

EBA/CP/2020/09

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4 June 2020

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# Consultation Paper

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## Draft Regulatory Technical Standards

on criteria to identify categories of staff whose professional activities have a material impact on an investment firm's risk profile or assets it manages under Directive (IFD) 2019/2034 of the European Parliament and of the Council on the prudential supervision of investment firms

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# 1. Responding to this consultation

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The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 4.2.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

## Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 4 September 2020. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

## Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

## Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EC) N° 45/2001 of the European Parliament and of the Council of 18 December 2000 as implemented by the EBA in its implementing rules adopted by its Management Board. Further information on data protection can be found under the Legal notice section of the EBA website.

## 2. Executive Summary

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Article 30(1) of Directive (IFD) 2019/2034 provides that 'Member States shall ensure that investment firms, when establishing and applying their remuneration policies for categories of staff including senior management, risk takers, staff engaged in control functions and for any employee receiving overall remuneration equal to at least the lowest remuneration received by senior management or risk takers, and whose professional activities have a material impact on the risk profile of the investment firm or of the assets that it manages, comply with the following principles'.

Under Article 30(4) of the Directive (IFD) 2019/2034, the EBA, in cooperation with ESMA, is mandated to 'develop draft regulatory technical standards to specify appropriate criteria to identify the categories of individuals whose professional activities have a material impact on the investment firm's risk profile as referred to as referred to in Article 30(1)'.

Competent authorities must ensure that investment firms comply with the specific provisions within the IFD regarding remuneration policies and variable remuneration for categories of staff whose professional activities have a material impact on an investment firms' risk profile or asset under management 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 the firm's risk profile or assets it manages 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 that aim at ensuring that a sufficient level of scrutiny by investment firms and competent authorities is applied when identifying staff whose professional activities have a material impact on the investment firms' risk profile or assets it manages. It is presumed that the staff with a high level of total remuneration has a higher impact on the risk profile or asset it manages compared to staff with significantly lower remuneration levels.

The quantitative criteria specified in the draft RTS are subject to additional conditions under which investment firms can demonstrate that members of staff who would be identified only under the quantitative criteria do in fact have no material impact on the investment firms' risk profile or asset under management and are therefore not considered to be staff whose professional activities have a material impact on the investment firms risk profile or asset under management. If investment firms aim to exclude such staff from this category, they are required to submit the respective assessments to the competent authorities for approval. For staff receiving EUR 1 000 000 or more (high earners) exclusions can only be approved in well justified exceptional circumstances and competent authorities need to inform the EBA about any of such exclusions before they are approved. The draft RTS sets out criteria for the assessment of such exceptional circumstances to ensure a coherent application of exclusions.

The IFD requires investment firms to identify all staff members whose professional activities have a material impact on the investment firm's risk profile or asset under management. These draft RTS

set out an additional common set of criteria which have to be applied in any case in order to identify staff whose professional activities have a material impact on the investment firm's risk profile or assets it manages. 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 in a way that can be applied by all investment firms and may, therefore, not identify exhaustively all staff members whose professional activities have a material impact on the risk profile of a particular investment firm, because of the specificities of its risk profile. Consequently, investment firms may have to apply within their identification process additional internal criteria to ensure that they meet the requirements.

The EBA is consulting the draft RTS for a period of three months and will subsequently finalise the draft RTS and submit it to the European Commission.

## 3. Background and rationale

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### 3.1 The nature of RTS under EU law

1. These draft RTS are produced in accordance with Article 10 of Regulation (EU) No 1093/2010 of 24 November 2010 (the EBA Regulation). Paragraph 4 of that same Article provides that the RTS shall be adopted by means of an EU Regulation or Decision.
2. In accordance with EU law, EU regulations are binding in their entirety and directly applicable in all Member States. This means that, on the date of their entry into force, EU Regulations become part of the national law of the Member States and that their implementation into national law is not only unnecessary but also prohibited by EU law, except insofar as this is expressly required by the regulations.

### 3.2 Legal basis and background

3. After the financial crisis, the EU co-legislator has put in place a legal framework under Directives 2010/76/EU and 2013/36/EU for staff that has a material impact on the institutions risk profile “identified staff”. This framework aimed at ensuring that the variable remuneration of identified staff is aligned with the institutions risk profile in the longer-term and applied to credit institutions and investment firms. Those requirements were one part of the regulatory measures taken to ensure trust in institutions and to ensure sound governance arrangement, including sound remuneration policies.
4. Considering the differences between credit institutions and investment firms a specific remuneration framework for certain investment firms has been established for those firms that are subject to IFD and not any longer to Directive 2013/36/EU (CRD). Small and non-interconnected investment firms that meet all the conditions of Article 12(1) IFR are not subject to the specific remuneration framework under IFD, but have to comply with the remuneration provisions within Directive 2014/65/EU<sup>1</sup> that sets out requirements on the remuneration in relation to the provision of investment services.
5. The IFD sets out a framework for remuneration policies for investment firms that has been construed as referring to the corresponding provisions in Directive 2013/36/EU<sup>2</sup>. The provisions should ensure that the remuneration of staff members who have a material impact on the investment firm’s risk profile or on the assets that it manages is aligned with its risk profile. Recital 41 of the IFD states that technical standards should specify which

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<sup>1</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU

<sup>2</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 as amended 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 Text with EEA relevance

staff members have a material impact for the risk-profile of investment firms for the purposes of remuneration provisions. Article 30(1) of IFD provides that ‘Member States shall ensure that investment firms, when establishing and applying their remuneration policies for categories of staff including senior management, risk takers, staff engaged in control functions and for any employee receiving overall remuneration equal to at least the lowest remuneration received by senior management or risk takers, and whose professional activities have a material impact on the risk profile of the investment firm or of the assets that it manages, comply with the following principles’.

6. For variable elements of remuneration, Article 32 of the IFD will apply in addition to, and under the same conditions as, those set out in Article 30 of the IFD.
7. Under Article 30(4) of the IFD, the EBA, in cooperation with ESMA, is mandated to ‘develop draft regulatory technical standards to specify appropriate criteria to identify the categories of individuals whose professional activities have a material impact on the investment firm’s risk profile as referred to as referred to in Article 30(1)’.
8. In developing its draft RTS, the EBA took into account Recommendation 2009/384/EC of 30 April 2009 on remuneration policies in the financial services sector as well as existing remuneration guidelines under UCITS, AIFMD and MiFID II and aim to minimise divergence from existing provisions. The appropriate identification of staff whose professional activities have a material impact on the investment firm’s risk profile or assets it manages is necessary to ensure an effective application of remuneration requirements contained within the IFD.
9. 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 the investment firm’s risk profile or of the assets that it manages in accordance with the requirements of Article 30(1) of the IFD.
10. The qualitative criteria aim to identify staff in key areas and functions whose impact on the risk profile the EBA considers will always be material, and staff with the authority to take risks above thresholds defined based on the investment firm’s capital figures or assets that it manages. In particular, all members of the management body or senior management must be identified. The draft RTS also set out criteria to identify staff in control and other functions, whose professional activities have a material impact on the investment firm’s risk profile because of their responsibilities, e.g. for managing risks monitoring and mitigating a material risk as referred to in Article 28 of Directive (EU) 2019/2034.
11. In addition, the levels of remuneration are used as appropriate quantitative criteria. The total remuneration awarded to staff reflects mainly the responsibilities, duties, abilities, skills and performance of the staff member, of the business line in which they are active and of the investment firm. Where individuals are awarded very high total remuneration, this is usually linked to the impact of their professional activities on the investment firm’s

risk profile or asset it manages. This can involve active risk taking but also responsibilities for key functions which can pose material operational, reputational or other risks. To ensure that all such individuals are identified, the draft RTS put forward quantitative criteria based on the total remuneration an individual receives, both in absolute and relative terms (with predefined quantitative thresholds) to other staff in the investment firm. However, as the remuneration is only a proxy for risk taking, investment firms may establish that staff identified only by virtue of the quantitative criteria do not in fact have a material impact on the investment firm's risk profile under additional conditions. An approval process ensures that competent authorities can review the exclusions in a timely manner and can ensure that the exclusions are exercised only in exceptional, well-reasoned cases. Competent authorities should inform the EBA of any exclusions of staff who have received total remuneration of 1 000 000 EUR or more before they are approved; the EBA will ensure a coherent application of these provisions.

12. The IFD itself states that any employee receiving overall remuneration equal to at least the lowest remuneration received by senior management or risk takers is an indicator that the staff member's activities have a material impact on the risk profile. The draft RTS set out how this criterion should be applied. Staff need to be assigned to the country where they perform the predominant part of their duties. However, provisions should be made to enable investment firms to rebut the presumption that staff members who fall within the remuneration bracket have a material impact, if they can show that their professional activities do not in fact have a material impact on the investment firm's risk profile. The exclusion of staff will always be subject to supervisory review in accordance with Article 30(1) of the IFD.
13. The EBA has conducted an impact assessment of costs and benefits caused by the provisions contained in these draft RTS.

### 3.3 Regulatory approach within the RTS

14. The IFD sets out a framework for remuneration policies for investment firms that has been construed as referring to the corresponding provisions in Directive 2013/36/EU. In accordance with this, the EBA has taken the existing remuneration framework established under Directive 2013/36/EU and the Commissions Delegated Regulation 614/2014<sup>3</sup> into account when developing the draft RTS.
15. The objectives of the draft RTS are to harmonise the criteria for the identification of staff whose professional activities have a material impact on the firm's risk profile or assets it manages 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 which 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

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<sup>3</sup> COMMISSION DELEGATED REGULATION (EU) No.



criteria and adding clear and appropriate quantitative criteria, the draft RTS ensure a harmonised identification of staff. The common criteria within the RTS are defined in a way that can be applied by all investment firms and may, therefore, not identify exhaustively all staff members whose professional activities have a material impact on the risk profile of a particular investment firms, because of the specificities of its risk profile or asset it manages. Consequently, investment firms may have to apply within their identification process additional internal criteria to ensure that they meet the above requirements.

16. 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 the investment firm's risk profile or assets it manages in accordance with the requirements of Article 30(1) of IFD. 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 IFD.
17. The quantitative criteria defined aim at ensuring that a sufficient level of scrutiny by investment firms and competent authorities is applied when identifying staff whose professional activities have a material impact on the investment firm's risk profile or assets it manages. It is presumed that the staff with a high level of total remuneration has also a more material impact on the risk profile compared to staff with significantly lower remuneration levels.
18. 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 that has a material impact on the investment firm risk profile or asset it manages has been set to ensure consistency with the legal framework foreseen by CRD. Values above the quantitative thresholds or having one of the highest remunerations within the investment firm establish a strong presumption that staff have a material impact on the investment firm's risk profile or assets it manages.
19. The quantitative criteria specified in the draft RTS are subject to additional conditions under which investment firms 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 investment firm's risk profile or assets it manages and are therefore not considered to be identified staff. If investment firms aim to exclude such staff, they are required to submit the respective assessments to the competent authorities for prior approval. For staff receiving EUR 1 000 000 or more (high earners) exclusions can only be approved in well justified exceptional circumstances and competent authorities need to inform the EBA about any such exclusions before they are approved. The draft RTS sets out criteria for the assessment of such exceptional circumstances to ensure a coherent application of such exclusions of high earners.

20. The result of the application of all qualitative and quantitative criteria needs to be documented by the investment firms so that competent authorities can ensure investment firms apply the criteria in line with the regulation.
21. Competent authorities must ensure that investment firms' identification process includes the qualitative and quantitative criteria set out in the draft RTS and that investment firms apply the requirements on remuneration policies and variable remuneration to all Identified Staff. The combination of the criteria put forward in these draft RTS, together with the requirements set out in Article 30(1) of the IFD ensures that each investment firm's individual risk profile is taken into account appropriately, while common qualitative and quantitative criteria promote a consistent classification of Identified Staff among investment firms.

## 4. Draft regulatory technical standards

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**COMMISSION DELEGATED REGULATION (EU) No .../..**

**of [date]**

**supplementing Directive (EU) 2019/2034 of the European Parliament and of the Council 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 investment firm's risk profile**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2019/2034/EU of the European Parliament and of the Council of dd/mm/2019 on the prudential supervision of investment firms and amending Directives 2013/36/EU and 2014/65/EU 4, and in particular Article 30 (4) thereof,

Whereas:

- (1) The framework for prudential supervision established by Directive 2019/2034/EU requires that all investment firms identify all members of staff whose professional activities have a material impact on the investment firm's risk profile. 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 the investment firm's risk profile based on their authority and responsibilities and the investment firm's risk and performance indicators. The investment firm's internal organisation and the nature, scope and complexity of its activities should be taken into account in the assessment. Small and non-interconnected investment firms that meet all the conditions of Article 12(1) IFR are not subject to the specific remuneration framework under IFD, but have to comply with the provisions under

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Directive 2014/65/EU<sup>5</sup> that sets out requirements on the remuneration with regard to the provisions of investments services.

- (2) Directive (EU) 2019/2034 regarding the governance and remuneration provisions applicable to investment firms has been construed as referring to the corresponding provisions in this Directive. Therefore this Regulation should be as far as possible aligned with the Commissions Delegated Regulation implementing Article 94(2) of Directive 2013/36/UE , also ensuring a level playing field between different types of investment firms, while taking into account the differences between credit institutions and investment firms and contribute to the alignment of variable remuneration with the risk profile of the investment firm. In this regard, certain definitions used in the context of the Commissions Delegated Regulation implementing Article 94(2) of Directive (EU) should be retained to enable and facilitate the consistent reading and application.
- (3) The criteria should fully reflect all risks to which the investment firm or group is or may be exposed. This should also enable investment firms to set proper incentives within the remuneration policy to ensure the prudent behaviour of staff and should ensure that the identification of those members of staff whose professional activities have a material impact on the investment firm's risk profile or asset it manages reflects the level of risk of different activities within the investment firm. The criteria should also consider that the risk profile of the investment firm is determined by the K-factors as set out under IFD and IFR .
- (4) A set of clear qualitative and appropriate quantitative criteria should be established in this Regulation to identify the core categories of staff whose professional activities have a material impact on an investment firm's risk profile or assets it manages, ensuring a harmonised approach across the Union and covering a common set of the most relevant risks, while the investment firm should also take into account the results of its own risk assessments within their internal procedures..
- (5) The qualitative criteria should identify staff in key areas and functions whose impact on the risk profile will always be considered as material. In particular, members of the management body have the ultimate responsibility for the investment firm, its strategy and activities and therefore should always be considered to have a material impact on the investment firm'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.
- (6) In addition functions responsible for providing internal support which are crucial to the operation of the business and have authority to take decisions in those areas expose the investment firm to material operational and other risks. Therefore the professional activities of staff members in such functions also have a material impact on the investment firm's risk profile or assets it manages. Hence, such staff should be identified under the qualitative criteria.
- (7) Considering that the outcome of decisions is often influenced by the staff initiating the decision while the formal decision making power is with more senior staff or

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<sup>5</sup> DIRECTIVE 2014/65/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU

committees, the criteria should take into account the material elements in such decision-making processes.

- (8) Staff with managerial responsibility are responsible for the business activities in the area under their management. Therefore, appropriate criteria should ensure that members of staff are identified as having a material impact where they are responsible for groups of staff whose activities could have a material impact on the investment firm's risk profile or assets under management. This includes situations where the activities of individual staff members under their management do not individually have a material impact on risk profile but the overall scale of their activities could have such an impact.
- (9) In addition to the qualitative criteria, appropriate quantitative criteria should be established. Total remuneration awarded depends principally on the contribution that staff make to the successful achievement of the investment firm's business objectives and therefore on the responsibilities, duties, abilities and skills of staff and the performance of staff and the investment firm. Where a member of staff is awarded total remuneration which exceeds an appropriate threshold, it is reasonable to presume that this is linked to the staff member's contribution to the investment firm's business objectives and to the impact of the staff member's professional activities on the risk profile of the investment firm or assets under management. Accordingly, it is appropriate to base the quantitative criteria on the total remuneration a member of staff receives, both in absolute and relative terms to other members of staff within the same investment firm. In the application of these quantitative criteria, account should, where appropriate, be taken of the fact that payment levels differ across jurisdictions.
- (10) Clear and appropriate thresholds should be established to identify staff whose professional activities have a material impact on the investment firm's risk profile or asset under management. 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 investment firm, can include amounts that are awarded based on performance periods that are longer than one year.
- (11) However, such presumptions based on quantitative criteria should not apply where investment firms establish on the basis of additional objective conditions that staff do not in fact have a material impact on the investment firm's risk profile or assets under management, taking into account all risks to which the investment firm is or may be exposed. As these quantitative criteria form a strong presumption that staff have a material impact on the investment firm's risk profile or assets under

management. The exclusion of the highest earning staff identified under these criteria should be subject to the approval of the competent authority in order to ensure effective and consistent application of the criteria. For staff awarded more than EUR 1 000 000 (high earners) competent authorities should inform the EBA before exclusions are approved in order to ensure, in particular in such exceptional circumstances, the coherent application of the criteria. The identification process, including the application of exclusions, should nevertheless always be subject to supervisory review in accordance with Article 36 of Directive (EU) 2019/2034.

- (12) Being in the same remuneration bracket as senior management or risk takers may also be an indicator that the staff member's professional activities have a material impact on the investment firm's risk profile or assets under management. For these purposes, the remuneration paid to staff in control functions, support functions and members of the management body in the supervisory function should not be taken into account. In the application of this quantitative criterion, account should also be taken of the fact that payment levels differ across jurisdictions. Investment firms should be allowed to demonstrate that staff who fall within the remuneration bracket, but do not meet any of the qualitative or other quantitative criteria, do not have a material impact on the investment firm's risk profile or asset it manages, taking into account all risks to which the investment firm is or may be exposed.
- (13) Competent authorities should ensure that investment firms maintain a record of the assessment made and of the staff whose professional activities have been identified as having a material impact on their risk profile or of the asset it manages to enable the competent authority and auditors to review the assessment. The documentation should also include staff who have been identified under criteria based on their remuneration but for whom the professional activities are assessed as not having a material impact on the investment firm's risk profile.
- (14) [The EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010]

HAS ADOPTED THIS REGULATION:

*Article 1*

*Managerial responsibility*

“Managerial responsibility” means a situation in which 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;

*Article 2*

*Control functions*

“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 3  
Business unit*

Business unit shall have the same meaning as defined in point (3) of paragraph 1 of Article 142 of Regulation (EU) No 575/2013.

Question 1: Are the definitions in Article 1-3 sufficiently clear?

*Article 4  
Application of criteria*

- 1) Without prejudice to the obligation on investment firms to identify all staff whose professional activities have a material impact on the investment firm's risk profile or asset it manages for the purpose of applying remuneration policies under paragraph (1) of Article 30 of Directive (EU) 2019/2034, this Regulation establishes specific qualitative and quantitative criteria to identify categories of staff whose professional activities have a material impact on an investment firm's risk profile or asset it manages.
- 2) The qualitative and quantitative criteria shall be applied by all investment firms that do not qualify as small and non-interconnected in accordance with Article 25 of that Directive on a individual and, where applicable, on a consolidated basis. On an individual basis, the criteria shall be based on the investment firm's risk profile. The criterion under point (c) of paragraph 1 of Article 6 shall only be applied on an individual basis. When applying the quantitative criterion under points a) and point b) of paragraph 1 of Article 6 on an individual basis, investment firms should take into account all remuneration awarded by the investment firm itself.
- 3) When applying the qualitative and quantitative criteria on a consolidated level, the consolidating investment firm shall base the criteria, on the impact on the consolidated risk profile. When applying the quantitative criterion under points a) and b) of paragraph 1 of Article 6 on a consolidated level, the consolidating investment firm shall take into account the remuneration awarded to the staff member by all entities within the scope of consolidation.
- 4) The quantitative criterion under point (d) of paragraph 1 of Article 6 shall be applied on individual and consolidated level.

Question 2: Is the Article 4 on the application of criteria appropriate and sufficiently clear?

*Article 5  
Qualitative criteria*

Members of staff shall be deemed to have a material impact on an investment firm's risk profile or assets it manages if one or more of the following qualitative criteria are met:

- (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 has managerial responsibility for a business unit that contributes to more than [10%/20%] of the investment firm's total own funds requirement at the end of the preceding financial year;

Question 3: What would be the appropriate percentage of own funds to determine that a business unit has a material impact on the risk profile of the investment firm?

It would be most helpful if respondents could provide a quantitative estimation of the number of staff identified under this criterion at the indicated percentages in addition to the other qualitative criteria within the draft RTS as well as the cost for the application of that criterion.

- (5) the staff member has managerial responsibilities as referred under Article 1 for the activities of a control function;
- (6) the staff member has managerial responsibilities as referred under Article 1 for the prevention of money laundering and terrorist financing;
- (7) the staff member has managerial responsibilities for a material risk as referred to in Article 28(3) of Directive (EU) 2019/2034 to which the investment firm is exposed or is a voting member of a committee responsible for managing, monitoring and mitigating a material risk to which the investment firm is exposed;
- (8) The staff member has managerial responsibility for the execution or the approval of processes or systems, performing economic analysis, management of outsourcing arrangements of critical or important functions as set out in Article 30 (1) of the Commission Delegated Regulation (EU) 2017/565<sup>6</sup> or providing information technology or security that are relevant for the investment firm's business activities with regard to one or more of the following:
  - (a) the management or safeguarding of assets under both discretionary portfolio management and nondiscretionary advisory arrangements of an ongoing nature;
  - (b) the administration or safeguarding of client money held both on segregated accounts and on non-segregated accounts;
  - (c) the execution of client orders;
  - (d) the execution of trading activities.
- (9) the staff member meets either of the following criteria with regard to decisions for approving or vetoing the introduction of new products:
  - (a) the staff member has authority to take such decisions;

<sup>6</sup> 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



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

Question 4: Are the qualitative criteria within Article 5 appropriate and sufficiently clear?

*Article 6*  
*Quantitative criteria*

1. Subject to paragraphs 2 to 5, members of staff shall be deemed to have a material impact on an investment firm's risk profile or asset it manages if one or more of the following quantitative criteria are met:
  - (a) the staff member has been awarded total remuneration which is equal to or greater than EUR 500 000 and equal to or greater than the average of the remuneration of members of the management body and senior management in or for the preceding financial year;
  - (b) the staff member has been awarded total remuneration which is equal to or greater than EUR 750 000 or more in or for the preceding financial year;
  - (c) in case the investment firm 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;
  - (d) the staff member was in or for the preceding financial year awarded total remuneration that is equal to or greater than the lowest total remuneration awarded in that financial year to a member of staff who meets one or more of the criteria in points of 1, 3, 4, 7, 8 or 9 Article 5.
2. A criterion laid down in paragraph 1 shall not be met where the investment firm determines that the staff member, or the category of staff to which the staff member belongs, have no material impact on the risk profile of the investment firm or assets it manages.
3. The condition of paragraph 2 shall be assessed on the basis of objective criteria which take into account all relevant risk and performance indicators used by the investment firm to identify, manage and monitor risks in accordance with Article 28 of Directive (EU) 2019/2034 and on the basis of the duties and authorities of the staff member or category of staff and their impact on the investment firm's risk profile or asset it manages, when compared with the impact of the professional activities of staff members identified by the criteria within Article 5.
4. The application of paragraph 2 by an investment firm in respect to a staff member mentioned in (b) and (c) of paragraph 1 of Article 6 shall be subject to the prior approval of the competent authority responsible for prudential supervision of that investment firm.

The competent authority shall only give its prior approval where the investment firm can demonstrate that the condition in paragraph 2 is satisfied, having regard to the assessment criteria set out in paragraph 3.

5. 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 in exceptional circumstances. In order to ensure the coherent application of this paragraph the competent authority shall inform the European Banking Authority before giving its approval in respect of such a staff member.
6. The existence of exceptional circumstances has to be demonstrated by the investment firm and assessed by the competent authority. The “exceptional circumstances” shall be deemed as a situation that is unusual, very infrequent or far beyond what is usual in magnitude or degree. The exceptional circumstances should be related to the staff member concerned.”

Question 5: Are the qualitative criteria within Article 6 appropriate and sufficiently clear?
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#### *Article 7*

- 1) For the purpose of point (a) of paragraph 1 of Article 6 investment firms should calculate the average total remuneration of all members of the management body and senior management 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 that falls under the definition of senior management in point (27) of paragraph 1 Article 3 of Directive 2019/204/EU.
- 2) All amounts of the variable and fixed remuneration shall be calculated gross and on a full-time equivalent basis.
- 3) Investment firms’ 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 year for which the variable remuneration is awarded;

#### *Article 8*

##### *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. It shall apply from [...]. This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission  
The President*

*[For the Commission  
On behalf of the President*

*[Position]*

## Accompanying documents

### 4.1 Draft cost-benefit analysis / impact assessment

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.
2. The development of draft RTS covering criteria for the identification of categories of staff who have a material impact on the institution’s risk profile stems from the obligations under Article 30 of Directive 2019/2034/EU on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU.

#### A. Problem identification

3. The remuneration requirements for certain investment firms were defined under CRD III and CRD IV frameworks. The provisions under CRD required credit institutions and investment firms to establish and maintain, for those categories of staff whose professional activities have a material impact on their risk profile, remuneration policies and practices that are consistent with effective risk management. The reason for introducing these provisions was the harmful effects of poorly designed remuneration structures, which were partly to blame for the perverse incentives for increased risk taking in the wake of the global financial crisis.
4. The legislator however designed the CRD framework mostly with credit institutions in mind. In recognition of the fact that the current framework is not fully suited to all investment firms, in 2015, the EBA conducted a review of the current framework, and the way in which capital, liquidity and other key prudential requirements apply to investment firms in the EU.<sup>7</sup> Following the 2015 EBA review, and the subsequent Call for Advice from the Commission (4 June 2016), some changes to the remuneration regimes of investment firms were included in the new IFR/IFD, which aim to reflect “the differences in risks posed by credit institutions and investment firms.”

#### B. Policy objectives

5. The scope of application of these RTS is defined by the IFD. The RTS will supplement at a technical level the provisions of the IFD, with the aim of contributing to the realisation of the objectives of the Level 1 text, in accordance with the mandate received under the IFD.

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<sup>7</sup> 2015 EBA report on investment firms



In accordance with Article 30 of the IFD, investment firms have to identify all staff whose professional activities have a material impact on the risk profile of the investment firm or of the assets that it manages. For this purpose, institution investment firms will implement internal processes which include the criteria provided within the RTS. The criteria chosen should avoid burdening investment firms as far as possible yet also ensure an enforceable and appropriate process for the identification of staff.

6. The qualitative and quantitative criteria within the RTS should help to identify not only the staff at the highest level of the hierarchy, but also risk takers, members of staff in control functions and other categories of staff whose professional activities have a material impact on the institution's risk profile, or of the assets that it manages.
7. The criteria follow as much as it is meaningful the criteria set in the RTS on identified staff under CRD. However, in cases where the identification is not meaningful for investment firms, the criteria were removed or adapted to reflect the specific nature of services provided by investment firms.
8. The requirements in the IFD regarding the remuneration of identified staff should contribute effectively to align the remuneration practices with the investment firm's risk profile and improving their risk management practices.

### **C. Baseline scenario**

9. The baseline scenario, i.e. the scenario against which the impact is assessed, is the current situation, where the investment firms are subject to CRR and CRDIV requirements, as well as the current RTS on identified staff under CRD. The latest amendments to the CRR/CRDIV framework and the Consultation Paper to the RTS on identified staff under CRDV were not taken into account in the baseline, but they are mentioned where relevant to show the difference between the provisions for credit institutions compared to the ones proposed for investment firms.

### **D. Options considered**

10. The section below describes each criterion and potential costs it may incur compared to the baseline scenario (current situation).

#### **Definitions**

11. To be consistent with the CRD framework, the EBA has set the criteria to define managerial responsibilities, control functions, business unit and critical and important function for the purpose of outsourcing.
12. With regard to setting criteria to define managerial responsibilities two options have been considered.



- Option A: Setting out a list of tasks that are commonly be required from staff with managerial responsibilities, e.g. including coordinating teams, coordinating work, HR responsibilities, budgetary responsibilities etc.

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

Option A would have potentially led to an identification of staff that does not have a material impact on the investment firm' risk profile, if each of the sub criteria set would have let to the identification of staff. If applied only cumulatively the criteria would potentially apply to not all material risk takers. Such an approach would therefore not be effective.

Option B: Commonly the hierarchical position together with reporting lines comes with a certain set of responsibilities. Identification of Staff would be easier based on the internal organisation. Such an approach would be more effective to identify the staff who has is responsible for business decisions and oversight functions and therefore potential material impact on the risk profile of an institution.

Option B has been retained.

13. With regard to setting criteria to define control functions only one option has been identified. Control functions has been 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, ensuring the consistent application of governance frameworks.
14. With regard to setting criteria to define business unit only one option has been considered by referring to the definition foreseen under CRR to ensure cross sectoral consistency.
15. With regard to setting criteria to define critical and important function for the purpose of outsourcing only one option has been considered by referring to the definition foreseen under MiFID and its delegated regulation to ensure cross sectoral consistency.

#### Qualitative criteria: Criteria based on seniority, responsibility, function and decision authority

16. Article 30 of the CRD establishes a general requirement that, when setting and applying remuneration policies, investment firms should identify categories of staff whose professional activities have a material impact on the risk profile of the investment firm or of the assets that it manages. According to this article, the identified categories of staff should at least include senior management, risk takers, staff engaged in control functions, and any employees receiving overall remuneration equal to at least the lowest remuneration received by senior management or risk takers.
17. For the purpose of the RTS, EBA has develop a set of qualitative criteria that should be used to identify staff whose professional activities have a material impact on the risk profile of the investment firm or of the assets that it manages. These criteria have been considered



on the basis that the level of seniority and/or the type of activity and responsibility are, in general, good indicators of the influence that a staff member has on the risk profile of the investment firm or of the assets it manages. The qualitative criteria can be grouped as follows:

- **Management body and senior management: Article 5 (1), (2), and (3)**

18. In all cases, the members of the management body, as well as the senior management, should be identified. The EBA has chosen to retain these core criteria that are also used in the proposed amendments to the RTS on identified staff under CRD, because it believes that they successfully identify a large portion of the staff having a material impact on the risk profile of the institution and are also easy to apply. The EBA also split the criterion to identify the management body in two, in order to identify members of the management body in management functions and members of management body in supervisory functions.

19. No options were considered for this criterion. In the current form, it is easy to implement due to easy identification of the staff fulfilling these criteria.

- **Managerial responsibilities for “material” business units: Article 5 (4)**

20. This criterion aims to capture staff members that have managerial responsibility for a business unit that materially contributes to the risk profile of the investment firm (using own funds requirements as proxy for risk profile). This in turn means that the staff with managerial responsibility in these units have a material impact on the risk profile of the investment firm or on the assets that it manages.

21. Several options were considered for defining a business unit that materially contributes to the risk profile of the investment firm: contribution of business unit to investment firm’s income, contribution of business unit to investment firm’s own funds requirements, and the assets under management for each business unit:

- Income was assessed as not an appropriate measure because (i) many business units may not generate income, but still have an impact on the risk profile and (ii) because income is volatile and may lead to jumps in assessment of a business unit’s relevance for this purpose.
- Regarding assets under management, while this may be a relevant measure to assess the investment firm’s size in general, it may not be appropriate when allocating it to business units, as, like in the case of income, it may be relevant only to very few business units. It may also not be relevant to some of the investment firms who do not have any assets under management but provide other types of services.
- Finally, the impact on own funds requirements was considered as a measure for the risk profile of the investment firm. Given that the own funds requirements will be calculated based on K-factors, which capture all the risks relevant to investment firms (risk to clients, risk to firm and risk to markets), this measure was assessed as most appropriate for identifying the business



units with impact on the risk profile of investment firms. This RTS considers two potential thresholds for the contribution of the business unit to the own funds requirements: more than 10% and more than 20%. Both thresholds will be assessed as part of the data collection that will take place in parallel with the consultation.

- **staff member has managerial responsibilities for the activities of a control function : Article 5 (5)**

22. Article 30 (1) of the IFD says that staff engaged in control functions should also be included in the list of categories of staff whose professional activities have a material impact on the risk profile of the investment firm or of the assets that it manages. This criterion aims to capture the top layer of staff in control functions. This include risk management, compliance and audit functions.

No options were considered for this criterion.

- **staff member has managerial responsibilities for the prevention of money laundering and terror financing: Article 5 (6)**

23. This criterion was added to capture staff responsible for prevention of money laundering and terrorist financing given that AML/CTF is a control function.

- **Responsible for managing, monitoring or mitigating material risks: Article 5 (8)**

24. Article 28 of the IFD specifies that the management body of the investment firm should approve and periodically review the strategies and policies on risk appetite of the investment firm, and on managing, monitoring and mitigating the risks the investment firm may be exposed to. In reference to this Article, the staff responsible for managing, monitoring and mitigating the material risks should also be identified, as they will have an impact on the risk profile of the investment firm. This criterion aims to capture these staff members responsible for material risks that have not been captured by other previous criteria.

No options were considered for this criterion.

- **Managerial responsibility in certain key areas that have direct impact on investment firms' K-factors: Article 5 (8)**

25. The criterion requires the identification of staff members that have managerial responsibility in key areas that are relevant for the investment firms' K-factors. Given that K-factors capture all the risks relevant to investment firms (risk to clients, risk to firm and risk to markets), this measure is appropriate to identify the staff in areas relevant for the investment firm's risk profile.

Two options were considered in this regard:





- Quantifying the contribution of staff members and their impact on K-factors or own funds requirements.
  - Using a qualitative measure for defining the contributions to the K-factors. This option focuses on the qualitative aspects by defining more specific areas and activities of staff members that are relevant and may have an impact on the investment firm risk profile or asset that it manages: the execution or the approval of processes or systems, performing economic analysis, management of outsourcing arrangements of critical or important functions or providing information technology or security that are relevant for the investment firms business activities.
26. The quantification of the contribution of each staff member in terms of K-factors would be too burdensome for investment firms. Therefore, among the two options considered, the approach using qualitative measures was considered more feasible.
- **Authority or voting member for the introduction of new products: Article 5 (9)**
27. The development of new products have an impact on the investment firm's risk profile. Therefore, the staff members with authority to approve or veto a new product or having a vote in a committee with similar authority will have an impact on the risk profile of the investment firm or the assets in manages. This criterion is similar to the one used in the RTS on identified staff under CRD.

No options were considered for this criterion.

#### Quantitative criteria: Criteria based on the amount of remuneration

28. The EBA has considered criteria based on the amount of remuneration. The amount and type of remuneration awarded depends principally on the responsibilities, duties, abilities and skills of staff and the performance of staff. Remuneration can thus be in certain cases a proxy for the staff member's seniority, managerial responsibility..
29. In the RTS on identified staff under CRD a relative and an absolute threshold were used based on the level of total remuneration. Similarly, the EBA has decided to set criteria aiming to identify staff receiving a particularly high salary in relative terms within the firm and one set in absolute terms.
- **Absolute threshold EUR 500 000 and average of management body and senior management: Article 6 (1) (a)**
30. The CRDV currently requires that all staff members with remuneration equal or greater than EUR 500 000 and equal to or greater than the average of the remuneration of members of the management body and senior management in the preceding financial year is identified for the purpose of remuneration policies. For investment firms, it is proposed to use a similar criterion for total remuneration to ensure cross sectoral consistency.

No options were considered for this criterion.

- **Absolute threshold EUR 750 000: Article 6 (1) (b)**

31. This criterion is added to identify staff with remuneration above EUR 750 000, similarly to the RTS on identified staff under the CRD.

No options were considered for this criterion.

- **Relative measure: Article 6 (1) (c)**

32. This criterion is added to identify staff within the 0.3% top earning staff of the total staff of the investment firms. This relative measure has the advantage of identifying the top earners within a firm. Those staff members have high responsibilities and authority and therefore are considered to have a significant influence on the investment firm's risk profile.

33. The relative threshold applies to investment firms that have more than 1000 staff. According to the 2016 data collection for the purpose of providing a response to the European Commissions' Call for Advice on Investment firms<sup>8</sup>, investment firms in the EU have on average 29 employees. Therefore, it is expected that this criterion will not be relevant for most investment firms, and its impact will thus be close to zero. It may still be relevant when considering the consolidated situation.

**Table 1 Statistics on the number of staff in investment firms**

	Number of investment firms	Number of staff	Average number of staff	Number of identified staff	Average number of identified staff
Austria	1	11	11	0	0
Belgium	12	311	26	7	1
Bulgaria	39	687	18	181	5
Croatia	8	86	11	0	0
Cyprus	2	6	3	0	0
Czech Republic	14	660	47	106	8
Denmark	10	260	26	38	4
Estonia	3	156	52	27	9
Finland	2	83	42	0	0
France	11	572	52	100	9
Germany	104	2296	22	272	3

<sup>8</sup>The data collection was addressed to MIFID investment firms and to management firms and managers subject to UCITS Directive and AIFMD. Accessed at: Opinion of the European Banking Authority in response to the European Commission's Call for Advice on Investment Firms <https://eba.europa.eu/sites/default/documents/files/documents/10180/1976637/c1cfe165-633a-4c1f-851d-fa771246ee54/EBA%20Advice%20on%20New%20Prudential%20Framework%20on%20Investment%20Firms%20%28EBA-Op-2017-11%29.pdf>; ANNEX TO THE EBA OPINION EBA-OP-2017-11 IN RESPONSE TO THE EUROPEAN COMMISSION'S CALL FOR ADVICE OF 13 JUNE 2016, <https://eba.europa.eu/sites/default/documents/files/documents/10180/1976637/a21fcaa3-5302-499a-9f9e-36e2211765b3/Annex%20to%20the%20EBA%20Opinion%20EBA-Op-2017-11.pdf>

Greece	48	1264	26	368	8
Hungary	1	146	146	0	0
Ireland	70	4037	58	500	7
Italy	42	1366	33	259	6
Latvia	3	126	42	110	37
Luxembourg	56	1583	28	132	2
Malta	28	276	10	77	3
The Netherlands	161	2476	15	640	4
Norway	65	1717	26	214	3
Poland	44	2648	60	373	8
Portugal	5	75	15	25	5
Romania	18	410	23	106	6
Slovakia	14	191	14	40	3
Slovenia	2	64	32	2	1
Spain	89	1480	17	203	2
United Kingdom	34	2695	79	359	11
<b>Total</b>	<b>886</b>	<b>25682</b>	<b>29</b>	<b>4139</b>	<b>5</b>

Source: 2016 data collection

34. A lower threshold for the total number of staff was considered. However, given the relatively small average size of investment firms, such a relative threshold would capture the top one, or in a few cases more than one member of staff. It is expected that these staff members will already be captured by the qualitative criteria, specifically the first three (management body and senior management). Hence it was assessed that the relative threshold should apply only to the rare cases when an investment firm is large, and there is a risk that the qualitative criteria will not capture sufficiently the high earners of the firm. This criterion however will be further assessed in the context of the data collection.

- **Remuneration bracket: Article 6 (1) (d)**

35. In line with the level 1, the fourth quantitative criterion is that staff that receives the equal or higher remuneration than any member of senior management or risk taker should be considered if the staff member has a material impact on the risk profile or assets that it manages (remuneration bracket criterion).

36. Namely the staff member should be identified if their remuneration is equal or greater than the lowest remuneration awarded to staff members that fulfil criteria 1, 3, 4, 6, 7, 8 or 9 of Article 4. Those are the staff members that are actively involved in risk taking.

37. The criterion is provided by the IFD, therefore no options were considered. However, it was still decided to have the criterion in the RTS to clarify how the threshold for its application is being calculated.

- **Exclusion criteria**



38. For quantitative criteria, the option of granting exemptions was considered in order to allow investment firms to exclude staff from the category of identified staff, where such exception is justified by facts. Similarly to the RTS on identified staff under CRD, it is proposed that the staff member is excluded from being identified based on quantitative criteria, if the firm determines that the staff member, or the category of staff to which the staff member belongs, have no material impact on the risk profile of the firm or the assets it manages.
39. If the remuneration is above EUR 750 000 or the staff is identified based on the relative threshold, the investment should get a prior approval from the competent authority responsible for its prudential supervision. In this case, the investment firm should demonstrate that the conditions for exclusion are met. For staff members with remuneration above EUR 1 000 000, exclusion should be granted only in exceptional cases.
40. The cost of implementing the exclusion is significant, as the burden of proving to the competent authority that the staff member has no material impact on the investment firm's risk profile or assets that it manages will be on the investment firm. However, this is not different from previous application of CRD to the investment firms, and hence is not expected to have an impact in comparison to the baseline scenario (i.e. current situation).

## E. Cost-Benefit Analysis

41. This section provides a summary of the costs and benefits of the proposed criteria to identify staff that has a material impact on the risk profile of the investment firm or on the assets it manages.
42. In addition, during the consultation on the draft RTS, the EBA will conduct a data survey in which investment firms will be asked to provide information about the number of Identified Staff under the proposed criteria, as well as under some alternative scenarios. This information will be used to assess the magnitude of impact as well as the effectiveness of the criteria proposed to identify the staff that has a material impact on the risk profile of the investment firms. The data may also be used to fine-tune some of the criteria to better fit the desired outcome of the legislator.

Table 1. Costs and benefits of applying the qualitative criteria (relative to baseline scenario)

Criterion	Options	Costs	Benefits
<b>Management body and senior management: Article 5 (1), (2), and (3)</b>	NA	No costs	Easy to identify and implement, very efficient criterion as most staff should be covered by this criterion.



Criterion	Options	Costs	Benefits
<b>Managerial responsibilities in “material” business units: Article 5 (4)</b>	A) based on income	Income is volatile and may lead to jumps in assessment of a business unit’s relevance  Units with impact on risk profile may not generate income (e.g. control functions)	Easy to measure and allocate to business units
	B) assets under management	Units with impact on risk profile may not have assets under management (e.g. control functions)	Easy to measure and allocate to business units
	C) own funds requirements	Resources required to calculate contributions to the own fund requirements of each business unit	Quantifies the materiality of a business unit, more objective.
<b>Responsible and accountable to management body for a control function: Article 5 (5)</b>	NA	No costs	
<b>Responsible and accountable to the management body or a head of control function for the prevention of money laundering and terror financing: Article 5 (7)</b>	Separate criterion for AML/CTF	More criteria	Ensuring the staff member responsible for AML/CFT is captured, even when they would not report directly to the management body
	Covered by the previous criterion	Risk of not capturing the staff member, unless they are report directly to management body	Less criteria
<b>Responsible for managing, monitoring or mitigating material risk : Article 5 (8)</b>	NA	Resources to identify material risks, and assign the material risks to staff members	This criterion is likely to identify few additional staff, but they will be ones that do not have any managerial role, but, nevertheless, are responsible for managing material risks.
<b>Managerial responsibility in certain key areas that have</b>	Quantitative approach	Significant resources to quantify the contribution	If a methodology for allocating contributions to K-factors is

Criterion	Options	Costs	Benefits
<b>direct impact on investment firms' K-factors: Article 5 (8)</b>		of staff members to K-factors.	developed, could be potentially more objective compared to the qualitative approach
	Qualitative approach	Resources to identify the mentioned managerial responsibilities, and identify which ones have an impact on K-factors	Easy to implement once the areas are identified
<b>Authority or voting member for the introduction of new products: Article 5 (9)</b>	NA	Negligible costs	Easy to identify and implement

Table 2. Cost and benefits of applying the quantitative criteria (relative to baseline scenario)

Criterion	Costs	Benefits
<b>Absolute threshold EUR 500 000 and average of remuneration of management body and senior management: Article 6 (1) (a)</b>	No additional costs, as this is already identified	Easy to identify and implement
<b>Absolute threshold EUR 750 000: Article 6 (1) (b)</b>	No additional costs, as this is already identified	Easy to identify and implement
<b>Relative measure: Article 6 (1) (b)</b>	No additional costs, as this is already identified	Easy to identify and implement
<b>Remuneration bracket: Article 6 (1) (d)</b>	Not assessed as included in IFD.	Not assessed as included in IFD
<b>Exclusion criteria</b>	Negligible as the criteria is the same as in the baseline scenario	Allows to exclude staff members that where captured by the quantitative criteria, but do not have impact on risk profile

## F. Preferred option

Preferred options are described in the section "Options considered".



## 4.2 Overview of questions for consultation

Question 1: Are the definitions in Article 1-3 sufficiently clear?

Question 2: Is the Article 4 on the application of criteria appropriate and sufficiently clear?

Question 3: What would be the appropriate percentage of own funds to determine that a business unit has a material impact on the risk profile of the investment firm?

It would be most helpful if respondents could provide a quantitative estimation of the number of staff identified under this criterion at the indicated percentages in addition to the other qualitative criteria within the draft RTS as well as the cost for the application of that criterion.

Question 4: Are the qualitative criteria within Article 5 appropriate and sufficiently clear?

Question 5: Are the qualitative criteria within Article 6 appropriate and sufficiently clear?