

EBA/CP/2019/16

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Consultation Paper

Draft Regulatory Technical Standards on the criteria to define managerial responsibility and control functions, material business unit and significant impact on their risk profile, and other categories of staff whose professional activities have an material impact on the institutions risk profile

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1. Responding to this consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2.

Comments are most helpful if they:

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

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 19 February 2020. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

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

Data protection

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

2. Executive Summary

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

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

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

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

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

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

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

the RTS on identified staff². Those criteria identify staff with material managerial responsibilities and staff with decision making powers that have a material impact on the institutions risk profile.

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

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

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

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

3. Background and rationale

1. Article 92(2) of Directive 2013/36/EU (CRD) provides that ‘Member States shall ensure that, when establishing and applying the total remuneration policies, inclusive of salaries and discretionary pension benefits, for categories of staff whose professional activities have a material impact on their risk profile, institutions comply with the following requirements in a manner that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities’. For variable elements of remuneration, Article 94 of the CRD applies in addition to, and under the same conditions as, those set out in Article 92(2) of the CRD.
2. Article 92(3) of the CRD defines criteria for the identification of staff for the purposes of Article 92(2) of the CRD determining a set of staff whose professional activities are at least considered as having a material impact on the institutions risk profile. These include all members of the management body and senior management, staff members with managerial responsibility over the institution’s control functions or material business units and staff members entitled to significant remuneration in the preceding financial year, providing that the staff member’s remuneration is equal to or greater than EUR 500 000 and equal to or greater than the average remuneration awarded to the members of the management body and senior management and that the staff member performs the professional activity within a material business unit and the activity is of a kind that has a significant impact on the relevant business units risk profile.
3. Article 94(2) of the CRD mandates the EBA to develop draft regulatory technical standards (RTS) in this area to set out criteria to define (a) managerial responsibility and control functions, (b) material business unit and significant impact on the relevant business unit’s risk profile; and (c) other categories of staff not expressly referred to in Article 92(3) of the CRD whose professional activities have an impact on the institution’s risk profile comparably as material as that of those categories of staff referred to therein. In developing this draft RTS, the qualitative criteria which have been set out in Regulation (EU) No 604/2014 have been retained to a large extent; the EBA took also into account the EBA Guidelines on sound remuneration policies, the supervisory experience since the entry into force of the Delegated Commission Regulation EU No 604/2014 and the EBA peer review report on the application of the RTS to identify categories of staff whose professional activities have a material impact on an institution’s risk profile. The appropriate identification of staff whose professional activities have a material impact on the institution’s risk profile is necessary to ensure an effective application of remuneration requirements contained within the CRD.
4. The CRD requires institutions to identify all staff members whose professional activities have a material impact on the institution’s risk profile and foresees a certain minimum set of criteria directly within the CRD. Competent authorities have to ensure that institutions comply with the requirements set out in Articles 92 and 94 of the CRD in this respect.

5. The combination of the criteria directly included in Article 92(3) of CRD, as implemented in national law, and the ones set in these draft RTS, together with the requirements set out in Article 92(2) of CRD ensures that each institution's individual risk profile is taken into account appropriately, while common qualitative and appropriate quantitative criteria promote a consistent classification of identified staff between institutions.
6. 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 institution's risk profile in order to ensure a consistent approach to the identification of such staff across the EU. These draft RTS set out a common set of criteria which have to be applied in any case in order to identify staff. Under these draft RTS, a staff member will be characterised as 'identified staff' if at least one of the criteria is met. By providing well-defined qualitative criteria and adding clear and appropriate quantitative criteria, the draft RTS ensure a harmonised identification of staff. The common criteria within the RTS are defined in a way that can be applied by all institutions and may, therefore, not identify exhaustively all staff members whose professional activities have a material impact on the risk profile of a particular institution, because of the specificities of its risk profile. Consequently, institutions may have to apply within their identification process additional internal criteria to ensure that they meet the above requirements.
7. 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 institution's risk profile in accordance with the requirements of Article 92(2) of the CRD. Where staff would be identified only under the quantitative criteria but do not, in fact, have a material impact, it is possible to exclude such staff members under additional conditions in line with the CRD.
8. The quantitative criteria defined in addition to the criteria included in Article 92 (3) of the CRD aim at ensuring that a sufficient level of scrutiny by institutions and competent authorities is applied when identifying staff whose professional activities have a material impact on the institutions risk profile. It is presumed that the staff with a high level of total remuneration has also a more material impact on the risk profile compared to staff with significantly lower remuneration levels.
9. The quantitative criteria specified in the draft RTS are subject to additional conditions under which institutions can demonstrate that members of staff who would be identified only under the quantitative criteria do not in fact have a material impact on the institution's risk profile and are therefore not considered to be identified staff. If institutions aim to exclude such staff, they are required to submit the respective assessments to the competent authorities for prior approval. For staff receiving EUR 1 000 000 or more (high earners) exclusions can only be approved in well justified exceptional circumstances and competent authorities need to inform the EBA about any such exclusions before they are approved. The draft RTS sets out criteria for the assessment of such exceptional circumstances to ensure a coherent application of such exclusions of high earners.
10. The result of the application of all qualitative and quantitative criteria should be documented by the institutions so that competent authorities can ensure institutions apply the criteria in line with the regulation.

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

4. Draft regulatory technical standards

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC³, as amended by Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 and in particular Article 94(2) thereof,

Whereas:

- (1) Article 92(2) of Directive 2013/36/EU provides that Member States shall ensure that, when establishing and applying the total remuneration policies, inclusive of salaries and discretionary pension benefits, for categories of staff whose professional activities have a material impact on their risk profile, institutions comply with the following requirements in a manner that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities'. For variable elements of remuneration, Article 94 of that Directive applies in addition to, and under the same conditions as, those set out in Article 92(2).
- (2) Article 92(3) of Directive 2013/36/EU defines criteria for the identification of staff for the purposes of Article 92(2) of that Directive, determining a set of staff whose professional activities are at least considered as having a material impact on the institutions risk profile. These include all members of the management body and senior management, staff members with managerial responsibility over the institution's control functions or material business units and staff members entitled to significant remuneration in the preceding financial year, providing that the staff member's remuneration is equal to or greater than EUR 500 000 and equal to or greater than the average remuneration awarded to the members of the management body and senior management and that the staff member performs the professional activity within a material business unit and the activity is of a kind that has a significant impact on the relevant business units risk profile.
- (3) Directive 2013/36/EU, and in particular Article 74 thereof, requires institutions to have robust governance arrangements and effective processes to identify, manage, monitor and report the risks that they are or might be exposed to. These arrangements and processes are to be comprehensive and proportionate to the nature, scale and complexity of the risks inherent in the business model and the institution's activities. They must take into account, amongst others, the specific risks identified in Articles 79 to 87 of that Directive. The arrangements and processes are evaluated by competent authorities as part of the supervisory review and evaluation process pursuant to Article 97 of that

³ OJ L 176, 27.6.2013, p. 338.

Directive. The risks identified are considered by institutions within the internal capital adequacy assessment process pursuant to Article 73 of that Directive.

- (4) The framework for prudential supervision established by Directive 2013/36/EU requires that all institutions identify all members of staff whose professional activities have a material impact on the institution's risk profile. Institutions must apply at least the criteria foreseen under Article 92(3) of Directive 2013/36/EU. Article 94(2) of Directive 2013/36/EU mandates the EBA to specify some aspects of those criteria and to define other categories of staff not expressly referred to in Article 92(3) of Directive 2013/36/EU whose professional activities have a comparably material impact on the institutions risk profile. Institutions should define also as appropriate additional internal criteria to ensure that all staff that have a material impact on the institution's risk profile are identified. Institutions should take into account the results of their own risk assessments within their internal procedures. Competent authorities should ensure a complete identification of all staff whose professional activities have a material impact on an institution's risk profile.
- (5) To ensure a consistent application across the European Union, a set of clear qualitative and appropriate quantitative criteria should be established in order to identify the categories of staff whose professional activities have a material impact on an institution's risk profile and to cover a common set of the most relevant risks. The criteria that are used to assess the materiality of the influence of the professional activities of staff on the risk profile should take into account the potential impact of staff on the institution's risk profile based on their authority and responsibilities and the institution's risk and performance indicators. The institution's internal organisation and the nature, scope and complexity of its activities should be taken into account in the assessment. The criteria should fully reflect all risks to which the institution or group is or may be exposed. This should also enable institutions to set proper incentives within the remuneration policy to ensure the prudent behaviour of staff and should ensure that the identification of those members of staff whose professional activities have a material impact on the institution's risk profile reflects the level of risk of different activities within the institution.
- (6) Members of the management body have the ultimate responsibility for the institution, its strategy and activities and therefore are always able to exercise a material impact on the institution's risk profile. This applies to the members of the management body in its management function who take decisions as well as to the members of the supervisory function who oversee the decision making process and challenge decisions made. Members of the management body as defined by Article 3(7) and (8) of Directive 2013/36/EU are identified under the criteria within Article 92(3)(a) of Directive 2013/36/EU
- (7) Members of senior management as defined by Article 3(9) of Directive 2013/36/EU are those who exercise executive functions within an institution and who are responsible, and accountable to the management body, for the day-to-day management of the institution. Those members are equally identified under the criteria within Article 92(3)(a) of the CRD.
- (8) In addition to the members of the management body and senior management, which are in any case identified as staff whose professional activities have a material impact on the institution's risk profile in accordance with points (a) and (b) of paragraph 3 of Article 92 of Directive 2013/36/EU, other senior staff members professional activities

who have managerial responsibilities for material business units, for the management of specific risk categories or for control functions should also be considered as having a material impact on the institution's risk profile taking into account their responsibility for making strategic or other fundamental decisions on the business activities or the control framework applied. The risks taken by the business units and the way they are managed are the most important factors for the institution's risk profile and therefore the aforementioned staff members should be identified for the purposes of the application of Article 92(2) of Directive 2013/36/EU.

- (9) In addition functions responsible for providing internal support which are crucial to the operation of the institution's business activities and have authority to take decisions in those areas expose the institution to material operational and other risks. Therefore the professional activities of staff members in such functions also have a material impact on the institution's risk profile.
- (10) As credit risk and market risk are typically entered into in order to generate business the impact of the activities generating those risks on the risk profile can be assessed using criteria based on limits of authority which are calculated at least annually on the basis of capital figures and approaches used for regulatory purposes, while applying a de minimis threshold for credit risks to ensure the proportionate application of the criteria within small institutions.
- (11) The criteria to identify staff whose professional activities have a material impact on the institution's risk profile should take account of the facts that the requirements relating to the trading book can be waived for some institutions under Regulation (EU) No 575/2013 and that limits are set in different ways between institutions using different approaches for the calculation of the capital requirements.
- (12) Appropriate criteria should ensure that members of staff are identified as having a material impact on the institution's risk profile where they are responsible for groups of staff whose activities could have a material impact on the institution's risk profile. This includes situations where the activities of individual staff members under their management do not individually have a material impact on the institution's risk profile but the overall scale of their activities could have such an impact.
- (13) In addition to the qualitative criteria, appropriate quantitative criteria should be established to identify categories of staff whose professional activities have a material impact on the institution's risk profile. The total remuneration, to which members of staff are entitled, typically depends on the contribution that staff make to the successful achievement of the institution's business objectives and therefore on the responsibilities, duties, abilities and skills of staff and the performance of staff and the institution. Where a member of staff is awarded total remuneration which exceeds a certain threshold, it is reasonable to presume that this is linked to the staff member's contribution to the institution's business objectives and to the impact of the staff member's professional activities on the risk profile of the institution. Accordingly, it is appropriate to set quantitative criteria on the total remuneration a member of staff receives, both in absolute terms and relatively to other members of staff within the same institution. In applying those quantitative criteria, account should, where appropriate, be taken of the fact that payment levels differ across jurisdictions.
- (14) Clear and appropriate thresholds should be established to identify staff whose professional activities have a material impact on the institution's risk profile, taking into account the data collected by EBA and by competent authorities. Institutions should be

expected to apply the quantitative criteria in a timely manner, therefore the quantitative criteria should be based on the total remuneration awarded in a performance year and not on the remuneration awarded for a performance year, as the determination of the variable remuneration is usually only finalised a few months after the end of the performance period.

- (15) Article 92(3) of Directive 2013/36/EU sets a quantitative threshold of EUR 500 000 combined with the average of the remuneration of members of the management body and senior management for the identification of staff that has a material impact on the risk profile of a material business unit. Values above the quantitative thresholds or having one of the highest remunerations within the institution establish a strong presumption that staff have a material impact on the institution's risk profile. In this regard more supervisory scrutiny should be applied to establish whether the professional activities of such staff members have a material impact on the institutions risk profile, if their remuneration exceeds the minimum quantitative threshold set within Directive 2013/36/EU. Where institutions establish on the basis of additional objective conditions that staff do not in fact have a material impact on the institution's risk profile, taking into account all risks to which the institution is or may be exposed, such staff members should not be subject to the application of the remuneration provisions under Articles 92 and 94 of Directive 2013/36/EU. The exclusion of the highest earning staff identified under the quantitative criteria laid down in Article 92 (3) c) of Directive 2013/36/EU and under this Regulation should be subject to the approval of the competent authority to ensure effective and consistent application of those criteria. For staff awarded more than EUR 1 000 000 (high earners) competent authorities should inform EBA before exclusions are approved, in order to assess, in particular in such exceptional circumstances, the coherent application of those criteria. The identification process, including the application of exclusions, should nevertheless always be subject to supervisory review in accordance with Articles 92(2) and 97 of Directive 2013/36/EU.
- (16) Competent authorities should ensure that institutions maintain a record of the assessment made and its results, and of the staff whose professional activities have been identified as having a material impact on their risk profile to enable the competent authority and auditors to review the assessment, including on the assessment of staff who have been identified under criteria based on their total remuneration but for whom the professional activities are assessed as not having a material impact on the institution's risk profile.
- (17) Since 2010, the EBA is monitoring the remuneration practices of institutions and has published several reports on the benchmarking of remuneration practices. In addition the EBA has reviewed the application of the 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. This Regulation is based on the draft regulatory technical standards submitted by EBA to the Commission taking also into account the findings of this peer review and the observed industry practices.
- (18) EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in



accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council (1).

Has adopted this Regulation

Article 1
Subject matter, scope and level of application

- 1) Without prejudice to the categories of staff expressly referred to in Article 92(3) of Directive 2013/36/EU, this Regulation establishes regulatory technical standards setting out criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile; criteria to define managerial responsibility and control functions; material business unit and significant impact on the relevant business unit's risk profile; and other categories of staff not expressly referred to in Article 92(3) of Directive 2013/36/EU whose professional activities have an impact on the institution's risk profile comparably as material as that of those categories of staff referred to therein.
- 2) The criteria shall be applied in accordance with Article 109 of that Directive on a consolidated, sub-consolidated and individual basis. On an individual basis, the criteria shall be based on the institution's risk profile. The criterion under point (b) of paragraph 1 of Article 7 shall only be applied on an individual basis. When applying the quantitative criterion under point (a) of paragraph 1 of Article 7 on an individual basis, institutions should take into account all remuneration awarded by the institution itself.
- 3) When applying the criteria on a sub-consolidated or consolidated level, the consolidating institution, financial or mixed financial holding company shall base the criteria, on the impact on the consolidated or sub-consolidated risk profile. When applying the quantitative criterion under point (a) of paragraph 1 of Article 7 on a sub-consolidated or consolidated level, the consolidating institution shall take into account the remuneration awarded to the staff member by all entities within the scope of consolidation.

Question 1: *Are the Subject matter, scope and level of application within Article 1 appropriate and sufficiently clear?*

Article 2
Managerial responsibility

“Managerial responsibility” shall be defined as a situation in which either of the following criteria applies:

- a. the staff member heads a business unit or a control function and is directly accountable to the management body as a whole or to a member of the management body or to the senior management;
- b. the staff member heads a subordinated unit or subordinated control function and reports to a staff member referred to in point (a).

Article 3
Control function

“Control function” shall be defined as a function independent from the business units that it controls, which has a responsibility to provide objective assessment of risks,

reporting or assurance. This includes, but is not limited to the risk management function, the compliance function and the internal audit function.

Article 4

Material business unit

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

- a. it has been allocated an internal capital of at least 2% of the internal capital of the institution as set out in Article 73 of Directive 2013/36/EU or is otherwise considered by the institution as having a material impact on the internal capital requirements of the institution;
- b. it provides a critical function or a core business line as defined in points (35) and (36) of paragraph 1 and paragraph 2 of Article 2 of Directive 2014/59/EU.

Question 2: *Are the definitions within Article 2, 3 and 4 appropriate and sufficiently clear?*

Article 5

Material business unit and significant impact on the material business unit’s risk profile

1. For the purpose of applying point (c) (ii) of paragraph 3 of Article 92 of Directive 2013/36/EU, institutions shall set out within their remuneration policy qualitative or quantitative metrics to determine whether the professional activities of staff or categories of staff have a significant impact on the material business unit’s risk profile, taking into account the following criteria:
 - a) the risk profile of the business unit as defined by Article 73 of Directive 2013/36/EU;
 - b) the institutions’ overall risk strategy and risk appetite;
 - c) the risk limits of the business unit;
 - d) the relevant risk and performance indicators used by the institution to identify, manage and monitor risks of the business unit in accordance with Article 74 of Directive 2013/36/EU;
 - e) the relevant performance criteria set by the institution under points (a) and (b) of paragraph 1 of Article 94 of Directive 2013/36/EU;
 - f) the professional activities, including the duties and authorities of staff members or categories of staff.
2. For the purpose of identifying all categories of staff whose professional activities have a material impact on an institution’s risk profile, institutions should consider those expressly referred to under points (a), (b) and (c) of paragraph 3 of Article 92 of Directive 2013/36/EU and those referred to under point (c) of paragraph 2 of Article 94 of Directive 2013/36/EU. In order to identify those staff or categories of staff referred to under point (c) of paragraph 2 of Article 94 of that Directive, as having an impact on an institution’s risk profile comparably as material as that of

those categories of staff referred to in paragraph 3 of Article 92 of that Directive, institutions should consider those staff or categories of staff if they meet one or more of the criteria defined under Articles 6 and 7 of this Regulation.

Having in mind that the qualitative criteria are comparable to the ones included in the RTS currently in force, respondents are asked to focus on the amended criteria within points 1 and 6.

Article 6 *Qualitative criteria*

Without prejudice to the criteria foreseen under points (a) and (b) of paragraph 3 of Article 92 of Directive 2013/36/EU, members of staff shall be deemed to have a material impact on an institution's risk profile if one or more of the following qualitative criteria are met:

- (1) the staff member has managerial responsibilities for :
 - (a) legal affairs;
 - (b) the adequacy and appropriateness of accounting procedures;
 - (c) compliance with taxation requirements;
 - (d) performing economic analysis;
 - (e) the prevention of money laundering and terrorist financing;
 - (f) dealing with human resources;
 - (g) the development or implementation of the remuneration policy;
 - (h) providing information technology or security
 - (i) managing outsourcing arrangements of critical or important functions.
- (2) the staff member has managerial responsibilities for a risk category set out in Articles 79 to 87 of Directive 2013/36/EU other than credit risk and market risk or is a member of a committee responsible for the management of a risk category provided for in Articles 79 to 87 of Directive 2013/36/EU other than credit risk and market risk;
- (3) with regard to credit risk exposures of a nominal amount per transaction, representing 0.5% of the institution's Common Equity Tier 1 capital and is at least EUR 5 million, the staff member meets one of the following criteria:
 - (a) the staff member has the authority to take, approve or veto a decision on such a credit risk exposure;
 - (b) the staff members is a voting member of a committee which has the authority to take decisions set out in points (a);
- (4) in relation to an institution to which the derogation for small trading book business under Article 94 of Regulation (EU) No 575/2013 does not apply, the staff member meets one of the following criteria:



- (a) the staff member has the authority to take, approve or veto a decision on transactions on the trading book which in aggregate represent one of the following thresholds:
 - i. where the standardised approach is used, an own funds requirement for market risks which represents 0.5% or more of the institution's Common Equity Tier 1 capital;
 - ii. where an internal model based approach is approved for regulatory purposes, 5% or more of the institution's internal value-at-risk limit for trading book exposures at a 99th percentile (one-tailed confidence interval level);
 - (b) the staff member is a voting member of a committee which has the authority to take decisions set out in point (a);
- (5) the staff member has managerial responsibilities in a group of staff members who have individual authorities to commit the institution to transactions and either of the following conditions is met:
- (a) the sum of those authorities equals or exceeds the threshold set out in point 3(a) or point 4(a)(i);
 - (b) where an internal model based approach is approved for regulatory purposes those authorities amount to 5% or more of the institution's internal value-at-risk limit for trading book exposures at a 99th percentile (one-tailed confidence interval level). Where the institution does not calculate a value-at-risk at the level of that staff member the value-at-risk limits of staff under the management of this staff member shall be added up;
- (6) the staff member meets either of the following criteria with regard to decisions 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.

Question 3: *Are the qualitative criteria within Article 6 appropriate and sufficiently clear? Having in mind that the qualitative criteria are comparable to the ones included in the RTS currently in force, respondents are asked to focus on the amended criteria within points 1 and 6.*

Article 7
Quantitative criteria

- 1) Without prejudice to point (c) of paragraph (3) of Article 92 of Directive 2013/36/EU, members of staff shall be deemed to have an impact on an institution's risk profile, where one or more of the following quantitative criteria are met:
- a. the staff member, including those expressly referred to under point (c) of paragraph 3 of Article 92 of Directive 2013/36/EU, has been awarded in the

- preceding financial year a total remuneration which is equal to or greater than EUR 750 000;
- b. the staff member is within the 0.3% of staff, rounded to the next higher integral figure, who have been awarded the highest total remuneration in the preceding financial year within the institution on an individual basis.
- 2) The criteria laid down in paragraph 1 shall not be deemed to be met where the institution determines that the professional activities of the staff member do not have a material impact on the institution's risk profile, because the staff member, or the category of staff to which the staff member belongs, meets one of the following conditions:
 - a. the staff member or category of staff only carries out professional activities and has authorities in a business unit which is not a material business unit as defined in Article 4;
 - b. the professional activities of the staff member or category of staff have no significant impact on the risk profile of a material business unit having regard to the criteria set out in paragraph 1 of Article 5.
 - 3) The application of paragraph 2 by an institution shall be subject to the prior approval of the competent authority responsible for prudential supervision of that institution. The competent authority shall only give its prior approval for staff member mentioned in a) and b) of paragraph 1 of Article 7 and where the institution can demonstrate that one of the conditions set out in paragraph 2 are satisfied.
 - 4) Where the staff member was awarded total remuneration of EUR 1 000 000 or more in the preceding financial year, the competent authority shall only give its prior approval under paragraph 3 in exceptional circumstances. In order to ensure the coherent application of this paragraph the competent authority shall inform the European Banking Authority before giving its approval in respect of such a staff member.
 - 5) The existence of exceptional circumstances shall be demonstrated by the institution and assessed by the competent authority. In this regard, the concept of "exceptional circumstances" entails a situation that is unusual and very infrequent or far beyond what is usual. The exceptional circumstances shall be related to the staff member or category of staff concerned.

<p>Question 5: <i>Are the provisions within Article 7 appropriate and sufficiently clear?</i></p>
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Article 8

Calculation of remuneration awarded

- 1) For the purpose of the Application of Article 92(3)(c)(i) of Directive 2013/36/EU institutions should calculate the average total remuneration of all members of the management body and senior management taking into account the total remuneration of all members of the management body in its management function and supervisory function as well as all staff that falls under the definition of senior management in point (9) of paragraph 1 Article 3 of Directive 2013/36/EU.



- 2) For the purposes of this Regulation, remuneration which has been awarded but has not yet been paid shall be valued as at the date of the award without taking into account the application of the discount rate referred to in Article 94(1)(g) of Directive 2013/36/EU or reductions in payouts, whether through clawback, malus, or otherwise. All amounts shall be calculated gross and on a full-time equivalent basis.

Question 6: *Are the provisions within Article 8 appropriate and sufficiently clear?*

*Article 9
Repeal*

Commissions Delegated Regulation (EU) No 604/2014 of 4 March 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile shall be repealed on the same day this Regulation enters into force.

*Article 10
Entry into force*

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Question 7: Considering that the RTS will apply to all credit institutions, are there specific provisions within the RTS that would not be appropriate to be applied to small and non-complex institutions and should be replaced by different provisions?

Where this is the case, respondents are provided to make concrete examples of issues created and alternative approaches that would ensure that all staff whose professional activities have a material impact on the risk profile of the institution are identified.

Done at Brussels,

*For the Commission
The President*

5. Accompanying documents

5.1 Draft cost-benefit analysis

1. Article 10 (1) of the EBA Regulation (Regulation (EU) No 1093/2010 of the European Parliament and of the Council) provides that, when any draft regulatory technical standards developed by the EBA are submitted to the European Commission they should be accompanied by an analysis of ‘the potential related costs and benefits’. This analysis should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options.
2. A. Problem identification
The identification of categories of staff whose professional activities have a material impact on the institution’s risk profile stems from the obligations under Article 92(2) of Directive 2013/36/EU. Article 92(3) of Directive 2013/36/EU already contains a minimum set of criteria that should at least be applied. Article 94(2) of that Directive mandates the EBA to develop draft RTS on criteria for defining managerial responsibility and control function, material business unit and significant impact on the relevant business unit’s risk profile and other categories of staff whose professional activities have an impact on the risk profile comparably as material as the staff identified under the criteria defined in Article 92(3) of Directive 2013/36/EU.

B. Policy objectives

3. The RTS supplement at a technical level the provisions of the CRD IV, with the aim of contributing to the realisation of the objectives of the Level 1, in accordance with the mandate received under the Directive 2013/36/EU. The criteria defined within the RTS should ensure a complete and consistent identification of staff, who have a material impact on the institution’s risk profile, by institutions.
4. The implementation of appropriate criteria to identify staff is the essential starting point for applying the requirements in the CRD for staff whose professional activities have a material impact on the institution’s risk profile. To this end, these RTS define criteria ensuring a harmonised identification in the EU of such staff members, taking into account the main risk drivers of institutions. The criteria within the RTS should help to identify in addition to the Level 1 other staff or categories of staff whose professional activities have a material impact on the institution’s risk profile, taking into account qualitative and quantitative aspects. A complete identification of staff whose professional activities have a material impact on the institution’s risk profile ensures that the specific remuneration provisions for such staff are applied, ensuring a better alignment of their variable remuneration with the risk profile.
5. While the criteria within the draft RTS strive for a comprehensive identification of staff, providing a complete set of identification criteria for all institutions, considering their specific business

model, is not possible. Therefore institutions might need to apply additional criteria to ensure a complete identification of staff whose professional activities have a material impact on the institutions risk profile.

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

C. Baseline scenario

7. Directive 2013/36/EU, together with the Regulation (EU) No 604/2014) currently in force for the baseline for this impact assessment.
8. Given the amendments of Directive 2013/36/EU by Directive 2019/878/EU and the specific mandate for EBA to develop this draft RTS under article 94(2) of Directive 2013/36/EU, the RTS on identified staff in force should be replaced. The present cost-benefit analysis is limited to the additional costs and benefits created by the amended or additional criteria set out in the present draft RTS and does not consider the costs and benefits created by the remuneration provisions encoded in Directive 2013/36/EU or the RTS on identified staff currently in force.

D. Options considered

9. The EBA has been mandated to set criteria to define managerial responsibilities, control functions, material business unit and significant impact on the institutions risk profile.
10. With regard to setting criteria to define **managerial responsibilities** two options have been considered.
 - Option A: Setting out a list of tasks that are commonly be required from staff with managerial responsibilities, e.g. including coordinating teams, coordinating work, HR responsibilities, budgetary responsibilities etc.
 - Option B: Basing managerial responsibilities mainly on the hierarchical position of the staff member taking into account responsibilities and reporting lines.
11. Option A would have potentially led to an identification of staff that does not have a material impact on the institutions' risk profile, if each of the sub criteria set would have let to the identification of staff. If applied only cumulatively the criteria would potentially apply not all material risk takers. Such an approach would therefore not be effective
12. Option B: Commonly the hierarchical position together with reporting lines comes with a certain set of responsibilities. Identification of Staff would be easier based on the internal organisation. Such an approach would be more effective to identify the staff who has is responsible for business decisions and oversight functions and therefore potential material impact on the risk profile of an institution.

13. Option B has been retained.

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

15. With regard to setting criteria to define **material business unit** two options have been considered.

- Option A: Containing the definition providing in the previous RTS in line with the definition provided under the Level 1.
- Option B: Containing the definition providing in the previous RTS in line with the definition provided under the Level 1, but also requiring institutions to identify business units that are material, even if there is not an allocation of internal capital.

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

17. Option B has been retained.

18. With regard to setting criteria to define **significant impact on the institutions risk profile** two options have been considered.

- Option A: Leaving the definition of thresholds and metrics to institutions, but providing for a non-exhaustive list of criteria that should be taken into account when doing so.
- Option B: Providing quantitative thresholds for the impact on risks.

19. Option A will lead to a sufficient level of harmonisation and limits the burden for institutions who have in any case to define risk strategies, risk limits and performance criteria. Basing the definition of significant impact on the existing internal policies also takes into account the nature size and complexity of the institution and allows for a proportionate approach. However, the appropriate setting of such a framework might be more work intensive than applying quantitative thresholds in terms of VaR impact or Risk Weighted Assets.

20. Option B would be too complex for smaller and less complex institutions and if based on standardised methods not sufficiently risk sensitive. In addition it would not consider all risks as not all are connected to regulatory capital requirements under the CRR. In addition, even if desirable for larger institutions, the calculation of a risk impact of single staff members or categories of staff would have to be based on a sufficient number of data points. Those are usually

not available and even if so, such a requirement would create an overly high cost impact on institutions.

21. Option A has been retained.
22. The approach of applying qualitative and quantitative criteria has proven to be effective and has been retained.
23. With regard to setting qualitative criteria that identify staff that has an impact on the risk profile that is comparably as material as staff identified under Article 92(3) of Directive 2013/36/EU. Two options have been considered.
24. Option A: Retaining the qualitative criteria in place that are already in force.
25. Option B: Adjusting the qualitative criteria in place taking into account supervisory experience and the findings of the EBA's review of the application of the RTS on identified staff.
26. Option A: Within the review the EBA has identified some criteria which could be improved (see also the Annex to this report). While such an option would create the least burden in terms of implementation, it would not be in line with the objectives of this RTS.
27. Option B: The qualitative criteria already in place have been reviewed. They have been found in the EBA's review performed by its review panel as overall effective. However, the need to clarify some of the criteria has been identified in order to ensure that only staff that has a material impact on the institution's risk profile is identified. E.g. the criteria based on credit risk initiation has been deleted as the decision afterwards is more relevant, being a member of a committee has been perceived as too broad and has been reduced to the voting members that actually have an impact on the institutions risk profile. In addition some functions that have always a material impact on the institutions risk profile have been added, taking into account the increased IT-risks, outsourcing of critical or important functions, tax risks and money laundering risks.
28. Option B has been retained.
29. With regard to setting quantitative criteria that identify staff that has an impact on the risk profile that is comparably as material as staff identified under Article 92(3) of Directive 2013/36/EU. Two options have been considered.
30. Option A: Removing the quantitative criteria from the RTS.
31. Option B: Reducing the burden of the application of the quantitative criteria based on supervisory experience, while still retaining them as an effective safeguard to ensure a complete identification of risk takers.
32. Option A: The CRD expressly provides for quantitative criteria and setting additional quantitative criteria would create additional burden.
33. Option B: Applying additional quantitative criteria is viewed as an effective safeguard to ensure a complete identification of staff and allows for closer supervisory scrutiny if paired with an approval

requirement based on supervisory review. Such an approach is more effective.

Requesting additional notifications for staff at lower remuneration levels or requiring additional analysis for their exclusion as it has been under the previous RTS has additional cost impact for institutions and supervisors and should therefore be avoided as the correct identification can always be subject to supervisory review.

34. Option B has been retained.

35. With regard to setting out how the provisions should be applied on an individual, sub-consolidated and consolidated level two options have been considered.

36. Option A: Article 109 of Directive 2013/36/EU sets out how the provisions should be applied, no further provisions are necessary in the RTS.

37. Option B: While article 109 of Directive 2013/36/EU sets out in principle how the provisions should be applied on the individual, sub-consolidated and consolidated level, some additional provisions should be provided to ensure a consistent application in all Member States.

38. Option A: Would not be effective as the review has shown that institutions had some doubts about the correct application of in particular the quantitative criteria on a consolidated level.

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

40. Option B has been retained.

Conclusion

The draft RTS only affects institutions that are subject to Directive 2013/36/EU. While some of the institutions may benefit from waivers regarding the application of the requirement to pay variable remuneration in instruments or in deferred instruments, all institutions are required to identify staff that has a material impact on the institutions risk profile, in order to ensure that the other provisions encoded within Articles 92 to 94 of Directive 2013/36/EU are correctly applied.

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

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

Overall the administrative costs triggered by the draft RTS are low and even reduce some of the ongoing cost for the ongoing application of the criteria for identifying staff. Still the RTS ensures a sufficient level of harmonisation of the identification of staff.

Question 8: Do respondents with the findings of the impact assessments?

Where respondents have comments on the additional cost and benefits created by the consulted RTS, comments are most helpful if they detail the costs and the responsible drivers as well as the challenges when applying the criteria set out within the RTS.

Where respondents find that the criteria lead to an identification of staff that does not have a material impact on the institutions risk profile, comments are most helpful if they detail the numbers of staff identified under the criteria and the main reasons why those staff members would systematically not have a material impact on the institutions risk profile.

5.2 Main findings from the review of the RTS on identified staff regarding the criteria set out in the RTS

1. Data has been collected from institutions on the numbers of staff identified under the criteria set out in the RTS on identified staff currently in force by the EBA's review Panel. This data has been used for the review of the criteria set within the RTS and the present impact assessment.⁴
2. Seventy-three institutions provided information, covering all Member States and two EEA countries regarding the identification of staff in 2017. Staff was assigned only to the first qualitative criteria under which it has been identified (based on the numbering of paragraphs) to avoid double counting.
3. Some institutions also specified internal criteria used that are not included in the RTS as follows:
 - a) All staff who create market risk that can be material for the institutions risk profile;
 - b) All staff at or above an internally defined hierarchical level;
 - c) Staff responsible for the management of a risk that has been identified as strategical risk;
 - d) Employees with corporate titles of MDs/Ds and VPs occupying sales functions in the Corporate and Investment Banking (CIB) division with an Revenue Credit threshold >EUR 5million where more than 50% of these individuals' Revenue Credits were made in certain exposed books;
 - e) Employees whose significant role can expose the bank to additional Credit, Market and other Risks in the Foreign Exchange and Emerging Market Debt businesses and Corporate Finance;
 - f) Employees in Risk, Legal and Communications area whose significant role can expose the bank to reputational risks;
 - g) Heads of certain Business Units which are not considered as "material" as per the regulatory definition;
 - h) Regional management committees voting members (not falling under Article 3 (10) of the RTS);
 - i) Employees responsible for key projects that impact business and the strategic risk profile of certain significant institutions;
 - j) Remuneration above EUR 150 000;
 - k) Heads of regions, heads of leasing and factoring;

⁴ The full report of the EBA's Review Panel report on the application of the RTS on identified staff can be found on the EBA's website under the following link: [.....](#)

- l) Risk owners;
- m) Major impact on private and corporate customers;
- n) Staff who could have a strong impact on the bank's reputation due to fact that the role works with activities related to offering strategic advice and a wide range of financing solutions to selected corporate and organisational clients (AML risks);
- o) Anyone who is classified as a Senior Manager within the Senior Manager regime;
- p) CROs, CFOs and COOs;
- q) High earners based on their current year compensation;
- r) Any other staff whose activities are deemed to expose the firm to a material level of harm.

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

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

6. For smaller institutions, the identification outcome is strongly driven by the criteria based on the hierarchical aspects of the organisation (members of the management body, senior management, heads of control functions). Those staff has also the powers to take risks. For a few institutions, the figures show significant numbers of staff identified under the criteria Article 3(5) of the RTS – risk management in material business units - while this is for most institutions a relatively low number. This may be a result of the specific internal organisation of the risk management function or an incorrect application of the RTS.



7. For larger institutions, the criteria based on the hierarchical structure are also important, but the impact of the identification is more driven by the senior management and other staff with managerial responsibilities. In addition, more identified staff that is not part of the management body or senior management is falling under the criteria that are based on the risk impact and in particular on credit risk taking competencies.

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

9. Under the quantitative criteria many, in particular large institutions, identify a large number of staff, with a large portion of staff that has not been identified under the qualitative criteria. Such staff could potentially be excluded from the scope of identified staff in line with the RTS, if they do not have a material impact on the institutions risk profile, e.g. because they would be working in a non-material business unit or have otherwise no material impact on the institutions risk profile.

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

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

Figure 1: Overview on the identification outcome

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



Figure 1: Identification contribution of qualitative criteria (staff identified under the criterion in % of total identified staff; EU28); numbers shown refer to the respective paragraph under Article 3 of the RTS (please refer to Annex 3 for a list of the qualitative criteria)

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

Figure 23: Identification under quantitative criteria and exclusion of staff identified under quantitative criteria (Article 4 of the RTS; EU28)

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

5.3 Qualitative criteria under Article 3 of the RTS on identified staff currently in force

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



5.3 Qualitative criteria under Article 3 of the RTS on identified staff currently in force

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

Question 1: Are the Subject matter, scope and level of application within Article 1 appropriate and sufficiently clear?

Question 2: Are the definitions within Articles 2, 3 and 4 appropriate and sufficiently clear?

Question 3: Are the qualitative criteria within Article 5 appropriate and sufficiently clear? Having in mind that the qualitative criteria are comparable to the ones included in the RTS currently in force, respondents are asked to focus on the amended criteria within points 1 and 6.

Question 4: Are the quantitative criteria within Article 6 appropriate and sufficiently clear?

Question 5: Are the provisions within Article 7 appropriate and sufficiently clear?

Question 6: Are the provisions within Article 7 appropriate and sufficiently clear?

Question 7: Considering that the RTS will apply to all credit institutions, are there specific provisions within the RTS that would not be appropriate to be applied to small and non-complex institutions and should be replaced by different provisions?

Where this is the case, respondents are provided to make concrete examples of issues created and alternative approaches that would ensure that all staff whose professional activities have a material impact on the risk profile of the institution are identified.

Question 8: Do respondents with the findings of the impact assessments?

Where respondents have comments on the additional cost and benefits created by the consulted RTS, comments are most helpful if they detail the costs and the responsible drivers as well as the challenges when applying the criteria set out within the RTS.

Where respondents find that the criteria lead to an identification of staff that does not have a material impact on the institutions risk profile, comments are most helpful if they detail the numbers of staff identified under the criteria and the main reasons why those staff members would systematically not have a material impact on the institutions risk profile.