REVIEW OF THE APPLICATION OF THE PRINCIPLE OF PROPORTIONALITY TO THE REMUNERATION PROVISIONS IN DIRECTIVE 2013/36/EU

THE EBA'S RESPONSE TO THE EUROPEAN COMMISSION'S LETTER – 21.11.2016

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EUROPEAN BANKING AUTHORITY

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Executive summary

This report sets out the European Banking Authority's (EBA's) response to the letter from the European Commission (the Commission), dated 21 April 2016, requesting further information with regard to the EBA's Opinion on the application of the principle of proportionality to the remuneration provisions in Directive 2013/36/EU (EBA/OP/2015/25). The EBA responded on 27 May 2016 to this request, pointing out the scope of the planned analysis and the necessary limitations given the timing and available resources.

The report is divided into four sections: Section 1 gives an overview by Member State on the applicable framework regarding the principle of proportionality with regard to waivers. Section 2 analyses by Member State the number of institutions and staff currently benefiting from waivers from the application of the requirements of Article 94(1) points (l), (m) and the second subparagraph in point (o) of Directive 2013/36/EU (CRD), with regard to pay out in instruments, deferral arrangements and discretionary pension benefits. Section 3 provides information, by Member State, about the institutions and staff who could benefit from waivers from the application of these requirements if the amendment proposed by the EBA's Opinion were to be adopted. Section 4 describes the current national implementation of the CRD regarding the possibility for listed institutions to use share-linked instruments.

The main findings are the following:

Most Member States allow for the application of waivers, either using thresholds based on the balance sheet total and/or the amount of variable remuneration or by making case-by-case assessments, taking into account the size, the internal organisation and the nature, scope and complexity of institutions' activities.

Within the European Union (EU), two thirds of credit institutions and ca. 60% of their identified staff benefit from waivers. However, the market share of these institutions is ca. 18%, which is not as high as the number of institutions would suggest. There are vast differences between these figures for different Member States. These divergences are mainly a result of differences in the thresholds being applied, the levels of variable remuneration being paid, and the structural differences of the banking sectors of Member States.

The EBA has calculated estimates for thresholds of EUR 1.5 bn, EUR 5.0 bn and EUR 10.0 bn for potential waivers, which would, for the EU, lead respectively to 2.8%, 6.8% and 10.2% of the aggregated market share (measured in balance sheet total) being excluded from the remuneration provisions within Article 94(1) points (l), (m) and the second subparagraph of point (o) of CRD.

The EBA has submitted this report to the Commission to inform the review of the application of the proportionality principle to the remuneration provisions within CRD.

Background

1. On 21 December 2015, the EBA published its Opinion on the application of the principle of proportionality to the remuneration provisions in Directive 2013/36/EU (EBA/OP/2015/25), [1] recommending to introduce possible exemptions from some of the remuneration principles set out in Article 94 of Directive 2013/36/EU (CRD).

2. In its Opinion, the EBA stressed the need to ensure a harmonised and consistent approach across the EU regarding the proportionate application of remuneration requirements, taking into account the compliance costs. It is recommended that the CRD be amended to allow for exemptions regarding (i) the application of deferral arrangements, (ii) the pay out in instruments for small and non-complex institutions and (iii) for identified staff that receive only a low amount of variable remuneration when specific criteria are met.

3. In addition, the EBA is of the view that also listed institutions should be able to use share-linked instruments for the pay out of variable remuneration as long as they are equivalent to awards made in shares, and recommended a respective legislative change.

4. To follow up on the application of the principle of proportionality with regard to the remuneration provisions contained in the CRD, on 21 April 2016 the Commission sent a letter[2] to the EBA requesting further clarification and additional information with regard to the application of the principle of proportionality to the remuneration provisions in the CRD.

Call for advice

5. The Commission sought the EBA's further clarification and additional information regarding three aspects in particular:

    - I) the current waiver[3] practices for CRD institutions and staff and, in particular, information, by Member State, about the institutions and staff currently benefiting from waivers from the application of the requirements of Article 94(1) points (l), (m) and the second subparagraph in point (o) of the CRD;

[1] The EBA Opinion can be found under the following link: https://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-25+Opinion+on+the+Application+of+Proportionality.pdf

[2] The call for advice can be found under the following link: http://www.eba.europa.eu/documents/10180/1476692/Letter+from+Ms+Astola%2C%20DG+JUST+re+EBA+Opinion+on+proportionality%2C%20Ares%282016%291895826.pdf/f9dc85a0-8157-49d5-8e44-c6471e85f3db

[3] A waiver in this context is the non-application of remuneration provisions to staff that have a material impact on the institution's risk profile. The relevant remuneration provisions are the requirements to pay out variable remuneration in instruments and to defer variable remuneration, including discretionary pension benefits.

- II) the current practices regarding the application of CRD remuneration requirements to UCITS and AIF managers, which are subsidiaries of CRD-regulated groups;
- III) the exemptions for CRD institutions and staff proposed in the EBA Opinion for certain institutions that are small, as well as for staff who receive low levels of variable remuneration.

6. The EBA responded on 27 May 2016[4] to the Commission, detailing that the EBA would use data that is already collected via the remuneration benchmarking exercise, but would also collect data from competent authorities in order to deliver information on the impact of current waivers by the end of October 2016 and on the impact of potential future waivers for credit institutions by the end of November 2016. The EBA also pointed to some limitations regarding the analysis that could be performed. Some information on the application of the principle of proportionality in Member States and on the applicable framework on UCITS and AIF managers has already been sent to the Commission together with the Opinion..

Data collected and methodology

7. The EBA has requested data from all EU/EEA competent authorities on the application of proportionality in the area of remuneration, on the number of institutions per Member State, on the impact of any waivers in that area currently in place, and on the balance sheet total, number of staff and identified staff of credit institutions. For the sake of a more granular assessment information was collected on a single credit institution basis. However, this is not intended to preclude the possibility to further explore, in the analysis of the effects and functioning of possible waivers, the consolidated dimension. Additional data on group level has not been collected due to time constraints. Branches of third country institutions were excluded from this exercise to reduce the burden of the data collection.

8. All EU competent authorities answered the EBA's information request. Data was also submitted by Iceland and Norway. Therefore, data reported for "EEA" ist without Liechtenstein.

9. The reference date is 31 December 2015 for most of the data. There are a few caveats that need to be mentioned:

   - Due to the limited time frame to perform the data collection and its analysis, there are some limitations on the quality of the data;
   - Figures in terms of numbers of staff were provided in headcount – more rarely using different estimations (e.g. full time equivalents (FTEs)), but this is not deemed to lead to a distortion in the analysis;

[4] http://www.eba.europa.eu/documents/10180/1476692/%28EBA+2016+D+709%29%20Letter+to+Ms+Astola+DG+JUST+re+CfA+Remuneration.pdf/d57d99e9-14ef-4098-bdd9-1e43a936b534

- One competent authority (UK), submitted data that included group data and also contained branches of third countries, leading to a significantly higher weight of the financial sector of the United Kingdom. This also led to some double counting effects regarding subsidiaries that were reported by other Member States. Therefore, EU figures were calculated also as EU27, excluding the United Kingdom.

10. Competent authorities reported for all credit institutions the balance sheet total and the number of staff. The number of identified staff was submitted by some competent authorities only for a sample of institutions. In addition, three Member States have granted waivers from the obligation to identify staff applicable to small institutions (DE, FR, SL). In those cases, the EBA used a statistical approximation to complete the data, using a function based on the number of staff that has been derived from remuneration benchmarking data.[5]

11. Some competent authorities reported the number of identified staff that benefit from waivers based on a low level of remuneration only for a sample of institutions. In that case, the data was completed by applying the same average percentage, calculated per Member State for the sample of institutions for which data was reported, to institutions for which no data was reported.

12. Figures were provided in local currency. The EBA converted the data based on the exchange rates of December 2015 provided on the website of the Commission. Given the change in value of GBP (UK) and the fact that group and branch data was reported, aggregated figures are provided for the EU, EU27 (without the UK), and EEA. It needs to be considered that, in the meantime, the value of GBP dropped significantly against EUR (GBP/EUR 12/2015: 0.7029, October 2016 ca. 0.90). Figures shown for Member States represent the state of play at the year end 2015 and will change over time, e.g. due to deleveraging, mergers and acquisitions or the conversion of branches into subsidiaries and vice versa.

13. Section 1 of the report provides, for each Member State, additional information on the current applicable legal framework for the application of the principle of proportionality. Section 2 provides information for each Member State on the impact of current waiver practices for institutions and identified staff who could benefit from waivers from the application of the requirements of Article 94(1) points (l), (m) and the second subparagraph in point (o) of the CRD. Section 3 provides information on the potential impact of proposed waivers of the above mentioned CRD provisions under different thresholds. Section 4 provides additional information for each Member State on the use of share-linked instruments for the pay out of variable remuneration.

[5] The benchmarking report can be found under the following link: https://www.eba.europa.eu/-/eba-reports-on-high-earners-and-the-effects-of-the-bonus-cap

1. Applicable regulatory framework regarding proportionality in the area of remuneration, by Member State

Introduction

14. As already depicted in the information annexed to the EBA Opinion, the application of waivers differs significantly between Member States. Even if some information was already provided in the Opinion and its accompanying report, the EBA has collected additional information on the thresholds applied by Member States or competent authorities to provide additional information and clarification to the Commission on the applicable framework regarding the principle of proportionality for each Member State.

15. In particular, applicable thresholds expressed in balance sheet total in million in local currency, under which waivers are applicable for credit institutions and investment firms, were collected for each Member State. The EBA requested competent authorities to specify whether those thresholds are applicable on an individual and/or group basis. Even if an institution would be eligible to waive requirements because it meets the threshold criteria, competent authorities could in such cases still require institutions to apply the requirements considering their complexity and risk profile. In addition, thresholds applicable at staff level due to their low level of variable remuneration were collected for each Member State. Where no thresholds exist, in some cases the competent authorities perform case-by-case assessments, taking into account the size, the internal organisation and the nature, scope and complexity of the institution's activities.

Data analysis

Main findings:

All but five Member States allow for waivers in the area of remuneration. Some do so based on thresholds for the size and/or the level of remuneration that identified staff receives, other decide on waiversbased on case-by-case assessments. Several Member States have introduced both, waivers based on the size and waivers based on the level of remuneration.

Seventeen Member States allow for waivers for the institution, with eightbasing them on the balance sheet total, and seven performing a case-by-case assessment. The thresholds applied vary significantly between Member States, ranging from EUR 1 000 million to ca. EUR 30 000 million. In one case an indicative threshold of EUR 52 000 million risk weighted assets is used.

Twenty-two Member States allow for waivers based on a low level of remuneration, 14 basing them on a threshold, and eight Member States applying exclusively a case-by-case assessment.

Thresholds based on variable remuneration range from EUR 8 000 in Lithuania to EUR 100 000 in France, Luxembourg and Malta. A particularly high amount of EUR 711 339 (GBP 500 000) is set in the United Kingdom, based on the total remuneration. Such thresholds are often combined with a ratio of variable to fixed remuneration of between 20% and 50%. The remuneration of identified staff is often limited to the maximum ratio of 100% or 200%, even if waivers are applied. Some Member States apply this limitation to all staff.[6]

16. Figure 1 shows that a large majority of Member States allow for waivers for credit institutions either in their regulatory framework or as a supervisory measure, regarding either the application of pay out in instruments and/or deferral arrangements and/or discretionary pension benefits. Within the EU/EEA only five Member States (CY, EE, SK, NO, IS) do not allow for waivers in the area of remuneration.

Figure 1: Member States overview on waivers

Member State	Waivers allowed
Austria (AT)	Yes
Belgium (BE)	Yes
Bulgaria (BG)	Yes
Cyprus (CY)	No
Czech Republic (CZ)	Yes
Germany (DE)	yes
Denmark (DK)	Yes
Estonia (EE)	No
Greece (EL)	Yes
Spain (ES)[7]	Yes
Finland (FI)	Yes
France (FR)	Yes
Croatia HR)	Yes
Hungary (HU)	Yes
Ireland (IE)	Yes
Italy (IT)	Yes
Lithuania (LT)	Yes
Luxembourg (LU)	Yes
Latvia (LV)	Yes
Malta (MT)	Yes
Netherland (NL)s	Yes
Poland (PL)	Yes

[6] See also EBAs report on the benchmarking of the use of approved higher ratios for remuneration: https://www.eba.europa.eu/documents/10180/950548/Benchmarking+Report+on+Approved+Higher+Ratios+for+Remuneration.pdf

[7] Waivers are based on indicative criteria that are taken into account in supervisory planning.

Member State	Waivers allowed
Portugal (PT)	Yes
Romania (RO)	Yes
Sweden (SE)	Yes
Slovenia (SI)	Yes
Slovakia (SK)	No
United Kingdom (UK)	Yes
Iceland (IS)	No
Norway (NO)	No

17. Eight Member States (AT, HR, FR, DE, HU, IT, LU, UK) allow for waivers regarding deferral arrangements and pay out in instruments on the basis of absolute thresholds based on balance sheet total. As shown in Figure 2, the thresholds range from EUR 1 000 million of balance sheet total in Austria to EUR 30 000 million in Italy. Sweden uses an indicative threshold of ca. EUR 52 000 million risk weighted assets to determine if the institution has to apply the requirements on pay out in instruments. In most Member States, the same thresholds apply not only to credit institutions but also to investment firms.[8] Italy and Luxembourg have different thresholds for investment firms (e.g. for LU, the net profit generated by one of the activities exceeds 20% of the total net profit before tax of the firm concerned).

18. In three Member States (IT, LU, SE),[9] different thresholds or a combination of thresholds apply for waivers of the deferral requirement and the requirement to pay out variable remuneration partly in instruments or require different minimum ratios for such requirements compared to the minimum ratios set in the CRD, so that also partial waivers to a subset of the relevant requirements are admitted.[10] In addition, four Member States (AT, HR, HU, UK) do not automatically allow t the application of waivers to discretionary pension benefits, while five Member States (FR, DE, IT, LU, SE) explicitly allow institutions to waive the remuneration requirements for discretionary pension benefits.

19. Figure 2 also shows that in eight Member States (BE, CZ, EL, IE, NL, PL, PT, RO) competent authorities allow for waivers regarding deferral, pay out in instruments and in seven Member States (BE, CZ, EL, IE, NL, PL, RO) also discretionary pension benefits on a case-by-

[8] In Austria, all firms that would commonly be investment firms are, in accordance with national law, categorised as credit institutions. In Croatia, thresholds are not applicable to investment firms.

[9] In Italy, credit institutions with a balance sheet total between EUR 3 500 million and EUR 30 000 million should defer at least 20-30% of the variable remuneration for at least 1.5 to 2.5 years; in addition, at least 25% must be paid out in instruments. A full waiver is permitted only from the application of the rule on pay out in instruments and only to credit institutions with a balance sheet total below EUR 3 500 million; these credit institutions may also use lower ratios and shorter periods for the deferral requirement, but must in any case defer parts of the variable remuneration of identified staff. This was implemented in Italy to ensure a more proportionate and smooth application of the rules and to reduce cliff effects of waivers. In Luxembourg, institutions that have a balance sheet total above EUR 5 000 million and an overall capital requirement that exceeds EUR 125 million (base 100%) or EUR 1 562.5 million (base 8%) cannot waive the deferral arrangements and the pay out in instruments.

[10] The CRD requires institutions to defer at least 40% of the variable remuneration for a period of at least 3 to 5 years, and to pay out at least 50% of the variable remuneration in non-cash instruments.

case basis, taking into account the institution's size, internal organisation and nature, scope and complexity of its activities.

20. Among the ine Member States that allow waivers based on absolute thresholds expressed in balance sheet total or indicative thresholds of risk weighted assets, three Member States (AT, DE, HU) apply them only on a single institution basis, one (IT) only on a group-wide basis, and five (HR, FR, LU, SE, UK) both on a single and group basis. Thirteen Member States (BG, CY, DK, EE, ES, FI, IS, LT, LV, MT, NO, SK, SI) do not allow for waivers based on balance sheet total or on a case-by-case basis but allow institutions to apply waivers based on a low level of variable remuneration, as shown in Figure 3.

Figure 2: Criteria for applying waivers regarding deferral and the pay out in instruments (in EUR million)

Member State	Threshold, absolute amount of balance sheet total in EUR million	Waivers applicable on a single/solo institution basis	Waivers applicable on a group-wide basis	Waivers applied on a group-wide basis but with discretion to exclude single subsidiaries	Waivers applied also to discretionary pension benefits	Case-by-case assessment
Austria	1 000	yes	no	no	no	no
Belgium	case by case	no	yes	yes	case by case	yes
Bulgaria	no	no	no	no	no	no
Cyprus	no	no	no	no	no	no
Czech Republic	case by case	case by case	case by case	case by case	case by case	yes
Germany	15 000	yes	no	no	yes	no
Denmark	no	no	no	no	no	no
Estonia	no	no	no	no	no	no
Greece	case by case	case by case	case by case	case by case	case by case	yes
Spain	no	no	no	no	no	no
Finland	no	no	no	no	no	no
France	10 000	yes	yes	no	yes	no
Croatia	918.27	yes	yes	no	no	no
Hungary	1 602.15	yes	no	no	no	no
Ireland	case by case	case by case	case by case	case by case	case by case	yes
Italy	30 000 and 3 500, below 3 500	no	yes	no	yes	no
Lithuania	no	no	no	no	no	no
Luxembourg	5 000 and	yes	yes	yes	yes	no

Member State	Threshold, absolute amount of balance sheet total in EUR million	Waivers applicable on a single/solo institution basis	Waivers applicable on a group-wide basis	Waivers applied on a group-wide basis but with discretion to exclude single subsidiaries	Waivers applied also to discretionary pension benefits	Case-by-case assessment
	overall capital requirement <125 (base 100%) or 1 562.5 (base 8%)					
Latvia	no	no	no	no	no	no
Malta	no	no	no	no	no	no
Netherlands	case by case	case by case	case by case	case by case	case by case	yes
Poland	case by case	case by case	case by case	case by case	case by case	yes
Portugal	Case by case	case by case	no	no	no	yes
Romania	case by case	-[11]	no	no	no	yes
Sweden	52 000[12]	yes	yes	no	yes	no
Slovenia	no	no	no	no	no	no
Slovakia	no	no	no	no	no	no
United Kingdom	21 340.16	yes	yes	yes	no	no
Iceland	no	no	no	no	no	no
Norway	no	no	no	no	no	no

21. Figure 3 shows that, altogether, 22 Member States (AT, BE, BG, HR, CZ, DK, ES, FI, FR, DE, EL, IE, IT, LT, LU, LV, MT, NL, PL, PT, SE, UK) allow for waivers based on a low level of remuneration. Thirteen of these Member States (AT, BE, HR, DK, FI, FR, DE, LT, LU, MT, NL, SE, UK) have established an absolute amount of variable remuneration as a threshold below which it is possible to waive the application of deferral arrangements and pay out in instruments. In nine Member States (BG, CZ, EL, ES, IE, IT, LV, PL, PT), competent authorities allow for waivers regarding deferral, pay out in instruments and discretionary pension benefits on a case-by-case basis regarding a low level of variable remuneration. Eight Member States do not apply waivers based on a low level of remuneration (CY, EE, HU, IS, NO, RO, SK, SI).

[11] Waivers on pay out in instruments is possible on a case-by-case basis and is applicable on a single institution basis.
[12] Indicative amount of risk weighted assets taken into account when assessing the significant of an institution, the requirement to pay out in instrument applies only to significant institutions.

22. Among those 22 Member States, 7 Member States (BG, DK, ES, FI, LT, LV, MT) do not allow institutions to apply waivers, neither based on balance sheet total nor on a case-by-case basis. The other 15 Member States (AT, BE, HR, CZ, FR, DE, EL, IE, IT, LU, NL, PL, PT, SE, UK) also allow for waivers for institutions (see Figure 2). Fifteen Member States (AT, HR, CY, DK, EE, HU, IS, LT, MT, NO, PT, RO, SK, SI, UK) do not allow for waivers based on the low level of variable remuneration for the remuneration requirements regarding discretionary pension benefits of identified staff.

23. The thresholds of variable remuneration range from EUR 8 000 in Lithuania to EUR 100 000 in France, Luxembourg and Malta. A particularly high amount of EUR 711 339 (GB 500 000) is set in the United Kingdom, based on the total remuneration. From those 14 Member States, eight Member States (AT, HR, DK, LT, LU, MT, NL, UK) combine the absolute amount of remuneration with a ratio between variable and fixed remuneration. The ratios range from 1 month's salary in the Netherlands to 50% in the United Kingdom. Even if waivers are applied, the remuneration is usually limited to a maximum ratio of 100% or 200% (with shareholders' approval).

Figure 3: Criteria to apply waivers based on a low level of variable remuneration regarding deferral and pay out in instruments (in EUR)

Member State	Threshold absolute amount of variable remuneration of staff	Threshold ratio between variable and fixed remuneration in %	Waivers applied also to discretionary pension benefits	Case-by-case assessment
Austria	30 000	25%	no	no
Belgium	75 000	N/A	yes	no
Bulgaria	case by case	case by case	case by case	yes
Cyprus	no	no	no	no
Czech Republic	case by case	case by case	case by case	yes
Germany	50 000	N/A	yes	no
Denmark	13 404	50/100/200%	no	no
Estonia	no	no	no	no
Greece	case by case	case by case	case by case	yes
Spain	50 000[13]	N/A	yes	yes
Finland	50 000	N/A	yes	no
France	100 000	N/A	yes	no
Croatia	13 118	30%	no	no
Hungary	no	no	no	no
Ireland	case by case	case by case	case by case	yes

[13] Used as an indicative criteria that is taken into account in supervisory planning

Member State	Threshold absolute amount of variable remuneration of staff	Threshold ratio between variable and fixed remuneration in %	Waivers applied also to discretionary pension benefits	Case-by-case assessment
Italy	case by case	case by case	case by case	yes
Lithuania	8 000[14]	20%	no	no
Luxembourg	100 000	200%	yes	no
Latvia	case by case	70/100%	yes	yes
Malta	100 000	100%	no	no
Netherlands	10 000	1 month's salary	yes	no
Poland	case by case	case by case	case by case	yes
Portugal	case by case	no	no	yes
Romania	no	no	no	no
Sweden	10 820[15]	N/A	yes	no
Slovenia	no	N/A	no	no
Slovakia	no	no	no	no
United Kingdom	711 339[16]	50%	no	no
Iceland	no	no	no	no
Norway	no	no	no	no

[14] Threshold applicable only for waiving the pay out in instruments.
[15] Threshold applicable only for waiving the deferral arrangements.
[16] This threshold is based on total remuneration.

2. Current waiver practices for CRD institutions and staff

Introduction

24. The Commission letter invites the EBA to provide '*information, per Member State, about the institutions and staff currently benefiting from waivers from the application of the requirements of Article 94(1) points (l), (m) and the second subparagraph in point (o) CRD IV, and specifically:*

a) an estimate of the number of institutions (separately for credit institutions and CRR investment firms) which benefit from waivers from the indicated CRD IV provisions at institution level, compared to the total number of credit institutions/CRR investment firms (respectively), counted on a single institution basis;

b) an estimate of the market share of institutions identified under point (a) (separately for credit institutions and CRR investment firms) in terms of their balance sheet total, compared to the balance sheet total of all credit institutions/all CRR investment firms (respectively);

c) an estimate of the number of identified staff (separately for credit institutions and investment firms) in institutions that were identified under point (a), compared to the total number of identified staff;

d) an estimate of the number of identified staff (separately for credit institutions and investment firms) who benefit from waivers from the indicated CRD IV provisions on the basis of the level of their individual variable remuneration (be it defined in absolute terms or as a percentage of the total or fixed remuneration, or both), excluding the staff identified under point (c), compared to the total number of identified staff.

The information under points (a)-(d) listed above should be provided on the basis of the criteria for waivers currently applied in Member States.'

Data analysis

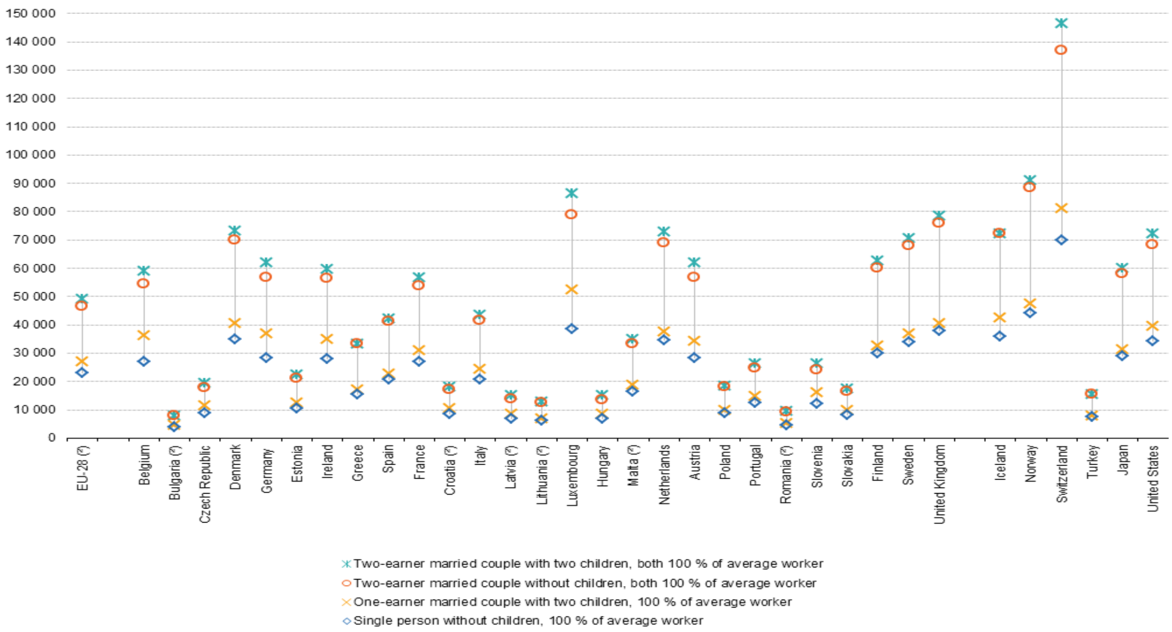
Main findings:

The extent to which credit institutions and identified staff currently benefit from waivers differs significantly across the EU. Overall, data for 5 341 institutions has been reported to the EBA, with an aggregated balance sheet total of EUR 48 490 599.0 million and 146 368 identified staff.

Thereof, within the EEA *(EU27)*, 66.1% *(66.8%)* of credit institutions representing a market share of 15.1% *(18.2%)* and, overall, 59.7% *(61.0%)* of the identified staff currently benefit from waivers.

25. When reading the figures provided in this report, it needs to be considered that not all identified staff receive variable remuneration. Also, the levels of variable remuneration differ significantly between Member States and institutions.[17] The extent to which variable remuneration is awarded depends very much on the 'pay culture' within a Member State and the business model of credit institutions. In addition, the remuneration level in Member States differs significantly.. While the remuneration in banking is higher than for average workers, Figure 4 clearly illustrates the differences between pay levels within different jurisdictions within and outside the EU.

Figure 4: Annual net earnings 2015 for workers across the EU[18]



(¹) Cyprus: not available.
(²) 2014.
Source: Eurostat (online data code: earn_nt_net)

[17] See also the EBA's report on the benchmarking of approved higher ratios: https://www.eba.europa.eu/documents/10180/950548/Benchmarking+Report+on+Approved+Higher+Ratios+for+Remuneration.pdf

[18] Eurostat, wages and labour costs, the report can be accessed under: http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Annual_net_earnings,_2015_(%C2%B9)_(EUR)_YB16.png

26. The number of identified staff depends to some extent on the structure of the banking sector within a Member State. Smaller institutions identify a higher percentage of their staff, in particular as all members of their management body are identified staff according to the criteria contained in the Commission Delegated Regulation (EU) No 604/2014 of 4 March 2014 (RTS on identified staff)[19]. Hence banking systems with a relatively high percentage of small institutions will have a higher percentage of identified staff (e.g. AT and DE), while banking systems with a high level of concentration have a lower percentage of identified staff (e.g. FR). Figure 5 includes the percentages for the five biggest institutions in terms of the aggregated balance sheet total of institutions within the Member States; this figure indicates the concentration within the banking sector. The number and percentage of identified staff also seems to depend on the extent to which waivers are granted to institutions and to staff that receive a low level of remuneration.

27. Applying the quantitative criteria contained in the RTS on identified staff, in particular the criterion in Article 4(1)(c) (the payment bracket criterion established in Article 92 of Directive 2016/36/EU), can lead to a high percentage of identified staff, when the possibility to apply the exclusion processes[20] for such staff is not used. Institutions are allowed to exclude such staff from the category of identified staff when certain conditions are met.

28. It can be expected that only institutions, that are not allowed to waive the deferral requirement and the requirement to pay variable remuneration in instruments, perform the permitted exclusion procedure for identified staff in order to reduce the number of staff to whom the specific remuneration requirements have to be applied. This leads to a higher percentage of identified staff im Member States that allow for waivers compared to Member States that do not allow for waivers.

29. To avoid double counting staff receiving a low level of variable remuneration were estimated only for institutions that are not benefiting from a waiver that is applicable on the level of the institution.

30. Figure 5 provides an overview of the number of institutions, staff and identified staff and the concentration of the banking sector. The figures for the United Kingdom are based on group data and include branches of third countries, while other figures are in general based on individual institutions' data and exclude branches of third country institutions, leading to some double counting and overestimation effects regarding the UK and EU figures. Where markets show a lower concentration, it can be expected that more small institutions exist that potentially benefit from waivers; also, the ratio of identified staff compared to all staff is expected to be higher. However, this also depends on the size of the banking market and the extent of the waivers being used.

[19] 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.

[20] The RTS on identified staff allows that staff that is initially identified alone by quantitative criteria can be excluded from the category of identified staff, if the staff, in fact, has no material impact on the institutions' risk profile.

Figure 5: Number of institutions, staff and identified staff (IS) included in the exercise, and concentration of the banking sector

Member State	Number of institutions	Number of staff	Number of IS	Ratio of IS to all staff	Balance sheet total of the five largest credit institutions per MS in %
Austria	640	69 844	8 774	12.56%	38.17%
Belgium	35	50 644	1 076	2.12%	78.74%
Bulgaria	22	29 734	1 089	3.66%	59.60%
Cyprus	13	11 312	817	7.22%	89.09%
Czech Republic	34	40 718	863	2.12%	69.86%
Germany	1 633	554 391	47 130	8.50%	34.65%
Denmark	85	48 967	3 205	6.55%	87.89%
Estonia	9	4 260	351	8.24%	94.67%
Greece	17	45 049	1 036	2.30%	98.94%
Spain	89	180 740	2 462	1.36%	70.26%
Finland	249	20 526	3 311	16.13%	80.03%
France	332	380 957	7 213	1.89%	51.30%
Croatia	33	20 789	909	4.37%	73.03%
Hungary	126	36 593	2 819	7.70%	52.62%
Ireland	26	34 889	665	1.91%	54.77%
Italy	547	291 017	12 598	4.33%	44.40%
Lithuania	7	6 202	990	15.96%	98.07%
Luxembourg	111	22 902	2 096	9.15%	41.05%
Latvia	16	8 373	940	11.23%	74.51%
Malta	20	4 956	402	8.11%	83.89%
Netherlands	54	102 916	2 120	2.06%	83.76%
Poland	597	171 120	3 820	2.23%	52.61%
Portugal	136	50 031	2 347	4.69%	75.63%
Romania	29	53 840	958	1.78%	64.80%
Sweden	123	85 622	22 553	26.34%	78.03%
Slovenia	14	10 973	628	5.72%	66.69%
Slovakia	13	17 000	470	2.76%	82.96%
United Kingdom	199	821 077	12 451	1.52%	62.92%
EU27	**5 010**	**2 354 365**	**131 642**	**5.59%**	**55.89%**
EU	**5 209**	**3 175 442**	**144 093**	**4.54%**	**58.43%**
Iceland	8	3 245	221	6.81%	99.59%
Norway	124	21 276	2 054	9.65%	71.60%
EEA	**5 341**	**3 199 963**	**146 368**	**4.57%**	**58.57%**

31. Figure 6 provides an overview of the number of credit institutions and their market share and the percentage of them benefiting from waivers that are applicable at the level of the institution and therefore affect all its identified staff. Figure 7 contains the number of identified staff and the number of them that work within institutions that benefit from waivers. In addition, Figure 7 provides information on the number and percentage of identified staff that work within institutions that have to apply the remuneration provisions, but who benefit from waivers because of their low level of variable remuneration. Finally, Figure 7 provides the total percentage of identified staff that benefit from any of the aforementioned waivers.

32. Within the EEA close to two thirds of credit institutions and their identified staff benefit from waivers. However, the market share of these institutions is ca. 15.1% *(EU27: 18.2%)*, which is not as high as the number of institutions would suggest. There are vast differences between these figures for different Member States. These divergences are mainly a result of differences in thresholds being applied, the levels of variable remuneration being paid and the structural differences of the banking sector of Member States.

Figure 6: Institutions benefiting from waivers (request of EU COM I points (a) and (b))

Member State	Number of credit institutions	Number of credit institutions benefiting from waivers	in %	Market share of all credit institutions in EUR million[21]	Market share of credit institutions benefiting from waivers in EUR million	in %
Austria	640	566	88.44%	794 114.2	123 183.2	15.51%
Belgium	35	6	17.14%	842 598.7	52 662.0	6.25%
Bulgaria	22	0	0.00%	43 033.4	0.0	0.00%
Cyprus	13	0	0.00%	68 275.4	0.0	0.00%
Czech Republic	34	30	88.24%	186 292.2	65 257.4	35.03%
Germany	1 633	1 588	97.24%	7 197 878.0	2 376 885.2	33.02%
Denmark	85	0	0.00%	1 030 205.7	0.0	0.00%
Estonia	9	0	0.00%	17 032.0	0.0	0.00%
Greece	17	0	0.00%	29 135.3	0.0	0.00%
Spain	89	0	0.00%	2 291 189.7	0.0	0.00%
Finland	249	0	0.00%	538 895.7	0.0	0.00%
France	332	213	64.16%	7 592 643.7	401 743.7	5.29%
Croatia	33	24	72.73%	52 625.9	5 153.9	9.79%
Hungary	126	113	89.68%	99 149.6	17 008.8	17.15%
Ireland	26	8	30.77%	474 499.6	53 139.0	11.20%
Italy	547	474	86.65%	2 821 182.3	516 401.2	18.30%
Lithuania	7	0	0.00%	19 894.4	0.0	0.00%
Luxembourg	111	83	74.77%	697 587.8	132 436.5	18.98%
Latvia	16	0	0.00%	26 944.0	0.0	0.00%
Malta	20	0	0.00%	26 105.3	0.0	0.00%
Netherlands	54	17	31.48%	2 720 846.6	1 164 372.4	42.79%
Poland	597	101	16.92%	327 270.5	127 542.4	38.97%
Portugal	136	0	0.00%	377 886.8	0.0	0.00%
Romania	29	2	6.90%	75 684.8	1 087.0	1.44%
Sweden	123	119	96.75%	1 878 366.6	533 498.6	28.40%
Slovenia	14	0	0.00%	38 616.6	0.0	0.00%
Slovakia	13	0	0.00%	57 758.0	0.0	0.00%
United Kingdom	199	184	92.46%	17 422 972.3	1 731 823.0	9.94%
EU27	**5 010**	**3 344**	**66.75%**	**30 592 712.8**	**5 570 371.3**	**18.21%**
EU	**5 209**	**3 528**	**67.73%**	**48 015 685.0**	**7 302 194.3**	**15.21%**
Iceland	8	0	0.00%	23 183.4	0.0	0.00%
Norway	124	0	0.00%	451 730.6	0.0	0.00%
EEA	**5 341**	**3 528**	**66.06%**	**48 490 599.0**	**7 302 194.3**	**15.06%**

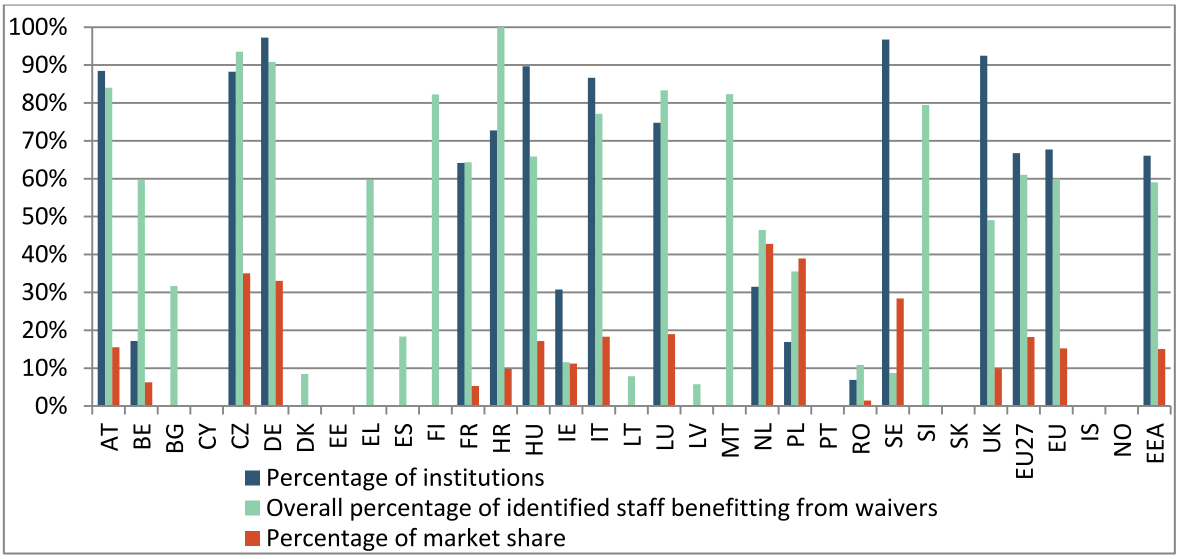
[21] For the currency conversion, exchange rates for December 2015 published by the Commission have been used: http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/index_en.cfm

Figure 7: Identified staff (IS) benefiting from waivers (request of EU COM I points (c) and (d))

Member State	Total number of identified staff	Number of IS benefiting from waivers applied to institutions	Number of IS benefiting from waivers in %	IS eligible for waivers because of low variable remuneration	IS eligible for waivers because of low variable remuneration in % of total IS	IS that have a low variable remuneration in % of IS in institutions that are as such not eligible for waivers	Total IS eligible for any waiver in %
Austria	8 774	5 646	64.35%	1 725	19.66%	55.15%	84.01%
Belgium	1 076	187	17.38%	455	42.29%	54.18%	59.67%
Bulgaria	1 089	0	0.00%	345	31.68%	31.68%	31.68%
Cyprus	817	0	0.00%	0	0.00%	0.00%	0.00%
Czech Republic	863	632	73.23%	175	20.28%	75.76%	93.51%
Germany	47 130	38 924	82.59%	3 883	8.24%	47.32%	90.83%
Denmark	3 205	0	0.00%	271	8.46%	8.46%	8.46%
Estonia	351	0	0.00%	0	0.00%	0.00%	0.00%
Greece	1 036	0	0.00%	619	59.76%	59.76%	59.76%
Spain	2 462	0	0.00%	452	18.36%	18.36%	18.36%
Finland	3 311	0	0.00%	2 723	82.24%	82.24%	82.24%
France	7 213	2 444	33.88%	2 198	30.47%	46.09%	64.36%
Croatia	909	511	56.22%	398	43.78%	100.00%	100.00%
Hungary	2 819	1 857	65.87%	0	0.00%	0.00%	65.87%
Ireland	665	64	9.62%	13	1.95%	2.16%	11.58%
Italy	12 598	8 372	66.46%	1 345	10.68%	31.83%	77.13%
Lithuania	990	0	0.00%	78	7.88%	7.88%	7.88%
Luxembourg	2 096	1 174	56.01%	573	27.34%	62.15%	83.35%
Latvia	940	0	0.00%	54	5.74%	5.74%	5.74%
Malta	402	0	0.00%	331	82.34%	82.34%	82.34%
Netherlands	2 120	957	45.15%	28	5.76%	2.41%	46.47%
Poland	3 820	1 069	27.98%	288	7.54%	10.47%	35.53%
Portugal	2 347	0	0.00%	0	0.00%	0.00%	0.00%
Romania	958	104	10.86%	0	0.00%	0.00%	10.86%
Sweden	22 553	1 966	8.72%	0	0.00%	0.00%	8.72%
Slovenia	628	0	0.00%	499	4.60%	79.46%	79.46%
Slovakia	470	0	0.00%	0	0.00%	0.00%	0.00%
United Kingdom	12 451	4 271	34.30%	1 834	14.73%	22.42%	49.03%
EU27	**131 642**	**63 907**	**48.5%**	**16 453**	**12.50%**	**23.88%**	**61.04%**
EU	**144 093**	**68 178**	**47.3%**	**18 287**	**12.69%**	**23.72%**	**60.01%**
Iceland	221	0	0.00%	0	0.00%	0.00%	0.00%
Norway	2 054	0	0.00%	0	0.00%	0.00%	0.00%
EEA	**146 368**	**68 178**	**46.6%**	**18 287**	**12.49%**	**23.03%**	**59.07%**

33. Figure 8 provides a graphic overview of the different extents to which waivers are applied. In general, the market share excluded from the application of remuneration requirements by waivers is lower than the percentage of staff and institutions excluded.

Figure 8: Impact of waivers on institutions, identified staff and market share (by percentage)



3. Proposed exemptions for CRD institutions and staff

Introduction

34. As set out in the Commission's letter, '*the EBA is invited to provide information, per Member State, about the institutions and staff who could benefit from waivers from the application of the requirements of Article 94(1) points (l), (m) and the second subparagraph in point (o) CRD IV if the amendment proposed by EBA in its Opinion were to be adopted, and specifically:*

   i) an estimate of the number of institutions (separately for credit institutions and CRR investment firms) which could benefit from waivers from the indicated provisions at institution level, compared to the total number of credit institutions/CRR investment firms (respectively), counted on a single institution basis;

   j) an estimate of the market share of institutions identified under point (i), separately for credit institutions and CRR investment firms, in terms of their balance sheet total, compared to the balance sheet total of all credit institutions/all CRR investment firms (respectively);

To collect the information under points (i) and (j) listed above EBA is invited to propose at least three different levels of the balance sheet total of a single institution, whereby institutions which fall below those thresholds could benefit from waivers from the indicated CRD provisions. Member States should then estimate the number (under point (i)) and market share (under point (j)) of institutions, the balance sheet total of which would fall under each of the proposed thresholds.

k) an estimate of the number of identified staff (separately for credit institutions and investment firms) in institutions that would be identified under each of the thresholds proposed by EBA under points (i) and (j), compared to the total number of identified staff;

l) an estimate of the number of identified staff (separately for credit institutions and investment firms) who could benefit from waivers from the indicated provisions on the basis of their remuneration level, excluding the staff identified under point (k), compared to the total number of identified staff;

To collect the information under point (I) EBA is invited to propose at least two different levels of the individual variable remuneration (in either absolute amount, or percentage of fixed or total remuneration, or both). Member States should then estimate the number of identified staff in institutions that exceed the thresholds proposed by EBA under points (i) and (j), who receive variable remuneration below the thresholds proposed by EBA under point (I) and would therefore qualify for waivers.

In this context, the Commission notes that in its Opinion EBA proposes to allow waivers for institutions, which are small and non-complex, "and which are not subsidiaries of a significant institution". We therefore kindly ask EBA to account for this factor when providing the estimate of the number of institutions that would be exempted.'

Data analysis

General aspects regarding the calibration of waivers

35. When calibrating waivers, the main determinant of the appropriate level should be the burden of the application of the remuneration provisions compared to the prudential benefit in terms of a better risk alignment in the long run. The risk alignment is directly achieved by deferral that allows for ex-post performance adjustments, but also by the pay out in instruments that automatically react to performance changes over time. In particular, the creation of suitable instruments is burdensome for many institutions that are not listed or do not regularly issue suitable Tier 1 or Tier 2 instruments. The valuation of instruments creates additional challenges where market values do not exist. In addition, the price of instruments depends on many factors and does not necessarily react in a timely way to changes in the performance of institutions.

36. Where institutions have to apply deferral and pay out in instruments, additional staff are needed for the administration of such arrangements; therefore, the burden for the institution needs to be considered, but also the riskiness of the business model. The latter is often based on a case-by-case assessment by the competent authorities, as a huge number of factors have to be taken into account, including the nature, size and complexity of the institution's activities, its organisation, its risk appetite, the markets in which it is active and the length of its business cycle.

37. In general, the compliance costs are relatively higher for small institutions that have a low number of staff. Considering the varying effectiveness of the regulatory requirements and the different costs for the application of the requirements, it would be possible to differentiate thresholds for the application of waivers for deferral and the pay out in instruments.

38. A general consideration is whether the criteria for waivers should be applied on a solo institution level or only on the highest level of consolidation. While single institutions are subject to the remuneration provisions, institutions within a group will benefit from the possibility of making use of a group-wide remuneration system and respective resources.

39. If single institutions within a group could benefit from waivers, because of their individual size, while the parent institution need to apply the requirements, because of the size of the group, the scope of waivers would be increased compared to waivers that would solely be based on group criteria.

40. The EBA Opinion suggested that there could be a differentiation for subsidiaries of significant institutions. Therefore the analysis also looked at the effect of waivers, if they could not be applied to subsidiaries of significant institutions.

41. Consolidated data was not available, therefore the impact of waivers based on group criteria only has not been performed. However, when setting out applicable waivers the costs and benefits of different levels of application (i.e. individual or consolidated level) should be taken into account.

Waivers based on the balance sheet total

42. The EBA analysed the effect of potential waivers with thresholds, based on balance sheet total, set at the levels of EUR 1.5 bn, EUR 5.0 bn and EUR 10.0 bn. In countries that have a different currency than the euro the results may change over time, depending on the exchange rate. The analysis was based on the exchange rates of December 2015; the exchange rate between GBP and EUR has changed significantly. Values for the EU are therefore also provided as EU27 data, excluding the United Kingdom.

43. In particular, in Member States with a low number of institutions some cliff effects can be expected as institutions have, in relative terms, a high market share; that is, with a small alteration of the threshold, the estimate may change significantly. In addition, due to

changes, e.g. deleveraging, mergers and aquisition, institutions balance sheet total over time might fall under or increase above the set threshold. Measures to stabilise the applicable framework for waivers should be considered.

44. At each of the applied thresholds, the percentage of market share that benefits from waivers differs significantly between Member States, as the national financial markets differ in terms of the structure and size of the institutions and relative number of small and non-complex institutions.

45. In some Member States with a low number of credit institutions, the size of the national financial market, -measured as the total balance sheet of these credit institutions, is relatively small. However, branches of institutions located in third countries have not been taken into account in the analysis; therefore, the size of the financial market is underestimated. For EU credit institutions, branches are part of the credit institution and are reported in the Member State where the institution has its seat; therefore, this has no effect on the EU averages provided.

Waivers based on a low level of remuneration

46. Data regarding the low level of remuneration was not collected, as this would have required a significant data collection exercise. Member States use different thresholds, ranging from ca. EUR 8 000 to EUR 100 000 variable remuneration, or a combination of an amount and a ratio between the variable and the fixed remuneration – for example, GBP 500 000 total remuneration, whereas the part of variable remuneration must not exceed 33%. In some cases, the absolute threshold is combined with a maximum ratio between fixed and variable remuneration. The effect of such waivers, when currently applied, is shown in Figure 7, and the corresponding thresholds are shown in Figure 3.

47. It would be difficult to apply such a uniform binding criteria to determine a low level of variable remuneration suitable for all Member States, given in particular the differences between the total level of remuneration and use of variable remuneration components (see also Figure 4).

48. Moreover, the application of deferral, to be an effective tool for having an impact on staff's risk behaviour, is only effective when an amount is deferred that matters to staff, so that malus can be applied at a later stage. An amount that matters differs significantly between Member States, as overall payment levels are different.

Effect of different potential thresholds

Main findings:

The EBA calculated the potential effect of waivers at thresholds, based on balance sheet total, of EUR 1.5 bn, EUR 5.0 bn and EUR 10.0 bn; typical institutions of these sizes would have around 290, 690 and 1 260 [22]staff members, respectively. However, the range of waived identified staff numbers is significant, varying, depending on the threshold, from 10 to 15 to 2 100 to 4 400 staff in single institutions.

At EUR 5.0 bn, at least the largest institutions in each Member State would be fully subject to the remuneration requirements, while under a threshold of EUR 10.0 bn all institutions would be excluded in some Member States.

Estimates for thresholds of EUR 1.5 bn, EUR 5.0 bn and EUR 10.0 bn for potential waivers have been calculated. In total, based on EEA or EU27 figures, around 75% to 90% of institutions, 35% to 60% of the identified staff and 3% to 15% of the market share would be able to benefit from waivers under those thresholds. This would be in addition to staff that could benefit from waivers based on low levels of remuneration. Results, however, differ for each Member State significantly, depending on the structure and size of the financial market.

	EU27 (without UK)			EEA (EU+NO+IS)		
EUR	**1.5 bn**	**5.0 bn**	**10.0 bn**	**1.5 bn**	**5.0 bn**	**10.0 bn**
Institutions excluded	74.9%	88.1%	92.5%	74.2%	87.5%	91.9%
Identified staff excluded	36.0%	53.4%	61.1%	34.0%	50.3%	57.6%
Market share excluded	4.2%	10.1%	15.2%	2.9%	6.9%	10.4%

49. Figure 9 shows the balance sheet total at which the given percentage of institutions would benefit from waivers, by Member State. Already at relatively low values of balance sheet total, a good number of institutions would be excluded in most Member States. Any threshold will always lead to a different number of institutions per Member State that would benefit from such a waiver. However, this should not affect the level playing field as the compliance costs would emerge at the level of each single institution.

Figure 9: Percentiles[23] of the balance sheet total in million EUR in terms of number of institutions in the sample

Country	p10	p25	p50	p75	p90	p95	p99
AT	47.1	78.2	175.9	401.0	1 402.4	4 005.9	22 783.3
BE	442.8	699.2	2 891.3	19 370.2	118 439.0	162 034.3	204 158.1
BG	218.6	518.7	1 094.2	2 941.3	4 438.8	5 681.6	8 880.4
CY	486.0	639.6	1 048.5	7 364.8	14 687.0	21 352.4	21 352.4

[22] Calculated as the average of the number of staff in institutions with a balance sheet total of EUR 1.4 bn to 1.6 bn, EUR 4.5 bn to 5.5 bn and EUR 9.5 bn to 10.5 bn, respectively.

[23] A percentile is a statistical measure indicating the value below which a given percentage of observations falls (e.g. p10, all observations that fall under the 10% of the lowest observations).

Country	p10	p25	p50	p75	p90	p95	p99
CZ	15.0	128.4	1 750.5	5 198.1	20 249.3	33 351.0	34 443.2
DE	112.2	241.2	657.6	1 734.8	4 395.2	8 854.9	72 672.6
DK	15.0	63.3	299.5	1 383.7	10 234.9	72 836.8	441 375.0
EE	42.4	304.6	415.8	736.8	9 186.8	9 186.8	9 186.8
EL	41.3	54.5	205.9	3 674.0	77 130.7	83 002.3	83 002.3
ES	155.6	396.0	1 463.5	6 703.1	48 849.2	163 629.7	496 322.3
FI	42.6	69.7	121.5	336.7	1 311.0	2 728.7	33 888.8
FR	64.2	441.2	2 893.5	11 480.8	26 835.2	50 528.2	500 257.0
HR	59.7	177.7	255.7	1 277.3	4 092.6	9 147.7	13 904.9
HU	14.6	25.4	47.0	184.4	2 406.7	5 542.1	9 051.4
IE	1 606.8	4 011.4	13 239.3	24 444.1	31 019.0	85 022.0	89 453.4
IS	0.5	26.2	44.2	7 309.2	7 950.7	7 950.7	7 950.7
IT	103.5	222.6	557.7	1 736.1	6 950.3	17 097.6	76 067.7
LT	137.6	247.3	1 657.9	6 667.6	6 868.0	6 868.0	6 868.0
LU	193.4	353.8	1 695.7	5 902.2	16 063.6	21 473.9	78 287.1
LV	238.5	403.2	695.7	2 967.3	4 928.1	5 427.6	5 427.6
MT	30.4	61.1	421.6	933.8	4 781.2	8 569.4	9 902.0
NL	11.6	624.5	4 557.9	14 000.5	91 314.0	432 000.0	838 528.0
NO	142.6	261.0	412.7	1 230.4	4 018.0	9 069.5	62 468.8
PL	10.9	17.9	31.5	55.8	142.3	521.5	15 465.5
PT	50.6	85.1	155.6	432.2	1 929.5	9 012.5	53 646.6
RO	117.9	275.0	860.6	2 560.8	10 655.7	11 062.8	13 371.9
SE	93.0	222.7	643.4	1 543.5	14 955.2	55 885.2	270 067.5
SI	3.2	662.7	1 216.8	2 272.5	3 830.2	4 246.2	4 246.2
SK	390.9	595.3	2 036.9	6 737.0	12 055.4	13 951.1	13 951.1
UK	87.9	413.4	1 256.2	9 696.3	57 023.3	448 551.7	2 594 821.5

50. The EBA calculated the potential effect of waivers at EUR 1.5 bn, EUR 5.0 bn and EUR 10.0 bn; the thresholds, based on balance sheet total, were chosen based on observed practices and percentiles shown under Figure 9. The balance sheet total of the single/solo institutions reported has been used. A typical institution[24] of that size would have around 290 (EUR 1.5 bn), 690 (EUR 5.0 bn), or 1 260 (EUR 10.0 bn) staff members. For most credit institutions the staff number scatters around these figures, but in total the range is significant, varying, depending on the threshold, from 10 to 15 to 2 100 to 4 400 staff in single institutions.

51. The effects of such waivers are shown in Figures 10 to 13. For the impact on the EU, the EU27 value is more relevant because of the different scope of the data provided by the United Kingdom.

[24] Calculated as the average of the number of staff in institutions with a balance sheet total of EUR 1.4 bn to 1.6 bn, EUR 4.5 bn to 5.5 bn and EUR 9.5 bn to 10.5 bn, respectively.

52. The same analysis has been performed assuming that subsidiaries of significant institutions would not be able to benefit from waivers, leading to a reduction of the effects caused by waivers. The results are shown in Figures 14 to 17.

53. At a threshold of EUR 10.0 bn, it can be observed that within some Member States none of the institutions would have to apply the requirements to defer variable remuneration and to pay it partly in instruments. At EUR 5.0 bn, at least the largest institutions in each Member State would be fully subject to the rules. All institutions that have to apply all remuneration provisions would still be able to waive the aforementioned requirements for identified staff that receive only a low level of remuneration.

Figure 10: Overview on effect of potential waivers at different thresholds

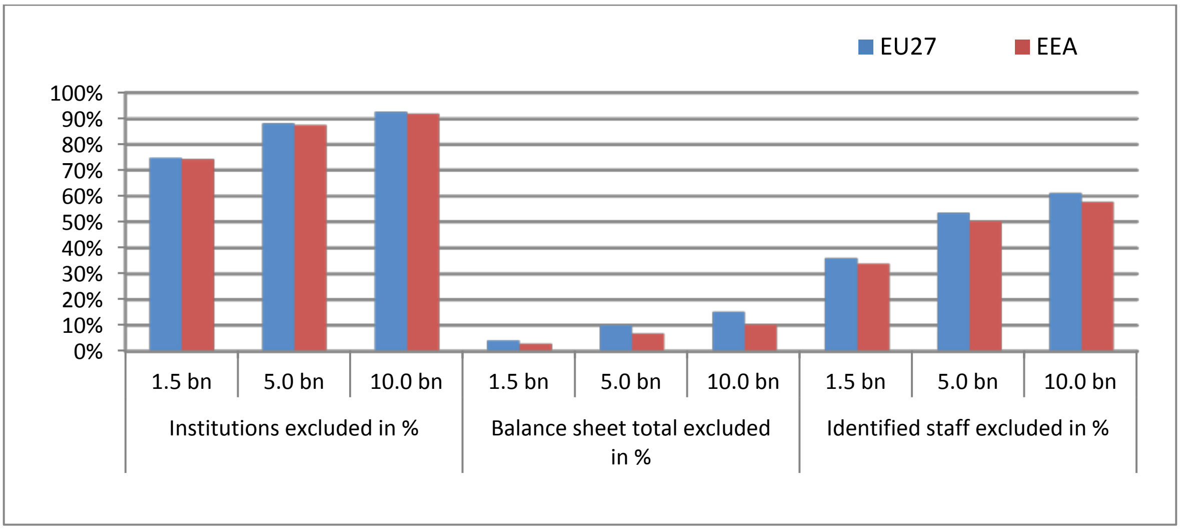


Figure 11: Effect of a potential waiver with a threshold of EUR 1.5 bn

Member State	Institutions excluded in %	Share of balance sheet total excluded	IS[25] excluded in %	Number of institutions excluded	Number of IS excluded
Austria	90.3%	17.3%	67.7%	578	5 940
Belgium	37.1%	1.0%	10.1%	13	107
Bulgaria	63.6%	21.8%	49.1%	14	535
Cyprus	53.8%	7.1%	22.5%	7	184
Czech Republic	50.0%	3.8%	27.9%	17	241
Germany	71.4%	8.1%	43.1%	1 166	20 319
Denmark	75.3%	1.7%	23.0%	64	736
Estonia	77.8%	16.4%	47.9%	7	168
Greece	70.6%	1.1%	39.9%	12	414
Spain	53.9%	1.3%	21.2%	48	521
Finland	91.5%	9.6%	39.3%	227	1 299
France	41.0%	0.8%	18.6%	136	1 336
Croatia	75.8%	12.2%	60.4%	25	549
Hungary	88.9%	15.6%	64.1%	112	1 808
Ireland	7.7%	0.3%	2.4%	2	16

[25] Identified staff (IS).

Member State	Institutions excluded in %	Share of balance sheet total excluded	IS[25] excluded in %	Number of institutions excluded	Number of IS excluded
Italy	73.7%	6.5%	45.8%	403	5 770
Lithuania	50.0%	6.1%	8.6%	3	82
Luxembourg	48.6%	4.0%	29.3%	54	614
Latvia	62.5%	18.8%	23.3%	10	219
Malta	85.0%	25.4%	61.7%	17	248
Netherlands	37.0%	0.3%	9.4%	20	199
Poland	96.1%	9.3%	75.1%	573	2 865
Portugal	87.5%	6.9%	55.8%	119	1 309
Romania	62.1%	11.7%	58.8%	18	563
Sweden	74.8%	2.5%	5.2%	92	1 171
Slovenia	42.9%	15.9%	21.5%	6	135
Slovakia	38.5%	5.6%	8.1%	5	38
United Kingdom	54.8%	0.3%	11.1%	109	1 377
EU27	**74.9%**	**4.2%**	**36.0%**	**3 748**	**47 386**
EU	**74.1%**	**2.8%**	**33.9%**	**3 857**	**48 763**
Iceland	62.5%	0.6%	15.8%	5	35
Norway	78.2%	9.0%	43.9%	97	902
EEA	**74.2%**	**2.9%**	**34.0%**	**3 959**	**49 699**

Figure 12: Effect of a potential waiver with a threshold of EUR 5.0 bn

Member State	Institutions excluded in %	Share of balance sheet total excluded	IS excluded in %	Number of institutions excluded	Number of IS excluded
Austria	95.5%	28.5%	78.8%	611	6 915
Belgium	62.9%	4.2%	23.0%	22	243
Bulgaria	90.9%	66.2%	89.1%	20	970
Cyprus	69.2%	17.0%	29.9%	9	244
Czech Republic	73.5%	16.7%	53.1%	25	458
Germany	91.1%	19.8%	69.8%	1 488	32 909
Denmark	88.2%	4.5%	33.8%	75	1 083
Estonia	77.8%	16.4%	47.9%	7	168
Greece	76.5%	2.3%	45.7%	13	474
Spain	71.9%	3.1%	36.4%	64	897
Finland	96.8%	15.8%	64.4%	240	2 132
France	58.4%	3.1%	30.9%	194	2 219
Croatia	90.9%	41.5%	87.0%	30	791
Hungary	94.4%	35.7%	73.6%	119	2 074
Ireland	26.9%	3.2%	10.5%	7	70
Italy	88.5%	14.5%	68.4%	484	8 620
Lithuania	83.3%	48.8%	14.5%	5	138
Luxembourg	69.4%	13.9%	51.1%	77	1 071
Latvia	93.8%	80.2%	73.4%	15	690
Malta	90.0%	34.3%	66.2%	18	266
Netherlands	50.0%	1.0%	14.7%	27	312
Poland	97.8%	19.6%	81.2%	583	3 098
Portugal	93.4%	12.1%	62.5%	127	1 466
Romania	79.3%	27.0%	75.1%	23	719
Sweden	86.2%	4.4%	7.1%	106	1 601
Slovenia	92.9%	69.4%	57.5%	13	361

Member State	Institutions excluded in %	Share of balance sheet total excluded	IS excluded in %	Number of institutions excluded	Number of IS excluded
Slovakia	69.2%	24.3%	47.0%	9	221
United Kingdom	70.9%	0.9%	16.4%	141	2 037
EU27	**88.1%**	**10.1%**	**53.4%**	**4 411**	**70 209**
EU	**87.4%**	**6.8%**	**50.2%**	**4 552**	**72 246**
Iceland	62.5%	0.6%	15.8%	5	35
Norway	91.9%	19.4%	62.9%	114	1 292
EEA	**87.5%**	**6.9%**	**50.3%**	**4 671**	**73 572**

Figure 13: Effect of a potential waiver with a threshold of EUR 10.0 bn

Member State	Institutions excluded in %	Share of balance sheet total excluded	IS excluded in %	Number of institutions excluded	Number of IS excluded
Austria	97.5%	40.2%	85.2%	624	7 476
Belgium	68.6%	6.1%	24.2%	24	256
Bulgaria	100.0%	100.0%	100.0%	22	1 089
Cyprus	76.9%	27.7%	38.4%	10	314
Czech Republic	88.2%	35.0%	73.2%	30	632
Germany	95.3%	26.2%	77.9%	1 556	36 718
Denmark	89.4%	5.1%	34.9%	76	1 120
Estonia	100.0%	100.0%	100.0%	9	351
Greece	76.5%	2.3%	45.7%	13	474
Spain	78.7%	5.1%	42.6%	70	1 049
Finland	98.0%	20.0%	72.0%	243	2 381
France	70.8%	7.1%	42.9%	235	3 084
Croatia	97.0%	73.6%	94.1%	32	855
Hungary	99.2%	77.8%	93.7%	125	2 641
Ireland	42.3%	8.3%	20.0%	11	133
Italy	92.3%	20.0%	76.3%	505	9 609
Lithuania	100.0%	100.0%	100.0%	6	955
Luxembourg	82.9%	27.8%	64.1%	92	1 343
Latvia	100.0%	100.0%	100.0%	16	940
Malta	100.0%	100.0%	100.0%	20	402
Netherlands	68.5%	3.6%	23.7%	37	503
Poland	98.3%	27.5%	84.4%	586	3 221
Portugal	95.6%	17.9%	67.0%	130	1 573
Romania	89.7%	53.6%	88.3%	26	846
Sweden	89.4%	5.8%	8.0%	110	1 802
Slovenia	92.9%	69.4%	57.5%	13	361
Slovakia	76.9%	35.9%	48.9%	10	230
United Kingdom	75.9%	1.3%	18.5%	151	2 306
EU27	**92.5%**	**15.2%**	**61.1%**	**4 631**	**80 358**
EU	**91.9%**	**10.2%**	**57.4%**	**4 782**	**82 664**
Iceland	100.0%	100.0%	100.0%	8	221
Norway	95.2%	25.8%	69.4%	118	1 425
EEA	**91.9%**	**10.4%**	**57.6%**	**4 908**	**84 309**

Figure 14: Overview on the effect of potential waivers at different thresholds that are not applicable to subsidiaries of significant institutions

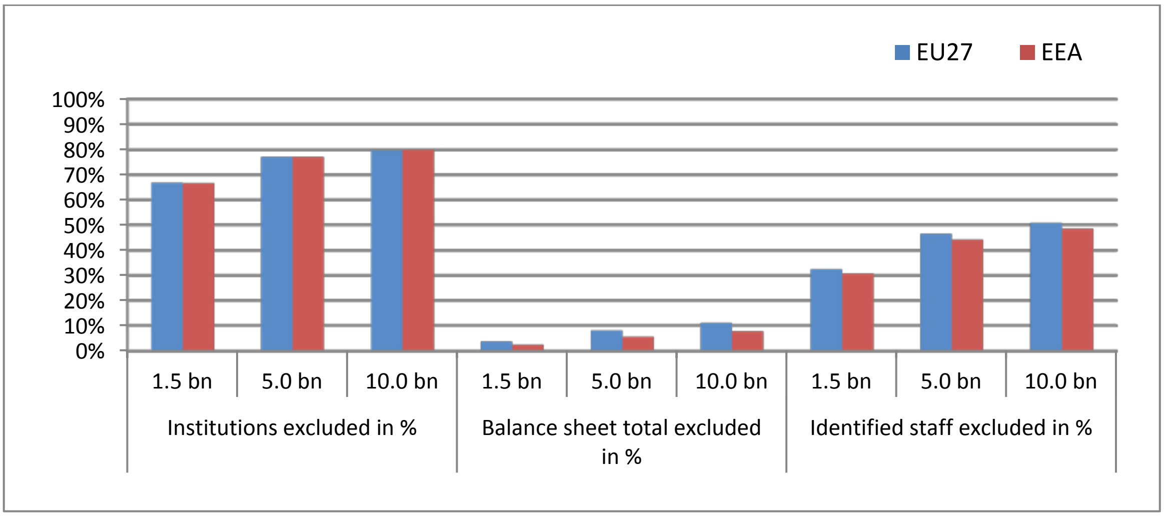


Figure 15: Effect of a potential waiver with a threshold of EUR 1.5 bn which is not applicable to subsidiaries of significant institutions

Member State	Institutions excluded in %	Share of balance sheet total excluded	IS excluded in %	Number of institutions excluded	Number of IS excluded
Austria	78.4%	12.9%	50.8%	502	4 454
Belgium	25.7%	0.6%	4.6%	9	49
Bulgaria	50.0%	12.4%	35.0%	11	381
Cyprus	38.5%	4.2%	17.0%	5	139
Czech Republic	50.0%	3.8%	27.9%	17	241
Germany	70.9%	8.0%	42.7%	1 157	20 106
Denmark	74.1%	1.7%	21.7%	63	697
Estonia	77.8%	16.4%	47.9%	7	168
Greece	64.7%	1.0%	38.1%	11	395
Spain	53.9%	1.3%	21.2%	48	521
Finland	21.8%	2.8%	7.6%	54	251
France	20.5%	0.3%	8.5%	68	608
Croatia	60.6%	8.3%	51.0%	20	464
Hungary	84.1%	11.5%	61.0%	106	1 720
Ireland	7.7%	0.3%	2.4%	2	16
Italy	71.7%	6.2%	44.2%	392	5 570
Lithuania	50.0%	6.1%	8.6%	3	82
Luxembourg	35.1%	3.1%	22.7%	39	475
Latvia	62.5%	18.8%	23.3%	10	219
Malta	70.0%	20.4%	55.2%	14	222
Netherlands	18.5%	0.2%	6.3%	10	133
Poland	95.0%	8.2%	70.9%	566	2 707
Portugal	86.0%	6.5%	54.8%	117	1 286
Romania	44.8%	6.9%	46.6%	13	446
Sweden	74.0%	2.4%	5.1%	91	1 148
Slovenia	35.7%	14.2%	17.0%	5	107
Slovakia	30.8%	5.2%	7.4%	4	35
United Kingdom	54.8%	0.3%	11.1%	109	1 377
EU27	**66.8%**	**3.7%**	**32.4%**	**3 344**	**42 639**

Member State	Institutions excluded in %	Share of balance sheet total excluded	IS excluded in %	Number of institutions excluded	Number of IS excluded
EU	**66.3%**	**2.5%**	**30.6%**	**3 453**	**44 016**
Iceland	62.5%	0.6%	15.8%	5	35
Norway	78.2%	9.0%	43.9%	97	902
EEA	**66.6%**	**2.5%**	**30.7%**	**3 555**	**44 953**

Figure 16: Effect of a potential waiver with a threshold of EUR 5.0 bn which is not applicable to subsidiaries of significant institutions

Member State	Institutions excluded in %	Share of balance sheet total excluded	IS excluded in %	Number of institutions excluded	Number of IS excluded
Austria	80.2%	17.1%	54.9%	513	4 815
Belgium	42.9%	2.9%	16.9%	15	178
Bulgaria	59.1%	28.3%	58.3%	13	635
Cyprus	38.5%	4.2%	17.0%	5	139
Czech Republic	64.7%	11.8%	43.3%	22	374
Germany	90.1%	19.4%	68.9%	1 471	32 474
Denmark	87.1%	4.5%	32.6%	74	1 044
Estonia	77.8%	16.4%	47.9%	7	168
Greece	70.6%	2.3%	43.9%	12	455
Spain	71.9%	3.1%	36.4%	64	897
Finland	23.8%	5.6%	13.9%	59	461
France	24.1%	0.8%	12.7%	80	913
Croatia	63.6%	12.8%	58.2%	21	529
Hungary	88.1%	26.6%	68.4%	111	1 927
Ireland	19.2%	1.9%	5.7%	5	38
Italy	83.5%	12.3%	61.4%	457	7 729
Lithuania	66.7%	18.8%	10.9%	4	104
Luxembourg	48.6%	9.5%	37.8%	54	792
Latvia	81.3%	59.3%	61.4%	13	577
Malta	75.0%	29.3%	59.7%	15	240
Netherlands	27.8%	0.6%	10.7%	15	226
Poland	95.8%	13.7%	73.6%	571	2 807
Portugal	91.2%	10.4%	60.8%	124	1 426
Romania	44.8%	6.9%	46.6%	13	446
Sweden	84.6%	4.2%	6.9%	104	1 561
Slovenia	57.1%	43.4%	39.0%	8	245
Slovakia	46.2%	13.4%	15.7%	6	74
United Kingdom	70.9%	0.9%	16.4%	141	2 037
EU27	**77.0%**	**8.2%**	**46.6%**	**3 856**	**61 273**
EU	**76.8%**	**5.5%**	**44.0%**	**3 997**	**63 310**
Iceland	62.5%	0.6%	15.8%	5	35
Norway	91.9%	19.4%	62.9%	114	1 292
EEA	**77.1%**	**5.7%**	**44.2%**	**4 116**	**64 637**

Figure 17: Effect of a potential waiver with a threshold of EUR 10.0 bn which is not applicable to subsidiaries of significant institutions

Member State	Institutions excluded in %	Share of balance sheet total excluded	IS excluded in %	Number of institutions excluded	Number of IS excluded
Austria	81.9%	26.8%	60.3%	524	5 295
Belgium	48.6%	4.8%	18.1%	17	191
Bulgaria	59.1%	28.3%	58.3%	13	635
Cyprus	46.2%	15.0%	25.6%	6	209
Czech Republic	70.6%	17.5%	50.8%	24	438
Germany	93.9%	25.4%	76.5%	1 534	36 061
Denmark	88.2%	5.1%	33.7%	75	1 081
Estonia	77.8%	16.4%	47.9%	7	168
Greece	70.6%	2.3%	43.9%	12	455
Spain	78.7%	5.1%	42.6%	70	1 049
Finland	24.2%	7.1%	15.2%	60	504
France	26.2%	1.4%	14.3%	87	1 026
Croatia	63.6%	12.8%	58.2%	21	529
Hungary	88.1%	26.6%	68.4%	111	1 927
Ireland	30.8%	6.0%	14.3%	8	95
Italy	85.6%	15.0%	64.3%	468	8 096
Lithuania	66.7%	18.8%	10.9%	4	104
Luxembourg	58.6%	20.1%	49.3%	65	1 033
Latvia	81.3%	59.3%	61.4%	13	577
Malta	80.0%	67.2%	77.1%	16	310
Netherlands	37.0%	2.0%	16.7%	20	355
Poland	96.1%	18.8%	75.7%	573	2 887
Portugal	92.6%	13.8%	64.9%	126	1 523
Romania	48.3%	15.1%	49.1%	14	470
Sweden	87.0%	5.3%	7.5%	107	1 682
Slovenia	57.1%	43.4%	39.0%	8	245
Slovakia	46.2%	13.4%	15.7%	6	74
United Kingdom	75.9%	1.3%	18.5%	151	2 306
EU27	**79.7%**	**11.2%**	**50.9%**	**3 989**	**67 018**
EU	**79.5%**	**7.6%**	**48.1%**	**4 140**	**69 324**
Iceland	100.0%	100.0%	100.0%	8	221
Norway	95.2%	25.8%	69.4%	118	1 425
EEA	**79.9%**	**7.8%**	**48.5%**	**4 266**	**70 970**

4. Use of share-linked instruments

54. According to the EBA's Opinion on proportionality, listed institutions should be able to use share-linked instruments as, in terms of incentives for prudent risk-taking, they have the same effect as shares when they reflect exactly the value of shares at all times. Such an approach is already taken in many Member States. Figure 18 provides an overview of the implementation of Article 94(1)(l)(i) CRD regarding the possibility for listed institutions to use share-linked instruments. All but one competent authority provided the requested information.

Figure 18: Member States allowing listed companies to use share-linked instruments

Member State	Listed companies are allowed to use share-linked instruments
Austria	no
Belgium	yes
Bulgaria	yes
Cyprus	no
Czech Republic	yes
Germany	yes
Denmark	yes
Estonia	yes
Greece	no
Spain	no
Finland	yes
France	yes
Croatia	yes
Hungary	no
Iceland	-
Ireland	yes
Italy	yes
Lithuania	no
Luxembourg	yes
Latvia	yes
Malta	yes
Netherlands	yes
Norway	yes
Poland	yes
Portugal	no
Romania	yes
Sweden	yes
Slovenia	N/A (no listed credit institutions in SI)
Slovakia	yes
United Kingdom	yes

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