

BVI's position on the 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 proposed Capital Requirements Directive
Reference: EBA/CP2013/11

BVI¹ gladly takes the opportunity to present its views on the proposed criteria to identify categories of staff whose professional activities have material impact on an institution's risk profile.

The majority of our members are managers of funds such as UCITS or AIF for which the CRR and the proposed RTS do not apply. However, according to Article 13(2) of the AIFM Directive 2011/61/EU and the similar in the UCITS V proposals, the competent authority ESMA shall cooperate closely with the EBA to determine guidelines on sound remuneration policies. Therefore, we assume that the proposed RTS will also stimulate the AIFM and UCITS regimes insofar as the RTS relate to general criteria to identify categories of staff whose professional activities have material impact on a company risk profile. However, the remaining BVI members are asset managers which fall under the scope of the CRR.

In generally, we welcome the proposals contained in the RTS. Altogether, the quantitative and qualitative criteria seem to us to be adequate to identify risk takers. However, we would like to make the following comments:

▪ **Scope of the RTS: Article 1(2) of the proposed RTS**

According to the proposed Article 1(2) of the Draft RTS, the Regulation shall apply to institutions at group, parent company and subsidiary levels. In our view, EBA should clarify that the RTS is not directly applicable to investment management companies which belong to banking groups. In such cases, the parent enterprise within a group (such as banks) must at least ensure that subordinated enterprises (such as investment management companies) for which other special remuneration requirements under supervisory law apply comply with their special remuneration requirements.

▪ **Qualitative and quantitative criteria: Article 3 of the proposed RTS**

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

The list of specific functions appears to be sufficient for institutions. However, the specific functions should be listed as examples which are not an exhaustive list.

¹ BVI represents the interests of the German investment fund and asset management industry. Its 78 members currently handle assets of EUR 2.0 trillion in both investment funds and mandates. BVI enforces improvements for fund-investors and promotes equal treatment for all investors in the financial markets. BVI's investor education programmes support students and citizens to improve their financial knowledge. BVI's members directly and indirectly manage the capital of 50 million private clients in 21 million households.

(BVI's ID number in the EU register of interest representatives is 96816064173-47). For more information, please visit www.bvi.de.



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

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

We consider the predetermined values regarding credit or market risk limits unsuitable. These values suggest a spurious accuracy even though they are arbitrarily determined. Institutions should implement a more appropriate process to assess all qualitative and quantitative criteria regarding global risk exposures because the collection of data according to Article 3(1)f) and g) of the Draft RTS are burdensome and unnecessary.

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?

We welcome the proposed criteria that the staff shall be identified as having a material impact on an institution's risk profile if the staff member could be awarded variable remuneration that exceeds 75% of the fixed component of remuneration and the amount of EUR 75 000. In our view, these thresholds are appropriate and reflect reality.

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?

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

We have reservations about the proposed approach under letter b) of Article 3(2) of the Draft RTS that staff shall be identified as having a material impact on an institution's risk profile if the staff member has been awarded total gross remuneration in one of the two preceding financial years which is equal to or greater than the lowest total remuneration that was awarded in that year to a member of staff who performs professional activities for the same entity and who is a member of senior management.

In our view, the proposed approach conflicts with the principle that remuneration shall be performance related. Indeed, the status of an individual as being risk takers or not would depend on the performance of others.

Moreover, the proposed criteria under letter b) of Article 3(2) of the Draft RTS could be considered contrary to the principle of proportionality according to which the structure of the remuneration of the staff members should be take into account (e.g. the amount of variable remuneration



perceived, the percentage of variable remuneration over the fixed remuneration). In such cases, the remuneration of a staff member might be equal to or greater than the lowest total remuneration of risk takers such as senior management but the percentage of variable remuneration is relatively low by comparison to the fixed remuneration.

Therefore, we ask EBA to consider the proportionality principle when establishing such criterion. The same should apply to cases described under letter d) of Article 3(2) of the Draft RTS.