

RESPONSE FROM FEDERCASSE ON BEHALF OF BCC-CR (ITALIAN CREDIT CO-OPERATIVE BANKS) TO THE EBA CONSULTATION DOCUMENT

“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” - Reference EBA/CP/2013/11

Foreword

The Consultation Paper defines a process and criteria to identify categories of staff whose professional activities have a relevant impact on the risk profile of the bank, according to requirements referred to in Art. 88 (2) (now Art. 92 (2)) of Directive 2013/36/EU of 26, June 2013 (CRD IV).

Federcasse, as the responding entity on behalf of BCC-CR (Italian Credit Co-operative Banks), first of all welcomes the mode adopted for consultation on the issue referred to in the title. The respondent also thanks for the opportunity given to express its opinions and comments on the topic.

Regarding the issue addressed, there is a broad agreement with the aims expressed in the introduction to the consultation document. We believe it is of the most importance to use internal criteria that must reflect the institution's risk profile and ensure that an appropriate consideration of the level of risk of the company and its business strategy in the identification of the most significant personnel.

Looking at the configuration actually proposed in the Paper we highlight how, for BCC-CR, quantitative and qualitative criteria referred to in Art. 3 in some cases should dramatically lead to a general and not correct extension of the perimeter of staff categories qualified as relevant. In fact, this possible outcome looks unreasonable also when comparing it to the outcome obtained by the current national rules.

We are of the opinion that it is of the most importance to maintain discretionary powers in the assessments based on the type of business of the different companies, to take in consideration differences existing between various business model. Criteria referred to in Art. 3, in addition, in some cases seem to be not consistent with the principle of proportionality. This principle shall necessary apply also to the process by which relevant staffs are identified, taking into account the size of the institution, its internal organization, the nature, the set and the complexity of activities undertaken.

More in general, we believe that the material risk takers cannot be identified on the basis of the level of their gross remuneration only, regardless of the variable component, due to the fact that we are talking about staff whose remuneration system may be likely to lead excessively risky conduct for the company.

Finally, even without giving specific answers to questions regarding implementation costs, notwithstanding the lack of quantitative estimates, we think that the implementation of the proposed rules could significantly impact on BCC-CR operating costs and on those of the whole network as well. The dreaded impact should come from changes needed in the internal identification process (Art. 2), for IT, training and new hires, the updating of processes and contracts.

All above said, in order to contribute to the consultation, Federcasse, on behalf of the Italian Credit Co-operative Banks, submits to the attention of the EBA, the following specific answers.

Article 3 – Qualitative and quantitative criteria

(1) Staff shall be identified as having a material impact on an institution's risk profile if they meet one or more of the following criteria:

- a. the staff member is a member of the management body;
- b. the staff member is a member of the senior management;
- c. the staff member is responsible and accountable to the management body for the activities of the internal risk control function, the compliance function or the internal audit function;
- d. the staff member heads a business unit (within the meaning of Article 137(1)(3) of Regulation (EU) No xxx/2013 [CRR]);
- e. the staff member heads a function responsible for legal affairs, taxation, human resources, information technology, budgeting, economic analysis, or business continuity planning;

Q1: Is the list of specific functions listed appropriate or should additional functions be added?

For small-size institutions with very simplified organizational structures, less complex operations, the reference *sic et simpliciter* to qualitative criteria that bases the qualification of the identified staff on the position held in the organization structure should not be suitable to express the actual possibility/capability of the role/identified responsibility to weigh on the risk profile of the bank. For these reasons, it seems opportune to specify that **qualitative criteria should be considered as long as the remuneration structure of the subject is likely to encourage risks assumption (see quantitative criteria)**. Put another way, in the context of the internal process to identify risks faced by the company, the subject has been identified as a staff whose activity has a relevant impact on the company risk profile (**see internal criteria**).

With regard to the of roles / functions listed, the following should be observed:

Letter a. In the light of features that characterize corporate governance mechanisms especially for small-size bank with reduced operating complexity like Italian BCCs, the inclusion of all the members of the board (**even those with no executive responsibilities**) seems unacceptable. Actually, national rules lead to include only members of the board with executive responsibilities.

Letter e. We disagree on the inclusion of functions unable to directly weigh on the risk profile of the bank (for example, budgeting, economic analysis). These functions are of support or infrastructural to decision process. However, functions referred to in this point also look like a mere operational implementation of strategies and risk targets approved at a higher level.

f. the staff member has, individually or collectively with other staff members, authority to commit to credit risk exposures of a nominal amount per transaction which represents 0.25% of the institution's Common Equity Tier 1 capital;

Q2: Can the above criteria be easily applied and are the levels of staff identified and the provided threshold appropriate?

The threshold of 0.25% with reference to the nominal value of the exposure is in many cases unsuitable. The reason is that when considering capital levels of small-size banks in absolute terms, they are of reduced amounts, although compliant with capital requirements and those banks behaving according to sound and prudent principles.

To illustrate:

- A BCC with a CET1 equal to 15 million should include in the risk takers perimeter staff with authority to commit to credit risk exposures of a nominal amount equal or higher than €37,500.
- A BCC with a CET1 equal to 30 million should include in the risk takers perimeter staff with authority to commit to credit risk exposures of a nominal amount equal or higher than €75,000.

For the same reasons, the reference to the above threshold made in letter h) of Art. 3 seems irrelevant.

Furthermore, **the concept entailed in the expression “authority to commit” shall be clarified.** In fact, this expression could be interpreted as referred to subjects with the decision power, subjects who propose transactions to customers (the front office area) as well as those who assess risks associated to single transactions (the risk management area).

g. in relation to an institution to which the derogation for small trading book business under Article 89(1) of Regulation (EU) No xxx/2013 [CRR] does not apply, the staff member has, individually or collectively with other staff members, authority to commit to transactions on the trading book which in aggregate represent one of the following:

- i. where the standardised approach is used, an own funds requirement for market risks of 0.25% or more of the institution's Common Equity Tier 1 capital;
- ii. where an internal model based approach is used, 5% or more of the institution's internal value-at-risk limit for trading book exposures at a 95th percentile, one-tailed confidence interval level;

Q3: Can the above criteria be easily applied and are the levels of staff identified and the provided thresholds appropriate?

The derogation for small trading book business is applicable to the overwhelming majority of BCCs.

We believe, anyhow, the criterion is not easy to apply: in general banks are not currently equipped with the management tools to allow them to assess risk levels for each individual desk or single person.

- h. the staff member has managerial responsibility for a group of staff members who have individual authorities to commit the institution to transactions, and the sum of those authorities equals or exceeds a threshold set out in point (f) or in point (g);
- i. the staff member has managerial responsibility for a staff member whose professional activities have or may have a material impact on the institution's risk profile according to the internal risk identification process in Article 2;
- j. the staff member has, individually or collectively with other staff members, the authority to take, approve or veto decisions on the introduction of new products, material processes, or material systems.

(2) Staff shall be identified as having a material impact on an institution's risk profile if they meet one or more of the following criteria, subject to Article (4):

- a. the staff member could, in accordance with the institution's remuneration policy, be awarded variable remuneration that exceeds both of the following amounts:
 - i. 75% of the fixed component of remuneration;
 - ii. EUR 75 000;

Q4 a) Is this criterion appropriate to identify risk takers?

Q4 b) Are the thresholds set in the criterion appropriate?

When taking into account what is stated in national provisions, we call for restructuring the thresholds in order to ensure a threshold level for the total remuneration consistent with the actual. The current national provision states that "anyway, staff whose gross remuneration including discretionary pension benefits, doesn't exceed 200,000 € and with the variable part below 20% may be considered irrelevant".

Therefore, we propose that the variable part of the remuneration exceeds both of the following amounts :

- 75% of the fixed component of remuneration
- 100.000€

Q4 c) What would be the number of staff members identified in addition to all other criteria within the RTS?

Q4 d) What would be the additional costs of implementation for the above criterion if an institution applies Article 4 in order to exclude staff from the group of identified staff?

b. 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;

Q5 a) Can the above criterion be easily applied?

Quantitative criteria that:

- (i) drive the process to identify relevant staff through a mere comparison exercise between the remuneration of staff considered in the process and the remuneration of other risk takers,
- (ii) **but fall outside of a specific assessment of the capacity of the subject to weigh on the risk profile of the bank**

seem inconsistent with regard to the scope of the regulation.

When combined with the adoption of criteria by themselves excessively extensive (see for example answer to Q2), an approach based on quantitative criteria as featured above should lead to **a domino effect, with an extension of the perimeter of risk takers to nearly all the staffs.**

Furthermore, also in order to ensure a greater simplicity for the implementation, we propose to refer for only one financial year.

Because of the reasons just mentioned above, we propose the wording of the criterion as follow:

b. The staff member whose the variable part of the remuneration exceeds the 75% of the fixed part and who has been awarded total gross remuneration in the last financial year which is equal to or greater than the lowest total remuneration that was awarded that year to a member of staff who performs professional activities for the same entity and who is either a member of the senior management or meets one of the qualitative criteria in paragraph (1) (*as emended before*) or one of the internal criteria referred to in Art. 2.

Q5 b) Would it be more appropriate to use remuneration which potentially could be awarded as a basis for this criterion?

We deem necessary to identify staff members with relevant impact on the risk profile of the institution taking into account values of remunerations of the previous year. This seems appropriate when considering also the necessity to contain on-going potential additional costs, for the monitoring and the identification of staff members based on more complex criteria.

Q5 c) What would be the difference in implementation costs if the potentially awarded remuneration would be used as a basis?

c. the staff member has been awarded total gross remuneration of EUR 500 000 or more in one of the two preceding financial years.

Q6: Can the above criterion be easily applied and are the threshold and the levels of staff identified appropriate?

Also in order to ensure a greater simplicity for the implementation, we propose to refer for only one financial year.

d. the staff member is within the 0.3% of staff who received the highest total gross remuneration in either the most recent financial year or in the preceding financial year

Q7: Can the above criteria be easily applied and are the levels of staff identified appropriate?

The criterion in question seems to be inappropriate because it's not bound specifically to an assessment of the capacity of the staff member to influence by its activity the risk profile of the bank.

Rather, the criterion is based on the presumption about the role only looking at **the gross remuneration**. Furthermore, this looking at the gross remuneration doesn't target **neither the absolute value** (it's a kind of a mere comparison exercise between staffs remuneration levels), nor it takes into account the weight of the **variable component**.

Any way, if the criterion were to be confirmed in the final version of the Paper, it should refer to:

- the staff member whose the variable part of the remuneration exceeds 75% of the fixed component and,
- for only one financial year (the most recent), also in order to ensure a greater simplicity for the implementation.

(3) In paragraph (1), a reference to staff members having, individually or collectively with other staff members, authority to commit to transactions or exposures or to take, approve or veto a decision includes both of the following categories of staff:

- a. staff who are responsible for advising on or initiating such commitments or decisions;
- b. staff who are members of a committee which has authority to make such commitments or to take such decisions.

Q8: Are there additional criteria which should be used to identify staff having a material impact on the institutions risk profile?

We don't believe that there are additional useful criteria for the identification of staff having a material impact on the institutions risk profile