prior to the start of multi-year accrual, or in any case should be split along the performance years.

If cap calculation is allowed only at the final stage (when the corresponding amount of instruments actually paid out is known), then the rationale of providing a LTI plan could be nullified. Moreover the matter acquires importance also where there is coexistence of LTI and STI plans.

UniCredit kindly asks also whether it could be possible to include in the fixed part of individual remuneration also all the deferred components of fixed pay the employee is entitled to receive by law at the moment of leaving the company in whatever way. This is in particular a feature of Italian labour collective bargaining and law, pursuant to which pre-defined percentages of fixed pay (including pension contributions) are monthly accrued (this is the so called “trattamento di fine rapporto”).

**Q 9. Are the requirements regarding allowances appropriate and sufficiently clear?**

UniCredit deems the requirements set by these guidelines appropriate and sufficiently clear. In this field, UniCredit asks whether it could be possible/appropriate to establish role - based allowances (e.g. for heads of control functions) that could allow to increase the individual fixed salary (temporary – for the time during which a person covers a certain role) until a specific pre-defined fixed pay standard threshold, deemed appropriate for such a role.

As regards principle under point 124 c) UniCredit deems that the comparison expected should difficultly apply for senior management roles, which are unique into an organization, by definition. This Authority is therefore asked to better clarify the meaning of this statement.

**Q 10. Are the requirements on the retention bonus appropriate and sufficiently clear?**

UniCredit deems appropriate the requirements set forth in the guidelines. UniCredit asks this Authority to clarify if the “*higher amounts of retention bonuses*” in point 128 refer to higher amounts than the cap fixed/variable pay.

**Q 11. Are the provisions regarding severance payments appropriate and sufficiently clear?**

As point 140 provides that institutions define the criteria for severance - including the maximum amount for different categories of Identified Staff - UniCredit asks if the mentioned limits could also be – in a group context:

- differentiated also on a “country” basis, taking into account local specifics;
- defined in terms of n. of monthly pay and not in absolute amount.

Furthermore, this Authority is asked to clarify if institutions are in any case allowed to define - and properly disclose in their policy - the criteria to determine the reference value of the single monthly pay to be taken into account for the maximum amount calculation (e.g. fixed pay; global average remuneration of last three years).

Point 153 states that severance above defined limits shall be considered variable pay for the purpose of cap calculation. To this regard UniCredit asks this Authority to clarify whether also severance that should not be taken into account for cap calculation shall be considered or not variable pay.

At last, UniCredit asks this Authority if severance considered as variable pay should be paid out also with mechanisms of variable pay (i.e. deferral cash/shares and subject to malus and claw-back clauses).

\*\*\*\*

Moreover, having regard to the “**exceptional remuneration elements**” described in paragraph 13 of this section of the guidelines, UniCredit asks this Authority to clarify if cap on variable/fixed pay applies or not to “buy outs” ex art. 94 i) CRDIV.

**Q 12. Are the provisions on personal hedging and circumvention appropriate and sufficiently clear?**

As regards personal hedging, UniCredit believes that the principles stated in the guidelines are endorseable. Anyway it is worth highlighting that requested monitoring activity could embed procedural difficulties (especially for possible “external inquiries”), amongst others, due to privacy and data protection reasons. Competitors could for instance not be entitled to respond to any inquiry, unless a legal exception is stated.

**Q 13. Are the requirements on remuneration policies in section 15 appropriate and sufficiently clear?**

As regards point 183, UniCredit asks this Authority to clarify whether the statement refers to above target/exceptional performance at individual or company/business unit level, or both.

**Q 14. Are the requirements on risk alignment appropriate and sufficiently clear?**

With reference to point 195, UniCredit asks this Authority to provide with some examples of measures that would be suitable to take into consideration the Reputational Risk. In particular it is asked to clarify if a provision of a qualitative adjustment based on the assessment of the compliance with reputational policies and practices would satisfy the requirement.

Referring to point 196, UniCredit asks this Authority to further clarify how stressed conditions should be taken into account for remuneration purposes. In particular it is asked to clarify if the requirement would be satisfied where risk assessment for compensation purposes is based on the comparison of KPIs actual values against their Risk Appetite Framework thresholds (i.e. risk appetite, risk tolerance, risk limit), defined leveraging on ICAAP stressed scenarios.

As regard point 227, UniCredit asks to provide further clarification on the scope (i.e. Group, business units) of the application of the mentioned KPIs. In Particular could be useful to clarify if the list of KPIs has to be fully applied or if should be taken into account only a subset of KPIs, depending on the business model of the bank.

As regards the “specific criteria for control functions” referred to at paragraph 16.1.3, UniCredit kindly asks this Authority to confirm that the sole control functions to be considered for remuneration purposes are Compliance, Risk Management and Audit, and HR function has to be then excluded by the control functions list.

To this regard, in addition, taking into account the examples given in the guidelines of suitable KPIs for control functions, UniCredit asks confirmation that some quantitative/economic (although not profit-linked) KPIs could also be adequate for certain control functions (e.g. if specific goals on “non performing loans recovery rate” - if correctly set in order to avoid possible conflict of interest – could be provided for Risk Management staff).

As regards the “quantitative” requirement for control functions’ variable remuneration as per point 171 section 14 of the guidelines, UniCredit kindly ask this Authority what in its view could be the appropriate % to reflect the “predominance” of fixed vs. variable pay for control functions.

As regards point 206, although agreeing with the provision, UniCredit asks if the statement *“The criteria used for assessing the performance and risks should be exclusively based on the internal control functions’ objectives. Variable remuneration for control functions should exclusively follow from control objective”* excludes or not the presence of goals not strictly pertaining to the control tasks (eg. growth of own resources, strenghtening of function’s activity etc.).

Moreover UniCredit deems not appropriate to refer the example of KPIs, mentioned under point 206, also to the Internal Audit function, since any parameter considered should:

- a) be exclusively based on control objectives embedded in the role and responsibilities performed;
- b) not be in contrast with point 24 of the Guidelines, in which it’s indicated that *“the remuneration policy should ensure that no material conflicts of interest arise for staff in control functions”* ;
- c) not impair or limit the compliance with any attribute standards, mandatory under the IPPF (e.g. “1.100 – Indipendence and Objectivity”; “1.120 – Individual Objectivity”; “1.130 – Impairment to

Independence or Objectivity”).

UniCredit suggests also to amend point 229 deleting the “e.g. based on internal audit results” in brackets or making further examples as the risk and control considerations and the internal controls indicators mentioned should be based on the results of all the internal control functions.

**Q 15. Are the provisions on deferral appropriate and sufficiently clear?**

UniCredit deems the provisions appropriate and sufficiently clear.

**Q 16. Are the provisions on the award of variable remuneration in instruments appropriate and sufficiently clear? Listed institutions are asked to provide an estimate of the impact and costs that would be created due to the requirement that under Article 94(1)(l)(i) CRD only shares (and no share linked instruments) should be used in parallel, where possible, to instruments as set out in the RTS on instruments. Wherever possible the estimated impact and costs should be quantified and supported by a short explanation of the methodology applied for their estimation.**

UniCredit kindly asks this Authority to clarify if among share-linked instruments to be avoided in case of listed companies should also be included the “phantom shares”, where linked to the price of shares of the company itself.

To this regard - and having regard to the rationale underlying the provision under point 249 - UniCredit deems appropriate to specify in the guidelines that phantom shares can be used where linked to the price of the institution’s shares and thus guaranteeing the appropriate risk alignment.

Lastly and in general, it is actually not clear which positive effects are expected by this Authority in using instruments subject to bail-in and shares rather than share-linked instruments.

**Q 17. Are the requirements regarding the retention policy appropriate and sufficiently clear?**

UniCredit deems the provisions appropriate and sufficiently clear.

**Q 18. Are the requirements on the ex post adjustments appropriate and sufficiently clear?**

UniCredit deems the provisions appropriate and sufficiently clear.

**Q 19. Are the requirements in Title V sufficiently clear and appropriate?**

UniCredit deems the provisions appropriate and sufficiently clear.

**Q 20. Are the requirements in Title VI sufficiently clear and appropriate?**

UniCredit deems the provisions appropriate. As regards point 305, UniCredit asks this Authority to confirm that “senior management” referred to is the “senior management” pursuant to the EBA RTS on risk takers identification (art. 3, § 3).

**Q 21. Do institutions, considering the baseline scenario, agree with the impact assessment and its conclusions?**

UniCredit agrees with the impact assessment and conclusions.

**Q 22. Institutions are welcome to provide costs estimates with regarding the costs which will be triggered for the implementation of these guidelines. When providing these estimates, institutions should not take into account costs which are encountered by the CRD IV provisions itself.**



**Main Contributors**

REWARD & BENEFITS – **HR STRATEGY**;

GROUP AUDIT METHODOLOGIES AND PROCESSES; GROUP AUDIT– COMPLIANCE RISKS & PROCESSES; AUDIT ADVISORY & ICRC SECRETARIAT – **INTERNAL AUDIT**.

GLOBAL COMPLIANCE RISK ASSESSMENT, REPORTING, QAR AND 263; GLOBAL REGULATORY COUNSEL – **COMPLIANCE**;

RISK APPETITE & INTEGRATED RISK ANALYSIS – **GROUP RISK MANAGEMENT**;