

# Draft RTS on revised identified staff for remuneration purposes

## About NFU

NFU – Nordic Financial Unions is an organization that promotes the interests of the Nordic financial trade unions in Europe. Through a high level of competence and dialogue, NFU contributes to shaping a sustainable financial sector, fundamental for job creation. Currently, NFU represents seven trade unions in the bank, finance and insurance sector in Denmark, Finland, Iceland, Norway and Sweden.

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## Consultation Paper replies

### **Q1: Are the Subject matter, scope and level of application within Article 1 appropriate and sufficiently clear?**

NFU is in favor of the idea of remuneration policies and practices being consistent with and promoting sound and effective risk management. However, the current scope might leave space for a very wide interpretation of the category of risk takers, to the level of including middle management and staff in supporting functions who are not immediately concerned with risk taking.

According to Recital 13 of the draft RTS, the total remuneration that members of staff are entitled to is seen as exclusively depending on the performance of staff in connection to achieving the institutions' business objectives. This is, as the Recital further suggests, presumable, and in fact it does not take into full account the existence of collective agreements which define the remuneration for most employees. It is equally important to acknowledge that most employees do not receive excessive amounts of variable

remuneration. In fact, in the area of banking, local agreements on variable remuneration can be extremely limited, which is the case, for example, in Denmark.

Thus, and in connection to the above reflections on scope and type of remuneration, it needs to be clarified that any legal provisions regarding remuneration do not apply to policies and/or provisions agreed in a collective agreement. The possibility for collective bargaining should not be hampered, in this case, by a too broad scope which would include a too wide number of employees, including those who in fact are not immediately concerned with risk taking. NFU therefore suggests that, in due consideration of the Nordic model and collective bargaining generally, a reference to collective agreements is made in the RTS. This is in accordance to Article 153,5 TFEU; Recital 69 of CRD IV, recital 10 in Directive 2014/91/EU and Recital 14 in Directive 2010/76/EU.

**Q2: Are the definitions within Articles 2, 3, and 4 appropriate and sufficiently clear?**

The definitions, especially in Article 2, can be seen as too broad and aiming to include employees not directly concerned with risk taking. If Article 92(3) of the Directive is taken as a background for developing the definitions, then the definitions should address 'management body' and 'senior management' rather than overall managerial responsibility in a general context.

**Q3: 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 newly included qualitative criteria indeed gives leeway for too broad interpretation of the list of employees that should be included in scope. This is also due to the fact that the list not only includes core but also supportive business functions, some of which can nowadays be fully or partially outsourced or carried out through innovative business models, hence proving the criteria difficult to uphold.

Including all managerial levels into the scope would also assume that all recommendations are taken into account equally, whereas the influence of middle management and other supporting staff is often inferior to the one of senior managers. It is also important to prevent

that responsibility on senior level is not being diluted by including too many other parties in the scope of risk takers within an institution.

**Q4: N/A**

**Q5: Are the provisions within Article 7 appropriate and sufficiently clear?**

Although there are challenges in identifying risk takers by function due to greater variety of positions and functions, in principle, remuneration in fixed amounts is not a clear-cut indicator for risk takers. Such consideration does not take into account the overall difference in wage levels in EU, and thus may twist the understanding of the number of risk takers in institutions of similar size and profile, but in different countries. At the same time, using fixed amounts also does not consider the wage developments over time, which undoubtedly shift the number of employees included in the risk takers category. This process might deem even more complex as the RTS foresee prior approval of a supervisory authority when it comes to derogations.

**Q6: Are the provisions within Article 8 appropriate and sufficiently clear?**

Please kindly refer to our answer to Q5.

**Q7: 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 noncomplex 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.

**Q8: 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.