

EBA CONSULTATION RTS on material risk takers AMAFI's answer

Question 1: Are the subject matter, scope and level of application within Article 1 appropriate and sufficiently clear?

Generally speaking, we would like to emphasize the RTS should include the identification criteria as specified in the CRD V text. It would facilitate the reading and avoid cross-checking two different sets of criteria.

Question 2: Are the definitions within Articles 2, 3 and 4 appropriate and sufficiently clear?

In Article 2, we consider the definition of “Managerial responsibility” is too vague and should therefore be further specified. With the current drafting, there is a risk for staff members not part of the senior management to be captured as material risk taker while in reality they could not engage the institutions in terms of capital or impact on its risk profile.

More specifically, we believe Article 2 should refer to “material business unit” as per Article 92(3) CRD which specifies “staff members with managerial responsibility over the institution’s control functions or material business units” and not only to “business unit”. This is our interpretation of the mandate given to EBA in Article 94(2) CRD.

Additionally, we consider in Article 2 the terms “business unit” and “subordinated control function” should be defined to avoid any misinterpretation.

We would also stress that in Article 2 (b), there is no reference to decision making power/duties and authority of the staff member in relation to the institution risk profile or material business unit profile.

In light of the above remarks, we would add in bold the following wording to Article 2:

“Managerial responsibility” shall be defined as a situation in which either of the following criteria applies:

- a. the staff member heads a **material** business unit or a control function and is directly accountable to the management body as a whole or to a member of the management body or to the senior management;
- b. the staff member heads a subordinated unit **within a Material Business Unit** or a subordinated control function **within a Control function** and:
 - has authority to take decisions with significant impact on the institution risk profile or on a material business unit’s risk profile
 - reports directly to a staff member referred to in point (a).

In Article 3, the definition of “Control function” as a function in charge of reporting is less precise than in the current RTS and should be further specified. As the definition currently stands, it could lead to the inclusion of other functions within the institutions.

We believe it is important to specify to whom the “objective assessment of risks, reporting and assurance” should be provided to. Besides “risk, compliance and internal audit functions”, there is a need to clarify which other functions are targeted as both “reporting” and “insurance” do not refer to any functions.

We suggest using the definition of the 2017 EBA Guidelines on internal governance to ensure a homogenous application across Member States. Article 3 would read as such:

“Control function” shall be defined as a function independent from the business units that it controls, which has a responsibility to provide objective assessment of risks, **compliance and controls to the management body and to senior management. It relates to risk, compliance and internal audit functions.**

In Article 4, the definition of “Material business unit” is broader than the one in the current RTS. As we consider that critical functions are already covered through the identification of material risk taker in control functions and through other functions in Article 6, we consider it crucial for the EBA to provide concrete examples of critical functions targeted in order to ensure a harmonized implementation of the legislation.

Overall, we share similar concerns as the French Banking Federation expressed in its answer.

Question 3: Are the qualitative criteria within Article 6 appropriate and sufficiently clear? Having in mind that the qualitative criteria are comparable to the ones included in the RTS currently in force, respondents are asked to focus on the amended criteria within points 1 and 6.

The definition of “managerial responsibility” would significantly expand the list of identified staff in the support functions who do not have a direct impact on the risk profile of the institution, would constitute a significant extension of the current criteria and would not contribute to a consistent application between banks.

As it currently stands, the definition of “managerial responsibility” goes against the primary objective of the legislation which is to identify staff which has a direct impact on the risk profile of the institution.

More specifically, we believe “the adequacy and appropriateness of accounting procedures” should be specified.

Besides, we also would like to understand the rationale for the new wording with regards to “human resources” and “remuneration policy” *i.e.* “dealing with human resources” and “development or implementation of the remuneration policy”.

We think it might be better for Article 6(1) to come back to the drafting of Article 3(9) in the current RTS.

For Article 6(2), “managerial responsibilities” should be replaced by “**is in charge of a risk category**” or “has authority to take decisions for a risk category” and “is a member of a committee” should be replaced by “**is a voting member of a committee**” to ensure consistency with the criteria 3 and 4 of Article 6.

Finally, for Article 6(5), we believe that “the staff member has managerial responsibilities in a group of staff members...” should be replaced by “**the staff member is the head of a group of staff members...**”.

Generally speaking, we share similar concerns as expressed by the French Banking Federation in its answer.

Question 5: Are the provisions within Article 7 appropriate and sufficiently clear?

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Question 6: Are the provisions within Article 8 appropriate and sufficiently clear?

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Question 7: Considering that the RTS will apply to all credit institutions, are there specific provisions within the RTS that would not be appropriate to be applied to small and non-complex institutions and should be replaced by different provisions? Where this is the case, respondents are provided to make concrete examples of issues created and alternative approaches that would ensure that all staff whose professional activities have a material impact on the risk profile of the institution are identified.

First of all, we would like to reiterate that small and non-complex institutions by definition could not have systemic implications and therefore its staff are not targeted by the legislation.

We are in favour of an alleviation of constraints on an individual basis for small and non-complex institutions given material risk takers are captured by the application of the rules on a consolidated basis. We very much support the application of the proportionality principle (i.e. appropriateness to the size, internal organisation and the nature, the scope and the complexity of the activities) for small and non-complex institutions in particular those which are subsidiaries of banking groups especially as they already benefit from an exemption on deferral and indexation as stated in Article 94.3 a) in CRDV.

Besides, we consider the process of identifying material risk takers at the level of small and non-complex entities and at the level of the Group would be too burdensome in light of the issues at stake.

When it comes to identifying material risk takers in small subsidiaries of a banking group which are subject to the exemption referred in Article 94.3 a) of CRDV, we would suggest limiting the identification criteria to the following functions:

- the members of the management body;
- the senior management;
- the heads of control functions.

The above concerns are very much in line with those expressed by the French Banking Federation.

Question 8: Do respondents with the findings of the impact assessments? Where respondents have comments on the additional cost and benefits created by the consulted RTS, comments are most helpful if they detail the costs and the responsible drivers as well as the challenges when applying the criteria set out within the RTS. Where respondents find that the criteria lead to an identification of staff that does not have a material impact on the institutions risk profile, comments are most helpful if they detail the numbers of staff identified under the criteria and the main reasons why those staff members would systematically not have a material impact on the institutions risk profile.

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Additional comments in light of Brexit

While negotiations on the future EU-UK relationship have just started, we would like to emphasize that a gold-plating of the remuneration rules could harm the level-playing field in terms of remuneration policies between the City and the EU-27. There is a strong risk that remuneration policies become the first area where the UK legislation will diverge from the EU regulatory framework. Besides, it will be extremely difficult to ensure the UK complies with level 2 texts. Therefore, we believe it would be best to postpone the implementation of the remuneration provisions as provided under CRD V until we have a clear understanding of the future EU-UK relationship so the EU-27 does not suffer from a competitive disadvantage vis-à-vis the UK. For the EU-27 to develop a competitive ecosystem it should be in a capacity to attract highly qualified staff and therefore able to align its remuneration policies with those taking place in the UK.

