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For publication

UniCredit reply to BCBS consultation paper on Corporate Governance Principles for Banks

UniCredit is a major international financial institution with strong roots in 17 European countries, active in approximately 50 markets, with almost 8,000 branches and over 130,000 employees. UniCredit is among the top market players in Italy, Austria, Poland, CEE and Germany.

Please find below UniCredit comments in relation to the specified sections of the Basel Committee document.

Introduction

The statement that *"The principles set forth in this document are applicable regardless of whether or not a jurisdiction chooses to adopt the Committee's regulatory framework"* [please see paragraph no. 14] does not seem to be fully consistent with the previous statement affirming that *"significant differences in the legislative and regulatory frameworks across countries may restrict the application of certain principles or provisions"* [foreseen by the Basel Committee] [please see paragraph no. 12].

Principle 1: Board's overall responsibilities

In order to avoid an overload of responsibilities, the board should be directly responsible only for the key personnel decisions concerning issues that the Board has to establish, supervise, review or agree on [please see paragraph no. 20].

Principle 2: Board qualifications and composition

Only the candidates for the position of independent board members should meet the "independence requirements" envisaged by paragraph no. 50. Otherwise such provision would not be consistent with the previous principle no. 45 that states that *"the board should be comprised of a sufficient number of independent directors"*. Furthermore, the lapse of time to be taken into account in carrying out the independence assessment in relation to the past positions held should be clearly defined: in our view, it seems excessive to take into account all the past positions held, regardless of how long ago the candidate has left them.

Principle 3: Board's own structure and practices

The Basel Committee introduces a provision [paragraph no. 60] according to which in order to promote checks and balances the chair of the board should not serve as chair of any board committee.

In this respect, UniCredit deems it advisable to clarify if this provision is applicable in relation to all the specialized board committees, or if otherwise is applicable only for those committees whose establishment is required by laws / regulations. The same comment holds for the provision stating that “a committee chair should be an independent, non-executive board member” [paragraph no. 66].

In addition, we would like to draw the attention that the principles may impact also at a local level on self regulatory codes. For example, with regard to the Austrian jurisdiction, we highlight an inconsistency of the proposed provision of the abovementioned paragraph no. 60 with Rule 43 of the applicable Austrian code of corporate governance which states that, as far as concerns the remuneration committee, the chair of such supervisory board committee must always be the chair of the supervisory board itself.

We appreciate that the Basel Committee explicitly recognize that there might be significant differences in the legislative and regulatory frameworks across countries which may restrict the application of certain principles or require an ad-hoc translation. On this respect, UniCredit is pleased to share the following comments regarding the Audit committee [please see paragraph no. 68]:

- the guidelines should include a reference to the fact that in certain jurisdictions the audit committee required by Directive 2006/43/EC, as amended by the new Directive 2014/56/EU of April 16, 2014, has been identified in a corporate body appointed by the shareholders' general meeting. For instance, under the Italian legal framework, the provisions set forth by Section 19 of the Legislative Decree No. 39 dated January 27, 2010 (implementing the European Directive above mentioned) foresee that in the “public-interest” entities the above provisions identify such committee in the Board of Statutory Auditors. ;
- although we appreciate that the Basel Committee provisions are guidelines which need to be transposed at national / jurisdictional level in order to be enforced, we note that in order to properly address inconsistencies with rules already enforced at EU level, it would be advisable to align them with the provisions contained in the aforementioned Directive, both in terms and substance. For instance, in the first bullet of paragraph no. 68, the statement would need to be amended as follows: “*the Audit Committee is responsible for **monitoring** the financial reporting process*”;
- in addition, in order to properly address inconsistency between global standards and EU/national laws, it would be convenient to foresee the possibility that the Committees' responsibilities (Audit, Risk) might not be exclusively attributed to one over the other.

Principle 5: Governance of group structures

As far as concerns the parent company board's role, its duties are duly detailed without there being envisaged any appropriate authority on the subject vis-à-vis its subsidiaries. Especially in case of parent companies of groups which operate in different countries, it is paramount that the powers of the parent company are outlined by

European Laws in order to allow the same to achieve the proper discharge of its responsibilities towards all its subsidiaries (both foreign and located in the same State of the parent company).

Principle 13: The role of supervisors
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UniCredit broadly shares the principles outlined by the BCBS, however it also suggests some fine-tuning.

First of all the supervisory guidance for corporate governance should be principle based and relying on its ultimate outcome on the bank management, rather than a straightforward enforcement of stated principles.

Moreover banking supervisors' principles on corporate governance should be consistent with those issues by other supervisors, for instance financial markets authorities, in order to avoid unduly and inconsistent burden on the banks.

In addition, corporate governance should ensure a smooth management of governance at group level for those banking group operating via several subsidiaries.

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Please find below the list of the key contact-people involved in this work, whose contribution made possible to coordinate and provide UniCredit answers to this Consultation. Some other experts have been involved alongside the UniCredit Group, but are not listed below.

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