EBA/RTS/2020/05

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Final report on

Draft regulatory technical standards on criteria to define managerial responsibility and control functions, a material business unit and a significant impact on its risk profile, and categories of staff whose professional activities have a material impact on an institution's risk profile

Contents

1. Executive summary

Article 92(2) of Directive 2013/36/EU (the Capital Requirements Directive – CRD)[1] provides that 'Member States shall ensure that, when establishing and applying the total remuneration policies, inclusive of salaries and discretionary pension benefits, for categories of staff whose professional activities have a material impact on the institution's risk profile, institutions comply with [the requirements set out in Article 92(2) of the CRD] in a manner that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities'. For variable elements of remuneration, Article 94 of the CRD applies in addition to, and under the same conditions as, Article 92(2) of the CRD.

Article 94(2) of the CRD mandates the EBA to develop draft regulatory technical standards (RTS) to set out criteria to define (a) managerial responsibility and control functions, (b) material business unit and significant impact on the relevant business unit's risk profile and (c) other categories of staff not expressly referred to in Article 92(3) whose professional activities have an impact on the institution's risk profile comparably as material as that of the activities of those categories of staff referred to therein.

The EBA has developed those draft RTS on the basis of the CRD and has been consulting on them for a period of two months to ensure that the draft RTS can be submitted to the European Commission without undue delay.

Competent authorities must ensure that institutions comply with the specific provisions of the CRD regarding remuneration policies and variable remuneration for categories of staff whose professional activities have a material impact on an institution's risk profile in addition to the general requirements regarding appropriate remuneration policies. The objectives of the draft RTS are to harmonise the criteria for the identification of staff whose professional activities have a material impact on an institution's risk profile in order to ensure a consistent approach to the identification of such staff across the EU.

The identification criteria are a combination of qualitative and appropriate quantitative criteria in addition to the criteria already set out in Article 92(3) of the CRD.

The qualitative criteria that are set out in Commission Delegated Regulation (EU) No 604/2014 have been retained to a large extent. However, some of the criteria have been revised taking into account supervisory experience since its entry into force in 2014 and the results of the EBA's peer

[1] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms as amended by Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures.

review of the RTS on identified staff.[2] Those criteria identify staff with material managerial responsibilities and staff with decision-making powers who have a material impact on an institution's risk profile.

Without prejudice to the quantitative criteria included in Article 92(3) of the CRD, the other quantitative criteria defined in the present draft RTS aim to ensure that a sufficient level of scrutiny by institutions and competent authorities is applied when identifying staff whose professional activities have a material impact on an institution's risk profile. It is presumed that staff with a high level of total remuneration have a higher impact on an institution's risk profile than staff with significantly lower remuneration levels.

The quantitative criteria specified in the draft RTS are subject to additional conditions under which institutions can demonstrate that members of staff who would be identified only under the quantitative criteria do not in fact have a material impact on the institution's risk profile and are therefore not to be considered staff whose professional activities have a material impact on the institution's risk profile. If institutions aim to exclude such staff from this category, they are required to submit the relevant assessments to the competent authorities for approval. For staff receiving EUR 1 000 000 or more (high earners), exclusions can be approved only in well-justified exceptional circumstances, and competent authorities need to inform the EBA about any such exclusions before they are approved. The draft RTS set out criteria for the assessment of such exceptional circumstances to ensure the consistent application of such exclusions.

The CRD requires institutions to identify all staff members whose professional activities have a material impact on the institution's risk profile and sets out a minimum set of criteria. These draft RTS set out an additional common set of criteria that have to be applied in any case in order to identify staff whose professional activities have a material impact on an institution's risk profile. Under these draft RTS, a staff member will be characterised as 'identified staff' if at least one of the criteria is met. The common criteria within the RTS are defined so that they can be applied by all institutions and may, therefore, not identify exhaustively all staff members whose professional activities have a material impact on the risk profile of a particular institution, because of the specificities of its risk profile. Consequently, institutions may have to apply, as part of their identification processes, additional internal criteria to ensure that they meet the above requirements.

[2] See Peer review report on the application of the RTS *on criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile*, published on the EBA website

2. Background and rationale

1. Article 92(2) of Directive 2013/36/EU (the CRD) provides that ‘Member States shall ensure that, when establishing and applying the total remuneration policies, inclusive of salaries and discretionary pension benefits, for categories of staff whose professional activities have a material impact on the institution’s risk profile, institutions comply with the following requirements in a manner that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities’. For variable elements of remuneration, Article 94 of the CRD applies in addition to, and under the same conditions as, those set out in Article 92(2) of the CRD.

2. Under Article 109 of the CRD, institutions have to apply the remuneration requirements at group, parent and subsidiary levels, including within subsidiaries that are not themselves subject to the CRD, unless they are themselves subject to specific remuneration requirements on an individual basis under other Union acts or would be subject to such requirements if they were established in the Union. However, under Article 109 (5) of the CRD, the remuneration provisions may still apply to individual staff members of such subsidiaries. Member States may also chose to apply the provisions set out in Article 109 (6) of the CRD on a consolidated basis to firms that have to apply a specific remuneration framework.

3. Article 92(3) of the CRD defines criteria for the identification of staff for the purposes of Article 92(2) of the CRD, namely determining a set of staff whose professional activities are considered to have a material impact on an institution’s risk profile. These staff are to include at least all members of the management body and senior management, staff members with managerial responsibility over the institution’s control functions or material business units and staff members entitled to significant remuneration in the preceding financial year, provided that the staff member’s remuneration is equal to or greater than EUR 500 000 and equal to or greater than the average remuneration awarded to the members of the management body and senior management and that the staff member performs the professional activity within a material business unit and the activity is of a kind that has a significant impact on the relevant business unit’s risk profile.

4. Article 94(2) of the CRD mandates the EBA to develop draft RTS in this area to set out criteria to define (a) managerial responsibility and control functions, (b) material business unit and significant impact on the relevant business unit’s risk profile and (c) other categories of staff not expressly referred to in Article 92(3) of the CRD whose professional activities have an impact on the institution’s risk profile comparably as material as that of the activities of those categories of staff referred to therein. In developing these draft RTS, the qualitative criteria that are set out in Commission Delegated Regulation (EU) No 604/2014 have been retained to a large extent; the EBA also took into account its guidelines on sound remuneration policies, supervisory experience since the entry into force of Commission Delegated Regulation (EU) No 604/2014 and its peer review

report on the application of the RTS to identify categories of staff whose professional activities have a material impact on an institution's risk profile. The appropriate identification of staff whose professional activities have a material impact on an institution's risk profile is necessary to ensure the effective application of the remuneration requirements set out in the CRD.

5. The CRD requires institutions to identify all staff members whose professional activities have a material impact on the institution's risk profile and sets out a certain minimum set of criteria. Competent authorities have to ensure that institutions comply with the requirements set out in Articles 92 and 94 of the CRD.

6. The combination of the criteria directly included in Article 92(3) of the CRD, as implemented in national law, and those set out in these draft RTS, together with the requirements set out in Article 92(2) of the CRD, ensures that each institution's individual risk profile is taken into account appropriately, while common qualitative and appropriate quantitative criteria promote the consistent classification of identified staff by institutions.

7. The objectives of the draft RTS are to harmonise the criteria for the identification of staff whose professional activities have a material impact on an institution's risk profile in order to ensure a consistent approach to the identification of such staff across the EU. These draft RTS set out a common set of criteria that have to be applied in any case in order to identify staff. Under these draft RTS, a staff member will be characterised as 'identified staff' if at least one of the criteria is met. By providing well-defined qualitative criteria and adding clear and appropriate quantitative criteria, the draft RTS ensure the harmonised identification of staff. The common criteria within the RTS are defined so that they can be applied by all institutions and may, therefore, not identify exhaustively all staff members whose professional activities have a material impact on the risk profile of a particular institution, because of the specificities of its risk profile. Consequently, institutions may have to apply, as part of their identification processes, additional internal criteria to ensure that they meet the above requirements.

8. The draft RTS set out qualitative and appropriate quantitative criteria for the identification of categories of staff whose professional activities have a material impact on an institution's risk profile in accordance with the requirements of Article 92(2) of the CRD. Where staff would be identified only under the quantitative criteria but do not in fact have a material impact, it is possible to exclude such staff members under additional conditions in line with the CRD.

9. The quantitative criteria defined in addition to the criteria included in Article 92(3) of the CRD aim to ensure that a sufficient level of scrutiny by institutions and competent authorities is applied when identifying staff whose professional activities have a material impact on an institution's risk profile. It is presumed that staff with a high level of total remuneration have a more material impact on an institution's risk profile compared to staff with significantly lower remuneration levels.

10. The quantitative criteria specified in the draft RTS are subject to additional conditions under which institutions can demonstrate that members of staff who would be identified only under the

quantitative criteria do not in fact have a material impact on the institution's risk profile and are therefore not to be considered identified staff. If institutions aim to exclude such staff, they are required to submit the relevant assessments to the competent authorities for prior approval. For staff receiving EUR 1 000 000 or more (high earners), exclusions can be approved only in well-justified exceptional circumstances, and competent authorities need to inform the EBA about any such exclusions before they are approved. The draft RTS set out criteria for the assessment of such exceptional circumstances to ensure the consistent application of such exclusions.

11. The result of the application of all the qualitative and quantitative criteria should be documented by the institutions so that competent authorities can ensure that institutions have applied the criteria in line with the regulation.

12. Competent authorities must ensure that institutions' identification processes include the qualitative and quantitative criteria set out in the draft RTS and that institutions apply the requirements on remuneration policies and variable remuneration to all identified staff.

3. Draft regulatory technical standards

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC,[3] as amended by Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 and in particular Article 94(2) thereof,

Whereas:

(1) The framework for prudential supervision established by Directive 2013/36/EU requires that all institutions identify all members of staff whose professional activities have a material impact on the institution's risk profile. Institutions must apply at least the criteria foreseen in Article 92(3) of Directive 2013/36/EU. Article 94(2) of Directive 2013/36/EU mandates the European Banking Authority (EBA) to define (a) managerial responsibility and control functions, (b) material business unit and significant impact on the relevant business unit's risk profile and (c) other categories of staff not expressly referred to in Article 92(3) of Directive 2013/36/EU whose professional activities have a comparably material impact on the institution's risk profile. Institutions should define also as appropriate additional internal criteria to ensure that all staff who have a material impact on an institution's risk profile are identified. Institutions should take into account the results of their own risk assessments within their internal procedures.

(2) To ensure consistent application across the European Union, a set of clear qualitative and appropriate quantitative criteria should be established in order to identify the categories of staff whose professional activities have a material impact on an institution's risk profile and to cover a common set of the most relevant risks. The criteria that are used to assess the materiality of the influence of the professional activities of staff on the risk profile should take into account the potential impact of staff on an institution's risk profile based on their authority and responsibilities and the institution's risk and performance indicators. The institution's internal organisation and the nature, scope and complexity of its activities should be taken into account in the assessment. The criteria should fully reflect all risks to which the institution or group is or may be exposed. This should also enable institutions to set proper incentives in their remuneration policies to ensure the prudent behaviour of staff and should ensure that the identification of those members of staff whose professional activities have a

[3] OJ L 176, 27.6.2013, p. 338.

material impact on the institution's risk profile reflects the level of risk of different activities within the institution.

(3) Members of the management body have the ultimate responsibility for the institution, its strategy and activities, and therefore are always able to exercise a material impact on the institution's risk profile. This applies to the members of the management body in its management function, who take decisions, as well as to the members of the supervisory function, who oversee the decision-making process and challenge decisions made. Members of the management body as defined by Article 3(7) and (8) of Directive 2013/36/EU are identified under the criteria set out in Article 92(3)(a) of Directive 2013/36/EU.

(4) Members of senior management as defined by Article 3(9) of Directive 2013/36/EU are those who exercise executive functions within an institution and who are responsible, and accountable to the management body, for the day-to-day management of the institution. Those members are identified under the criteria set out in Article 92(3)(a) of Directive 2013/36/EU.

(5) In addition to the members of the management body and senior management, who are in any case identified as staff whose professional activities have a material impact on an institution's risk profile in accordance with point (a) of paragraph 3 of Article 92 of Directive 2013/36/EU, other senior staff members' professional activities can have a material impact on an institution's risk profile, in particular if they have managerial responsibilities for material business units or for control functions, taking into account their responsibility for making strategic or other fundamental decisions on the business activities or the control framework applied. Such control functions include, typically, risk management, compliance and internal audit. The risks taken by the business units and the way they are managed are the most important factors for the institution's risk profile and therefore the aforementioned staff members should be identified for the purposes of the application of Article 92(2) of Directive 2013/36/EU.

(6) In addition, functions responsible for providing internal support that are crucial to the operation of an institution's business activities and have authority to take decisions in those areas expose the institution to material operational and other risks. Therefore, the professional activities of staff members heading such functions also have a material impact on the institution's risk profile.

(7) As credit risk and market risk are typically entered into in order to generate business, the impact of the activities generating those risks on an institution's risk profile can be assessed using criteria based on limits of authority which are calculated at least annually on the basis of capital figures and approaches used for regulatory purposes, while applying a de minimis threshold for credit risk to ensure the proportionate application of the criteria within small institutions.

(8) The criteria to identify staff whose professional activities have a material impact on an institution's risk profile should take account of the facts that the requirements relating to the trading book can be waived for some institutions under Regulation (EU)

No 575/2013 and that limits are set in different ways for institutions using different approaches to calculate capital requirements.

(9) Appropriate criteria should ensure that members of staff are identified as having a material impact on an institution’s risk profile where they are responsible for groups of staff whose activities could have a material impact on the institution’s risk profile. This includes situations where the activities of individual staff members under their management do not individually have a material impact on the institution’s risk profile but the overall scale of their activities could have such an impact.

(10) In addition to the qualitative criteria, appropriate quantitative criteria should be established to identify categories of staff whose professional activities have a material impact on an institution’s risk profile. The total remuneration to which members of staff are entitled typically depends on the contribution that staff make to the successful achievement of the institution’s business objectives and therefore on the responsibilities, duties, abilities and skills of staff, and the performance of staff and the institution. Where a member of staff is awarded total remuneration that exceeds a certain threshold, it is reasonable to presume that this is linked to the staff member’s contribution to the institution’s business objectives and to the impact of the staff member’s professional activities on the risk profile of the institution. Accordingly, it is appropriate to set quantitative criteria on the total remuneration that a member of staff receives, both in absolute terms and relative to other members of staff within the same institution. In applying those quantitative criteria, account should, where appropriate, be taken of the fact that payment levels differ across jurisdictions.

(11) Clear and appropriate thresholds should be established to identify staff whose professional activities have a material impact on an institution’s risk profile. Institutions should be expected to apply the quantitative criteria in a timely manner; therefore, the quantitative criteria should be based either on the total remuneration awarded in the preceding performance year, which includes the fixed remuneration paid for that performance year and the variable remuneration awarded in that performance year (i.e. with reference to earlier performance) or the total remuneration awarded for the preceding performance year, which includes the fixed remuneration paid for that performance year and the variable remuneration awarded in the current performance year .for the preceding financial year. While the latter provides for a better alignment of the identification process with the actual remuneration awarded for a performance period, it should be applied only when a timely calculation for the application of the quantitative criteria will still be possible. In either case, the variable remuneration, depending on the performance criteria used by the institution, can include amounts that are awarded based on performance periods that are longer than one year.

(12) Article 92(3) of Directive 2013/36/EU sets a quantitative threshold of EUR 500 000 combined with the average of the remuneration of members of the management body and senior management for the identification of staff who have a material impact on the risk profile of a material business unit. Therefore, remuneration above this quantitative threshold or amounting to one of the highest remunerations within the institution establish a strong presumption that staff receiving such remuneration have a material impact on the institution’s risk profile. In this regard, more supervisory scrutiny should be applied to establish whether the professional

activities of such staff members have a material impact on the institution's risk profile. Where institutions establish on the basis of additional objective criteria that staff do not in fact have a material impact on the institution's risk profile, taking into account all risks to which the institution is or may be exposed, such staff members should not be subject to the application of the specific remuneration provisions under Article 94 of Directive 2013/36/EU. The exclusion of the highest earning staff identified under the quantitative criteria under this Regulation should be subject to the approval of the competent authority to ensure effective and consistent application of those criteria. For staff awarded more than EUR 1 000 000 (high earners), competent authorities should inform the EBA before exclusions are approved, so that it can assess, in particular in such exceptional circumstances, the consistent application of those criteria. The identification process, including the application of exclusions, should always be subject to supervisory review in accordance with Articles 92(2) and 97 of Directive 2013/36/EU.

(13) Competent authorities should ensure that institutions maintain a record of the assessments made and their results, and of the staff whose professional activities have been identified as having a material impact on their risk profiles, to enable the competent authority and auditors to review the assessments, including of staff who have been identified under criteria based on their total remuneration but whose professional activities are assessed as not to have a material impact on the institution's risk profile.

(14) Since 2010, the EBA has been monitoring the remuneration practices of institutions and has published several reports on the benchmarking of remuneration practices. In addition, the EBA has reviewed the application of Commission Delegated Regulation (EU) No 604/2014 of 4 March 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile.

(15) The EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based and has analysed the potential related costs and benefits.

Has adopted this Regulation

Article 1
Application of criteria

1) Where this Delegated Regulation is applied on individual basis in accordance with Article 109 (1) of Directive 2013/36/EU, the criteria set out therein shall be assessed against the institution’s individual risk profile.
2) Where this Regulation is applied on consolidated or sub-consolidated level in accordance with Article 109 (2) to (6) of Directive 2013/36/EU, the criteria set out therein shall be assessed against the risk profile of the relevant parent institution or financial holding company or mixed financial holding company on a consolidated or sub-consolidated basis.
3) Where applying point (a) of paragraph 1 of Article 7 on individual basis, the remuneration awarded to the staff member by the institution itself shall be considered. Where applying point (a) of paragraph 1 of Article 7 on sub-consolidated or consolidated level, the consolidating institution shall consider the remuneration awarded to the staff member by any entities within the scope of consolidation.
4) Point (b) of paragraph 1 of Article 7 shall apply only on individual basis.

Article 2
Managerial responsibility

‘Managerial responsibility means a situation, in which any of the following criteria applies:

a) the staff member heads a 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 one of the functions set out in points (a) to (j) of Article 6 (1) of this Delegated Regulation;
c) in a large institution as defined in point (146) of Article 4(1) of Regulation (EU) No 575/2013, the staff member heads a subordinated business unit, or a subordinated control function, and reports to a staff member referred to in point (a).

Article 3
Control function

‘Control function’ means a function independent from the business units that it controls, which has a responsibility to provide objective assessment of risks, reviews or reporting, including, but not limited to, the risk management function, the compliance function and the internal audit function

Article 4
Material business unit

‘Material business unit’ shall be defined as a business unit referred to in point (3) of paragraph 1 of Article 142 of Regulation (EU) No 575/2013, which meets either of the following criteria:

a) it is a business unit with allocated internal capital of at least 2% of the internal capital of the institution as set out in Article 73 of Directive 2013/36/EU or is otherwise seen to have a material impact on the institution’s internal capital;

b) it is a core business line as set out in point (36) of paragraph 1 of Article 2 of Directive 2014/59/EU.

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Article 5
Significant impact on a material business unit’s risk and staff or categories of staff referred to under point (c) of paragraph 2 of Article 94 of Directive 2013/36/EU

1) For the purpose of applying point (c)(ii) of paragraph 3 of Article 92 of Directive 2013/36/EU, institutions shall set out within their remuneration policies objective criteria to determine whether the professional activities of staff or categories of staff have a significant impact on the material business unit’s risk profile, taking into account the following criteria:

    a) the risk profile of the material business unit and the distribution of internal capital to cover the nature and level of the risks as set out in Article 73 of Directive 2013/36/EU;

    b) the risk limits of the material business unit;

    c) the relevant risk and performance indicators used by the institution to identify, manage and monitor risks of the material business unit in accordance with Article 74 of Directive 2013/36/EU;

    d) the relevant performance criteria set by the institution under points (a) and (b) of paragraph 1 of Article 94 of Directive 2013/36/EU;

    e) the duties and authorities of staff members or categories of staff.

2) Institutions shall identify staff or categories of staff under point (c) of paragraph 2 of Article 94 of Directive 2013/36/EU as having an impact on an institution’s risk profile comparably as material as that of those categories of staff referred to in paragraph 3 of Article 92 of that Directive if they meet one or more of the criteria defined in Articles 6 and 7 of this Regulation.

Article 6
Qualitative criteria

In addition to members of staff identified under the criteria set out in points (a) and (b) of paragraph 3 of Article 92 of Directive 2013/36/EU, members of staff shall be deemed to have a material impact on an institution's risk profile if one or more of the following qualitative criteria are met:

(1) the staff memberhas managerial responsibility as referred to in point (b) of Article 2 for:

a) legal affairs;

b) the soundness of accounting policies and procedures;

c) finance, including taxation and budgeting;

d) performing economic analysis;

e) the prevention of money laundering and terrorist financing;

f) human resources;

g) the development or implementation of the remuneration policy;

h) information technology;

i) information security;

j) managing outsourcing arrangements of critical or important functions as set out in Article 30 (1) of the Commission Delegated Regulation (EU) 2017/565[4].

(2) the staff member has managerial responsibilities for a risk category set out in Articles 79 to 87 of Directive 2013/36/EU or is a voting member of a committee responsible for the management of a risk category provided for in Articles 79 to 87 of Directive 2013/36/EU;

(3) with regard to credit risk exposures of a nominal amount per transaction, representing 0.5% of the institution's Common Equity Tier 1 capital andis at least EUR 5 million, the staff member meets one of the following criteria:

a) the staff member has the authority to take, approve or veto decisions on such credit risk exposures;

b) the staff members is a voting member of a committee which has the authority to take the decisions mentioned in point (a);

(4) in relation to an institution to which the derogation for small trading book business under Article 94 of Regulation (EU) No 575/2013 does not apply, the staff member meets one of the following criteria:

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[4] Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive OJ L 87, 31.3.2017, p. 1–83

a) the staff member has the authority to take, approve or veto decisions on transactions on the trading book that in aggregate represent one of the following thresholds:

i. where the standardised approach is used, an own funds requirement for market risks that represents 0.5% or more of the institution’s Common Equity Tier 1 capital;

ii. where an internal model-based approach is approved for regulatory purposes, 5% or more of the institution’s internal value-at-risk limit for trading book exposures at a 99th percentile (one-tailed confidence interval level);

b) the staff member is a voting member of a committee that has the authority to take the decisions mentioned in point (a);

(5) the staff member heads a group of staff members who have individual authorities to commit the institution to transactions and either of the following conditions is met:

a) the sum of those authorities equals or exceeds the threshold set out in point 3(a) or point 4(a)(i);

b) where an internal model-based approach is approved for regulatory purposes, those authorities amount to 5% or more of the institution’s internal value-at-risk limit for trading book exposures at a 99th percentile (one-tailed confidence interval level); where the institution does not calculate a value-at-risk at the level of that staff member, the value-at-risk limits of staff under the management of this staff member shall be added up;

(6) the staff member meets either of the following criteria with regard to decisions on approving or vetoing the introduction of new products:

a) the staff member has authority to take such decisions;

b) the staff member is a voting member of a committee that has authority to take such decisions.

Article 7
Quantitative criteria

1) Without prejudice to point (c) of paragraph 3 of Article 92 of Directive 2013/36/EU, members of staff shall be deemed to have an impact on an institution’s risk profile where one or more of the following quantitative criteria are met:

a) the staff member, including those expressly referred to in point (c) of paragraph 3 of Article 92 of Directive 2013/36/EU, has been awarded in or for the preceding financial year total remuneration that is equal to or greater than EUR 750 000;

b) in case the institution has over 1 000 members of staff, the staff member is within the 0.3% of staff, rounded to the next higher integral figure, who have been awarded the highest total remuneration in or for the preceding financial year within the institution on an individual basis.

2) The criteria laid down in paragraph 1 shall not be deemed to be met where the institution determines that the professional activities of the staff member do not have a material impact on the institution’s risk profile, because the staff member, or the category of staff to which the staff member belongs, meets one of the following conditions:

    a) the staff member or category of staff only carries out professional activities and has authorities in a business unit that is not a material business unit as defined in Article 4;

    b) the professional activities of the staff member or category of staff have no significant impact on the risk profile of a material business unit having regard to the criteria set out in paragraph 1 of Article 5.

3) The application of paragraph 2 by an institution shall be subject to the prior approval of the competent authority responsible for prudential supervision of that institution. The competent authority shall only give its prior approval for staff members mentioned in (a) and (b) of paragraph 1 of Article 7 and where the institution can demonstrate that one of the conditions set out in paragraph 2 are satisfied.

4) Where the staff member was awarded total remuneration of EUR 1 000 000 or more in or for the preceding financial year, the competent authority shall only give its prior approval under paragraph 3 in exceptional circumstances. In order to ensure the consistent application of this paragraph, the competent authority shall inform the EBA before giving its approval in respect of such a staff member.

5) The existence of exceptional circumstances shall be demonstrated by the institution and assessed by the competent authority. Exceptional circumstances shall be deemed as a situation that is unusual and very infrequent or far beyond what is usual. The exceptional circumstances shall be related to the staff member.

Article 8
Miscellenous

1) For the purpose of this Regulation and the application of Article 92(3)(c)(i) of Directive 2013/36/EU, the average total remuneration of all members of the management body and senior management shall be calculated, taking into account the total of the fixed and variable remuneration of all members of the management body in its management function and supervisory function as well as all staff who fall under the definition of senior management in point (9) of paragraph 1 of Article 3 of Directive 2013/36/EU.

2) For the purposes of this Regulation, variable remuneration that has been awarded but has not yet been paid shall be valued as at the date of the award without taking into account the application of the discount rate referred to in Article 94(1)(g) of Directive 2013/36/EU or reductions in payouts, through clawback, malus or otherwise.

3) All amounts of the variable and fixed remuneration shall be calculated gross and on a full-time equivalent basis.
4) Institution's remuneration policies shall set out the reference year for the variable remuneration that they take into account when calculating the total remuneration; this shall be either the preceding financial year in which the variable remuneration is awarded or the preceding financial yearfor which the variable remuneration is awarded;

Article 10
Repeal

Commission Delegated Regulation (EU) No 604/2014 of 4 March 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile shall be repealed for credit institutions, , with effect from 28 December 2020.

Article 11
Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States. It shall not apply to investment firms subject to Regulation (EU) No 2033/2019 unless they are subject to Regulation 575/2013 as amended by Regulation 2019/876 and Directive 2013/36 as amended by Directive 2019/878 in accordance with Regulation (EU) No 2019/2033 and Directive 2019/2034.

Done at Brussels,

For the Commission
The President

4. Accompanying documents

4.1 Draft cost–benefit analysis

1. Article 10(1) of the EBA Regulation (Regulation (EU) No 1093/2010 of the European Parliament and of the Council) provides that, when any draft regulatory technical standards developed by the EBA are submitted to the European Commission they should be accompanied by an analysis of 'the potential related costs and benefits'. This analysis should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options.

A. Problem identification

2. The identification of categories of staff whose professional activities have a material impact on an institution's risk profile stems from the obligations set out in Article 92(2) of the CRD. Article 92(3) of the CRD already contains a minimum set of criteria that should, at least, be applied. Article 94(2) of that Directive mandates the EBA to develop draft RTS on criteria for defining managerial responsibility and control functions, a material business unit and a significant impact on the relevant business unit's risk profile and other categories of staff whose professional activities have an impact on the institution's risk profile comparably as material as that of the activities of the staff identified under the criteria defined in Article 92(3) of the CRD.

B. Policy objectives

3. The RTS supplement at a technical level the provisions of CRD IV, with the aim of contributing to the realisation of the objectives of the Level 1 text, in accordance with the mandate received under the CRD. The criteria defined in the RTS should ensure the complete and consistent identification by institutions of staff who have a material impact on an institution's risk profile.

4. The implementation of appropriate criteria to identify staff is the essential starting point for applying the requirements of the CRD to staff whose professional activities have a material impact on an institution's risk profile. To this end, these RTS define criteria ensuring the harmonised identification in the EU of such staff members, taking into account the main risk drivers of institutions. The criteria set out in the RTS should help to identify, in combination with the Level 1 text, staff or categories of staff whose professional activities have a material impact on an institution's risk profile, taking into account qualitative and quantitative aspects. The complete identification of staff whose professional activities have a material impact on an institution's risk profile ensures that the specific remuneration provisions for such staff are applied, thus ensuring a better alignment of their variable remuneration with their risk profile.

5. While the criteria set out in the draft RTS strive to ensure the comprehensive identification of staff, providing a complete set of identification criteria for all institutions, considering their specific business models, is not possible. Therefore, institutions might need to apply additional criteria to ensure the complete identification of staff whose professional activities have a material impact on the institution's risk profile.

6. Furthermore, Article 109 of the CRD sets out the approach to the application of remuneration requirements on consolidated, sub-consolidated and individual levels. The draft RTS should also clarify how the criteria should be applied on those different levels.

C. Baseline scenario

7. The CRD, together with Commission Delegated Regulation (EU) No 604/2014, currently in force, form the baseline for this impact assessment.

8. Given the amendments made to the CRD by Directive (EU) 2019/878 and the specific mandate for the EBA to develop these draft RTS under Article 94(2) of the CRD, the RTS on identified staff currently in force should be replaced. The present cost–benefit analysis is limited to the additional costs and benefits created by the amended or additional criteria set out in the draft RTS and does not consider the costs and benefits created by the remuneration provisions encoded in the CRD or the RTS on identified staff currently in force.

D. Options considered

9. The EBA has been mandated to set criteria to define managerial responsibilities, control functions, material business units and a significant impact on an institution's risk profile.

10. With regard to setting criteria to define **managerial responsibilities**, two options were considered.

    - Option A: setting out a list of tasks that are commonly required of staff with managerial responsibilities, for example coordinating teams, coordinating work, human resources responsibilities, budgetary responsibilities, etc.

    - Option B: basing the definition of managerial responsibilities mainly on the hierarchical position of the staff member, taking into account responsibilities and reporting lines.

11. Option A could potentially lead to the identification of staff who do not have a material impact on the institution's risk profile, if staff meeting any one of the sub-criteria set were to be identified. If applied only cumulatively, the sub-criteria would potentially not identify all material risk-takers. Such an approach would therefore not be effective.

12. Option B: commonly, a certain hierarchical position, together with reporting lines, comes with a certain set of responsibilities. Identification of staff based on internal organisation would be

relatively easy. Such an approach would be more effective in identifying the staff who are responsible for business decisions and oversight functions, and therefore potentially have a material impact on the risk profile of an institution.

13. Option B was retained.

14. With regard to setting criteria to define **control functions**, only one option was identified. Control functions were defined in line with the EBA's guidelines on internal governance, already in place, and the definition used by the Basel Committee on Banking Supervision, thus ensuring the consistent application of governance frameworks.

15. With regard to setting criteria to define a **material business unit**, two options were considered.

- Option A: retaining the definition provided in the previous RTS, in line with the definition provided in the Level 1 text.

- Option B: retaining the definition provided in the previous RTS, in line with the definition provided in the Level 1 text, but also requiring institutions to identify business units that are material, even if there is no allocation of internal capital.

16. Supervisory experience shows that Option A has not been effective for all institutions in the past, as not all of them allocate internal capital to their business units. In particular, smaller institutions would need to be able to use less sophisticated procedures. In addition, capital allocation is often done based on the existing risks and not taking into account the future development of business activities that might become material. Option B would allow both aspects to be accommodated and is therefore more effective, even though it is based on some more qualitative or subjective elements.

17. Option B was retained.

18. With regard to setting criteria to define a **significant impact on the relevant (i.e. material) business unit's risk profile** two options were considered.

- Option A: leaving the definition of thresholds and metrics to institutions but providing a non-exhaustive list of criteria that should be taken into account when defining thresholds and metrics.

- Option B: providing quantitative thresholds for the impact on risk.

19. Option A would lead to a sufficient level of harmonisation and limit the burden on institutions, which have in any case to define risk strategies, risk limits and performance criteria. Basing the definition of significant impact on existing internal policies also takes into account the nature, size and complexity of the institution and allows for a proportionate approach. However, the establishment of such an appropriate framework might be more work-intensive than applying quantitative thresholds in terms of value-at-risk impact or risk-weighted assets.

20. Option B would be too complex for smaller and less complex institutions and, if based on standardised methods, not sufficiently risk sensitive. In addition, it would not take into account all risks, as not all are connected to regulatory capital requirements under the CRR. In addition, even if it might be desirable for larger institutions, the calculation of the risk impact of individual staff members or categories of staff would have to be based on sufficient data points. Those are not usually available and, even if they were, such a requirement would have an overly high cost impact on institutions.

21. Option A was retained.

22. The approach of applying qualitative and quantitative criteria has proven to be effective and was retained.

23. With regard to setting qualitative criteria that identify staff who have an impact on the institution's risk profile that is comparably as material as that of staff identified under Article 92(3) of the CRD, two options were considered.

24. Option A: retaining the qualitative criteria that are currently in force.

25. Option B: adjusting the qualitative criteria that are currently in force, taking into account supervisory experience and the findings of the EBA's review of the application of the RTS on identified staff.

26. Option A: in the review, the EBA identified some criteria that could be improved. While this option would create the smallest burden in terms of implementation, it would not be in line with the objectives of these RTS.

27. Option B: the qualitative criteria already in place were reviewed by the EBA's review panel and found to be effective overall. However, a need to clarify some of the criteria was identified, in order to ensure that only staff who have a material impact on an institution's risk profile are identified. For example, the criterion based on credit risk initiation has been deleted, as the decision afterwards is more relevant; being a member of a committee was perceived as too broad a criterion and the new criterion is being a voting member who actually has an impact on the institution's risk profile. In addition, some functions that always have a material impact on an institution's risk profile have been added, taking into account increased IT risk, risk stemming from outsourcing of critical or important functions, tax risk and money laundering risk.

28. Option B was retained.

29. With regard to setting quantitative criteria that identify staff who have an impact on the institution's risk profile that is comparably as material as that of staff identified under Article 92(3) of the CRD, two options were considered.

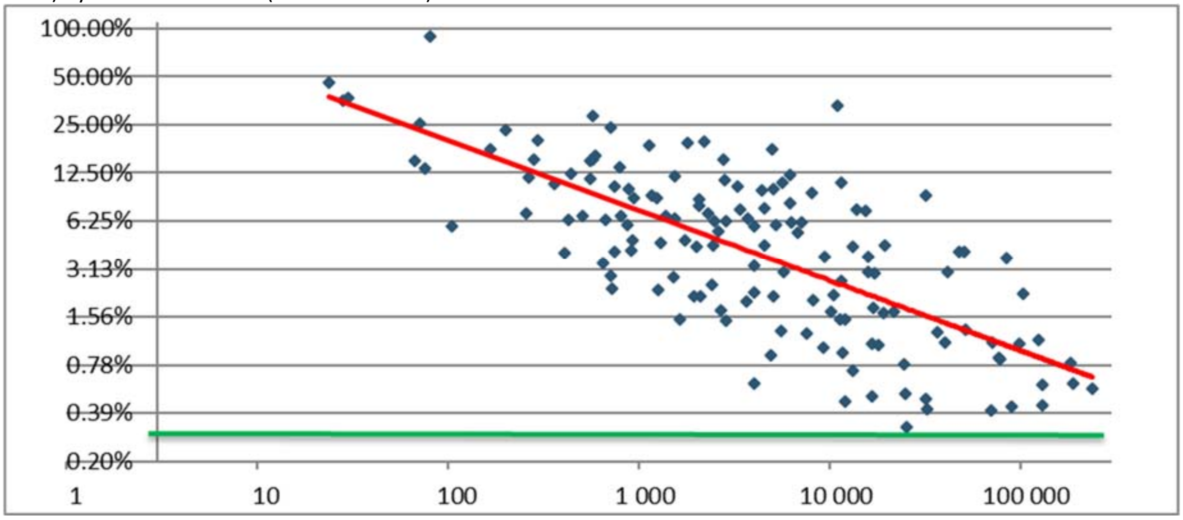
30. Option A: removing the quantitative criteria from the RTS.

31. Option B: reducing the burden created by the application of the quantitative criteria, based on supervisory experience and by applying the 0.3% criterion only to institutions with more than 1 000 staff, while retaining these criteria as an effective safeguard to ensure the complete identification of risk-takers.

32. Option A: the CRD expressly sets out quantitative criteria and creating additional quantitative criteria would create an additional burden.

33. `

Figure 1: Ratio of identified staff to all staff within institutions in 2016 (logarithmic scale; trend line in red, green line at 0.3%) by size of institution (number of staff)[5]



34. Option B was retained.

35. With regard to setting out how the provisions should be applied on individual, sub-consolidated and consolidated levels, two options were considered.

36. Option A: Article 109 of the CRD sets out how the provisions should be applied; no further provisions are necessary in the RTS.

37. Option B: while Article 109 of the CRD sets out in principle how the provisions should be applied on individual, sub-consolidated and consolidated levels, some additional provisions should be provided to ensure consistent application in all Member States.

38. Option A would not be effective, as the review found that institutions have some doubts about the correct application of, in particular, the quantitative criteria on a consolidated level.

[5] EBA, *Benchmarking* benchmarking *of remuneration practices at the European Union level and data on high earners (data as of end 2016).*)

39. Option B: the RTS should specify how the quantitative criteria should be applied on all different levels, considering the burden of aggregating remuneration data across different institutions and Member States. Therefore, the 0.3% criterion should be applied only on an individual level. Such an approach would still be effective in identifying the staff with the highest remuneration and applying additional supervisory scrutiny if they are not treated as identified staff.

40. Option B was retained.

41. Regarding the calculation of the amounts of remuneration for the application of the quantitative criteria, three options were considered.

42. Option A: changing the approach to setting the reference period used for the calculation of the variable remuneration, allowing for flexibility to use either the variable remuneration awarded in the previous financial year (e.g., for determining the amount for 2019, the fixed remuneration for 2019 plus the variable remuneration for 2018 awarded in 2019) or awarded for the previous financial year (e.g., for determining the amount for 2019, the fixed remuneration for 2019 plus the variable remuneration for 2019 awarded in 2020).

43. Option B: Option A and in addition requiring institutions to make a choice in their remuneration policies of one of the methods, to avoid arbitrary decisions.

44. Option C: setting out detailed provisions in the RTS on how to calculate the amounts on a full-time equivalent basis.

45. Option A would allow institutions to maintain the current approach to the calculation of quantitative thresholds, and therefore would not create any additional burden, but would allow more flexibility for institutions and the possibility of aligning the calculation of thresholds with the performance year. Institutions would need to be able to ensure a timely calculation. While this might be a challenge, it would be up to the institution and is therefore not considered burdensome.

46. Option B would ensure that there was no circumvention through frequent changes to the approach. It would require small changes to remuneration policies; however, the approach taken must be documented anyway to ensure that the application of the RTS can be audited and supervised.

47. Option C would ensure a fully harmonised calculation method, but it would need to be fully comprehensive to cover all possible situations, such as vacant positions, additional positions, staff members leaving, staff members with career progression, etc. Such a level of detail would be difficult to reconcile with the mandate to develop the present RTS and would be better set out in EBA guidelines.

48. Option A was retained.

Conclusion

The draft RTS affect only institutions that are subject to the CRD. While some of these institutions may benefit from waivers regarding the application of the requirement to pay variable remuneration in instruments or in deferred instruments, all institutions are required to identify staff who have a material impact on the institution’s risk profile, in order to ensure that the other provisions encoded in Articles 92 to 94 of the CRD are correctly applied.

Some of the burden that was created by the RTS on identified staff currently in place has been reduced, as some criteria that may have led to the identification of too many staff have been amended.

The new provisions aim also to clarify some issues identified regarding the application of the RTS on sub-consolidated and consolidated levels, reducing the burden for institutions and the costs of the cumbersome application of some of the quantitative criteria on a consolidated level.

Overall, the administrative costs triggered by the draft RTS are low, and the RTS even reduce some of the ongoing costs of applying the criteria for identifying staff. Nonetheless, the RTS will ensure a sufficient level of harmonisation with regard to the identification of staff.

4.2 Annex to the impact assessment: Main findings from the review of the RTS on identified staff regarding the criteria set out in the RTS

1. Data were collected by the EBA's review panel from institutions on the numbers of staff identified under the criteria set out in the RTS on identified staff currently in force. These data were used for the review of the criteria set out in the RTS and the present impact assessment.[6]

2. Seventy-three institutions, from all the Member States and two EEA countries, provided information regarding the identification of staff in 2017. Staff were assigned only to the first qualitative criteria under which they had been identified (based on the numbering of paragraphs) to avoid double counting.

3. Some institutions also specified internal criteria for identified staff that are not included in the RTS, namely:

   a) all staff who create market risk that may be material for the institution's risk profile;

   b) all staff at or above an internally defined hierarchical level;

   c) staff responsible for the management of a risk that has been identified as a strategic risk;

   d) employees with the corporate title of managing director, director or vice-president occupying sales functions in the corporate and investment banking division with a revenue credit threshold greater than EUR 5 million where more than 50% of the individual's revenue credits were made in certain exposed books;

   e) employees whose significant role could expose the bank to additional credit, market and other risks in the foreign exchange and emerging market debt businesses and in corporate finance;

   f) employees in the risk, legal and communications areas whose significant role could expose the bank to reputational risk;

   g) heads of certain business units that are not considered material under the regulatory definition;

   h) regional management committee voting members (not falling under Article 3(10) of the RTS);

   i) employees responsible for key projects that impact business and the strategic risk profiles of certain significant institutions;

[6] The full report of the EBA's Review Panel on the application of the RTS on identified staff can be found on the EBA's website.

j) staff receiving remuneration above EUR 150 000;

k) heads of regions, heads of leasing and factoring;

l) risk owners;

m) staff having a major impact on private and corporate customers;

n) staff who could have a significant impact on the bank's reputation because their activities relate to offering strategic advice and a wide range of financing solutions to selected corporate and organisational clients (money laundering risks);

o) anyone who is classified as a senior manager within the senior manager regime;

p) chief risk officer, chief financial officers and chief operating officers;

q) high earners based on their compensation for the current year;

r) any other staff whose activities are deemed to expose the firm to a material level of harm.

4. Only very few comments on the clarity of the RTS provisions were received (on Articles 4(1)(b), 3(7) and 3(10)). The most material concern raised related to the application of the RTS on a consolidated level and clarification regarding the consideration of newly employed staff when applying the remuneration bracket criterion. During the identification of staff on a consolidated level, the criteria are applied to staff located in different Member States that have different remuneration levels. Other clarifications were suggested regarding the treatment of new joiners who are identified under the qualitative criteria but have low remuneration because they have not yet received a bonus. In the context of the data collection, institutions also raised questions regarding severance pay, part-time staff, and staff leaving or joining during the year and how they were to be considered in calculating amounts under the quantitative criteria. However, many of the issues raised have already been clarified to a good extent in the EBA's guidelines on sound remuneration policies and practices.

5. For each of the qualitative criteria, the contribution to the overall identification outcome was calculated as a percentage of the total number of staff identified. For this purpose, three different size categories based on total assets were defined (< EUR 5 billion; EUR 5–30 billion; > EUR 30 billion). For each of the different categories and for all institutions, the average contribution and the quartiles of contribution to the identification outcome were calculated. In addition, the same calculation was performed for the total sample. When analysing the figures, it should be remembered that staff were to be recorded only under the first applicable qualitative criterion.

6. For smaller institutions, the identification outcome was strongly driven by the criteria relating to the hierarchical aspects of the organisation (members of the management body, senior management,

heads of control functions). Those staff also have the powers to take risks. For a few institutions, the figures showed significant numbers of staff identified under the criterion of Article 3(5) of the RTS – risk management in material business units – while for most institutions a relatively low number of staff were identified under this criterion. This may be a result of the specific internal organisation of the risk management function or the incorrect application of the RTS.

7. For larger institutions, the criteria relating to hierarchical structure were also important, but the impact of the identification was driven more by senior management and other staff with managerial responsibilities. In addition, more identified staff who were not part of the management body or senior management fell under the criteria relating to risk impact and in particular credit risk-taking competencies.

8. The identification of staff was mainly driven by the quantitative criteria. Overall, the data can be interpreted as indicating that most staff who have competencies for risk-taking are already identified in most institutions based on their hierarchical position. While the criterion relating to credit risk (Article 3(11) of the RTS) is also highly relevant, the criteria based on other risk types or decision-making powers or managerial responsibilities for risk-takers (paragraphs 12 to 15 of Article 3) usually have little impact on the identification outcome.

9. Under the quantitative criteria many institutions, in particular large institutions, identify a large number of staff, many of whom are not identified under the qualitative criteria. Under the RTS, such staff can be excluded from identified staff if they do not have a material impact on the institution's risk profile, for example because they work in a non-material business unit.

10. Most institutions had excluded all or nearly all staff who had been identified only under the remuneration bracket criterion from the category of identified staff. In some larger institutions, the related exclusion process concerned a material number of staff, leading to an additional burden arising from the application of the identification process. Only three institutions in the sample had made use of the possibility to exclude other staff (i.e. staff who had received more than EUR 500 000 in remuneration) under the notification procedure. No institutions within the sample had applied for prior approval to exclude staff who had earned over EUR 750 000 or staff who were among the 0.3% of staff with the highest remuneration.

11. For many firms, in particular large firms, the application of the requirements to subsidiaries that are not themselves subject to the CRD increases significantly the number of identified staff. However, this is a consequence of the application of Article 109 of the CRD.

Table 1: Overview of the identification outcome

Overview of the identification of staff within a sample of institutions	
Total number of staff included in the sample	788 650
Total number of identified staff	13 004
Staff identified under qualitative criteria (Article 3 of the RTS)	11 655
Additional staff identified under internal criteria	683
Additional staff (without double counting of staff already identified under qualitative or internal criteria) identified under quantitative criteria	666
Staff meeting quantitative criteria (Article 4 of the RTS)	25 491
thereof staff receiving > EUR 500 000	2 181
thereof 0.3% of staff with the highest remuneration	1 905
thereof identified because they fall within the remuneration bracket	21 405
Staff excluded from the scope of identified staff under Article 4 of the RTS	16 010
thereof without notification (staff receiving less than EUR 500 000)	15 934
thereof with notification (staff receiving EUR 500 000 to EUR 750 000 or staff within the 0.3% of staff with the highest remuneration)	76
thereof with prior approval	0

Table 2: Identification contribution of qualitative criteria (staff identified under the criterion as a percentage of total identified staff; EU-28); column headings refer to the relevant paragraphs of Article 3 of the RTS (please refer to Annex 3 for a list of the qualitative criteria)

Art. 3 RTS	1	2	3	4	5	6	7	8	9	10	11 a	11 b	11 c	12 a (i)	12 a (ii)	12 b	13 a	13 b	14 a	14 b	15
Average BST < 5bn	10.73%	12.75%	9.29%	7.94%	21.79%	10.30%	5.15%	8.11%	6.59%	3.55%	3.80%	2.03%	3.72%	2.96%	0.17%	0.42%	0.68%	0.00%	0.84%	2.87%	1.27%
p25	5.88%	6.63%	0.00%	5.88%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
p50	11.28%	22.22%	10.18%	8.93%	0.00%	0.00%	0.00%	0.00%	8.82%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
p75	16.67%	28.57%	20.00%	15.56%	1.47%	7.69%	9.64%	8.33%	14.81%	5.13%	5.56%	0.00%	3.70%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Average BST 5-30bn	8.02%	11.96%	24.31%	5.26%	6.70%	5.52%	7.36%	1.97%	4.20%	10.12%	4.86%	1.05%	1.97%	1.05%	0.13%	0.00%	1.18%	0.26%	0.39%	0.66%	0.13%
p25	3.32%	1.20%	4.62%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
p50	9.43%	11.32%	13.48%	3.84%	0.00%	0.78%	0.59%	0.00%	1.09%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
p75	11.90%	25.76%	37.31%	7.14%	0.40%	6.88%	10.60%	8.93%	7.41%	3.56%	4.85%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Average BST > 30bn	4.90%	3.83%	17.35%	2.19%	1.65%	2.44%	9.50%	9.93%	3.88%	4.34%	12.22%	0.92%	0.99%	1.77%	2.54%	0.78%	0.67%	0.09%	2.41%	1.26%	2.74%
p25	3.14%	0.98%	4.40%	0.23%	0.00%	0.00%	3.62%	0.00%	0.00%	0.00%	0.39%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
p50	4.86%	4.30%	7.99%	1.30%	1.31%	0.23%	6.59%	3.33%	1.02%	1.79%	5.33%	0.00%	0.00%	0.00%	0.00%	0.00%	0.15%	0.00%	0.00%	0.00%	0.00%
p75	7.69%	10.44%	29.20%	3.77%	1.94%	1.40%	12.12%	7.64%	3.86%	9.51%	10.60%	0.27%	1.12%	2.09%	2.41%	0.00%	1.36%	0.00%	1.20%	0.84%	1.20%
Average total	5.61%	5.12%	17.03%	2.89%	3.78%	3.34%	8.98%	9.30%	4.14%	4.61%	11.02%	1.03%	1.29%	1.84%	2.18%	0.70%	0.70%	0.09%	2.15%	1.37%	2.45%
p25	3.69%	1.69%	3.46%	1.02%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
p50	8.10%	10.65%	11.11%	4.84%	0.00%	0.09%	4.08%	0.00%	2.21%	0.15%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
p75	13.02%	23.30%	33.03%	9.45%	1.69%	4.92%	10.94%	7.99%	9.88%	5.34%	7.00%	0.00%	0.61%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

NB: BST, balance sheet.

Table 3: Identification under quantitative criteria and exclusion of staff identified under quantitative criteria (Article 4 of the RTS; EU-28)

	Identified under quantitative criteria in relation to final number of identified staff			percentage of identified staff identified under quantitative criteria that do not fall under qualitative criteria			percentage of staff identified under quantitative criteria that has supsequently been excluded		
	500 000	0.30%	remuneration bracket	500 000	0.30%	remuneration bracket	without notification	notification	prior approval
Avergage BST <5bn	0.25%	3.46%	31.08%	0.00%	4.88%	81.52%	65.78%	0.00%	0.00%
p25	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
p50	0.00%	2.75%	0.00%	0.00%	0.00%	52.11%	0.00%	0.00%	0.00%
p75	0.00%	8.33%	37.04%	0.00%	0.00%	66.67%	50.00%	0.00%	0.00%
Average BST 5-30bn	15.37%	7.36%	183.57%	79.49%	19.64%	85.47%	41.21%	4.20%	0.00%
p25	0.00%	2.72%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
p50	0.00%	7.68%	2.37%	0.00%	0.00%	88.66%	0.00%	0.00%	0.00%
p75	4.27%	13.23%	25.64%	85.71%	7.69%	100.00%	57.14%	0.00%	0.00%
Average BST >30bn	18.64%	16.35%	177.59%	45.51%	27.32%	85.30%	63.87%	0.04%	0.00%
p25	1.52%	5.71%	1.17%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
p50	8.56%	15.90%	41.06%	14.81%	27.78%	33.78%	0.00%	0.00%	0.00%
p75	22.64%	31.59%	149.44%	42.75%	39.57%	80.42%	52.38%	0.00%	0.00%
Average total	16.77%	14.65%	164.60%	47.27%	26.61%	85.25%	62.51%	0.30%	0.00%
p25	0.00%	0.97%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
p50	0.00%	7.07%	3.22%	6.76%	0.00%	52.11%	0.00%	0.00%	0.00%
p75	5.34%	14.98%	64.45%	34.27%	27.05%	91.75%	52.38%	0.00%	0.00%

NB: BST, balance sheet.

4.3 Annex: Qualitative criteria under Article 3 of the RTS applicable during the review of the RTS on identified staff

1	The staff member is a member of the management body in its management function.
2	The staff member is a member of the management body in its supervisory function.
3	The staff member is a member of the senior management.
4	The staff member is responsible and accountable to the management body for the activities of the independent risk management function, compliance function or internal audit function.
5	The staff member has overall responsibility for risk management within a business unit as defined in Article 142(1)(3) of Regulation (EU) No 575/2013 which has had internal capital distributed to it in accordance with Article 73 of Directive 2013/36/EU that represents at least 2% of the internal capital of the institution.
6	The staff member heads a material business unit.
7	The staff member has managerial responsibility in one of the functions referred to in point (4) or in a material business unit and reports directly to a staff member identified under either point (4) or point (5).
8	The staff member has managerial responsibility in a material business unit and reports directly to the staff member who heads that unit.
9	The staff member heads a function responsible for legal affairs, finance including taxation and budgeting, human resources, remuneration policy, information technology, or economic analysis.
10	The staff member is responsible for, or is a member of a committee responsible for, the management of a risk category provided for in Articles 79 to 87 of Directive 2013/36/EU other than credit risk and market risk.
11a	With regard to credit risk exposures of a nominal amount per transaction which represents 0.5% of the institution's Common Equity Tier 1 capital and is at least EUR 5 million, the staff member is responsible for initiating credit proposals, or structuring credit products, which can result in such credit risk exposures.
11b	With regard to credit risk exposures of a nominal amount per transaction which represents 0.5% of the institution's Common Equity Tier 1 capital and is at least EUR 5 million, the staff member has authority to take, approve or veto a decision on such credit risk exposures.
11c	With regard to credit risk exposures of a nominal amount per transaction which represents 0.5% of the institution's Common Equity Tier 1 capital and is at least EUR 5 million, the staff member is a member of a committee which has authority to take the decisions referred to in point (a) or (b).
12a (i)	In relation to an institution to which the derogation for small trading book business provided for in Article 94 of Regulation (EU) No 575/2013 does not apply, the staff member has authority to take, approve or veto a decision on transactions on the trading book which in aggregate meet the following threshold: where the standardised approach is used, an own funds requirement for market risks which represents 0.5% or more of the institution's Common Equity Tier 1 capital.
12a (ii)	In relation to an institution to which the derogation for small trading book business provided for in Article 94 of Regulation (EU) No 575/2013 does not apply, the staff member has authority to take, approve or veto a decision on transactions on the trading book which in aggregate meet the following threshold: where an internal model-based approach is approved for regulatory purposes, 5% or more of the institution's internal value-at-risk limit for trading book exposures at a 99th percentile (one-tailed confidence interval).

12b	In relation to an institution to which the derogation for small trading book business provided for in Article 94 of Regulation (EU) No 575/2013 does not apply, the staff member is a member of a committee which has authority to take decisions set out in point (a).
13a	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 11(a), point 11(b) or point 12(a)(i).
13b	The staff member has managerial responsibility for a group of staff members who have individual authorities to commit the institution to transactions and where an internal model-based approach is approved for regulatory purposes those authorities amount to 5% or more of the institution's internal value-at-risk limit for trading book exposures at a 99th percentile (one- tailed confidence interval). Where the institution does not calculate a value-at-risk limit at the level of that staff member the value-at-risk limits of staff under the management of this staff member shall be added up.
14a	With regard to decisions to approve or veto the introduction of new products, the staff member has the authority to take such decisions.
14b	With regard to decisions to approve or veto the introduction of new products, the staff member is a member of a committee which has authority to take such decisions.
15	The staff member has managerial responsibility for a staff member who meets one of the criteria set out in points (1) to (14).

4.4 Feedback on the public consultation

1. The EBA publicly consulted on the draft RTS on criteria to define managerial responsibility and control functions, a material business unit and a significant impact on its risk profile, and categories of staff whose professional activities have a material impact on an institution's risk profile.

2. To ensure the timely submission of the draft RTS to the Commission, the consultation period lasted only two months, ending on 19 February 2020. A total of 20 responses were received, of which 15 were published on the EBA's website. The Banking Stakeholder Group did not submit an opinion.

3. This paper presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments and the actions taken to address them if deemed necessary.

4. In many cases, several industry bodies made similar comments or the same body repeated its comments in response to different questions. In such cases, the comments, and the EBA's analysis, are included in the section of this paper where the EBA considers them most appropriate.

5. A main area of concern was that the proposed draft RTS would lead to the identification of additional staff at lower hierarchical levels, as the proposed definition of managerial responsibility would be too wide. In addition, references to 'critical functions' and 'core business lines' were perceived to be too broad. While some respondents suggested that all quantitative criteria be applied at an individual level and exclude in any case subsidiaries that are subject to a specific remuneration framework, a few respondents suggested their application only on a consolidated basis. In addition, many respondents asked for some flexibility when calculating the amounts for the quantitative thresholds and in particular that institutions be given the option to use the variable remuneration awarded in the financial year in which the identification is made and not restricted to using the variable remuneration awarded in the preceding financial year.

6. Changes have been made to the draft RTS as a result of the responses received during the public consultation and have increased the clarity of the draft RTS. Some criteria have been revisited to ensure that the principle of proportionality is respected. The definition of managerial responsibility has been revised, taking into account that institutions of different sizes have different numbers of hierarchical levels. In particular, it should be noted that the quantitative criteria set out in the draft RTS should be applied to institutions only on an individual level, so that subsidiaries that are subject to specific remuneration requirements can follow those. The EBA has also provided the desired flexibility in calculating the amount of remuneration for the application of the quantitative requirements. However, institutions need to have those figures available in a timely manner to ensure that they apply the requirements on remuneration to all identified staff. For more detail on the responses, please refer to the feedback table.

Summary of responses to the consultation and the EBA's analysis

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
General comments			
Date of application	Many respondents mentioned that the first application of these new RTS should be at the earliest to the performance year 2021 for the identification of 2021 identified staff onwards. Respondents also mentioned that, because of the application date of the Investment Firms Directive, the RTS could be applicable only from the performance year 2022. Respondents encouraged the EBA to liaise with the European Commission to address the timing gap.	The EBA is well aware of the issue and will take it into consideration when submitting the draft RTS to the European Commission. The final date of application depends on the timing of the adoption procedure.	
Proportionality	Many respondents consider the new draft RTS would lead to an essential increase of the number of material risk takers (MRTs) at lower levels of management and would mean considerably higher administrative efforts for entities especially for non-complex institutions with flat organizational structures and many targeted activities.	Parts of the definition of managerial responsibility have been amended and its scope limited to large institutions as defined in point (146) of Article 4(1) of Regulation (EU) No 575/2013. In addition, it has been clarified that those with managerial responsibility include staff members who head a function listed in points (a) to (j) of Article 6(1) of the Delegated Regulation. A new point (b) has been added to the definition to take into account flat organisational structures and many targeted activities. Sometimes those functions may be combined in small institutions or may be headed by members of the management body or senior management.	Article 2 has been amended.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Proportionality	One respondent suggested clarifying recital 6 and amending it to reflect the fact that in small and non-complex banks as defined in CRR II ‘only’ members of the management body are able to exercise a material impact on an institution’s risk profile. In such banks, multiple hierarchy levels and material business units (Article 4) generally do not exist. This should be clarified also in the wording of Article 2 (‘Managerial responsibility’), Article 3 (‘Control function’) and Article 4 (‘Material business unit’).	Article 92(3) of the CRD defines criteria for the identification of staff for the purposes of Article 92(2) of that Directive, namely determining a set of staff whose professional activities are considered to have a material impact on an institution’s risk profile. These staff are to include all members of the management body. This provision applies to all institutions and does not envisage that only members of the management body will have a material impact on an institution’s risk profile. This Article includes also the obligation to identify senior management, staff members with managerial responsibility over the institution’s control functions or material business units and staff members entitled to significant remuneration in the preceding financial year, provided that (1) the staff member’s remuneration is equal to or greater than EUR 500 000 and equal to or greater than the average remuneration awarded to the members of the management body and senior management and (ii) that the staff member performs the professional activity within a material business unit and the activity is of a kind that has a significant impact on the relevant business unit’s risk profile. The EBA has a mandate to further specify the above and to define other categories of staff not expressly referred to in Article 92(3) of the CRD whose professional activities have a comparably material impact on the institution’s risk profile.	No change.
Harmonisation of requirements	A few respondents considered that the draft RTS would foster diverging implementation at national level, rendering comparisons between individual companies increasingly difficult. This contradicts	The RTS will be directly applicable in all Member States and will not need to be implemented. This will ensure the harmonised application of the criteria for identifying staff whose professional activities have a	No change.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	the EBA's peer review report and the draft RTS's aim of ending the current heterogeneity in the identification of risk-takers within the EU by formulating clear and generally applicable criteria. A few respondents emphasised that goldplating of the remuneration rules could harm the level playing field in terms of remuneration policies between the UK and the EU, owing to the strong risk that remuneration policies may become the first area where UK legislation diverges from the EU regulatory framework.	material impact on an institution's risk profile within the EU. Some of the criteria for the identification of staff were directly included by the co-legislators in the Directive. There is no mandate to further specify those criteria within the present RTS. The RTS are the standards that will apply in the EU (and EEA). The UK is at the moment still under the EU framework. The relationship between the EU and the UK is still being negotiated.	
Responses to questions in the Consultation Paper			
Question 1 Article 1	Almost all respondents suggested including in the RTS the identification criteria directly set out in CRD V in order to have one unified source of information and to avoid cross-checking.	The CRD as amended by Directive (EU) 2019/878 already sets out some criteria for the identification of staff who have a material impact on an institution's risk profile; there is no need and no specific mandate to include those criteria in the RTS.	No change.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Question 1 Article 1 Scope of application	Some respondents suggested clarifying that the application of the criteria on a consolidated basis should be based on the group's (consolidated) risk profile in the same manner that the application of the criteria on an individual basis is.	The criteria set out in these RTS should be applied in accordance with Article 109 of the CRD on a consolidated, sub-consolidated and individual basis. On an individual basis, the criteria should be based on the institution's risk profile. When applying the criteria on a sub-consolidated or consolidated level, the consolidating institution or financial or mixed financial holding company should base the criteria on the impact on the consolidated or sub-consolidated risk profile. The RTS further specify which quantitative criteria should be applied only on an individual basis.	Article 1 has been clarified.
Question 2 Article 2 Managerial responsibility	Almost all respondents highlighted that the definition of managerial responsibility was too broad and considered that it should be restricted to staff who head a business unit or a control function and are directly accountable to the management body as a whole, a member of the management body or the senior management. Several respondents suggested removing Article 2(b), as the definition of managerial responsibility was too broad and would lead to the inclusion of an essential number of staff members who are three hierarchical levels below the management body (fourth management level). Those staff do not have a material impact on the institution's risk profile.	Parts of the definition of managerial responsibility have been amended and its scope limited to large institutions as defined in point (146) of Article 4(1) of Regulation (EU) No 575/2013. In addition, it has been clarified that those with managerial responsibility include staff members who head a function listed in points (a) to (j) of Article 6(1) of the Delegated Regulation. See also the comment above on proportionality.	Article 2 has been clarified.
Question 2 Article 2	One respondent highlighted that in many cases in small and non-complex institutions all important decisions, including those involving risk, are	The members of the management body are always identified staff in accordance with Article 92(3) of the CRD. In addition, the previous point (b), now point (c)	Article 2 has been clarified.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Managerial responsibility	initiated and taken exclusively at the management body level. Almost all the respondents noted that the definition was not sufficiently clear: • it refers to a business unit and not to a material business unit; • business unit, subordinated business unit and subordinated control function are not defined; • there is no reference to the decision-making powers/duties and authority of the staff member in relation to the institution's risk profile or a material business unit's risk profile.	applies only to large institutions and a new point (b) has been added to the definition to take into account the flat organisational structures of small and non-complex institutions. See comment above. In addition, it should be mentioned that the notion of a business unit is used for the purpose of the definition of managerial responsibilities; the same is intended by it as by a material business unit as referred to in Article 92(3) and as defined in the present RTS in Article 4. The wording has been clarified and 'material' has been added to 'business unit'. The definition of managerial responsibilities has been clarified. The reference to a subordinated business unit or control function is sufficiently clear and refers to functions on a lower hierarchical level. See also comment immediately above.	
Question 2 Article 3 Control function	Many respondents considered that the definition of control function was imprecise and unclear and that such a broad interpretation could not be inferred from Article 92 of the CRD. Respondents asked to keep the restriction to three functions (risk, compliance and audit).	The definition of control function has been amended. Such functions include, typically, depending on the size of the institution, separate functions for risk management, compliance and internal audit, but they may include additional functions, in particular in larger institutions, that are entrusted with specific aspects of those functions, including ensuring compliance with anti-money laundering and countering terrorist financing requirements or managing IT security risks.	Article 3 has been clarified.
Question 2 Article 4	Many respondents mentioned that the reference to a core business line as defined in the BRRD was too broad and not compatible with the	The EBA is mandated to define a material business unit.	Article 4 has been amended.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Material business unit	background on Article 7(2)(a), which provides that the actual position and decision-making powers in a core business line preclude any rebuttal of identification based on quantitative criteria under Article 7(2)(a). Several respondents suggested providing concrete examples of critical functions targeted, as these functions are already covered through the identification of material risk-takers under Articles 2 and 3 and other functions already targeted in Article 6.	The reference to core business lines as defined in the BRRD linked to the definition of material business unit may make it possible to identify individuals who should be identified staff. The exclusion procedure is applicable only to staff who are not identified under any of the qualitative criteria. Some identified staff may meet multiple criteria; the whole set of criteria aims to identify all staff whose professional activities have a material impact on an institution's risk profile. However, the RTS have been amended to focus on the internal risks of the institution and not on macroeconomic risks, and therefore the term 'critical function' has been deleted.	
Question 2 Article 4 Material business unit	Some respondents mentioned that the definition of material business unit is not applicable if the bank does not allocate internal capital to the business unit (e.g. in the case of small institutions). Some respondents asked for clarification on what constitutes a 'business unit'. For instance, would asset management and investment banking have to be identified as business units? Such business units would be material if they reached the capital threshold in accordance with the current RTS.	The EBAs is well aware of this issue and this is why the following sentence was added in the Consultation Paper to the definition: 'or is otherwise considered by the institution as having a material impact on the internal capital requirements of the institution'. What is material may be different in different institutions, for example depending on their business models. It is up to the institution to determine which business units are material and which are not. In accordance with Article 142 of the CRR, a business units are any separate organisational or legal entities, business lines or geographical locations; typically, asset management and investment banking are business lines and should be considered business units. These units may or may not be material.	No change.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Article 5	Several respondents highlighted that the current text increased the identification and documentation efforts that would be required and urged the EBA to reconsider the approach using the criterion of Article 5 for the process of exclusion only and not for inclusion. Respondents suggested deleting Article 5 for proportionality reasons for small and non-complex institutions because of the inappropriate cost–benefit relation. Some respondents considered that setting out metrics for the six criteria mentioned in Article 5(1) was rather complicated for the institution and might be hard to understand. Therefore, the respondents suggested changing ‘quantitative and qualitative metrics’ to ‘objective criteria’.	Institutions set their risk appetite and implement it throughout the institution, including by setting risk limits. To determine whether an individual has a significant impact on a material business unit’s risk profile, all institutions should use objective criteria. Taking into account the proportionality principle, such criteria in large institutions should include appropriate quantitative and qualitative criteria, for example based on risk models; other institutions may use scorecards, etc. In order to reduce the burden, the comment has been taken into account through the application of proportionality. Institutions should set out objective criteria in their remuneration policies and large institutions should define as part of such criteria qualitative or quantitative metrics.	Article 5 has been clarified.
Article 5	Some respondents suggested eliminating the mention of the remuneration policy in order to harmonise the identification process across Member States and not to introduce substantive issues such as the content of institutions’ remuneration policies.	In line with the 2015 EBA guidelines on sound remuneration policies, the remuneration policy should set out the identification process.	No change.
Article 5 Material business unit	Some respondents suggested systematically referring in Article 5 to a material business unit and avoiding referring to professional activities in point (f).	The comment was accommodated.	Article 5 has been amended.
Question 3 Article 6(1)	Many respondents highlighted that the definition of managerial responsibility appeared to be difficult to reconcile with the persons presumed to	The RTS have been clarified, in particular, the link between the definition of managerial responsibility and the list of functions in Article 6 of the RTS has been	Article 6 has been amended.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	be material risk-takers under Article 6(1). Under the proposed definition of managerial responsibility in Article 2, the only staff members classified as having managerial responsibility would be those heading subordinated units or subordinated control functions, namely those in point (b) who report to those in point (a), that is, to the head of a business unit or a control function. The definition omits from the category of material risk-takers any staff member who actually heads an area/function detailed in Article 6. The respondents were concerned that persons designated as identified staff under the RTS often have no material impact on a company's risk profile for several reasons: (1) The decisions made in respect of a control function that do have a material impact on a firm's risk profile are made at a higher level than the person heading that control function. (2) The subordinate business units, or subordinate control functions, listed in Article 2(b) effectively have no material impact on a firm's risk profile (and neither do their heads or the heads' direct reports). (3) The function or department itself has no material impact on the firm's risk profile, but such functions and departments are listed in Article 6.	clarified by including a reference in the definition of managerial responsibility. The RTS aim not only to ensure that identified staff include not only staff who create market or credit risk but also staff who manage risk or create operational or reputational risk. The impact on risk at different hierarchical levels depends on the institution's organisation and its size. Considerations relating to the size of the institution have been included in the definition of managerial responsibility. The approach taken ensures a level playing field. See comments made above regarding the definition of a material business unit.	
Question 3 Article 6(1)(d)	Some respondents asked the EBA to specify what kind of economic analysis is intended, for example analysis of the market, the customers or the bank.	The focus of the economic analysis is on real activity and financial conditions in the economy. It determines a short- to medium-term outlook on macroeconomic	No change.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	Other respondents commented that the data from the economic analysis are to be used as one of the sources for drafting the risk appetite statement and that the material impact on the risk profile is caused by decision-making (e.g. investment decisions) based on the risk appetite statement. Therefore, either all the departments involved in that process should be considered to have a material impact on the risk profile of the institution or none should.	and financial market developments, taking into account several factors, including GDP development, labour market conditions, external shocks, fiscal policy, behaviour of customers, asset prices, financial yields, and supply and demand in the goods, services and factor markets. The RTS include several functions that have a material impact on an institution's risk profile; this includes functions that take risks in terms of market and credit risk but also functions that create operational risk or are responsible for the setting of the risk appetite or managing risk. All those aspects have an impact on the risk profile of the institution and the persons responsible for those functions are therefore identified under the qualitative criteria. More specifically, regarding the economic analysis, the outlook derived forms a basis for setting strategies, setting the risk appetite and making adjustments to the business model, and it therefore has a material impact on the decisions taken and the risk profile of the institution.	
Question 3 Article 6(1)(i)	Several respondents suggested deleting 'managing outsourcing arrangements for critical or important functions', as this is not an existing function within an organisation but is directly managed through the business strategy. In this context, respondents consider that this criterion should be deleted. If it was kept, the respondents requested clarification on if arrangements with third parties	While decisions on critical or important outsourcing are usually taken by senior management or the management body, who are identified staff in any case, the sound ongoing management of such outsourcing arrangements is important to ensure the operational continuity of business activities and that operational risk stays within acceptable levels. The EBA has issued guidelines on outsourcing that clarify the scope of critical and important outsourcing	Reference to the definition of critical and important outsourcing has been added in article 6.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	to the group are exclusively intended or if intragroup arrangements are covered as well. Some respondents highlighted that there was no definition of critical or important functions in the text, and that therefore it would be difficult to determine which members of staff other than the management body of the institution had such functions. A respondent highlight that when reference is made to management of outsourcing arrangements, this comprises different layers and, in line with a typical three-lines-of-defence model, these responsibilities are not necessarily covered by one unit and could affect the consuming business or infrastructure division as well as outsourcing control functions. Therefore, the respondent asked for clarification on which layer the EBA intended to refer to when referring to managing outsourcing arrangements.	and the treatment of intragroup outsourcing, which is still considered an outsourcing arrangement. A definition of critical and important outsourcing has been added to the RTS. Paragraph 38 of the EBA’s guidelines requires institutions to establish an outsourcing function or designate a senior staff member who is directly accountable to the management body (e.g. a key holder of a control function) and responsible for managing and overseeing the risks of outsourcing arrangements as part of the institution’s internal control framework and overseeing the documentation of outsourcing arrangements. This person should be identified under the RTS. In small institutions, this may be a member of the management body.	
Question 3 Article 6(1) to (4)	Some respondents highlighted that it was not clear whether members of staff with managerial responsibility who at the same time have management functions in credit risk, market risk or risk model validation were to be treated as staff having a material impact on an institution’s risk profile. One respondent mentioned that the criteria excluded managers of units managing systematic credit risk (creating risk models), managing market risk or validating risk models.	The criteria set out in the RTS need to be applied together with the criteria included in the CRD that include staff who have managerial responsibilities in control functions. While criteria on credit risk-taking and market risk-taking are included in Article 6(3) and (4), the management of such risks are included in paragraph 2 of this Article. To avoid uncertainty about how to apply all those provisions together and which prevails, paragraph 2 has been rephrased to include credit and market risk management.	Paragraph 2 has been amended.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Question 3 Article 6(2)	For consistency with criteria 3 and 4 of Article 6, several respondents suggested specifying that the criterion refers to the voting members of the committee and specifying if this also refers to their deputies.	The comment has been accommodated. Regarding the issue of alternates, the institution needs to take into account its internal arrangements. If an alternate becomes a voting member when that alternate participates, the alternate is a voting member.	Paragraph 2 has been amended.
Question 3, Article 6(3)(b), (4)(b) and (6)(b)	Respondents appreciated the application of those criteria only to voting members of committees. Regarding the criteria in points (b) of paragraphs 4–6 of Article 6, one respondent asked that consideration be given to the fact that, regarding the voting members of a committee, a collegial credit decision made by a committee creates a different impact on the risk profile and is subject to more challenge than a decision made by a single staff member.	The EBA has restricted the application of the criteria to voting members. The criteria are based on decision-making powers, rather than actual decisions taken; no different thresholds for decisions of single staff members and committees are included, as this could lead to unintended consequences with regard to the setting up of internal decision-making processes.	No change.
Question 3 Article 6(5)	Respondents suggested replacing 'the staff member has managerial responsibilities in a group of staff members' with 'the staff member <u>is the</u> **head of** a group of staff members', for the sake of clarity.	The comment has been accommodated.	Article 6(5) has been amended.
Question 3 Article 6(6)	A respondent asked the EBA to clarify if 'approving or vetoing the introduction of new products' refers only to new products or also covers the modification of existing products and/or withdrawing products from the offer.	The criterion concerns the introduction of new products and the modification of existing products in line with the EBA's guidelines on internal governance, which explain the new product approval process in detail.	No change.
Question 5	A respondent noted that the scope of the term 'remuneration' for the purposes of the calculation	The scope of the term 'remuneration' in the RTS is the same as in the EBA's guidelines on remuneration	No change.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Article 7 Definition of remuneration	of the thresholds might not be sufficiently clear, with particular reference to non-competition arrangements.	policies: 'all forms of fixed and variable remuneration [including] payments and benefits, monetary or non-monetary, awarded directly to staff by or on behalf of institutions in exchange for professional services rendered by staff, carried interest payments within the meaning of Article 4(1)(d) of Directive 2011/61/EU, and other payments made via methods and vehicles which, if they were not considered as remuneration, would lead to a circumvention of the remuneration requirements of Directive 2013/36/EU'. Non-competition agreements are included among the variable components of remuneration (Section 9 of the EBA's guidelines on remuneration policies).	
Question 5 Article 7 and relation to Article 92(3)(c) of the CRD	A respondent requested the deletion of paragraph 1(b) of Article 7, assuming that the inclusion among risk-takers of staff not considered under Article 92(3)(c) of the CRD would not be consistent with the objective of the Directive. In the same respect, another respondent requested clarification about the correlation between the EUR 750 000 threshold in the RTS and the EUR 500 000 threshold in the Directive.	The identification of staff not falling under the criteria set out in Article 92(3)(c) of the CRD is consistent with Article 94(2)(c) of the CRD, which mandates the EBA to develop RTS setting out the criteria to define other categories of staff, not expressly referred to in Article 92(3) of the CRD, whose professional activities have an impact on the institution's risk profile comparably as material as that of the activities of those categories of staff referred to therein. As part of its mandate, the EBA has defined qualitative and quantitative criteria (including the 0.3% criterion under paragraph 1(b) of Article 7). Furthermore Article 92(3)(c) of the CRD requires that staff is "at least" identified if the conditions are met. Article 7 is applicable both to staff members who meet the cumulative criteria under Article 92(3)(c)(i) of the CRD and to staff members who do not meet those	No change.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		criteria. The EUR 750 000 criterion under the RTS is distinct from the criterion under Article 92(3)(c) of the CRD.	
Question 5 Article 7 Application of the 0.3% criterion	Many respondents requested clarification about whether the identification of risk-takers pursuant to the 0.3% criterion: i) should never be applicable on a consolidated level and ii) should be carried out only for subsidiaries that are credit institutions as per the CRR definition or should be extended also to institutions outside the scope of application of the CRR (e.g. credit institutions located outside the EU). With regard to the 0.3% threshold, a respondent pointed out that its application on an individual basis would result in differing compensation thresholds within groups where multiple entities are required to apply the RTS on an individual basis. It was therefore suggested that the 0.3% threshold be applied only on a consolidated basis, in order to ensure consistency in its application across groups. Another respondent noted that the application of Article 7(1)(a) at an individual level, as required by Article 1(2), might not cover variable remuneration in circumstances where this is delivered by the parent institution of a group. It was therefore recommended that the wording of	As stated in Article 1(2), the criterion under Article 7(1)(b) is to be applied only on an individual basis. The criterion takes into account that in different Member States the level of remuneration paid is different. Therefore, it is an effective safeguard to ensure that the staff with the highest remuneration are subject to a thorough identification procedure. Aggregating remuneration data on a consolidated level was deemed too burdensome by many institutions and is therefore no longer required for this criterion. The application of this criterion only on an individual basis also implies that the 0.3% criterion is not applicable with respect to subsidiaries that are outside the scope of application of the CRR/CRD (e.g. asset managers, investment firms, credit institutions located outside the EU), since they are not subject to the CRR/CRD rules.	No change.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	Article 1(2) be amended to 'remuneration awarded in respect of services provided to the institution itself.' A third respondent deemed it useful for the RTS to define the status of a staff member in the time between the submission of a request for exclusion and the approval decision by the competent authority.		
Article 7	During the public hearing, it was suggested that small institutions should not be required to apply the 0.3% criterion, as it is too burdensome and as in small institutions there is already a high percentage of identified staff.	To reduce the burden for small institutions, the EBA amended the RTS as suggested during the public hearing. The criterion of 0.3% need only be applied by institutions that have more than 1 000 staff members.	Article 7 has been amended.
Question 5 Article 7 EUR 750 000 criterion and application on a consolidated level	With respect to the identification of staff members with total remuneration of EUR 750 000 or more in the preceding financial year on an individual (institution) level and on a consolidated (group) level, a respondent asked for confirmation that, if a staff member is employed by a legal entity other than an institution in the same consolidation scope and provides services to the institution performing the identification process, the EUR 750 000 criterion is not applicable on an individual level. Likewise, if a staff member receives remuneration from several legal entities within the same consolidation scope, is only the remuneration awarded by the institution performing the identification process on a full-time equivalent basis relevant for the application of this criterion on an individual basis? Is it the case	The EUR 750 000 criterion has to be applied on an individual level by institutions and on a sub-consolidated and consolidated basis. The application on a consolidated basis follows the provisions in Article 109 of the CRD, and in particular paragraphs 4 and 5 of this Article need to be taken into account. Article 109(4) of the CRD specifies that this quantitative criterion, subject to the national discretion provided for in Article 109(6), is not applied on a consolidated basis to either of the following: (a) subsidiary undertakings established in the Union where they are subject to specific remuneration requirements in accordance with other instruments of Union legal acts;	Article 1 has been clarified.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	that, by contrast, when applying the criterion on a group level, all remuneration awarded to the staff member by all legal entities within the group's consolidation scope should be considered?	(b) subsidiary undertakings established in a third country where they would be subject to specific remuneration requirements in accordance with other Union legal acts if they were established in the Union. In the situations set out in this Article, the remuneration requirements become directly applicable to individual staff, even if they may be employed by a subsidiary that has to comply with a specific remuneration framework, if the staff member is mandated to perform activities that have a direct material impact on the risk profile or the business of the institutions within the group	
Question 5 Article 7 Exclusion and notification	Some respondents asked for clarification about the thresholds used for the purpose of the quantitative criteria, and whether the prior approval of the competent authority should be sought only for excluding staff members identified pursuant to Article 7 or also for excluding staff members meeting the criteria set out in Article 92(3)(c) of the CRD. Other respondents asked if a notification is needed under Article 92(3)(c) of the CRD. A respondent pointed out that it was not clear whether the notification process is still applicable for staff members being awarded an amount below EUR 750 000 and below the 0.3% of staff with the highest remuneration. Another respondent suggested that competent authorities should perform only an *ex post* check on whether an exclusion was proper and justified, and possibly impose administrative sanctions if	The requirement to request prior approval for exclusions applies to staff who meet the EUR 750 000 criterion or the 0.3% criterion, regardless of if they meet or do not meet the criterion set out in Article 92(3)(c) of the CRD. No prior approval below the thresholds set in the RTS is required. The provision set out in Article 92(3)(c) does not require a notification. However, Member States could impose this requirement, as the provision is subject to minimum harmonisation. The criteria set out in Article 7(2) of the RTS for finding that the criteria set out in Article 7(1) of the RTS are not met and that therefore the staff member need not be considered identified staff despite the amount of remuneration received mirror those criteria under Article 92(3)(c)(ii) of the Directive (i.e. performing the professional activity within a non-material business unit or, alternatively, performing an activity that has no significant impact on the business unit's risk profile).	Article 7 (renumbered Article 8) has been clarified.

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	the exclusion were not deemed proper and justified. This solution would be less intrusive for institutions.	Prior approval for the exclusion of staff is deemed appropriate to ensure that the remuneration requirements are not circumvented. Sanctioning compliance breaches would be less effective. Some firms are excluded from the application of criteria on a consolidated level under Article 109(4) of the CRD, but under Article 109(5) of the CRD the remuneration provisions may still apply to individual staff members of such firms. As the criteria are in general not applied to such firms on a consolidated basis, staff will not be identified under those criteria and therefore no notification or approval is required, unless the Member States make use of their discretion to include such firms in the scope of consolidated application under Article 109(6) of the CRD.	
Question 5 Article 7 Exceptional circumstances	A respondent suggested that the notion of 'exceptional circumstances' in the context of exclusions under Article 7(5) should include the circumstances in which: i) the staff or categories of staff operate in an asset management, advisory or investment company, since it is often the case that staff working in these entities are awarded high remuneration despite the fact that they are not working in material business units; ii) staff members are tied agents, as they have a different structure of remuneration whereby high remuneration is not necessarily linked to material risk-taking.	The notion of 'exceptional circumstances' is supposed to refer to something that is unusual or unpredictable in degree or magnitude, and not to a stable, recurring circumstance. Therefore, the fact that a staff member belongs to a specific category of staff or business line does not seem to qualify as an exceptional circumstance. The RTS apply only on a consolidated basis to certain subsidiaries as specified in Article 109(4) of the CRD. See also comments above.	Article 7 has been amended.

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Question 6 Article 8 Calculation of thresholds	Many respondents found it inappropriate that the calculation of the average total remuneration awarded to members of the management body and the senior management included members of the management body in its supervisory function: remuneration for non-executive members is generally very low, fee-based and not comparable to that for members of the management body in its management function or to senior management. It was pointed out that both recital 13 and Article 4(1)(c) of Commission Delegated Regulation (EU) No 604/2014 expressly exclude members of the management body in its supervisory function from the staff whose total remuneration is referred to as a term of comparison in Article 4(1) on quantitative criteria. This incongruence would be even greater in institutions with a two-tier structure and a clear separation between the executive board and the supervisory board. Difficulties would also arise with regard to the treatment of employee representatives on the supervisory board.	The inclusion of remuneration awarded to members of the management body in its supervisory function in the calculation of the average total remuneration of management body and senior management stems from Article 92(3)(c)(i) of the CRD, which expressly refers to 'the average remuneration awarded to the members of the institution's management body and senior management referred to in point (a)'. Point (a) of Article 92(3) mentions '<u>all members</u> of the management body and senior management'. Therefore, the EBA has no legal mandate to limit the calculation of the average remuneration to exclude remuneration for some members of the institution's management body from the calculation. The EBA considers that the inclusion of remuneration awarded to members of the management body in its supervisory function does not significantly increase the number of staff members who will be identified pursuant to Article 92(3)(c)(i), given that the threshold is equal to or greater than EUR 500 000, unless differently implemented by Member States.	No change.
Question 6 Article 8 Calculation of remuneration	A number of respondents asked for some flexibility with regard to the performance year of reference for the identification of risk-takers. While the calculation of remuneration awarded refers to fixed compensation awarded in the previous performance year (e.g. in 2020) and variable compensation awarded in the performance year before that (e.g. 2019) and thus	The comment has been accommodated. Institutions must document the approach chosen in their remuneration policies.	Article 8 has been amended.

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	enables institutions to submit exemption requests within the deadline (if variable compensation is awarded too late in the year to enable the deadline for the exemption submission to be respected), it was suggested that it would also make sense for institutions to consider the remuneration (fixed and variable) awarded for the same performance year. This would be convenient for institutions that do not use the possibility to ask for exemptions, or would be able to submit exemption requests in due course. Being given the flexibility to calculate the remuneration awarded in, for example, 2020 as the fixed remuneration awarded in 2020 and the variable remuneration awarded on the basis of the performance year 2020 would allow institutions to adopt a more accurate and conservative approach to risk by identifying more rapidly members of staff whose total compensation awarded in reference to the preceding performance year was above the threshold.		
Article 8 Calculation of remuneration on a full-time equivalent basis	A few respondents requested clarification about how to treat remuneration of staff members employed for more than 3 months but less than 12 months. A respondent asked for clarification about how to calculate amounts on a full-time equivalent basis for non-executive directors.	Calculation on a full-time equivalent basis implies that the amount should be calculated as if the staff member had worked on a full-time basis for a full performance year. As all members of the supervisory function in the management body are identified staff, the calculation of the threshold under Article 7(1) of the RTS is not necessary for those members. For the purpose of the	Calculation of the average variable remuneration has been clarified.

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	Another respondent recommended that retention bonuses and other similar payments be excluded from remuneration calculated pursuant to Article 8(2), since such payments are usually awarded only once to retain key employees when a given institution faces difficult times (e.g. a restructuring process). As a result, such staff members may become identified staff only in the year when the retention payment is awarded, whereas in the following years they would not meet the quantitative criteria. Consequently, they should be covered by the CRD remuneration regime only for this one year, and not in the following years.	application of Article 92(3)(c)(i) of the CRD, the calculation will be clarified in EBA guidelines. All variable remuneration should be taken into account; the exclusion process allows sufficient leeway to deal with exceptional circumstances in a controlled way that ensures that there is no circumvention of requirements.	
Question 7 Small and non-complex institutions	Several respondents noted that it would not be appropriate to apply all the identification criteria to small and non-complex institutions, in particular to those that are subsidiaries of banking groups and benefit from the waiver set out in Article 94(3)(a) of CRD V, considered that banking groups already apply the criteria on a consolidated level. It was argued that in large banking groups the potential material risk-takers are already identified on the consolidated or sub-consolidated level of the group. Consequently, a difficult and complex process of identifying potential material risk-takers at individual level would only represent an additional administrative burden, both for small and non-	The identification of staff is not only important for the correct application of deferral and payout of variable remuneration but also to determine which staff have a material impact on the institution's risk profile. Despite the possibility for Member States to implement waivers, institutions are required to align the variable remuneration of identified staff with their risk profile, for example through appropriate performance criteria. A few criteria have been amended (e.g. by changing of the definition of managerial responsibility and the 0.3% criterion) to ensure a more proportionate approach.	Definition and 0.3% criterion have been amended.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	complex entities and for groups (which might have a large number of such subsidiaries), and it could create an un-level playing field in relation to sectors and activities that are not subject to the CRD.		
Question 8 Findings of the impact assessment	A respondent requested clarification on the difference between point 18 of the cost–benefit analysis (criteria to define significant impact on an institution’s risk profile) and Article 5 of the RTS, which refers to ‘a significant impact on the material business unit’s risk profile’. In this context, it was asked that the EBA provide at least an example of key metrics for financial and non-financial risks and elaborate on the notion of quantitative metrics in Article 5(1).	The heading of Article 5 has been amended; the difference from the impact assessment is only editorial. Article 5(1) has been amended and requires that institutions set out objective criteria. For larger institutions that use risk models, the setting of quantitative metrics should be possible based on such models, and qualitative metrics should be set as well, for example using a scorecard, to identify what creates a significant impact on the risk of a material business unit.	Editorial changes have been made.