



## POLISH BANK ASSOCIATION

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### European Banking Authority

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### Comments to Draft Regulatory Technical Standards

Dear Sirs,

Enclosed please find comments to draft Regulatory Technical Standards collected by Polish Bank Association in Polish banking sector.

Our major comments are related to:

- Necessity of adjusting the requirements specified in all documents referring to remuneration, namely Directive 2013/36/EU amended in Directive 2019/878 and RTS, as in some cases there are discrepancies among them (e.g. art. 7 it. 1) a. of draft RTS shows the level of staff members remuneration taken into account as equal to or greater than EUR 750 000, while in art. 92(3) (c) (i) of the Directive 2013/36/UE, which is quite often called for in the consultation paper, the level is EUR 500 000);
- Necessity of giving more precise definitions in some areas for better identification of MRT.s, (e.g. managerial responsibility, control function, subordinated unit, providing information technology or security);
- Necessity of applying significantly simplified provisions for small and non-complex institutions due to relatively high cost of labour and limited resources, especially that they already benefit from exemption by application of art. 94.3 (a) of CRD5.

Yours sincerely  
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President  
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## Comments to Draft RTS

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

General comment:

We suggest to include in draft RTS the criteria listed in Art. 92 (3) of Directive 2013/36/UE, to have one unified source of information.

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

Art. 2 - Regarding the definition of managerial responsibility, we consider that it is unclear that this point refers to „business unit” and not to „material business unit”.

Secondly, Article 2 (b) implies the inclusion in the perimeter of the identified staff of many subjects who do not take significant risks. The provision should therefore be completed with the explanation that the subjects must have objective managerial responsibility.

What is the definition of „a subordinated unit” and „subordinated control function”? To which level of organization are they related?

Art. 2 b. – add at the end, after comma: „provided that he/she has individual managerial responsibility including financial and employment issues”, or alternatively add „provided that the unit under his/her management has material impact on the institution’s risk profile”.

Reason: this additional explanation would exclude members of staff at third reporting level (line) whose managing role over subordinated units is limited to operation issues.

As far as the definition of Control function in Art 3. is concerned it is less precise than in the previous RTS and unclear. It is not mentioned to whom the objective assessments of risks, reporting and assurance are meant to be provided; could it be clarified that it would be to the Management Body or to the senior management as the function has to be independent from the business that it controls?

We do not understand which other functions (apart from risk, compliance and audit) are concretely targeted. Reporting and assurance do not refer to functions. We would need a clear and explicit definition of the additional functions targeted to be able to apply the RTS. An unclear definition will also lead to heterogeneous interpretations and will increase disparity of application of RTS among institutions.

### **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.**

General comment:

We suggest to include in draft RTS the criteria listed in art. 92 (3) of Directive 2013/36/UE, to have one unified source of information.

Example of discrepancy: the draft RTS does not show a direct criterion indicating that a member of staff with managerial responsibility over the institution's control functions has a material impact over the institution's risk profile, while the Directive indicates this in Art. 92 (3) (b). In our understanding such definition refers to managers of internal audit units in the bank.

The draft RTS do not specify the qualifying criteria of members of staff of material business unit. Such criteria are generally described in Article 92 (3) (c) (ii) of Directive 2013/36/UE as „staff member (who) performs the professional activity within a material business unit and the activity is of a kind that has a significant impact on the relevant business unit's risk profile”.

It would be helpful to define these functions in RTS.

The definition of managerial responsibility appears difficult to reconcile with the persons presumed to be MRTs under article 6(1). In this sense, under the proposed definition for managerial responsibility established in article 2, the only staff members performing functions envisaged in article 6 that would be captured by the definition would be those staff members heading subordinated units or subordinated control functions, that is to say, those in letter (b) who report to (a) (i.e. the head of a business unit or a control function).

In organizational structures where the functions envisaged under article 6 are performed within or subordinated to, a business unit/control function, this would not appear problematic (the staff member would be identified via article 2(b)). But this is not the case in many (larger) institutions, where the type of functions envisaged in article 6 (“support functions”) are performed by areas not subordinated to any business unit or control functions/areas.

It. (1) (d) – (staff member) „performing economic analysis” – please specify what kind of analysis it is – analysis of the market, customers or the bank.

It. (1) (f) – (staff member) „dealing with human resources” – the description is too general.

It. (1) (h) – (staff member) „providing information technology or security” - the description is too general.

It. (1) (i) – there is no definition of „critical or important functions” in the text, therefore it would be difficult to assign them to other members of staff than the management body of the bank.

Also, the „outsourcing arrangements of critical or important functions” are not clear. Do they refer to banking functions only (accounts, crediting, loans, savings, bank guarantees, clearing, etc), or they also refer to outsourcing other activities e.g. back office, employment and/or legal issues?

It. (2) – it would be useful to specify here that this criterion refers to voting members of the committee, and define whether this also refers to their deputies.

Items (1)-(4) of Art.6 do not clearly indicate that members of staff with managerial responsibilities who at the same time have management function in credit risk, market risk or risk models validation, are treated as staff having impact on institution's risk profile. Items (3) and (4) only show that staff members who are entitled to take decision, veto or accept a decision concerning credit risk or market risk respectively, or members of committees, are regarded as MRT.s. Such approach excludes managers of units managing the systemic credit risk (creating risk models), market risk or validating risk models.

Also, the Standards should clearly specify that such provisions are binding for staff members of subordinate institutions.

It. (6) – does this item (approving or vetoing introduction of new products) refer to new products only? Or it also covers modification of existing products and/or withdrawing products from the offer?

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

For the application of the remuneration criteria that are included in the Directive itself, we consider that taking into account the remuneration of all members of the management body, in particular those in their supervisory function, for the calculation of the average is not appropriate. Indeed, the majority of board members are independent and the remuneration paid to them, if any, is not comparable to the remuneration awarded to other staff members because their remuneration takes the form of attendance/directors fees whose amounts depend on their participation and their attendance to committees (in particular specialized ones) and not to the performance of the institution.

In Art. 7 it. 1) a. the level of staff members remuneration taken into account is equal to or greater than EUR 750 000, while in art. 92(3) (c) (i) of the Directive 2013/36/UE, which is quite often called for in the consultation paper, the level EUR 500 000. This should be clarified.

It appears that scope of the term "remuneration" is not sufficiently defined here. Is this the remuneration as defined by local law applicable to and relevant for hiring staff member in the Member State? This might be of importance given the fact that the staff member may have a non-compete or confidentiality arrangements entitling him/her to receive compensation for refraining from being employed by a competitive business or from conducting such a competitive business. The term should clearly list which part of pay is in-scope or out-of-scope.

It. 3 – it would be useful to define the status of the member of staff in the time between placing a request to exclude him/her from the list of MRT.s and receiving the decision from competent authority. We assume such a person is treated as identified MRT until the decision is received.

***Question 6: Are the provisions within Article 8 appropriate and sufficiently clear? (obliczanie przyznanego wynagrodzenia)***

In it. 1) of Article 8 Calculation of remuneration awarded, it is clarified that *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. It means that the quantification includes components of management body in management function and supervisory function, thus also including non-executive members whose remuneration values are very low. With the extension proposed by the RTS, a substantial number of resources could be identified within the scope of Identified Staff which could then be excluded because they are not operating in significant business units, but this would result in an increase in management costs.

In case of staff members who were employed in the 2nd half of the year and whose monthly remuneration is relatively high, it would be useful to have the remuneration calculated on a full year basis.

Does this article refer to quantitative criteria?

We would suggest to define the average remuneration awarded to members of management body and senior management of institution as indicated in Art. 92 (3) (c) i) of Directive 2013/36/UE. The calculation of such average remuneration for indicated functions should include:

- type of remuneration (basic fixed/total)
- duration of time (full year/other)
- in case of full year remuneration, please indicate how to treat the members of staff employed for less than 12 months in a particular year.

***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?***

We would suggest to apply to small and non-complex institutions only the criteria defined in Art. 92 (3) of Directive 2013/36/UE, and include them in the draft RTS to have one uniform source of criteria.

The RTS should be significantly simplified for small and non-complex institutions and take into account their simple organization as well as the small size of teams that would be in charge of applying the RTS. It is not appropriate to apply all the criteria to small and non-complex institutions which already benefit from an exemption by application of the 94.3.(a) of CRD5.

***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.***

General comments to the whole document:

There are discrepancies in requirements between draft RTS and Directive 2013/36/EU (with amendments introduced by Directive 2019/878/EU).

- 1) E.g. in art. 92(3) (c) (i), which is quite often called for in the consultation paper, the level of staff members remuneration taken into account is equal to or greater than EUR 500 000, while in draft RTS in art. 7 it. 1) a. the level is EUR 750 000.
- 2) The qualitative criteria for identifying MRT in both, CRD and draft RTS, are not the same, therefore to properly identify the MRT it is required to check record in both documents.

Accompanying documents – items 35-39

Including the criterion of 0.3% of staff at the consolidated level (of institutions) will allow to identify the members of staff having material impact on a single institution's risk profile even when they are not identified at the individual (institution's) level. Otherwise they may not be identified.

After adoption of consulted draft RTS will they be in force in conjunction with RTS/2013/11?

If so, we have the following comment:

In RTS/2013/11 - Art. 4, it. 1 – the quantitative analysis foresees three main criteria (a-b-c) to include a member of staff in the list of MRT.s, with the provision of non-inclusion if competent national authority accepts the evidence delivered by the institution.

In Poland (and probably other EU Member States) the remuneration of staff members meeting the criterion (b) is much lower than the threshold indicated in criterion (a) (EUR 500 000). To simplify the procedures in this case we would suggest to add the following wording at the end of it. 5 in Art. 4 of RTS/2013/11, after comma: „with the exception of staff members whose awarded remuneration is below level defined in it. 1 (a) above.”