

Brussels, 8 August 2013

*Launched in 1960, the European Banking Federation is the voice of the European banking sector from the European Union and European Free Trade Association countries. The EBF represents the interests of some 4,500 banks, large and small, wholesale and retail, local and cross-border financial institutions. Together, these banks account for over 80% of the total assets and deposits and some 80% of all bank loans in the EU alone.*

The European Banking Federation response to the European Banking Authority (EBA) Consultation Paper on Draft Regulatory Technical Standards on criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile under Article 90(2) of the Capital Requirements Directive (Directive 2013/36/EU)

## Main points

- Key CRD IV principles seem to have been ignored;
- Under the proposed criteria, a large number of staff will be captured *ex ante*, many of whom will not be material risk takers; therefore, better calibration of the criteria is needed;
- Remuneration criteria follow a “one-size-fits-all” approach, failing to take into consideration the size, structure and activities of the institution, as well as the different locations and markets where it operates;
- The remuneration (quantitative) criteria should serve as backstop, with the purpose to verify whether all material risk takers have indeed been identified through the principal (qualitative) criteria;
- The influence of Group level supervision on policies, procedures and business strategy needs to be better assessed;
- It would be more workable and less burdensome for institutions to exempt categories of staff (i.e. by activity and / or function), rather than on an individual case-by-case basis;
- The RTS, if adopted as currently drafted, would lead to an increase of the fixed remuneration and subsequent decrease of the variable, a structure that moves away from risk-based remuneration policies and tools.

## **General Remarks**

The European Banking Federation (EBF) welcomes the opportunity to respond to the consultation on EBA's draft Regulatory Technical Standard (RTS) setting criteria (qualitative and quantitative) to identify categories of staff whose professional activities have a material impact on the institution's risk profile (hereafter 'material risk takers') within the framework of CRD IV.

In order to improve the process of the identification of material risk takers and to reach a higher level of harmonisation across the banking industry, the EBF understands the proposed approach, which is based on a combination of internal criteria developed by institutions, and other regulatory qualitative and quantitative criteria to ensure consistency across institutions.

At the same time, the EBF would like to stress the role of national Financial Supervisory Authorities (FSAs), which are better placed to provide more detailed advice, guidance and support to the financial institutions in their respective markets, and ensure that relevant staff is identified. This approach can then be supported by European benchmarks (as currently conducted by EBA), providing FSAs with guidance on how they are positioned within a European context.

Furthermore, in order to avoid an un-level playing field, the draft RTS must be aligned with regulations targeting other parts of the financial industry, such as the Alternative Investment Fund Managers Directive (AIFMD) and (draft) UCITS V.

As for the draft RTS, the EBF would like to take this opportunity to draw your attention in particular to level playing field concerns and to issues related to applying such criteria within a Group context. The underlying concern is that key principles set out in the CRD IV text and described in Article 2 (3) of the draft RTS, such as proportionality (i.e. consideration of size, internal organization, business model and the risk profile of institution), which is also important with regard to individuals institutions, and the notion of effective material impact of the staff members, are ignored under the proposed drafting.

We summarise hereafter our key suggestions for alternative regulatory choices, followed by detailed comments on specific Articles of the draft RTS.

### **Key concerns regarding the proposed material risk taker identification criteria**

- There is particular concern that the binding variable / fixed ratio of 1:1 (or up to 2:1 with shareholder approval) provided for in CRD IV will create difficulties for EU headquartered institutions when competing for talent in key financial centers outside of the EU, in particular in the United States and Asia. This competitive distortion will be further accentuated if the EUR 500,000 total compensation criteria under Article 3 (2)(c) remain 'one-size-fits-all', without the possibility to make an assessment / demonstration of the effective material risk influence of the staff member provided for under Article 4, and taking into account the levels of remuneration and market practice across different jurisdictions. This "one-size-fits-all" approach also seems to contradict with the CRD IV

text, which indicates that the inclusion of those captured by virtue of their total remuneration level is contingent on them having an effective material risk impact<sup>1</sup>.

We would then suggest that **Article 4 can be applied to all staff members identified solely as a result of any of the remuneration related (quantitative) criteria under Article 3 (2)**, without limiting this possibility only to points (a) and (b) of that Article.

- In a consolidated Group context, the approach to identification of material risk takers should take into consideration the influence of Group level supervision on policies, procedures, business strategy etc., and that subsidiaries often have hierarchical reporting lines to staff members in the parent institution.

Thus, we would like to suggest that **all the criteria in the draft RTS be assessed at the consolidated Group level and not on a subsidiary-by-subsidiary basis within the EEA, with the possible exception of subsidiaries that are significant in relation to both the EU parent institution and their local market** (as suggested below).

#### Scope of application (Article 1)

The scope of application covers all institutions covered by CRD IV. Article 1 (2) and Recital (2) specify that the criteria should be applied at group, parent and subsidiary level. Those firms who are not covered institutions but are within the consolidated or sub-consolidated scope of a covered parent institution, do not have to apply the criteria, but should be included in the assessment carried out at group level.

It appears that CRD IV covered institutions would have a similar “core” population of material risk takers (management body, senior management, heads of business units, staff responsible for internal risk control / compliance / internal audit, head of legal, tax, HR, IT, budgeting, economic analysis, business continuity planning, 0.3% of highest paid staff, etc.) irrespective of their size, internal organization and the nature, scope and complexity of their activities. This seems to contradict the proportionality principle as specified in the CRDIV text<sup>2</sup>. For instance, in a Group context, each separate legal entity within the Group will have the above mentioned functions in scope, but the draft RTS do not take into account the fact that many of such staff are only responsible for implementing the Group policies and strategy (including, in particular, risk policies and procedures) rather than defining them, and will often report to a superior in the parent company, therefore, are not in position to take material decisions at their own level.

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<sup>1</sup> Article 88 CRDIV: “...categories of staff including senior management, risk takers,...and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on their risk profile...”

<sup>2</sup> Article 88 of CRDIV: “...institutions comply with the following principles in a way and to the extent that is appropriate to their size, internal organization and the nature, the scope and the complexity of their activities:”

It is unclear to us how a sufficient level of harmonisation is to be obtained across the EEA if the criteria are identical, irrespective of the size and activity of the institution. If, subsequently, application of proportionality and the ability to neutralise the most stringent remuneration rules (deferral, retention, variable remuneration in instruments and *ex post* risk adjustment) is left to national supervisory authorities that today apply proportionality rules very differently, it will lead to uneven application of the rules not only between EEA institutions but also between institutions within the same Group.

**Recommendation:**

The RTS should provide that in a consolidated Group context, the criteria should be assessed at Group level and not at the level of each EEA subsidiary subject to CRD IV. Exceptions could be made to this rule for institutions that are significant subsidiaries both of the EU parent institution and for their local market, and, therefore, would need to apply the criteria on an individual or sub-consolidated basis. This would align the perimeter of identification of material risk takers with the scope of disclosure requirements for remuneration under the CRR.

The notions of significant subsidiary / material significance in the local market should be clearly defined and aligned with other regulatory texts (i.e. the proposed European Parliament definition in Article 7 (1)(a) of the draft Recovery and Resolution Directive).

In addition, the RTS should clarify that identification under such criteria as a material risk taker does not preclude a subsequent neutralisation of the requirements on the pay-out-process for all or some categories of such staff, under the application of proportionality, as provided under CEBS guidance of December 2010.

Quantitative and Qualitative Criteria (Article 3)

Criteria relating to role / function

The proposed specific functions are appropriate, subject to the ability to make the assessment in a group context of which functions have a material risk impact, and taking into account the internal organisation within the Group (see above). The reference to “budgeting” could possibly be more broadly defined as “finance”.

Moreover, we believe that the draft RTS should only apply to the executive members of the management body (Article 3 (1)(a)). Non-executive members are not part of the staff of an institution, and have no employment relationship with the institution, as their role is to supervise and monitor the management. Besides, in general terms, their remuneration has no variable elements, but rather consists of a fixed remuneration based on earnings or a fixed compensation for attending the Board meetings.

The CEBS Guidelines on Remuneration Policies and Practices follow this approach; paragraph 16 (categories of staff that must be included as Identified Staff) states that the institutions must include the “*executive members of the credit institution or investment firms’ corporate bodies, depending on the local legal structure of the institution, such as: directors, the chief executive officer, and also the chairman of the management body if he/she is an executive.*” Similarly, paragraph 47 states that “*In order to properly address conflicts of interests, it is good practice for members of the supervisory function to be compensated only with fixed remuneration. Incentive-based mechanisms should generally be excluded...*”.

**Recommendation:**

Recital (5) should read: “*Members of the management body have the ultimate responsibility for the institution, its strategy and activities and therefore are always able to have 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*”.

Article 3 (1)(a) should read: “*the staff member is an executive member of the management body;*”

Criteria relating to authorisation to commit to credit risk or market risk exposure

Article 3 (1)(g) (market risk exposure) is appropriate, notwithstanding two required specifications:

- Criterion (g)(ii) permits the institution to use an internal model based approach, however, the reference exposure at the 95<sup>th</sup> percentile is not in line with some institutions’ internal model approaches (i.e. some banks internal models are based on Value at Risk – VaR – at the 99<sup>th</sup> percentile). The RTS should give the flexibility for institutions to base the market risk exposure assessment on their existing internal models.

In addition, this criterion should not be restricted to trading book exposures, as many banks’ internal VaR methodologies cover both trading and banking book market risk in a combined approach. Applying the criterion only to the trading book would require significant additional investments in IT infrastructure. For this reason, the criterion should cover both trading and banking book exposures.

- The text refers to “*collectively*” and “*authority to commit to transactions on the trading book which in the aggregate represent...*” as well as the text in Recital (9) which specifies “*Limits of authority in the trading area should therefore be based on the aggregated exposures taken by a trading desk, encompassing all staff who have the authority to enter into such positions*”. While the assertion that market risk exposure is generally managed at the desk level is correct, the definition of material risk taker should target the individual staff member who is directly accountable for the limit of authority (i.e. generally the desk head) and not all traders on the desk, to the extent that this would encompass many junior traders who are simply executing instructions from their line management and are only

authorized to take positions / commit to transactions subject to a significant level of internal supervision.

**Recommendation:**

Article 3 (1)(g)(ii) should read: “...*the institution’s internal value-at-risk limit for trading and banking book exposures at a 95<sup>th</sup> percentile or any higher percentile used in the internal model as approved by the relevant supervisory body, ...*”

Article 3 (1)(g) and Recital (9) should specify: “*Where trading limits of authority are based on aggregate exposures at the trading desk level, this encompasses the staff member who is directly accountable for the limit / threshold and who supervises the group of staff who can enter into positions within such limit*”.

Article 3 (1)(h) refers to “*a staff member who has responsibility for a group of staff members who have individual authorities...the sum of those authorities equals or exceeds a threshold set out in point (f) or in point (g)*”. To the extent that it is not possible to “sum” risk exposures due to netting effects, this criterion is difficult to apply in practice. A more general condition that any staff member who has managerial responsibility for material risk taker identified under Article 2 or Article 3 would be more feasible to implement.

**Recommendation:**

Article 3 (1)(h) and (i) should merge to read: “*the staff member has managerial responsibility for another staff member whose professional activities have or may have a material impact on the institution’s risk profile, according to the internal risk identification process in Article 2 and the criteria (1)(a) through (g) of this Article [Article 3]*”.

When it comes to the criterion in Article 3 (1)(j) (introduction of new products), the scope should be narrowed down to new products of material importance for the institution. Otherwise, the requirement will affect any new proposals, despite the size of the product and regardless of the product’s risk classification.

Article 3 (3) refers to staff who are responsible for advising on or initiating material commitments or decisions. In order to avoid capturing larger numbers of more junior staff – such as credit analysts and other control or operational risk functions who may be involved in advising on a specific transaction or decision – the wording should be more specific so as to capture only significant influence functions whose position could considerably weigh on the ultimate decision.

**Recommendation:**

Article 3 (3)(a) should be either deleted or reworded: “...*members of the staff in a significant influence function who are responsible for advising on or initiating such material commitments or decisions*”.

## Criteria relating to remuneration level

As a general comment, the proposed remuneration criteria would cover so many members of the staff that would cause a significant administrative burden for institutions. The remuneration related criteria should serve as backstop and not principal criteria, with the purpose to verify whether all material risk takers have indeed been identified through the other (qualitative) criteria. The number of individuals identified *ex ante* (due to function / role, ability to commit to market / credit risk exposure, etc.) should constitute the vast majority of material risk takers and the number identified *ex post* (i.e. due to their remuneration level) should be minimal. This would be both in the interest of the institutions, for which it is difficult to manage (from HR perspective) remuneration regulations over time for a very volatile perimeter of staff, but also for supervisors and stakeholders who use publicly disclosed data to make year-to-year comparisons of the remuneration pool allotted to such staff.

More specifically, Article 3 (2)(a) (more than EUR 75,000 and 75% of fixed remuneration) is particularly difficult to implement since the criterion is conditional (“*could be awarded under the remuneration policy*”). If the institution’s remuneration policy does not fix formal caps for variable remuneration awards, it would be particularly difficult to identify the staff concerned, as it could potentially mean all staff in the institution, even if in reality such variable levels are not awarded. With regards to remuneration market practices in some countries (in particular, the United States, the United Kingdom, certain Asian markets) the caps proposed are too low and would capture a significant number of staff *ex post*: the process of demonstrating to supervisors that each staff member concerned does not in fact have the capacity to take material risk would be lengthy, costly and burdensome. By contrast, for some other countries (especially in Eastern Europe, South America and Africa) the proposed caps are so high that they would not capture all material risk takers.

Article 3 (2)(b) sets the criterion most closely aligned to the CRD IV (Level 1) text (“*...any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers*”). However, if in practice the remuneration bracket is very wide, this could lead to a significant administrative burden and costs of identifying a large circle of staff and reviewing their risk profile. If “entity” encompasses all branches in different geographical locations forming part of an institution, the remuneration bracket will be very wide.

It would be helpful to have a relatively stable reference remuneration bracket in order to reduce the administrative burden of reviewing the risk profile of all staff receiving remuneration in this bracket. This could be achieved by:

- Making the analysis at the level of each entity (i.e. subsidiary or branch) in a given location;
- Excluding control function and infrastructure staff from the reference remuneration bracket. Besides, this seems to be the spirit of the Level 1 text;
- Making reference to the lowest gross remuneration that could potentially be awarded to senior management and risk takers (i.e. taking into account the institutions maximum

variable / fixed remuneration ratio). This would reduce the volatility of the lower bracket, which would otherwise occur when even one member of the senior management / risk taker categories did not receive any variable remuneration, due to poor performance.

Article 3 (2)(c) provides that any staff member that has been awarded total gross remuneration of EUR 500,000 or more in one of the two preceding years is automatically identified to be a material risk taker, irrespective of their job function / activity. The problem of having a ‘one-size-fits-all’ total remuneration criterion is the issue (already raised above) of having too many members of the staff identified *ex post* and, consequently, a very variable year-on-year population of material risk takers. In addition, individuals could fall in or out of this category simply due to a small fluctuation in exchange rates. Finally, due to very different cost of living levels across different countries, this level would capture a disproportionate level of staff in some locations (i.e. New York, London, Hong Kong), some of whom have no material impact on the risk profile of the institution or group, and, on the contrary, would be unfitting in many EEA countries. The concern that EEA-headquartered institutions are subject to competitive distortion when having to apply CRD IV remuneration provisions outside the EEA will be even more acute, should such institutions have to encompass all staff remunerated above a fixed threshold, irrespective of their material risk impact. To the extent that remuneration levels vary significantly across jurisdictions, the review of risk profile and “*levels of remuneration which can be awarded in different jurisdictions*” provided under Article 4, should apply to those staff members identified under Article 3 (2)(c). If a “one-size-fits-all” remuneration criterion is deemed essential, in order to capture in all cases the highest earning staff in the major financial centers, the threshold should then be higher in line with remuneration practices, and should take into account the cost of living in such locations.

The proposed 0.3% of highest paid staff (Article 3 (2)(d)) is a useful reference for large institutions, but does not take into account proportionality and could, thus, create unnecessary rules for small, non-complex institutions. As above mentioned, in line with CEBS guidance of December 2010, proportionality should allow neutralisation of the pay-out-process rules for small, non-complex institutions (see recommendations under “scope of application”). Proportionality should apply both with respect to the size of the institution, but also the nature of the activities performed within the institution. While the 0.3% is a relatively low threshold (even though clarification is required as to whether 0.3% refers to the total staff, the staff who receive the highest gross remuneration and if so, what is considered highest gross remuneration), it may still lead to a disproportionate number of risk takers being identified within a large retail bank, taking into account the risk profile of the institution. As such, the possibility to apply Article 4 to those staff members identified under Article 3 (2)(d) should be given, in order to take into account the different risk profiles among different institutions.

**Recommendation:**

Article 4 should also apply to the members of staff identified under Article 3 (2)(c) and Article 3 (2)(d). In any case, the proportionality principle should apply and, if deemed absolutely necessary to have an ‘one-size-fits-all’ remuneration threshold under Article 3 (2)(c) to capture high earners, this threshold should be increased to take into account market remuneration practices in the major financial centers.

Article 3 (2)(a) should be deleted, since it is unworkable in many institutions due to its conditional nature and due to the fact that is disconnected from the remuneration levels of senior management and risk taker functions within an international context.

Article 3 (2)(b) should read: *“the staff member has been awarded gross remuneration in one of the two preceding financial years which is equal to or greater than the lowest total remuneration that could, in accordance with the institution’s remuneration policy, have been awarded in that year to a member of staff who performs professional activities for the same entity and who either is a member of senior management or a risk taker. For purposes of this assessment the senior management and risk taker categories include those staff identified in paragraph (1) or under Article 2, with the exception of control function and infrastructure staff. “Entity” is understood to be a parent, subsidiary or branch in a given location”*.

Staff with no material impact on the risk profile (Article 4)

Given the very large number of staff who could be subject to review after having been identified under the remuneration based criteria, it should be possible to exempt categories of staff (i.e. by activity and / or function) rather than on an individual case-by-case basis that would be time consuming and burdensome.

**Recommendation:**

In the end of Article 4, a sentence could be added to read: *“In the situation where groups of staff are subject to review under this Article, the assessment can be made for each category of staff (i.e. with the same activity and / or function), rather than on an individual basis”*.

Entry into force (Article 5)

According to the calendar set by the CRD IV, the publication of the RTS could take place as late as mid-2014 (submission to the Commission by end March 2014 and subsequent validation by the Commission prior to publication, unless the Commission decides to postpone the implementation date). The financial institutions should undertake an evolutionary process for the first period of application, due to the short deadline for implementation, and be able to analyse any legal issues linked to the fact that compensation policies might be included in labour contracts or collective agreements. Consequently, adequate time is required to implement such changes (i.e. in contracts

of employment, development of new methodologies, installment of new technological programs that could help to identify relevant staff, communication programs among affected employees) which can be a project in themselves, and an adequate transition should be available.

Alternatively, since the remuneration provisions (in particular, the variable / fixed maximum ratio) apply to remuneration awarded for the 2014 performance year, the institutions would need to have a clear picture of the final criteria already by end 2013 for operational implementation of the new rules (adjustment of processes and information systems to take into account the identification criteria, communication to employees, modification of any contractual arrangements, immediate implementation of the maximum ratio in January 2014 for any staff whose variable remuneration is paid on a monthly basis, preparation of the Annual General Shareholders Meeting, etc.).

**Recommendation:**

Request for the publication of the final RTS on identification criteria for material risk takers by end 2013.

## **Response to questions**

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

The identification of staff members heading functions listed in point (e) should be limited to significant business units, legal entities or major geographical locations, assessed both in relation to the Group and taking into account relevance to the local market. Besides, we consider the list of specific functions to be too broad. The inclusion of staff members that head Taxation and Business Continuity Planning functions is unnecessary, and, in any case, their function is not material in terms of impact on the institution's risk profile. These functions normally report to the Heads of Finance and Risk respectively, who, according to our understanding, fall under the senior management criterion (b). It is, thus, more important to focus on senior decision making and influence. Similarly, the Head of IT cannot be considered a material risk taker, unless he is also Head of Operations.

Moreover, the wording "...staff member heads a function responsible for..." lacks clarity as regards the management level to which this criterion applies. Our view is that the criterion should be restricted to a certain management level, that is to say, no more than two levels below the Board of Managing Directors. For instance, large institutions have one HR director and many more Heads of HR within the various areas of the organisation, who, all report to HR director and have no material impact nor can they veto on material HR issues.

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

Criterion (d) (“*the staff member heads a business unit*”) seems too far-reaching, since it would cover any staff member who heads a separate legal entity within the group. For organisational and / or operational reasons, it is often necessary for firms to have several (small) legal entities in a group to perform non-financial operations (i.e. back-office, call center, housing, etc.). Heads of such legal entities generally have no material impact on the institution’s risk profile and, therefore, should not be included in the category of identified staff.

We would then suggest excluding such functions or at least allowing staff members to be excluded from the category of identified staff, if they only meet criterion (d).

In addition, we believe that criteria (c) and (d) (“*staff member is responsible and accountable to the management body for the activities of the internal risk control function, the compliance function or the internal audit function*”; and “*the staff member heads a business*”) should be better defined and restricted to the hierarchy levels 1 and 2 steps below the Board of Managing Directors.

As regards criterion (f), the interpretation of collectiveness is quite wide and could lead to a disproportionately wide scope. Besides, it should be noted that decisions are often made by committees rather than by individuals. The specification of individuals does not follow business operations in practice, hence, it may be more relevant to specify senior committees (e.g. the senior credit committee). Equally, not all members of such committees are senior staff but they may be junior non-voting members, who should also be excluded.

The 0.25% threshold of an institution’s CET1 would identify personnel with authority to commit to credit risk exposures, nonetheless, a higher threshold (above 0.5%) would be more appropriate from a risk angle. Furthermore, the impact of this criterion also depends on the legal structure of the institution. It will differ between institutions that operate through one legal entity with a branch network, and institutions operating through subsidiaries under local supervision, with diverse CET1 capital. In the latter case, the staff members with the same authority to commit to credit risk exposures would be impacted differently. Consequently, this approach can be seen as simplistic, and the potential Profit & Loss (P&L) impact could be more appropriate.

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

In principle, we believe that the criteria can be easily applied. The interpretation of collectiveness, however, is quite wide and could lead to a disproportionately wide scope. Thus, the wording ‘*individually or collectively*’ should be revised or at least clarified. To this end, staff should be identified if they can individually take on risk positions of a certain size and / or if they head a trading unit that collectively can do so. The mere fact of being employed in a trading unit that collectively can take on a certain size of risk should not indicate identification.

As far as criterion (g)(ii) is concerned, our position is that it should not be restricted to trading book exposures, as many banks' internal VaR methodologies cover both trading and banking book market risk in a combined approach. Applying the criterion only to the trading book would require significant additional investments in IT infrastructure. For this reason, the criterion should cover both trading and banking book exposures (combined approach).

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

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

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

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

a) In our view, this criterion is not balanced compared to other requirements presented both in CRD III / CEBS and in CRD IV, and even in these draft RTS. The scope widens significantly and targets several parts of a universal bank, where individual employees cannot be considered to belong to categories of staff whose professional activities have a material impact on the institution's risk profile. Such parts include non-managing positions within Sales & Research, Asset Management and Corporate Finance.

The reason why this criterion is not appropriate to identify risk takers is that it solely focuses on the remuneration of an employee. Firms do not use remuneration levels (and in this case ratios of variable to fixed) to determine risk taker status, or to allocate risk limits / authorities, therefore, we do not consider this to be an appropriate way of assessing risk taker status. While there is the possibility to exclude individuals who fall under this criterion if they are not risk takers, this would entail considerable administrative burden, as variable remuneration (and what part of it is paid to each employee) varies from year to year and so are the members of the staff who will be in or excluded.

The benefit of this criterion is doubtful and we would suggest to remove it. We would prefer criteria which, instead, take into consideration the function, authority and responsibilities of the employee, as well as the different locations, market specificities, etc (qualitative criteria). Nevertheless, if the sole focus remains on remuneration, identified staff members should be excluded if they are identified only by this criterion and have no material impact on the institution's overall risk profile.

b) The requirements will significantly increase the number of identified staff and their impact would greatly vary among countries and would depend on each country's national remuneration levels. It is also not clear why variable compensation exceeding EUR 75,000 should indicate that an employee has a material impact on the institution's risk profile. We would like to stress that an absolute threshold of this kind is not appropriate for companies with global activities in several markets.

Additionally, this criterion is not consistent with, and even contradicts, the CRD IV approach, under which, employees whose total remuneration exceeds EUR 500,000 are considered risk takers.

The above mentioned combination (EUR 100,000 fixed remuneration / EUR 75,000 variable remuneration) would trigger a massive shift from variable to fixed remuneration. Should this criterion be maintained in the final RTS, we would insist on setting the threshold at minimum 100% of the fixed component of remuneration and at least EUR 250,000 in fixed remuneration.

c) It is not possible to provide a precise figure of how many additional staff would be identified on the basis of the criteria in Article 3 (2). However, assuming that a risk taker is identified even if just one of the Article 3 (2) criteria is met, a rough estimate would be a threefold increase of the number of identified risk takers.

d) Additional IT capacity and costs would be needed and additional administrative burden will be required for an institution to demonstrate that certain members of its staff should be excluded. The corresponding costs would depend on the extent of all risk-taker relevant criteria and the necessary changes these would entail. For that reason, the scale of additional costs cannot be currently foreseen.

**Q5 a) Can the above criterion be easily applied?**

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

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

a) There is uncertainty for the definition of ‘entity’. It is not clear whether it relates to a legal entity, a business area or a lower level entity. Regardless of the definition, this criterion will most likely cause significant additional costs for the institutions, including additional IT costs, as well as additional administrative burden, for proving that certain staff members do not have material impact on the institution’s risk profile and should be excluded.

We would also like to stress that in many institutions control functions are not highly paid, and this would cause many employees with similar salaries but with no impact in the institution’s risk profile to be captured by this criterion. For instance, in some cases the total remuneration of a junior dealer can be higher than that of a team leader / middle manager in a support function within the same entity.

As for the employees, it is reasonable that they, when entering the earning year, know if they will be considered as identified staff or not based on the level of remuneration.

b) The use of past variable remuneration as a criterion could prove misleading as regards the employee’s current function, authority and responsibilities. In relation to this, the outcome of variable remuneration is not determined by risk mandates but is linked to performance.

An institution providing no variable remuneration to a risk taker, due to poor performance, is forced, as a consequence, to identify retroactively additional staff within the same entity as risk takers, due to the reduction of the threshold.

The general use of potentially awarded variable remuneration (or target remuneration) would therefore be more appropriate. Applying a potential remuneration will support a consistent identification over time as oppose to a situation where certain employees are identified as risk takers for some years and not others due to changes in total remuneration that marginally put them below or above the thresholds. On the other hand, the wording “*could be awarded*” seems too vague and overly inclusive, and might need clarification.

c) We do not anticipate any significant difference.

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

This criterion can be easily applied with additional IT capacity, nonetheless, as above mentioned, we do not believe that the remuneration level is in general a good criterion for the identification process, and, in any case, should be always accompanied by criteria that take into account the employee’s function, authority and responsibilities (qualitative criteria). Besides, the meaning of “*awarded gross remuneration*” must be clarified in relation to defined benefit plans, as pension reservations often vary significantly over time.

Having a monetary cap might also have different impact on different countries, as there are great divergences in general remuneration levels. As an example, the level of EUR 500,000 is a very high level in most Eastern European countries, while it is relatively far lower in Nordic and Western European countries. A level playing field needs to be secured at global level as well, since the EU major financial institutions have a global activity. The fact that EU financial institutions are required to apply these RTS on remuneration requirements to their branches and subsidiaries on a global basis, will lead to competitive distortions and EU banks will not be in a position to compete on equal terms in the US, (some of) South American or Asian markets. Hence, in order to ensure a level playing field at international level, branches and subsidiaries of EU banks situated outside the EEA should have the possibility to take into account the local business environment, their size and complexity when applying these technical provisions.

In any case, if the sole focus remains on remuneration, there has to be a possibility to automatically exclude staff members from the category of identified staff if they are only identified by this criterion and have no material impact on the institution’s overall risk profile. It should not be overlooked that individual contract modifications would be necessary.

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

We believe that the impact of this criterion will be very limited, given the institution’s internal identification process and the other qualitative and quantitative criteria of these draft RTS.

In practice, each year a new ‘catch-all’ threshold would need to be defined. If the previous year is taken into account (as retroactive amendments of the Remuneration Policy should be avoided), in a not well-performing year the threshold can be set at a lower level, therefore, in the following year (assuming that it will be a well performing year) the identified staff will be far higher. This would cause a volatility in the number of identified staff, and under the above explained circumstances, the newly identified staff may not have a material impact on the risk profile of the company.

Moreover, the wording is vague and further clarity is sought. In particular, it is not clear whether the 0.3% refers to the total staff or to the staff who receives the highest gross remuneration, and in this case, what is considered the ‘highest gross remuneration’? Also, is this expected to be applied at a group or entity level? If the latter, in certain organisations with low headcount and / or flat management structure, this would inadvertently capture a significant number of non-risk takers.

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

No additional criteria should be added. Responsibilities in an institution are given to the most appropriate function; the target function is staffed with employees who are considered able to take on that responsibility. In risk taking areas, it is natural to categorise such employees as identified staff. Article 3 (3) significantly complicates the process of defining identified staff by expanding the definition to include not only staff members, individually or collectively, who have the authority to commit transactions, but also employees without formal mandates. Thereby, this requires a far more discretionary and *ad hoc*-driven process than examination of mandates, titles, hierarchy and remuneration levels.

It is further difficult to anticipate in advance who will in the future provide advice to decision makers (committees etc.). The conclusion will be that the identification process defining identified staff might need to be partly made retroactively.

It is further unclear what “*responsibility for advice*” consist of; does it include only those who provide the actual advice or also those who have been part of the analysis resulting in the final advice? In the latter, the identified staff will be significantly larger, but the number of staff who actually have a material impact on the institutions’ risk profile will not change.

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

All relevant costs have been captured. We could perhaps indicate an additional operational cost, the translation costs for the Group Remuneration Policies and Guidelines.

However, this statement is based on the assumption that there is no requirement for the institutions to prove that individuals caught by remuneration levels alone are non-risk takers. If this is not the

case, significant efforts and costs (depending on the size of the institution) will be involved in conducting this exercise for each case separately.

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

Type (a) and (b) of costs are the most likely to occur, however, on-going costs (d) are likely to be the most significant, should institutions have to prove why certain individuals should be excluded. Dedicated staff will be required to track, monitor and inspect this volatile information, which will fluctuate each year. Existence of overseas operations with different systems would constitute an additional complication.

Indirect compliance costs will also be significant, probably on a once-off basis, such as legal costs and professional consultancy.

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

As repeatedly outlined in our replies to questions 1 to 10, there are certain points which are not appropriate in our view. In particular, the cumulative effect of using all the above-mentioned criteria would lead to a very large number of identified staff, the majority of which, in a second phase (under Article 4), would probably have to be excluded, since they have no material impact on the institution's risk profile. Furthermore, the overall cost and time required for IT changes is disproportional in our opinion, and would make the process of identifying risk takers time-consuming and expensive. By mainly focusing on quantitative criteria, one should not overlook the risk of ignoring 'real' aspects of risk-taking functions.

Again, clarity is required for consistent application. If an institution carries out this analysis on a consolidated, parent and subsidiary basis, will different lists be required (e.g. for subsidiary and external operations, for external regulators)? This would give rise to additional complexity, with different personnel being relevant in different locations, and the consolidated list not being the sum of the individual lists. Then, one of the objectives of these RTS, which is "*reducing the burden to comply with different regulatory frameworks*" (page 24), cannot materialise.

Lastly, we need to flag the impact of these RTS on the remuneration policies. The RTS, if adopted as currently drafted, would lead to an increase of the fixed remuneration and subsequent decrease of the variable, a structure that moves away from risk-based remuneration policies and tools.