EBA/RTS/2021/02

21/01/2021

Final Report

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 (EU) 2019/2034 (IFD) of the European Parliament and of the Council on the prudential supervision of investment firms

Contents

1. Executive summary

Article 30(1) of Directive (EU) 2019/2034 (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'.

Under Article 30(4) of the Directive (EU) 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 in Article 30(1)'.

The EBA has developed those draft RTS on the basis of Directive (EU) 2019/2034 and has been consulting on them for a period of three months to ensure that the draft RTS can be submitted to the European Commission in due time.

Competent authorities must ensure that investment firms comply with the specific provisions in the IFD regarding remuneration policies and variable remuneration for categories of staff whose professional activities have a material impact on an investment firm's risk profile or assets under management in addition to the general requirements regarding appropriate and sound 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 firm's risk profile or assets it manages. It is presumed that the staff with a high level of total remuneration have a higher impact on the risk profile or assets 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 firm's risk profile or assets under management and are therefore not considered to be staff whose professional activities have a material impact on the investment firm's risk profile or assets under management. Where 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 members 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 consistent 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 assets under management. 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 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 in the RTS are defined in a way that can be applied by all investment firms and may, therefore, not exhaustively identify 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.

2. Background and rationale

2.1 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.

2.2 Legal basis and background

3. After the financial crisis, the EU co-legislator put in place a legal framework under Directives 2010/76/EU and 2013/36/EU for staff that have a material impact on the institution´s risk profile or 'identified staff'. This framework is aimed at ensuring that the variable remuneration of identified staff is aligned with the institution`s 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 arrangements, 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 Directive (EU) 2019/2034 (IFD) and no longer to Directive 2013/36/EU (CRD). Small and non-interconnected investment firms that meet all the conditions of Article 12(1) of the IFR are not subject to the specific remuneration framework under the IFD, but have to comply with the remuneration provisions in Directive 2014/65/EU[1] that sets out requirements on 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[2]. 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

[1] 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

[2] 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 the 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 in Article 30(1) of the IFD'. In accordance with Article 30(1) of the IFD, not only the impact on the risk profile of the investment firm is relevant, but also the impact on assets it manages is relevant for determining the staff who should be identified.

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 aims 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 the remuneration requirements contained in 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 or assets under management the EBA considers will always be material. 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 or assets under management because of their responsibilities, e.g. for managing a material risk as referred to in Article 28 of the IFD.

11. In addition, the levels of remuneration are used as appropriate quantitative criteria. The total remuneration awarded to staff members reflects mainly the responsibilities, duties, abilities, skills and performance of the staff member within the business line in which they perform their activities and the performance of the investment firm. Where staff members

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 assets 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 such staff members 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). However, as the total remuneration is only a proxy for risk-taking, investment firms may establish that staff members identified only by virtue of quantitative criteria do not in fact have a material impact on the investment firm's risk profile or assets it manages, under additional conditions. An approval process for staff with a remuneration of EUR 750 000 and above and the 0.3% of the highest earning staff ensures that competent authorities can review the exclusions in a timely manner.

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 investment firm's risk profile or assets it manages. The draft RTS set out how this criterion should be applied. Staff members 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, where they can show that their professional activities do not in fact have a material impact on the investment firm's risk profile or assets it manages. 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.

2.3 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 Commission Delegated Regulation 604/2014[3] as well as its revision in 2020 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 those staff members. Under these draft RTS, staff members will be

[3] 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 (OJ L 167, 6.6.2014, p. 30).

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 harmonised identification of such staff members. The common criteria in the RTS are defined in a way that can be applied by all investment firms and may, therefore, not exhaustively identify all staff members whose professional activities have a material impact on the risk profile of a particular investment firm or the assets it manages, because of its specificities. Consequently, investment firms may have to apply in 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 the IFD. Staff members identified only under the quantitative criteria but that do not, in fact, have a material impact may be excluded pursuant to 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 staff members with a high level of total remuneration have more material impact on the risk profile or assets under management compared to members with significantly lower remuneration levels.

18. A quantitative threshold of EUR 500 000 for the identification of staff that have a material impact on the investment firm’s risk profile or assets it manages has been set to ensure consistency with the legal framework set out in Directive 2013/36/EU. Values above the absolute threshold or which represent one of the highest remuneration within the investment firm establish a strong presumption that staff members 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 staff members who are identified only under 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. Where investment firms aim to exclude staff with a remuneration above EUR 750 000 or having one of the highest remuneration in the investment firm, 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 set out criteria for the assessment of such exceptional circumstances to ensure a consistent 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 the competent authorities can ensure investment firms apply the criteria in line with this Regulation.

21. Competent authorities must ensure that the investment firm's identification process includes the qualitative and quantitative criteria set out in the draft RTS and that they 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.

3. Draft regulatory technical standards

COMMISSION DELEGATED REGULATION (EU) No …/..

of [date]

supplementing Directive (EU) 2019/2034 of the European Parliament and of the Council with regard to regulatory technical standards specifying appropriate criteria to identify categories of staff whose professional activities have a material impact on an investment firm's risk profile or assets it manages referred to in Article 30 (1) of that Directive

THE EUROPEAN COMMISSION,

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

Having regard to Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2013/36/EU and 2014/65/EU and in particular Article 30 (4) thereof,

Whereas:

(1) Investments firms are required to apply specific requirements to the variable remuneration of all members of staff whose professional activities have a material impact on the investment firm's risk profile or assets it manages. It is therefore necessary to lay down criteria to identify staff members whose professional activities have a material impact on the investment firm's risk profile or assets it manages. Those criteria should take into account the authority and responsibilities of such staff members, the investment firm's risk profile or assets it manages and performance indicators, the investment firm's internal organisation, and the nature, scope and complexity of the firm concerned. The identification of staff enables invesmtent firms to set proper incentives in their remuneration policies to ensure that the staff members concerned act prudently when performing their tasks. Lastly, those criteria should reflect the level of risk of different activities within the firm.

(2) 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.

(3) Some staff members are responsible for providing internal support that is crucial to the operation of the business. Their activities and decisions can also have a material impact on a firm's risk profile or assets it manages because their activities and decisions may expose the investment firm to material operational and other risks.

(4) The professional activities of staff members with managerial responsibility can have a material impact on the investment firm's risk profile or assets it manages because they can make strategic or other fundamental decisions that have an impact on the business activities or on 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 those units are managed are the most important factors for a firm's risk profile or assets it manages. Certain business activities create higher risks than others and therefore the nature of the business activities should be taken into account.

(5) Appropriate qualitative criteria should ensure that staff members 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.

(6) The total remuneration of staff members depends typically on the contribution that staff make to the successful achievement of the investment firm's business objectives. That remuneration depends 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 a total remuneration which exceeds an appropriate threshold, it is reasonable to presume that such remuneration is linked to the staff member's contribution to the investment firm's business objectives and, therefore to the impact of the staff member's professional activities on the risk profile of the investment firm or assets under management. It is therefore appropriate to use quantitative criteria related to the total remuneration of a staff member, both in absolute and relative terms, to other members of staff within the same investment firm to determine whether the professional activities of such staff member could have a material impact on the investment firm's risk profile or assets it manages.

(7) 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 assets under management. Investment firms should be expected to apply the quantitative criteria in a timely manner. A first method to apply quantitative criteria is to base them 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. A second method to apply quantitative criteria is to base them on 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. The second method provides for a better alignment of the identification process with the actual remuneration awarded for a performance period but can only be applied where a timely calculation for the application of the quantitative criteria is possible. Where such timely calculation is not possible, the first method should be used. Under either method, the variable remuneration can include amounts that are awarded based on performance periods that are longer than one year, depending on the performance criteria used by the investment firm.

(8) This regulation sets a quantitative threshold of EUR 500 000 for the identification of staff whose professional activities have a material impact on the risk profile of the investment firm or assets it manages. Remuneration above that quantitative threshold establishes a strong presumption that the activities of staff receiving such remuneration have a material impact on the investment's risk profile or assets it manages, in which case more supervisory scrutiny should be applied to establish whether the professional activities of such staff members have a material impact on the investment firm's risk profile or asset it manages.

(9) However, such presumptions based on quantitative criteria should not apply where investment firms establish on the basis of additional criteria that such staff members do in fact not 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. To ensure an effective and consistent application of those objective criteria, competent authorities should approve the exclusion of the highest earning staff members identified or those staff member with a remuneration awarded of more than EUR 750 000. For staff members that are awarded more than EUR 1 000 000 (high earners) competent authorities should inform the European Banking Authority before approving exclusions so that the EBA can ensurethe consistent application of those criteria.

(10) 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 it manages. 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 assets it manages, taking into account all risks to which the investment firm is or may be exposed.

(11) In order for competent authorities and auditors to be able to review the assessments carried out by investment firms to identify their staff whose professional activities have a material impact on their risk profiles or assets under management, it is critical that investment firms keep record of the assessments made and their results, including of staff members 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 investment firm's risk profile or assets under management.

(12) The EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based and analysed the potential related costs and benefits and requested the advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council.

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(1) '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.

(2) 'Control function' means a function that is independent from the business units it controls and that is responsible for providing an objective assessment of the investment firm's risks, review or report on those, including, but not limited to, the risk management function, the compliance function and the internal audit function.

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

Article 2
Application of criteria

1) Where this Regulation is applied on an individual basis in accordance with Article 25 of Directive (EU) 2019/2034, compliance with the criteria set out in Articles 3 and 4 of this Regulation shall be assessed against the investment firm's individual risk profile.
2) Where this Regulation is applied on a consolidated basis in accordance with Article 25 of Directive (EU) 2019/2034, criteria shall be assessed against the risk profile of the investment firm on a consolidated basis.
3) Where Article 4(1) point a) applies on an individual basis, the remuneration awarded by the investment firm should be considered.
4) Where Article 4(1) point a) applies on a consolidated basis, the consolidating investment firm shall consider the remuneration awarded by any entities that fall within the scope of consolidation.
5) Article 4(1) point b) shall only be applied on an individual basis.
6) Article 4(1) point c) shall be applied on an individual and consolidated basis.

Article 3
Qualitative criteria

Staff members 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) in investment firms with a total balance sheet equal to or more than EUR 100 million, staff members with managerial responsibility for business units that are providing at least one of the services that requires authorsation under points (2), (3), (4), (5), (6) and (7) of Section A of Annex 1 to Directive 2014/65/EU;

(5) the staff member has managerial responsibilities for the activities of a control function;

(6) the staff member has managerial responsibilities for the prevention of money laundering and terrorist financing;

(7) the staff member is responsible for managing a material risk as referred to in Article 28(3) of Directive (EU) 2019/2034 within the investment firm or is a voting member of a committee responsible for managing a material risk to which the investment firm is exposed;

(8) in an investment firm that is authorised for providing at least one of the services listed under points (2), (3), (4), (5), (6) and (7) of Section A of Annex 1 to Directive 2014/65/EC, the staff member is responsible for managing one of the following activities:

(a) economic analysis

(b) information technology

(c) information security

(d) outsourcing arrangements of critical or important functions as referred to in Article 30(1) of Commission Delegated Regulation (EU) 2017/565;

(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;

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

Article 4
Quantitative criteria

1. Subject to paragraphs 2 to 5, a staff member shall be deemed to have a material impact on an investment firm's risk profile or assets it manages where any of the following quantitative criteria are met:
   (a) the staff member has been awarded a total remuneration which is equal to or greater than EUR 500 000 in or for the preceding financial year;
   (b) where the investment firm has over 1 000 staff members, the staff member is within the 0.3% of staff, rounded to the next higher integral figure, which have, within the firm, been awarded the highest total remuneration in or for the preceding financial year;
   (c) 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, 8 or 9 of Article 3.
2. A criterion laid down in paragraph 1 shall not apply where the investment firm determines that the staff member, or the category of staff to which the staff member belongs, has 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 categories of staff and their impact on the investment firm’s risk profile or assets it manages, when compared with the impact of the professional activities of staff members identified by the criteria in Article 3.
4. The application of paragraph 2 by an investment firm in respect to a staff member mentioned in point (b) of paragraph 1 or to a staff member that was awarded a total remuneration of EUR 750 000 or more in or for the preceding financial year, shall be subject to the prior approval of the competent authority responsible for the 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 in a given financial year 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 consistent application of this paragraph, the competent authority shall inform the European Banking Authority before giving its approval in respect of such a staff member. The existence of exceptional circumstances has to be demonstrated by the investment firm and assessed by the competent authority. The

‘exceptional circumstances’ shall be situations that are unusual, very infrequent or far beyond what is usual in magnitude or degree. The exceptional circumstances shall be related to the staff member concerned.

Article 5

Calculation of the variable remuneration awarded

1) All amounts of the variable and fixed remuneration shall be calculated gross and on a full-time equivalent basis.

2) Investment firms’ remuneration policies shall set out the reference year for the variable remuneration that they take into account when calculating the total remuneration. That reference year shall be either the year preceding the financial year in which the variable remuneration is awarded or the year preceding the financial year for which the variable remuneration is awarded.

Article 6

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]

4. 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 provides an overview of the findings and options 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 firm's risk profile or assets it manages stems from the obligations under Article 30 of Directive (EU) 2019/2034 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 the CRD III and CRD IV frameworks. The provisions under the 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.[4] 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. These changes aim to reflect the 'differences in risks posed by credit institutions and investment firms'.

B. Policy objectives

[4] 2015 EBA report on investment firms

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. 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 the assets that it manages. For this purpose, investment firms will implement internal processes which include the criteria provided in 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 in 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 firm's risk profile or the assets that it manages.

7. The criteria follow, insofar as it is meaningful, the criteria set in the RTS on identified staff under the 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 the services provided by investment firms.

8. The requirements in the IFD regarding the remuneration of identified staff should contribute effectively to aligning the remuneration practices with the investment firm's risk profile and improving its 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 the CRD. The latest amendments to the CRR/CRDIV framework and the Consultation Paper to the RTS on identified staff under the CRDV were not taken into account in the baseline scenario, but they are mentioned where relevant to show the difference between the provisions for credit institutions compared to those proposed for investment firms.

D. Options considered

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

Definitions

11. To ensure consistency with the CRD framework, the EBA has set the criteria to define managerial responsibilities, control functions and business units.

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 required from staff with managerial responsibilities, e.g. 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 do not have a material impact on the investment firm's risk profile or assets under management. Where applied only cumulatively, the criteria would potentially not apply to 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 and authority to take decisions. Identification of staff would be easier based on the internal organisation. Such an approach would be more effective to identify the staff who are responsible for business decisions and oversight functions and therefore have a potential material impact on the firm's risk profile or assets under management.

Option B has been retained.

13. With regard to setting criteria to define control functions only one option has been identified. Control functions have 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 units, only one option has been considered, referring to the definition set down in the CRR to ensure cross-sectoral consistency.

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

15. 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.

16. For the purpose of the RTS, the EBA has developed 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 the assets it manages. The qualitative criteria can be grouped as follows:

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

17. 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 the CRD, because it believes that they successfully identify a large portion of the staff having a material impact on the risk profile of the firm and are also easy to apply. The EBA also split the criterion to identify the management body in two parts, in order to identify members of the management body in management functions and members of management body in supervisory functions.

18. No options were considered for this criterion. In its current form, it is easy to implement as the staff fulfilling these criteria can be readily identified.

- **Managerial responsibilities: Article 3(4)**

19. This criterion aims to identify staff members that have managerial responsibility in a business unit that materially contributes to the risk profile of the investment firm (using the services that require authorisation under points (2), (3), (4), (5), (6) and (7) of Section A of Annex 1 to Directive 2014/65/EU as a proxy for material contribution to the 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 the assets that it manages. This criterion applies only to firms with a balance sheet of more than EUR 100 million.

20. Several options were considered for defining a business unit that materially contributes to the risk profile of the investment firm: contribution of the business unit to the investment firm’s income, contribution of the business unit to the investment firm’s own funds requirements, the assets under management for each business unit and the services under points (2), (3), (4), (5), (6) and (7) of Section A of Annex 1 to Directive 2014/65/EU for which investment firms are required to be authorised

- Income was considered not to be 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 variations in the assessment of a business unit’s relevance for this purpose.

- Regarding assets under management, while this may be a relevant measure for assessing the investment firm’s size in general, it may not be appropriate when allocating it to business units, since, as in the case of income, it may be relevant only for very few business units. It may also not be relevant to some investment firms that do not have any assets under management but provide other types of services.

- The impact on own funds requirements was considered as a measure for the risk profile of the investment firm. This RTS considered two potential thresholds for the contribution of the business unit to own funds requirements: more than 10% and more than 20%. The data collection showed no differences in impact between these two options (see results of the data collection). 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 burdensome as not all investment firms do this mapping.

- Finally, the services that require authorisation under points (2), (3), (4), (5), (6) and (7) of Section A of Annex 1 to Directive 2014/65/EU were considered for as a proxy for material contribution to the risk profile of the investment firm. This approach was assessed as the most appropriate and less burdensome compared to other options. The listed services also reflect the services that are explicitly mentioned under Article 109 of Directive 2013/36/EU for the group application and therefore represent appropriate proxies.

- **Staff member has managerial responsibilities for the activities of a control function: Article 3(5)**

21. Article 30(1) of the IFD states 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 the assets that it manages. This criterion aims to capture the top layer of staff in control functions. This includes 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 terrorist financing: Article 3(6)**

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

- **Responsible for managing material risks: Article 3(7)**

23. 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 the risks the investment firm may be exposed to. In reference to this Article, the staff responsible for managing material risks should also be identified, as they will have an impact on the risk profile of the investment firm. This criterion aims to identify the staff members responsible for material risks that have not been identified by other previous criteria.

No options were considered for this criterion.

- **Managerial responsibility in certain key areas that have direct impact on the investment firm's risk profile or assets under management: Article 3(8)**

24. The criterion requires the identification of staff members who have responsibilities for managing key areas that have an impact on the investment firm's 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.

Three 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 assets 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 firm's business activities.
- Narrowing the scope by using services listed under points (2), (3), (4), (5), (6) and (7) of Section A of Annex 1 to Directive 2014/65/EC as a proxy for activities that have an impact on the risk profile or assets under management together with defining more specific areas and activities of staff members that are relevant and may have an impact on the investment firm risk profile or assets that it manages: economic analysis information technology; information security; and outsourcing arrangements of critical or important functions as referred to in Article 30(1) of Commission Delegated Regulation (EU) 2017/565.

25. The quantification of the contribution of each staff member in terms of K-factors would be too burdensome for investment firms. Therefore, among the three options considered, the third approach using qualitative measures was considered more feasible.

- **Authority or voting member for the introduction of new products: Article 3(9)**

26. The development of new products has 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 it manages. This criterion is similar to that used in the RTS on identified staff under the CRD.

No options were considered for this criterion.

Quantitative criteria: Criteria based on the amount of remuneration

27. The EBA has considered criteria based on the amount of remuneration. The amount and type of remuneration awarded depend 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 and managerial responsibility.

28. In the RTS on identified staff under the CRD, a relative and 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: Article 4(1)(a)**

29. It is proposed to use a simple criterion for total remuneration as in the current Commission Delegated Regulation (EU) No 604/2014 of 4 March 2014.

No options were considered for this criterion.

- **Relative measure: Article 4(1)(b)**

30. This criterion is added to identify staff within the 0.3% top earning staff of the total staff of the investment firm. 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.

31. The relative threshold applies to investment firms that have more than 1 000 staff. According to the latest data collection for the purpose of assessing the impact of the IFR/IFD on investment firms, investment firms in the sample have on average 231 staff at consolidated level and 73 staff at individual level (see section results of the data collection). In the current sample of 220 Class 2 investment firms, only two have total staff of more than 1 000, both at consolidated level. Therefore, it is expected that this criterion will not be relevant for most investment firms, including most consolidated groups, and its impact will thus be close to zero.

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

- **Remuneration bracket: Article 4(1)(c)**

33. In line with level 1, the fourth quantitative criterion is that staff receiving 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 investment firm's risk profile or assets that it manages (remuneration bracket criterion).

34. In other words, 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, 8 or 9 of Article 4. Those are the staff members that are actively involved in risk-taking.

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

- **Exclusion criteria**

36. 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 the 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.

37. If the remuneration is above EUR 750 000 or the staff are identified based on the relative threshold, the investment firm should obtain 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.

38. 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 the previous application of the CRD to 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

39. This section provides a summary of the costs and benefits of the proposed criteria to identify staff that have a material impact on the risk profile of the investment firm or the assets it manages.

40. 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 have a material impact on the risk profile of

the investment firm. 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 qualitative criteria (relative to baseline scenario)

Criterion	Options	Costs	Benefits
Management body and senior management: Article 3(1), (2), and (3)	NA	No costs	Easy to identify and implement, very efficient criterion as most staff should be covered by it.
Managerial responsibilities for business units that materially contribute to the risk profile: Article 3(4)	A) based on income	Income is volatile and may lead to variations in assessment of a business unit's relevance Units with an 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 an 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.
	D) the services under points (2), (3), (4), (5), (6) and (7) of Section A of Annex 1 to Directive 2014/65/EU for which investment firms are required to be authorised :	No cost	Easy to identify and implement, very efficient criterion as most staff should be covered by it.
Managerial responsibilities for a control function: Article 3(5)	NA	No cost	
Managerial responsibilities for the prevention of money	Separate criterion for AML/CTF	More criteria	Ensuring the staff member responsible for AML/CFT is

Criterion	Options	Costs	Benefits
laundering and terror financing: Article 3(6)			identified, 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 report directly to management body	Less criteria
Responsible for managing, material risk: Article 3(7)	NA	Resources to identify material risks and assign the material risks to staff members	This criterion is likely to identify few additional staff members, but they will be those that do not have a managerial role, but nevertheless are responsible for managing material risks
Managerial responsibility in certain key areas that have direct impact on an investment firm's K-factors: Article 3(8))	Quantitative approach	Significant resources to quantify the contribution of staff members to K-factors	If a methodology for allocating contributions to K-factors is developed, it could be potentially more objective compared to the qualitative approach
	Qualitative approach	Resources to identify the managerial responsibilities, and identify which ones have an impact on K-factors	Easy to implement once the areas are identified
Authority or voting member for the introduction of new products: Article 3(9)	NA	Negligible cost	Easy to identify and implement

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

Criterion	Costs	Benefits
Absolute threshold EUR 500 000: Article 4(1)(a)	No additional costs, as this is already identified	Easy to identify and implement
Absolute threshold EUR 750 000: Article 4(1)(b)	No additional costs, as this is already identified	Easy to identify and implement

Criterion	Costs	Benefits
Relative measure: Article 4(1)(b)	No additional costs, as this is already identified	Easy to identify and implement
Remuneration bracket: Article 4(1)(d)	Not assessed as included in the IFD.	Not assessed as included in the IFD
Exclusion criteria	Negligible as the criteria is the same as in the baseline scenario	Allows the exclusion of staff members that were identified by the quantitative criteria, but do not have impact on the risk profile

F. Preferred option

The preferred options are described in the section ‘Options considered’.

G. Results of the data collection

As part of the analysis of the impact of the new investment firm framework, a data collection was conducted among investment firms. One of the templates was dedicated to assessing the impact of the RTS on criteria for identified staff.

Most relevant for the GL and RTS under the IFD are the Class 2 investment firms that are subject to the specific IFD provisions on governance and remuneration. Out of a sample of 395 investment firms, 220 are Class 2 firms (56%), i.e. they are subject to capital requirements according to Article 11(1) of the IFR (K-factors). To be noted: in the full population of investment firms, Class 2 firms represented 995 out of 2533 (60%).

The analysis in this note refers only the 220 IFR/IFD investment firms that are not classified as small and non-interconnected (i.e. Class 2 investment firms). The tables below show the breakdown of these investment firms by scope of reporting and country (Table 1).

Table 1 Number and total assets of Class 2 IFs in the sample, by country and level of consolidation

	Consolidated				Individual			
Country	Number	Share of total number	Total assets (EUR million)	Share in total assets	Number	Share of total number	Total assets (EUR million)	Share in total assets
BE					2	1.1%	Not shown	Not shown
BG	1	3.3%	Not shown	Not shown	3	1.6%	28.8	0.0%
CY	4	13.3%	9.4	0.0%	36	18.9%	10 529.9	11.0%
CZ	1	3.3%	Not shown	Not shown	8	4.2%	823.6	0.9%
DE	2	6.7%	720.6	1.6%	12	6.3%	342.5	0.4%
DK					3	1.6%	124.7	0.1%
EE	1	3.3%	Not shown	Not shown	2	1.1%	Not shown	Not shown
ES					3	1.6%	2450.8	2.6%
FI	1	3.3%	Not shown	Not shown	1	0.5%	Not shown	Not shown
FR	4	13.3%	9 531.0	21.5%	24	12.6%	50 914.1	53.1%
HR					1	0.5%	Not shown	Not shown
HU					3	1.6%	615.3	0.6%
IE	4	13.3%	803.0	1.8%	33	17.4%	9 549.5	10.0%
IT	3	10.0%	596.8	1.3%	6	3.2%	710.7	0.7%
LU	2	6.7%	Not shown	Not shown	16	8.4%	577.8	0.6%
LV					2	1.1%	Not shown	Not shown
MT	1	3.3%	Not shown	Not shown	6	3.2%	73.2	0.1%
NL	3	10.0%	31 710.4	71.4%	12	6.3%	18 180.8	19.0%
PL	1	3.3%	Not shown	Not shown				
PT	1	3.3%	Not shown	Not shown	1	0.5%	Not shown	Not shown
RO					9	4.7%	128.9	0.1%
SE					4	2.1%	496.3	0.5%

SI	1	3.3%	Not shown	Not shown	2	1.1%	Not shown	Not shown
SK					1	0.5%	Not shown	Not shown
TOTAL	30	100%	44 410.0	100%	190	100%	95 809.3	100%

Note: For confidentiality purposes, total assets are not shown in cases where the number of investment firms is less than three

Table 2 shows the distribution of total assets across investment firms. On average, the total assets of an investment firm reporting on a consolidated level are EUR 1.5 billion, and those of an investment firm reporting at an individual level are EUR 0.5 billion. In both cases the distribution of total assets across firms is highly skewed to the right, with a median of EUR 0.1 billion for consolidated assets, and EUR 0.02 billion for individual.

Table 2 Mean and distribution of total assets by scope of consolidation (EUR million)

Percentile	CONSOLIDATED	INDIVIDUAL
Number	30.0	190.0
Average	1 480.3	504.3
Min	0.7	0.0
P10	2.3	1.1
P20	3.5	2.6
P30	16.0	6.1
P40	63.9	12.1
P50 (median)	124.0	21.6
P60	194.6	31.4
P70	297.8	63.0
P80	493.2	146.8
P90	4 604.9	603.4
Max	22 533.5	30 285.5

Investment firms reporting at a consolidated level have on average 231 total staff, while investment firms reporting at individual level have on average 73 staff. Like in the case of total assets, the distribution is highly skewed to the right, with medians of 59 and 30, respectively.

The staff numbers are relatively low. Only a very few firms have more than 1 000 staff members at consolidated level and would need to apply the 0.3% criterion under the RTS on IS. In the sample, there are no investment firms that meet the criterion on an individual basis.

Table 3 Mean and distribution of total staff by scope of consolidation

Percentile	CONSOLIDATED	INDIVIDUAL
Number	30	190
Average	231	73
Min	6	1
P10	9	6

Percentile	CONSOLIDATED	INDIVIDUAL
P20	21	8
P30	30	14
P40	45	20
P50 (median)	59	30
P60	106	40
P70	130	62
P80	234	96
P90	689	157
Max	2 293	904

Table 4 shows the average total staff and identified staff under the baseline and two alternative scenarios considered in the data collection for the purpose of identifying business units with a material contribution to the risk profile of the investment firms. As a reminder, the scenarios are the following:

- The baseline scenario is the current situation, i.e. the RTS on identified staff under the CRD applies.
- Scenario A is the scenario where the threshold for a material business unit in Article 5(4) of the Draft RTS on identified staff (Article 30(4) of the IFD) is set at equal or more than 10% of own funds requirements.
- Scenario B is the scenario where the threshold for a material business unit in Article 5(4) of the Draft RTS on identified staff (Article 30(4) of the IFD) is set at equal or more than 20% of own funds requirements.

The results show that there is no significant difference between the two alternative scenarios considered. In scenario A, the identified staff represent on average 25% and 29% of the staff for consolidated and individual investment firms respectively. The numbers for scenario B are 24% and 27% for each scope of consolidation, respectively.

Most IF will not have a high number of business units, meaning that at any given threshold (10/20%) all heads of business units will be considered as heads of material business units. Only some large firms might not need to identify all heads of business units.

Table 4 Average and median for the total and identified staff by scenario and scope of consolidation

	Consolidated		Individual	
	Average	Median	Average	Median
Total staff	231	59	73	30
Identified staff - baseline scenario	32 33%	11 24%	13 39%	7 25%

Identified staff - scenario A	27 25%	10 18%	9 29%	5 19%
Identified staff - scenario B	26 24%	9 16%	8 27%	4 18%

The charts below show the scatter plot of total assets versus total staff. To ensure the readability of the chart, due to a few investment firms with very large total assets, the total assets shown are cut off at EUR 300 million. The consolidated and individual scopes are represented by different colours. From the chart, a slight positive relationship between total assets and total staff can be observed, but it is not very evident.

Figure 1 Total assets vs total staff (Total assets cut off at EUR 300 million)

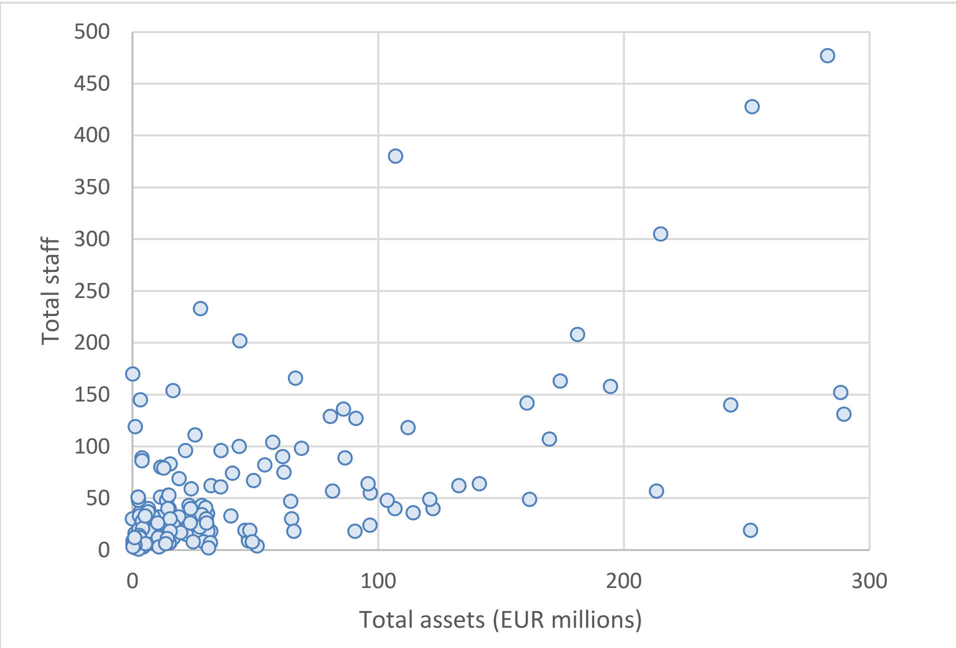
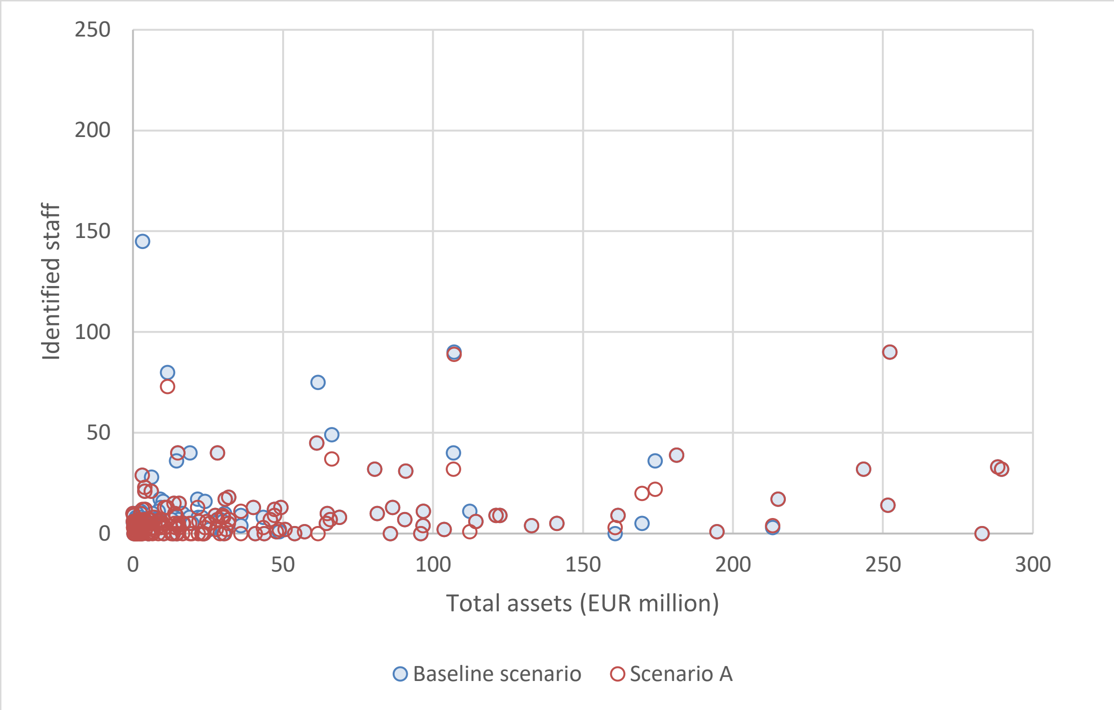


Figure 3 below shows the relationship between total assets (in absolute terms and identified staff in the baseline scenario and scenario A (scenario B was not included as it is very similar to scenario A). In general, there is a very big overlap between the two scenarios, with only small differences visible in this chart.

Figure 2 Total assets vs identified staff in baseline scenario and scenario A (both individual and consolidated scope)



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

Summary of key issues and the EBA's response

In total, 18 respondents replied to the public consultation, 15 of these were published and three were submitted confidentially.

Although most investment firms are currently subject to a similar framework under Directive 2013/36/EU, the comments received were nevertheless limited. In particular, few comments were raised repeatedly. Some of the criteria set out in the RTS for identifying staff were considered to be too prescriptive and too broad, in particular, the definition of managerial responsibilities and some of the qualitative criteria. The quantitative criteria based on remuneration were also criticised. Respondents suggested that exclusion should be allowed for all staff that would be inappropriately identified using qualitative criteria and based on remuneration. Some respondents pointed out that the RTS could be further clarified for application in a group context. The impact of the RTS was perceived as being burdensome. In particular, the process for the exclusion of staff would trigger additional costs.

The draft RTS are based on the EBA's mandate to develop criteria to identify categories of staff whose professional activities have a material impact on the investment firm's risk profile or assets under management. The draft RTS complete the regulatory framework laid down in the IFD by providing technical criteria for the identification of staff whose professional activities have a material impact on the investment firm's risk profile or assets under management.

The feedback table below contains a summary of the responses received, limited to responses received that concern the draft RTS on identified staff.

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

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
General comments			
Inclusion of asset managers	One respondent pointed out that where an investment firm has assets under management different (and not necessarily consistent) remuneration regimes will apply simultaneously: the RTS under the IFD, the ESMA guidelines under the MiFID framework and contractual provisions (such as provisions to fulfil AIFMD and UCITS remuneration requirements in case of delegation of portfolio management of investment funds to investment firms). The suggestion is to exclude such investment firms or activities from the IFD RTS and to align the process for identifying staff for these firms with those set out in ESMA guidelines.	The remuneration requirements under the IFD apply to investment firms, as defined in Article 4(1)(1) of Directive 2014/65/EU, that do not meet all of the conditions for qualifying as small and non-interconnected investment firms under Article 12(1) of Regulation (EU) 2019/2033 (class 2 firms). Under the IFD, the co-legislators gave the EBA a mandate to draft an RTS on the identification of staff whose professional activities have a material impact on the firm's profile or assets it manages. No waivers or exclusions are explicitly mentioned for asset managers. To ensure a consistent framework, the EBA has taken into account the AIFMD and UCITS framework when drafting this RTS.	No change
Qualitative criteria	One respondent disagreed with the inclusion of qualitative criteria for non-systemic firms. It was argued that, in comparison with banks under the CRD, there is no obligation under Level 1 IFD to introduce qualitative criteria.	As mentioned in the previous comment, the EBA has been given a mandate under the IFD to draft this RTS. The Level 1 already foresees that investment firms that meet the conditions for qualifying as small and non-interconnected, as set out in Article 12(1) of Regulation (EU) 2019/2033/EU), are excluded. In line with the existing framework under the CRD that previously applied to certain investment firms, the draft RTS set out the criteria to define which staff or categories of staff should be considered as identified staff. The mandate does not specify the criteria to be defined. The qualitative criteria ensure that certain staff members are identified that have a material impact on the risk profile.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Group application	One respondent requested clarification about the extent to which staff of investment firms in wider banking groups may be within the scope of being identified as MRTs of the bank (and so subject to the CRD V remuneration rules). Their understanding of the EBA's intention in its final RTS on the identification of MRTs under CRD V, and the accompanying report, is that the identification of staff within a CRD consolidation group is to be undertaken: (i) by the relevant CRR institution(s) on the basis of their solo situation	This RTS is a mandate given to the EBA under the IFD to set out the criteria for the identification of staff whose professional activities have a material impact on the firm's risk profile or assets it manages. The exclusion of investment firms under Article 109 of the CRD that are part of a banking group are further specified within the EBA guidelines on sound remuneration policies under the CRD.	No change
Responses to questions in Consultation Paper EBA/CP/2020/09			
Question 1			
Article 1 Managerial responsibilities	Several respondents considered the definition of 'Managerial responsibilities' to be too vague, and that it would identify too many people further down in the organisation who would not really have an impact on risk or capital. Several respondents argued in favour of including references to decision making powers as well as duties and authorities in relation to the firm's risk profile. Finally, the current one-size-fits-all approach is not considered appropriate for the wide variety of investment firm types.	The definition is consistent with the definition in the RTS on identified staff submitted to the European Commission under Directive 2013/36/EU and the principle of proportionality has been taken into account.	No changes
Article 2 Control functions	A few respondents considered that 'control functions' were not clearly defined. In particular, respondents asked what other functions, besides those mentioned, should be included. It was also suggested that the definition of (heads of) control functions should be in line with the EBA Guidelines on Internal Governance. One respondent suggested the following definition: '*Control function' means a function independent from the business units that it controls, which has a responsibility to provide objective assessment of risks, compliance and controls to the*	The definition is consistent with the one used under the RTS on identified staff under the CRD and international standards. The definition includes at least the compliance function and, where established, the risk management and internal audit functions. Some other functions might be considered internal control functions, e.g. the AML function or the IT security function.	No changes

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	management body and to the senior management. It relates to risk, compliance and internal audit functions.		
Article 2 Control functions	Some respondents suggested limiting this explicitly to the second line of defence, perhaps including a reference to reporting lines to the Board Risk Committee.	See comment above. The reporting lines of control functions always end at the management body.	No change
Article 3 Business units	A few respondents argued that the definition of ‘business unit’ was vague. For example, is a trading desk a business unit, or is a team that develops products a business unit? Other responses appeared pleased that the definition was in line with current legislation.	The definition is in line with current applicable legislation (Directive 2013/36/EU and Regulation (EU) No 575/2013).	No change
Question 2			
Article 4(1) Application of criteria	One respondent suggested that Article 30(4) of the IFD (mandate) only refers to the risk profile of the investment firm.	While Article 30(4) of the IFD does not refer explicitly to the assets under management, it refers to paragraph (1) of Article 30 of the IFD that explicitly refers also to the impact on the assets under management.	No change
Article 4(3)	One respondent asked whether ‘consolidated level’ referred to consolidation at investment firm level, rather than at the group level. The latter would lead to duplicated work, as the individual level assessment would be based on IFD and CRD criteria.	The consolidated level refers to the investment firm group in line with Article 7 of Regulation (EU) 2019/2033 on prudential consolidation.	No change
Article 4(3)	Another respondent suggested that, based on Article 25(4) of the IFD, on an individual level, where a staff member is employed by another legal entity (which is not an investment firm or an institution) in the same scope of consolidation (e.g., staff in shared service companies for administrative functions) and renders services to the investment firm performing the process on the identification of risk takers, this criterion (of absolute and relative thresholds) is not applicable. Furthermore, if a staff member receives remuneration from several legal entities within the same consolidation scope, only	The individual level means that the remuneration criteria apply at the level of the investment firm. Individual level does not refer to an individual person. The scope of consolidation is the prudential scope of consolidation defined in Article 7 of Regulation (EU) 2019/2033. This may be different from the accounting scope of consolidation. When a staff member receives remuneration from several legal entities that are included in the prudential scope of consolidation the total remuneration from those entities should be considered and the impact of that staff on the group risk profile.	No change

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	the remuneration awarded by the investment firm performing the process on the identification of risk takers calculated on a full-time equivalent basis shall be relevant for the application of this criterion. However, under point (a) of Article 6(1) on a consolidated level, all remuneration awarded to staff by all legal entities within the group's consolidation scope shall be considered.		
Article 4(4)	One respondent suggested that this provision in conjunction with point (a) of Article 6(1) and Article 6(2) creates an enormous amount of administrative work and documentation efforts for the purpose it serves. The most risk takers identified would already fall far below the EUR 500 000 threshold. In summary, such quantitative criteria are not proportionate for investment firms.	The criteria under Article 4(4) specify the application remuneration bracket criterion which is included in Article 30(4) of the IFD. An RTS has to be consistent with the requirements of the Level 1 text (IFD).	No change
Question 3			
Article 5 (4) Qualitative criteria	Some respondents argued that the approach results solely from the requirements of the CRD (Article 92(3)(c), covering staff members entitled to significant remuneration in the preceding financial year, which are not required under the IFD and suggested removing this criterion.	The approach chosen is in line with the mandate under Article 30(4) of the IFD. It is also necessary to ensure cross sectoral consistency.	No change
Article 5 (4) Qualitative criteria	Several respondents, especially investment firms with an asset management context, considered that the cost of the implementation of this threshold would be greater than the benefits, as it would entail a high effort in terms of collecting necessary data, calculating the requirement, breaking down own capital figures by business unit for the purpose of staff categorisation and monitoring ongoing compliance, without identifying any additional staff that would not have already been identified under any of the qualitative and/or quantitative requirements from Article 5 or 6.	The impact on own funds requirements was considered as a measure for the risk profile of the investment firm. This RTS considered two potential thresholds for the contribution of the business unit to own funds requirements: more than 10% and more than 20%. The data collection showed no differences in impact between these two options (see results of the data collection). Given that 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 burdensome as not all investment	RTS amended

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		firms do this mapping. Instead, the services that require authorisation under points (2), (3), (4), (5), (6) and (7) of Section A of Annex 1 to Directive 2014/65/EU were considered for as a proxy for material contribution to the risk profile of the investment firm. This approach was assessed as the most appropriate and less burdensome compared to other options.	
	It also lacks the element of proportionality as not all investment firms will feature a structure where business units significantly differ and the level of risk for the firm can be broken down by meaningful metrics.	It should be remembered that the Level 1 text already introduced some proportionality as remuneration requirements under the IFD apply only to Class 2 firms.	
Article 5 (4) Qualitative criteria	Some respondents considered that 20% would be an appropriate percentage. One respondent considered that 10% was too low and 20% would be too high. One respondent considered that 10% was the right percentage of own funds to determine which business units have a material impact on the risk profile of the investment firm. One respondent considered that it would be most appropriate to give firms the flexibility to determine this threshold internally, due to the fact that some IFD firms will have low capital requirements and hence it would not seem proportionate to apply a single threshold to all IFD-regulated firms. One respondent pointed out that levels adequate for advanced markets may be disproportionate for emerging or underdeveloped markets. In this regard, the delegation to national supervisory authorities to determine weights within the accepted ranges should be considered.	No data were provided by respondents to support their comments. The RTS should be sufficiently detailed to further specify the Level 1 text and allowing firms to apply precise criteria to determine who is a material risk taker. The RTS provides for a common set of criteria that are applicable in all Member States. Investment firms may need to define additional internal criteria to ensure that all risk takers are identified. See comments above. The provision has been clarified	RTS amended

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	One respondent considered that it would be reasonable to correlate the percentage level with the size of the investment company (e.g. through the prism of revenues or turnover). In particular, in smaller entities the percentage ratio should be set at a higher level, due to materially lower risk than in the case of large entities. One respondent required clarification on how to consider heads of business units that do not manage assets or are not revenue generating.		
Question 4			
Article 5 Qualitative criteria	Several respondents disagreed with the general approach that the proposed qualitative criterion on identifying staff should apply in any case for all staff members named in Article 5 of the Draft RTS, irrespective of whether the professional activities of these staff members have a material impact on the profile of the investment firm or the assets that it manages. They proposed that qualitative criteria should be stated as examples, and investment firms should be required to carry out its own assessment as to whether, and to what extent, the named categories of staff have a material impact on the risk profile of the investment firm or the assets it manages.	As mandated within the IFR, these draft RTS set out a common set of core criteria which have to be applied in any case 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. The qualitative criteria aim to identify staff in key areas and functions where it is considered that the impact on the risk profile of the firm or the assets it manages is always material. 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, including the members of the management body in its supervisory function, whose professional activities have a material impact on the investment firm’s risk profile because of their responsibilities to oversee and manage risks and risk-taking and to set policies and procedures.	No change

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Article 5 Qualitative criteria	One respondent required clarification on whether or not the criteria include non-executive directors of the management body. They would not expect non-executive directors to be in the scope, especially as there is a conflict of interest, given that they are members of the remuneration committee.	The criteria include all members of the management body, including all members of the management body in its supervisory function (non-executive directors). The remuneration committee is a subset of the management body, composed exclusively by non-executive directors in accordance with the IFD. There is usually no material COI as such members receive usually a fixed participation fee and in cases where they receive remuneration it would be subject to the control of the shareholders or owners.	No change
Article 5(3)	One respondent considered that the reference to 'senior management' was too broad and open to interpretation. Greater clarity would be preferred to avoid misinterpretation or inconsistent application.	Senior management is defined under Article 3(1)(27) of the IFD. 'Senior management' means senior management as defined in point (37) of Article 4(1) Directive 2014/65/EU.	No change
Articles 5(5) and 5(7)	One respondent required confirmation about their understanding of Articles 5(5) and 5(7): Article 5(7) of the Draft RTS requires the identification of staff members with managerial responsibility (i.e., n-1 reporting to the management body) for a material risk the investment firm needs to report to the management body in line with Article 28(3) of the IFD. According to Article 5(5), in conjunction with Article 2 of the Draft RTS, staff members with managerial responsibility for the risk management function in its control function are already identified as risk takers. In this respect, it is our understanding that Article 5(7) of the Draft RTS aims at identifying the staff members accountable to the management body for a risk management function, which is not considered a control function in line with Article 2 of the Draft RTS, but a risk function in the sense of the 1st line of defence'.	The heads of control functions are identified under Article 5(5). Article 5(7) does not specify if this function is a business function (1st line) and responsible for risk management therein, or if there is a separation of this function from the business unit. Usually staff within the 1st line will be identified under these criteria. But given that there is no legal definition of lines of defence, it may well be that a function that falls under this criterion is within what is understood to be the 2nd line of defence.	No change

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Article 5	One respondent asked about the possibility for firms that employ individuals who are identified staff as they provide a role/service for the entity but are based in another country/employed by another entity to apply proportionality to their remuneration to reflect the portion of time spent on this role, rather than requiring all of their remuneration to be subject to deferral/non-cash. An example might be a manager employed by the US parent who performs a role for the regulated entity in scope (e.g. Board or Committee member).	The RTS only provides for criteria for the identification of staff. The aim is to identify staff whose activities have an impact on the risk profile of the firm or the assets it manages. Since the staff member is identified as identified staff then the remuneration requirements apply in accordance with the IFD. Further details on the application of remuneration requirements will be provided in the EBA Guidelines on remuneration policies.	No change
Articles 5(7) and 5(9)	Many respondents considered that the inclusion of voting members of the committees without decision-making or blocking powers contemplated by Article 5(7) and 5(9) is too far-reaching and could potentially go beyond identifying staff whose professional activities have a material impact on an investment firm's risk profile or the assets it manages, and also be a disincentive for appropriately experienced staff to undertake roles on committees and limit the benefits of participating in committees. It also could pull down the threshold set in Article 6(1) (d), as the pay levels of staff on a committee will normally be driven by their general role, and not by their responsibilities on committees. Consequently, for a member of staff identified as an MRT solely due to their status as a voting member of a committee, the pay level would not be a proxy for their impact on risk, and consequently, including those individuals in the comparator group for the purpose of Article 6(1)(d), would be inappropriate.	Voting members of committees explicitly refers to voting members of committees that are responsible for managing, monitoring and mitigating a material risk to which the investment firm is exposed or that take decisions on new products. These voting members have decision making powers	No change
Article 5(8)	Several respondents considered that the reference to 'the execution or the approval of processes or systems' was vague	Where processes or systems (e.g. IT – systems) are inappropriate or fail, the investment firm faces an operational risk event that	RTS amended.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	and potentially too wide in scope, and that the definitions of ‘processes’ and ‘systems’, were not sufficiently clear and would therefore benefit from more specific definitions. The criterion would also identify staff that have no material impact on the risk profile. Some respondents require confirmation that the reference to ‘providing IT or security’ is intended to refer to ‘providing IT or information security’, and that letters (a) to (d) apply only to ‘providing information technology or security’ and not to the rest of the sentence. One respondent proposed the following amendment: ‘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 Commission Delegated Regulation (EU) 2017/565, or providing information technology or security that are relevant for the investment firm’s business activities, with regard to…’ One respondent pointed out that the MiFID services listed in paragraph 8 do not correspond to the terms used in the MiFID, which may lead to difficulties of delimitation. Some respondents considered it was not clear what was meant by management responsibility in terms of ‘performing economic analysis’, especially as opposed to portfolio management, and questioned how heading a function responsible for economic analysis in relation to some activities such as nondiscretionary	may lead to material losses. Hence, staff responsible for the design of processes or systems, and also staff that execute critical processes or provide IT systems may be the source of material risks. It is indeed intended to refer to providing IT or information security. However, letters (a) to (d) apply to the full sentence and therefore to all the activities mentioned in the first paragraph. The head of a function that performs the economic analysis has usually a material impact on the risk profile as the results of that analysis drive the decisions taken or advice given. However, this paragraph has been reviewed and clarified and limited to the services that require authorisation under points (2), (3), (4), (5), (6) and (7) of Section A of Annex 1 to Directive 2014/65/EU were considered for as a proxy for material contribution to the risk profile of the investment firm.	

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	advisory arrangements of an ongoing nature could have a material impact on the risk profile of the firm or of those assets.		
Question 5			
Article 6 Quantitative criteria	One respondent considered that it was not clear whether the remuneration referred to in Article 6 included benefits other than fixed and variable remuneration, resulting from legal provisions (both acts of law or on a long-term contractual basis), e.g. retirement benefits resulting from worked years (awarded on non-discretional basis). They suggested that such benefits should be excluded from aggregation.	The remuneration referred to in Article 6 is the total remuneration (both variable and fixed) excluding mandatory contributions by the firms to social security and comparable schemes. The variable includes additional payments or benefits depending on performance or, in exceptional circumstances, other contractual elements but not those which form part of routine employment packages (such as healthcare, childcare facilities or proportionate regular pension contributions). Both monetary and non-monetary benefits should be included.	No change
Article 6(1)(a)	Many respondents did not agree to implement quantitative criteria because it was not required in Level 1 and did not consider the different risk profiles of investment firms, based on differing investor bases, risk appetites and risk horizons. Their business models and structures typically vary from those of large banks, and correspondingly investment firms have different pay structures in practice. They consider the EBA should be guided by the principal-based remuneration requirements established by ESMA in its guidelines under the MiFID, AIFMD and UCITS Directive, for which no quantitative criteria exist and also the qualitative criteria are explicitly subject to the provision that staff members have a material influence on the risk profile of the company or the managed portfolios. One respondent pointed out that the thresholds just replicate CRD IV/V.	This RTS is based on a mandate given to the EBA under the IFD to set out the criteria for the identification of staff whose professional activities have a material impact on the firm´s risk profile or assets it manages. 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 firm’s risk profile or assets it manages in accordance with the requirements of Article 30 of the IFD and taking into account specificities of investment firms. It should be stressed that the RTS on identified staff, Commission Delegated Regulation 604/2014, was already applicable to some investment firms. It should also be noted that the RTS is a directly applicable binding act. The guidelines set out under AIFMD and UCITS do not provide specific details on the identification of risk takers. However, those guidelines have been considered when drafting the RTS.	No change

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	Several respondents requested that quantitative thresholds be considered only as indicative and that a true risk-based qualitative assessment be prioritised, allowing investment firms to not to apply them based on this assessment. Some respondents considered that the EBA approach should allow for the exclusion of non-executive roles (due to fee-based remuneration) as Supervisory Board members do not receive fixed or variable remuneration for their mandate, but (if any) an attendance fee. This should not be considered in the calculation of the remuneration threshold, as they generally do not receive performance-related remuneration.	The criteria referred to in the RTS are legally binding and not indicative. The draft RTS puts forward quantitative criteria based on the total remuneration an individual receives (including non-executive members of the management body), both in absolute terms (with predefined quantitative thresholds) and relative to other staff in the firm. However, as the remuneration is only a proxy for risk-taking, firms may establish that staff identified only by virtue of the quantitative criteria do not in fact have a material impact on the firm's risk profile or assets it manages under additional conditions. An exclusion of staff identified under the qualitative criteria is not possible.	
Article 6(1)(d)	Some respondents considered that the current drafting of Article 6(1)(d) potentially creates volatility in the identified staff population. Variable remuneration, will by its nature, vary year-on-year and it is possible for individuals to come in and out of scope on an annual basis, making administration complex. This could be further complicated by exchange rate fluctuations when staff are employed in different countries.	Article 6(1)(d) is explicitly based on Article 30(1) of the IFD (the remuneration bracket) and the mandate given to the EBA to draft this RTS. The criterion as such is set in the IFD, the RTS provides in detail how it should be applied.	
Article 6(1)(d)	One respondent noted that the proposed threshold omits MRTs identified under Article 5 point 5 and sought clarity as to whether it would be compliant, in considering the Article 6(1)(d) threshold, to exclude heads of control functions from consideration where they also meet the criteria in points 1 and/or 3 of Article 5.	The quantitative and qualitative criteria are independent from each other. Under these draft RTS, a staff member will be characterised as 'identified staff' if at least one of the criteria is met.	No change

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Article 6(4)	Several respondents considered that the pre-approval requirement for the disapplication of the quantitative criteria is cumbersome and impractical and contrary to the spirit of firms identifying MRTs based on a risk assessment, and they hope that a 'comply or explain' approach could be adopted instead. They suggested that the thresholds should be subject to the overarching test of whether the staff member has a material impact on the investment firm's risk profile or its managed assets, with it being for firms to assess this and to internally record the considerations in that regard. They consider that such approach would be in line with the approach for determining identified staff under the AIFMD and UCITS V Directive, and it would be more effective and efficient in ensuring that the correct staff were identified as MRTs, whilst still being prudentially sound and avoiding a disproportionate administrative burden.	This provision has been clarified. It should be mentioned that a draft RTS should provide a sufficient level of detail as it is a directly applicable act. Finally, for those staff that receive such an amount of total remuneration, the cost for investment firms to demonstrate to the CA that staff members have effectively no material impact on the firm´s risk profile or assets it manages is not disproportionate.	RTS clarified
Article 6(5)	Some respondents considered that above EUR 1 000 000 the possibility of excluding a member of the staff becomes onerous, not only relying on the absence of risk materiality but also on well-justified exceptional circumstances and once the competent authorities have informed the EBA about any such exclusion before it is approved. They consider local competent authorities are competent to make these determinations and do not understand why the reasons for disapplication have to be 'exceptional'.	Quantitative criteria at this level form a very strong presumption that staff have a material impact on the investment firm's risk profile or on the assets it manages.	Article 6(5)