

# Barclays Responses to EBA consultation paper on Material Risk takers

## Article 3 - Qualitative and quantitative criteria

(1) Staff shall be identified as having a material impact on an institution's risk profile if they meet one or more of the following criteria:

- a. the staff member is a member of the management body;
- b. the staff member is a member of the senior management;
- c. the staff member is responsible and accountable to the management body for the activities of the internal risk control function, the compliance function or the internal audit function;
- d. the staff member heads a business unit (within the meaning of Article 137(1)(3) of Regulation (EU) No xxxx/2013 [CRR]);

Article 137 (1) (3) reads: 'business unit' means any separate organisational or legal entities, business lines, geographical locations;

- e. the staff member heads a function responsible for legal affairs, taxation, human resources, information technology, budgeting, economic analysis, or business continuity planning;

Q1: Is the list of specific functions listed appropriate or should additional functions be added?

A prescribed list of functions will not achieve a 100% match in all institutions - for example, Barclays do not have an 'economic analysis' or 'budgeting' function. However, in compiling such a list, we think that Finance, Operations & Communications should be represented. Also, we would suggest that Business Continuity Planning be removed as this would be a subset of the internal risk

- f. the staff member has, individually or collectively with other staff members, authority to commit to credit risk exposures of a nominal amount per transaction which represents 0.25% of the institution's Common Equity Tier 1 capital;

Q2: Can the above criteria be easily applied and are the levels of staff identified and the provided threshold appropriate?

This criterion cannot be easily applied as this is not how credit risk assets are managed within Barclays.

The decision and agreement on target market criteria is the responsibility of specific committees who together would be considered Material Risk decision makers and identified under Article 3(2)

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g. in relation to an institution to which the derogation for small trading book business under Article 89(1) of Regulation (EU) No xxxx/2013 [CRR] does not apply, the staff member has, individually or collectively with other staff members, authority to commit to transactions on the trading book which in aggregate represent one of the following:

- i. where the standardised approach is used, an own funds requirement for market risks of 0.25% or more of the institution's Common Equity Tier 1 capital;
- ii. where an internal model based approach is used, 5% or more of the institution's internal value-at-risk limit for trading book exposures at a 95th percentile, one-tailed confidence interval level;

Q3: Can the above criteria be easily applied and are the levels of staff identified and the provided thresholds appropriate?

The criteria cannot be easily applied since a portfolio measure such as VaR is a net number and cannot be distilled down to individual traders. We can only identify staff with trader mandates and compare their limits to a threshold based on CET1.

As a threshold 0.25% of CET1 capital seems very low if the aim is to assess materiality. By definition this is 1/400 of one type of capital which an institution may hold. However, a criterion based on a measure such as this would not address those leveraged products which utilise less capital but may in fact carry greater risk.

Furthermore we are unsure as to the meaning of 'Individually or collectively' in this context. If person A & B work on the same strategy but A is mandated above a threshold and B is not, then person A might be identified, but collectively A & B should also be identified. This has no logical floor - all traders can be identified since the sum of all traders will be above the threshold.

We think that this criterion should be tailored, in consultation with the National Competent Body, to reflect the way in which risk is managed at the

h. the staff member has managerial responsibility for a group of staff members who have individual authorities to commit the institution to transactions, and the sum of those authorities equals or exceeds a threshold set out in point (f) or in point (g);

i. the staff member has managerial responsibility for a staff member whose professional activities have or may have a material impact on the institution's risk profile according to the internal risk identification process in Article 2;

j. the staff member has, individually or collectively with other staff members, the authority to take, approve or veto decisions on the introduction of new products, material processes, or material systems.

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(2) Staff shall be identified as having a material impact on an institution's risk profile if they meet one or more of the following criteria, subject to Article (4):

a. the staff member could, in accordance with the institution's remuneration policy, be awarded variable remuneration that exceeds both of the following amounts:

- i. 75% of the fixed component of remuneration;
- ii. EUR 75 000;

Q4 a) Is this criterion appropriate to identify risk takers?

This criterion does not relate to risk taking so it cannot be considered directly appropriate for identifying risk takers.

As a backstop criterion for use in certain types of institution, it may be appropriate. However, at this level of remuneration, the percentage part of the criterion is very sensitive to small changes in fixed remuneration. The list would therefore be quite volatile annually.

It would not be appropriate for an institution such as Barclays, where a variable award of EUR 75,000 is not considered large.

It would also have the undesirable consequence of encouraging institutions to raise fixed pay rather than variable, leaving them less able to manage costs in years of heightened financial pressure.

Q4 b) Are the thresholds set in the criterion appropriate?

No - neither of the thresholds are appropriate for Barclays.

While we agree that there is a relationship between higher reward levels and the impact that recipients have on a firm's risk profile, in the context of a global financial services firm, remuneration numbers at this level are not particularly high. For example, in 2012, Barclays paid over 5,200 variable awards in excess of EUR 75,000, and nearly 3,500 variable awards in excess of 75% of fixed pay.

Q4 c) What would be the number of staff members identified in addition to all other criteria within the RTS?

Compared to staff identified by Article 2 and Articles 3(1) and 3(3), this criteria would increase the number of identified staff from 1,337 to 3,221 - meaning that nearly 60% of those on the list would be identified by this criterion alone.

Q4 d) What would be the additional costs of implementation for the above criterion if an institution applies Article 4 in order to exclude staff from the group of identified staff?

Since this criterion will add nobody to our list that Barclays would not seek to exempt under Article 4, it would fit the purpose of the RTS better if institutions had the flexibility, in consultation with the National Competent Body, to deselect this criterion entirely.

However, the extent to which this increases costs is not quantifiable - but there would certainly be indirect costs in performing this task.

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b. the staff member has been awarded total gross remuneration in one of the two preceding financial years which is equal to or greater than the lowest total remuneration that was awarded in that year to a member of staff who performs professional activities for the same entity and who either is a member of senior management or meets one of the criteria in paragraph (1) or one of the internal criteria referred to in Article 2;

Q5 a) Can the above criterion be easily applied?

There is no practical difficulty in applying the criterion, but the suggestion that an employee receiving as much remuneration as the lowest earning risk taker should therefore be defined as a risk taker is not credible. As can be seen in our data submission, this would give rise to a list of 27,995 people of which more than 95% have been identified solely due to this backstop criterion.

There may also be undesirable consequences of including this criterion, such as:

1. In the case of poor performance from a MRT, knowing that making a reduction in the level of their remuneration would also serve to expand the identified staff population, may in fact influence the decision to make the reduction;
2. The decision to identify a true MRT may be adversely influenced where that staff member happens to be lower paid than any others being identified.

In 2012 the lowest remuneration earned by an employee of Barclays identified as Code Staff was €217,000. There were 7,600 other staff members who earned in excess of this amount. Institutions should be free to identify such staff without regard to their remuneration, and they should also be able to reduce, for any reason, the remuneration of staff that are identified, without the added burden of knowing that each such decision would lead to the need to seek an exemption for several thousands of other staff.

Q5 b) Would it be more appropriate to use remuneration which potentially could be awarded as a basis for this criterion?

Many banks operate discretionary incentive arrangements that have no individual maximum so this doesn't provide a practical solution.

Q5 c) What would be the difference in implementation costs if the potentially awarded remuneration would be used as a basis?

There is no additional cost in changing the basis of the criterion, but it may not be practical to do so given that the potential remuneration may not be

c. the staff member has been awarded total gross remuneration of EUR 500 000 or more in one of the two preceding financial years.

Q6: Can the above criterion be easily applied and are the threshold and the levels of staff identified appropriate?

Again, there is no practical difficulty in applying this criterion, but observing a threshold of EUR 500,000 would capture 1,700 employees in addition to the 1,337 staff identified by Article 2 and Articles 3(1) and 3(3).

Also, for institutions operating in a global setting the list will be skewed towards costlier locations. At Barclays, there are employees which would not be captured by this threshold in Africa, whereas employees performing a similar function in New York would be simply because general levels of pay are higher there.

Since Article 4 does not currently allow for the exemption of any staff captured by this criterion, these staff would need to remain on the list. To have over half of all MRTs defined by this criterion alone is not an appropriate outcome.

We strongly recommend that either (1) Article 4 is extended to allow the exclusion of staff erroneously captured by this criterion; or (2) the threshold is reviewed in consultation with the National Competent Body to be set at a level appropriate to the individual institution.

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d. the staff member is within the 0.3% of staff who received the highest total gross remuneration in either the most recent financial year or in the preceding financial year.

**Q7: Can the above criteria be easily applied and are the levels of staff identified appropriate?**

We feel this criterion, for our institution type, is an appropriate type of backstop. This criterion acts well since all of these staff would be appropriate for inclusion in the list of identified staff in the event that they may not otherwise be captured by any of the risk-related criteria.

Furthermore, this criterion offers operational simplicity and because it is an internal relativity measure it satisfies the concept of highly paid staff being 'bracketed with' other risk takers. It will also not result in any of the irrelevant volatilities year on year which will be caused by all of the other criteria in article 3(2). Finally, by its nature it immediately resolves exposure to the movements in currency rates.

(3) In paragraph (1), a reference to staff members having, individually or collectively with other staff members, authority to commit to transactions or exposures or to take, approve or veto a decision includes both of the following categories of staff:

- a. staff who are responsible for advising on or initiating such commitments or decisions;
- b. staff who are members of a committee which has authority to make such commitments or to take such decisions.

**Q8: Are there additional criteria which should be used to identify staff having a material impact on the institutions risk profile?**

We do not believe there are other criteria for identifying MRTs which should be considered over and above those already proposed.

(4) For the purposes of this Article remuneration which has been awarded but is not yet paid shall be valued as at the date of the award without taking into account application of the discount rate referred to in Article 90(1)(f) of Directive 2013/xx/EU [CRD] or reductions in payouts, whether through claw back, malus, or otherwise. All amounts shall be calculated as at the end of the institution's financial year and on a full-time equivalent basis.

### Article 4 - Staff with no material impact on the risk profile

Where a member of staff is identified as having a material impact on an institution's risk profile only as result of either or both of the criteria in points (a) and (b) of Article 3(2) the institution may treat the professional activities of that staff member as not having a material impact on the institution's risk profile if each of the following conditions is met:

a. the professional activities of the staff member are not considered to have a material impact on the institution's risk profile pursuant to the institution's internal identification process carried out in accordance with Article 2 (other than as a result of the application of the criteria in points (a) and (b) of Article 3(2));

b. the staff member in fact does not have a material impact on the institution's risk profile, taking into account in particular the absolute amount of variable remuneration which could be awarded, the staff member's authorities and duties and differences between the levels of remuneration which can be awarded in different jurisdictions where the institution undertakes business.

Although there is no specific question here, please note that in Q6 we recommend the expansion of this Article such that employees identified by Article 3(2)c may also be exempted.

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## Impact of the proposals

The impact of this RTS will vary greatly between institutions and will depend mainly on the size of the institutions the activities it conducts and the composition of its staff.

*Direct compliance costs* - They cover all the incremental costs that meeting the new requirements of this RTS will generate for institutions and national authorities.

**Table 1 - Summary of the direct compliance costs of the proposal**

Party concerned	Costs
Credit Institutions	<p><b>One-Off Costs</b></p> <p>a. Costs of IT changes to the current information systems to identify staff</p> <p>b. Costs of changing the current relevant internal processes for identifying staff</p> <p>c. Costs of training or hiring staff members in charge of identifying staff</p> <p><b>Ongoing Costs</b></p> <p>d. Additional costs (compared to the current requirements), for monitoring and identifying potential additional staff members (new hires, changes in the institutions structure, etc.) with more complex criteria.</p>
National Supervisory Institutions	<p><b>Ongoing Costs</b></p> <p>e. Incremental costs (compared to the current requirements), of supervising compliance with new requirements for identifying staff.</p>

Almost all the firms in the survey that provided answers on costs confirmed that the main drivers of costs of the RTS had been appropriately listed in the table above. From this limited sample, it appears that for most institutions, independently of their number of employees, changes to IT systems will be one of the main drivers of costs. Changing processes is another important driver of costs, but tends to affect larger institutions. As expected, smaller institutions cited rather hiring/training new staff as an important driver of costs. Most of the institutions in the sample were not able to provide any estimate of the scale of these changes.

**Q9. Could you indicate whether all the main drivers of direct costs from the RTS have been identified in the table above? Are there any other costs or benefits missing? If yes, could you specify which ones?**

No other direct material cost as a result of the RTS

**Q10: For institutions, could you indicate which type of costs (a, b, c, d) are you more likely to incur? Could you explain what exactly drives these costs and give us an indication of their expected scale?**

a, b & c would all be drivers of cost increase since they would utilise employee time, but the extent of this is not easy to estimate, but probably not particularly high. As noted under 5(c) above, there would also be indirect costs depending on the extent of the work needed to exempt staff under Article 4, which are similarly difficult to estimate.

*Indirect Compliance Costs* - By defining the scope of the staff identified as having a material impact on the institution's risk profile, the RTS will also affect the size of the costs driven by the requirements of the directive; for instance, the costs associated with changing individual contracts for identified staff that are not compliant with the CRR or due to the disclosure requirements.

*Benefits* - By establishing harmonised criteria to identify staff members who have a material impact on the institutions risk profile, the RTS will ensure that institutions in different member states use the same practices to indentify staff, reducing the burden to comply with different regulatory frameworks. These criteria will identify in some member states more staff as having a material impact on the institution's risk profile compared to the current national framework. By doing so, they contribute to realise the benefits sought by the CRD IV requirements *which is beside others to ensure that the remuneration of identified staff reflects more accurately the risks they generate and is more aligned with the longer term interests of the institution.*

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Q11: Do you agree with our analysis of the impact of the proposals in this CP? If not, can you provide any evidence or data that would explain why you disagree or might further inform our analysis of the likely impacts of the proposals?

We agree with many of the points made in the analysis, but disagree with the impact on a few major items.

We disagree with point 26 - that a threshold of EUR 500,000 will only identify a further 3,004 individuals across the industry. Barclays alone would identify additional staff in a quantity greater than half of this number.

We disagree with point 27 - that a threshold of EUR 500,000 is appropriate since it is approximately the average of benchmarking data across 110 institutions. Barclays recognises a small peer group of institutions globally, most of which are headquartered in the US, APAC or Switzerland. Looking across 110 institutions in