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Final Report

Guidelines

on sound remuneration policies under Articles 74(3) and 75(2) of Directive 2013/36/EU and disclosures under Article 450 of Regulation (EU) No 575/2013

EBA guidelines on sound remuneration policies

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Executive Summary

Institutions have to apply sound remuneration policies to all staff and specific requirements for the variable remuneration of staff whose professional activities have a material impact on the institutions' risk profile (identified staff). Articles 74 and 75 of Directive 2013/36/EU (CRD) mandate the EBA to develop guidelines on both remuneration policies for all staff as part of institutions' internal governance arrangements and remuneration policies for identified staff.

The EBA's predecessor, the CEBS, had already published guidelines on remuneration policies and practices, which have been updated to reflect changes introduced by the CRD, the regulatory technical standards on criteria for the identification of staff, the regulatory technical standards on instruments which can be used for the purposes of variable remuneration, the EBA opinion on the use of allowances, the developments of remuneration policies in institutions and experiences in supervising institutions' remuneration policies.

In line with Article 92(2) of the CRD the specific requirements for the variable remuneration of identified staff should be applied in a manner and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities. The European Commission in close cooperation with the EBA will submit a report on the review of the remuneration provisions including on the application of proportionality by the end of June 2016 to the European Parliament and the Council.

Having in mind the prudential perspective the EBA has analysed as part of the review of remuneration provisions in line with Article 161(2) of the CRD if a legislative proposal to amend the CRD would be appropriate. This analysis was based on, among other things, additional input received during the public consultation from the industry on the impact of the application of these principles to all institutions, particularly to small and non-complex institutions, and on the impediments for a full application as a starting point. To this end the EBA has submitted its opinion in parallel with the publication of these guidelines to the European Commission.

The guidelines are addressed to institutions and competent authorities. For institutions the guidelines apply on an individual, consolidated and sub-consolidated basis. Competent authorities shall ensure the application accordingly at all levels.

Parts of the guidelines are applicable to all staff, ensuring that institutions have in place sound remuneration policies; other parts of the guidelines focus on the specific provisions applicable for the remuneration policies for identified staff. For identified staff in particular, the alignment of remuneration incentives with the institutions' risk profile and the interest of the owners is crucial.

The guidelines set out in detail the requirements for remuneration policies, the corresponding governance arrangements and the processes which should be applied when remuneration policies are implemented. They provide details on the application of the requirements in a group context and with regard to the proportionate application of the CRD requirements. The guidelines

set out criteria for the allocation of remuneration to its fixed and variable component, taking into account the EBA opinion on the use of allowances. Competent authorities were asked to ensure institutions' compliance with this opinion by the end of 2014. The correct mapping into these two categories is crucial for the calculation of the ratio between the variable and the fixed component and to ensure that the limitation of this ratio is complied with. The guidelines clarify the requirements of the CRD regarding variable remuneration and how remuneration should be aligned to the risks of the institution, and they provide additional details on disclosures required in this area under the CRR. The draft guidelines were subject to a three-month consultation period between March 2015 and June 2015. The EBA received 127 responses to the draft guidelines. In particular, most of the respondents raised concerns about the limited application of the proportionality principle. The EBA assessed all the main arguments presented in the responses, with a view to deciding on whether amendments were required before issuing the final guidelines. The result of this assessment is presented in an extensive feedback section.

Next steps

The guidelines will be translated into the official EU languages and published on the EBA website. The deadline for competent authorities to report whether they comply with the guidelines will be two months after the publication of the translations. The guidelines will apply from 1 January 2017.

Background and rationale

1. Inappropriate remuneration structures have been a contributing factor to excessive and imprudent risk taking. Poorly designed remuneration policies have potentially detrimental effects on the sound management of risks, control of risk and the risk-taking behaviour of individuals. Explicit remuneration requirements were initially introduced by Directive 2010/76/EU of the European Parliament and the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies (CRD III). These requirements were repealed and replaced by Directive 2013/36/EU (CRD), which came into effect on 1 January 2014.
2. The remuneration requirements aim to ensure that remuneration policies are consistent with and promote sound and effective risk management, do not provide incentives for excessive risk taking and are aligned with the long-term interests of the institutions across the EU.
3. The main changes in this area, which came into force in 2014, are the introduction of a limitation of the ratio between the variable and fixed components of remuneration to 100% (where applicable 200% with shareholders' approval), which should apply in any case to all institutions and to all their subsidiaries in the scope of prudential consolidation; stricter requirements regarding the application of malus and clawback to up to 100% of the variable remuneration; and requirements to pay out variable remuneration, where possible, also in other instruments under Article 94(1)(l)(ii) of the CRD. Those instruments were defined within the RTS specifying the classes of instruments that adequately reflect the credit quality of an institution as a going concern and are appropriate to be used for the purposes of variable remuneration and more granular disclosure requirements.

Legal basis

4. The guidelines are based on Article 16 of the EBA's founding Regulation 1093/2010 as amended, Articles 74 and 75 of the CRD and Article 450 of Regulation (EU) No 575/2013 (CRR) of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.
5. Article 74 of the CRD requires that institutions shall have sound internal governance arrangements, including remuneration policies and practices that are consistent with and promote sound and effective risk management, and mandates the EBA to develop appropriate guidelines.
6. Article 75 of the CRD mandates the EBA to develop guidelines with respect to requirements contained in Articles 92 to 95 of the CRD. The EBA also issues guidelines on disclosure

requirements under Article 450 of the CRR to ensure a consistent application of these requirements.

7. The guidelines take into account the EBA opinion on the use of allowances and the CEBS Guidelines on Remuneration Policies and Practices¹, which will be repealed with the coming into force of the final guidelines. Competent authorities were asked to ensure institutions' compliance with the EBA's opinion, in particular with the criteria that remuneration must meet to be considered as fixed, by the end of 2014. When updating the CEBS guidelines the EBA considered results of the benchmarking of remuneration practices, experience gathered under the framework established under CRD III and also the work of the Financial Stability Board regarding this matter.
8. When developing these guidelines the EBA coordinated the work closely with ESMA regarding guidelines on sound remuneration policies for investment firms. In this context one should also refer to the guidelines on remuneration policies under Directive 2014/91/EU (UCITS V Directive), when these have been issued by ESMA. These guidelines will include provisions on how different sectoral remuneration principles, such as those set out in the AIFMD (Directive 2011/61/EU) and in the CRD, are to be applied where employees or other categories of staff perform services subject to different sectoral remuneration principles².
9. These guidelines should be read in conjunction with other relevant EBA guidelines, in particular concerning internal governance, the supervisory review process and disclosures.

Rationale, objective and structure of the guidelines

10. In line with Article 16 of the EBA's founding Regulation 1093/2010, as amended, the guidelines aim to ensure that a level playing field is preserved amongst institutions within Member States, taking into account the nature, scale and complexity of their activities. The guidelines complete the relevant provisions of the CRD and CRR in order to ensure that institutions implement sound remuneration policies which are based on sound governance processes, taking into account the institutions' risk strategy and profile, and align the incentives of staff with the interests of owners and other stakeholders.
11. To this end, guidance is given for both institutions and competent authorities to ensure that a risk-aligned remuneration culture and framework in the financial sector is implemented, maintained and further developed in line with the regulatory requirements. In line with the abovementioned objectives, the guidelines contain requirements on remuneration policies for all staff and specific requirements on remuneration for staff whose professional activities have

¹ Published at: <https://www.eba.europa.eu/regulation-and-policy/remuneration/guidelines-on-remuneration-policies-and-practices>

² The ESMA guidelines are mandated under Article 14b(2), second sub-paragraph of Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions.

a material impact on the institutions' risk profile (identified staff) and their implementation. In addition specific guidelines are provided for institutions which benefit from government intervention and on disclosure requirements.

Remuneration policies and group context

12. The guidelines differentiate between the requirements applicable to all staff and requirements applicable to identified staff. As identified staff have a higher impact on the risk profile, it is appropriate that more stringent remuneration policies are applied.
13. The remuneration policy for all staff, including identified staff, must be consistent with and promote sound and effective risk management. The remuneration policy should be consistent with the long-term strategy of the institution including the overall business strategy, the corresponding risk strategy and its risk appetite, including all risk types (e.g. credit, market, operational, liquidity, reputational and other risks). To be sound and effective, risk management must be in line with the relevant regulatory requirements, including Articles 74 to 87 of the CRD, the requirements on governance in Articles 88 to 91 of the CRD, the EBA guidelines on internal governance, the requirements on the internal capital adequacy assessment process and the requirements of the CRR for specific risk categories, including the appropriate risk measurement approaches.
14. To set the appropriate incentives for long-term-oriented and prudent risk taking, the remuneration policy and practices need to be transparent for staff regarding the fixed remuneration, the variable remuneration and the award criteria used. Fixed remuneration should be permanent, predetermined, non-discretionary and non-revocable. Variable remuneration should be based on performance or, in exceptional cases, other conditions. Opaque remuneration policies, e.g. where the conditions for payments are not transparent, are discretionary or where adjustments of the remuneration depend unilaterally on the sole discretion of the institution, could have unforeseen effects on staffs' behaviour in terms of risk-related decisions and are therefore not consistent with the above principles.
15. Implementing a sound remuneration policy is the responsibility of the management body and, where applicable, the remuneration committee. In practice, the development of a remuneration policy needs to be supported by internal control functions and corporate functions to ensure that appropriate performance and risk measurement tools are used and that contracts between institutions and staff ensure that the remuneration policies are applied. In addition, business units need to be involved in the development of the remuneration policy to ensure that appropriate incentives, in particular for identified staff within the business units, are set. It is important that the remuneration policy is considered in the capital and liquidity planning so that it can contribute to safeguarding a sound capital base and does not lead to shortcomings in the institutions' liquidity.
16. The corporate bodies which have the competencies to approve the remuneration policy may differ among countries due to national corporate law. Additionally, in some countries the corporate body that approves the remuneration policy of the management body may differ

from the one that approves the remuneration policy for identified staff in business areas and identified staff in control functions. For these reasons, these guidelines should be read together with the relevant national legal provisions.

17. The body that performs the responsibilities of the management body in its supervisory function may differ among countries due to national corporate law. The EBA is aware that within Member States usually one of two governance structures is used, a unitary or a dual board structure; no particular structure is advocated. Regarding these issues the EBA guidelines on internal governance should be taken into account.
18. In accordance with the CRD, institutions have to apply the remuneration requirements at group, parent and subsidiary levels, including within subsidiaries that are not themselves subject to the CRD. Remuneration policies of different group entities within the scope of prudential consolidation should be consistent with the group's remuneration policy set by the consolidating institution. The remuneration policy needs to comply with the CRD provisions, these guidelines and additional requirements set within national company, labour and other relevant laws.
19. The scope of consolidation includes all institutions, financial institutions, and can include ancillary undertakings that are subsidiaries of the institution which is responsible for the consolidation; where requirements refer to the 'consolidated basis' or 'consolidated situation' the responsible EU parent institution, EU parent financial holding company or EU parent mixed financial holding company is responsible for compliance with the relevant CRD provisions and guidelines. This also includes subsidiaries for which other specific sectoral directives (e.g. AIFMD and UCITS V) apply.

Remuneration committee

20. The guidelines should clarify which institutions are significant and therefore need to have a remuneration committee. Also, where an institution is part of a significant group of institutions and a remuneration committee is established on the group level, all individual institutions that are themselves significant on a standalone basis need to establish their own remuneration committee in line with Article 95 of the CRD.

Proportionality

21. When complying with the CRD and CRR remuneration provisions, institutions should apply them in a manner and to the extent that is appropriate to the institutions' size internal organisation and the nature, scope and complexity of their activities. This proportionality principle, mentioned in recital 66 and Articles 74 and 92(2) of the CRD and Article 450(2) of the CRR, aims to match remuneration policies and practices consistently with the institutions' risk profile, risk appetite and strategy, so that the objectives of the obligations are more efficiently achieved.

22. Institutions have to implement remuneration policies in compliance with the specific provisions in a way that is appropriate for the category of staff, e.g. it can be appropriate that the remuneration policy sets out different maximum ratios for the variable remuneration or different deferral arrangements for specific categories of identified staff as their impact on the risk profile during the business cycle differs. As stated in recital 65 of the CRD, the limitation of the variable remuneration to 100% of the fixed remuneration (200% with shareholders' approval) should be applied in any case.
23. The European Commission, in close cooperation with the EBA, will submit a report on the review of the remuneration provisions by the end of June 2016 to the European Parliament and the Council (Article 161(2) of the CRD).
24. In addition, the EBA has investigated which specific situations would justify the introduction of explicit exemptions for some of the remuneration provisions or other CRD amendments needed to enable institutions to apply the requirements in a meaningful but more proportionate way. This analysis is based on, among other, additional input received during the public consultation from industry on the impact of the application of these principles to all institutions, particularly to small and non-complex institutions, and on the impediments for a full application as a starting point. To this end the EBA has submitted its opinion to the European Commission in parallel with the publication of these guidelines.
25. Disclosures should take into account the size of the institution and the nature, scope and complexity of its activities as provided by Article 450 of the CRR. Small and non-complex institutions should comply with the disclosure requirements by providing information commensurate with their internal organisation and applied remuneration policy.

Identification of staff

26. The guidelines aim at ensuring that the process of identifying staff whose professional activities have a material impact on the institutions' risk profile is consistently applied by all institutions. The CRD requires that staff be identified in any case before the requirements are applied in a proportionate way to the different categories of identified staff.
27. All institutions have to identify the staff whose professional activities have a material impact on the individual institution's risk profile. In line with Articles 92(2) and 109(1) of the CRD the identification has also to be performed at consolidated and sub-consolidated levels and within subsidiaries which are not themselves subject to the CRD. The primary responsibility for the identification process for the consolidated and sub-consolidated levels and in subsidiaries which are not themselves subject to the CRD lies with the consolidating institution. To ensure that the identification can be performed at these levels it is appropriate to require that subsidiaries should actively participate in the identification process by providing the necessary information to assess the impact of staff at a consolidated level. To ensure a complete and harmonised identification of staff, the guidelines set out how institutions should apply the criteria set out in 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 ('RTS on identified staff') within their self-assessment process and the relevant governance arrangements. The guidelines specify how the criteria set in the RTS are applied on consolidated and sub-consolidated levels and in subsidiaries which are not themselves subject to the CRD. The guidelines complete the requirements of the RTS on identified staff with regard to the necessary notifications and prior approvals, when staff identified only under the criteria within Article 4(1) of the RTS would be excluded from the scope of identified staff and the supervisory review regarding the identification of staff.

28. While the criteria contained in the RTS on identified staff have to be applied in any case, institutions are obliged under the CRD to identify all staff whose professional activities have a material impact on the institution's risk profile and therefore institutions should consider the need to apply additional internal criteria which ensure that the specific risk profile and internal organisation of the institution are taken into account.

Capital base

29. Institutions must have a sound capital basis. Remuneration represents an important cost factor for institutions, and remuneration payments influence directly the institution's capital base and liquidity. There is also an indirect influence on the capital base (i.e. the impact of the remuneration policy on the risks taken for which capital is required). If an institution falls short of its capital targets, priority is to be given to building up the necessary capital or solvency buffer and a conservative remuneration policy needs to be pursued, particularly regarding variable remuneration. To ensure that remuneration does not endanger the financial stability of the institution, remuneration must also be taken into account for capital and liquidity planning purposes. Article 104(1)(g) of the CRD empowers competent authorities to require institutions to limit variable remuneration as a percentage of net revenues where it is inconsistent with the maintenance of a sound capital base, and Article 141 limits distributions, including the variable remuneration, where the combined capital buffer is not met.

Categories of remuneration

30. According to Article 94 of the CRD it must be ensured that the fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion to allow a fully flexible policy on variable remuneration. Remuneration is either fixed or variable; there is no third category of remuneration. The guidelines set out criteria for the allocation of remuneration to its fixed and variable components, taking into account the EBA opinion on the use of allowances published on 15 October 2014. The correct mapping into these two categories is crucial for the calculation of the ratio between the variable and fixed components and to ensure that the limitation of this ratio is complied with.

31. Variable remuneration should provide incentives for prudent risk taking in the long term and for sound risk management. Fixed remuneration should primarily reflect the relevant

professional experience and organisational responsibility of staff and provide a stable source of income. In any case, according to the CRD, variable remuneration must not be paid through vehicles or methods that facilitate non-compliance with the CRD or CRR.

32. Following the adoption of the CRD and the introduction of the bonus cap, some institutions have introduced 'allowances'. Allowances may differ regarding the situations where they are awarded and their exact features. They can belong to routine remuneration packages; recital 64 of the CRD names some routine elements such as healthcare, child care facilities or proportionate and regular pension contributions on top of the mandatory regime that are not considered as variable remuneration. However, where regular pension benefits would be subject to performance adjustments or clawback, they would be counted as discretionary pension benefits, as their amount is not predetermined but conditional. The guidelines specify under which conditions allowances count as fixed remuneration taking into account the EBA opinion on the use of allowances.

33. The criteria for the allocation of remuneration to the fixed or variable component are not limited to the awarding of remuneration or the contractual conditions, but also extend to the way in which remuneration is paid should be taken into account. It should be noted that the paying out of remuneration which would per se meet the requirements for fixed remuneration but is made in instruments rather than cash may be understood as performance related depending on the features of the instrument awarded. Where remuneration is subject to additional contractual conditions (e.g. malus and clawback) these conditions would contradict the criterion that fixed remuneration should be predetermined.

Requirements for variable remuneration

34. Variable remuneration provides an incentive for staff members to pursue the goals and interests of the institution and enables them to share in its success. It is also an element of cost flexibility for institutions. Provided that the interests of the institution's owners are taken into account and there is no incentive to assume inappropriate or excessive risks, an appropriate level of variable remuneration can benefit all stakeholders of an institution. A variable component linked to performance, the deferral of variable remuneration and its award in shares, share-linked or equivalent instruments or bail in able other instruments issued by the institution can have a positive effect on 'risk-sharing', incentivising prudent behaviour and ensuring the safe and sound performance of the institution.

35. The CRD requires that for identified staff the variable component must be appropriately balanced by the fixed component, partly deferred and partly paid out in instruments. The CRD introduced a maximum ratio between the variable and fixed remuneration components.

Risk alignment

36. It is necessary to counterbalance the incentives of variable remuneration for risk taking with measures to incentivise sound risk management. Variable remuneration needs to be aligned with the risk-related performance over time, in particular for identified staff. Otherwise such

arrangements can create a ‘heads I win, tails I still win’ approach to risk, which encourages more risk taking than would probably be preferred by the institution’s shareholders or creditors. To ensure a sound risk alignment of variable remuneration, staff should also not be able to transfer the downside risks to another party, e.g. through hedging or insurance.

37. Any form of variable remuneration should always be consistent with and promote sound and effective risk management. The effectiveness of risk alignment would be significantly weakened if institutions made excessive use of allowances, retention bonuses or guaranteed variable remuneration. Therefore institutions need to be able to justify the use of any variable remuneration element, including allowances, retention bonuses, guaranteed variable remuneration and severance payments.
38. Remuneration has a direct or indirect influence on staff’s behaviour. Variable remuneration may encourage staff to take undesirable, irresponsible and excessive risks or to sell unsuitable products in the hope of generating more turnover or making more profit in the short run and thus increasing staff’s variable remuneration. Furthermore, staff members may be tempted to game with or manipulate information with a view to making their (measured) performance look better. For example, if the variable part of the remuneration consists predominantly of remuneration instruments that are paid out immediately, without any deferral or ex post risk adjustment mechanisms (malus or clawback), or are based on a formula that links variable remuneration to current year revenues rather than risk-adjusted profit, there are strong incentives for staff to shy away from conservative valuation policies, to ignore concentration risks, to rig the internal transfer pricing system in their favour and to ignore risk factors, such as liquidity risk and concentration risk, that could place the institution under stress in the future. By connecting risk management elements to the remuneration policy, the aforementioned risks can be counterbalanced.
39. The guidelines on risk alignment contain the general requirements that should apply to institutions and their staff as a whole and the specific requirements that institutions have to apply at least to the individual remuneration packages of identified staff under Articles 92 and 94 of the CRD. Institutions can also apply these more specific requirements to additional categories of staff.
40. The risk alignment process and the award process should be transparent to ensure that they have an impact on staff’s behaviour as intended.
41. So-called ex ante risk adjustments are applied when the remuneration is awarded to consider current and future risks and have an immediate effect on the variable remuneration awarded and on staff’s risk-taking behaviour.
42. Ex post risk adjustment should ensure that staff members are rewarded in line with the sustainability of the performance in the long term, which is the result of decisions taken in the past. A framework for ex post risk adjustment is always necessary, including for multi-year accrual periods, because at the time remuneration is awarded the ultimate performance

cannot be assessed without uncertainty. Ex post risk adjustments are achieved by different means, in particular the application of deferral, malus and clawback, and the pay out in suitable instruments.

43. In order to ensure that the risk-adjusted performance is appropriately reflected in the variable remuneration, institutions need to measure risks and performance and use a mix of different qualitative and quantitative criteria for their measurement to ensure that overall the assessment outcome is appropriate and weaknesses of single criteria are counterbalanced. This applies at all stages: the setting of the bonus pool, the actual award of remuneration and the application of ex post risk adjustments. There are different categories of performance criteria: relative, absolute, internal and external.
44. Absolute performance measures are measures set by the institution on the basis of its own strategy, including its risk profile and risk appetite. Relative performance measures are measures that compare performance with peers, either 'internal' peers (i.e. within the organisation) or 'external' (i.e. similar institutions). The advantage of absolute measures is that they are easier to set and monitor. Relative measures could encourage excessive risk taking and therefore need always to be supplemented by other metrics and controls, including the use of prudent judgemental analysis during the award process.
45. In a period of sector-wide positive financial performances, external relative measures could lead to increased risk taking and a herd mentality, with a potential negative impact on the financial stability of the financial sector. In a downturn economic cycle where most institutions perform poorly, relative external measures may lead to positive measurements of a per se negative outcome and thus to an insufficient contraction of the institution's total variable remuneration.
46. Similarly, internal (e.g. profits) and external (e.g. share price) variables come with both advantages and disadvantages that should be balanced carefully. Internal performance measures are able to generate more involvement of staff members if they can influence the outcome by their own behaviour. On the other hand, such measures can be manipulated and can create distorted outcomes on a short-term basis. External performance measures are less subject to the risk of manipulation, although, for example, attempts to artificially increase the stock price can still occur.
47. Every criterion used has its risks, limitations and advantages. Institutions need to take these into account and weight them carefully when determining the performance and risk criteria at every level (i.e. the institution, the business area and the individual) and use an appropriate mix to minimise the risks and assess the performance as objectively as possible.

Pay out process

48. The CRD requires that at least 50% of variable remuneration comprises a balance of shares, equivalent ownership rights, share-linked or equivalent non-cash instruments, in the case of non-listed institutions, and, where possible, certain eligible other instruments defined within

the RTS on instruments. The awarded instruments are subject to retention periods. At least 40% of variable remuneration is subject to deferral arrangements.

49. The above requirements regarding the pay out of variable remuneration should ensure that the variable remuneration is aligned with the risks of the institution in the long term and that ex post risk adjustments can be applied as appropriate.
50. A deferral schedule is key to ensuring risk alignment effects in a remuneration package, since it allows parts of the remuneration to be adjusted for risk outcomes over time through ex post risk adjustments. The ratio of deferred remuneration to variable remuneration and the deferral period need to be tailored to the long-term impact of the category of identified staff throughout the business cycle and therefore arrangements may differ between different categories of identified staff and will also depend on the institution's business model.
51. Although variable remuneration should already be aligned to risk through ex ante risk adjustments, due to the uncertainty about the assessment and future development of risks, ex post risk adjustments are needed to keep incentives fully aligned over an appropriate time period. This can only be achieved where an appropriate part of the variable remuneration is deferred. In particular in Member States where the application of malus or clawback may not be in line with the general principles of national contract and labour law, institutions should carefully design the instruments used for the award, the deferral and the retention scheme in order to ensure that needed ex post risk adjustments are reflected, e.g. in price changes of the instruments.
52. It is important to highlight that the upfront payment of instruments as variable remuneration, even if the retention period equals the applied deferral period, is not equivalent to the deferral of instruments.
53. Retention periods affect the risk-taking incentives of staff members only by extending the period during which implicit adjustments can take place. Instruments paid upfront belong to the staff member (they are vested rights), which implies that no malus clauses (i.e. no reduction of the number of instruments that will be received) can be applied to them. Even though clawback may be applicable, the ability to apply ex post risk adjustment will be weakened and is without prejudice to the national labour and contract laws.
54. Unlike retained instruments, deferred instruments allow for the application of explicit ex post risk adjustments via malus arrangements, e.g. determined by the back-testing of the underlying performance, possibly leading to a reduction of the number of instruments that will eventually vest and be paid out.
55. Ex post risk adjustments should not lead to an increase of the variable remuneration, as they would expose the staff member to both the positive and the negative parts of the outcomes, providing incentives to take more risk than that which can be considered prudent from a supervisory point of view to recover parts of variable remuneration if they were reduced following the application of ex post risk adjustments.

56. When the variable remuneration takes the form of instruments, the final monetary value received by staff depends also on the market prices or the fair value of these instruments. This implicit adjustment of remuneration due to changes in the market price of listed instruments or the fair value of non-listed instruments is not related to any explicit decision of the institution, but inherent in the instruments used for the award. Market prices respond to many factors and are, without additional ex post risk adjustments, not sufficient to align the variable remuneration with the risks taken in the long term. The same is true of the fair value, which in addition is less objective than an observed market price.

State aid and government support

57. Institutions receiving state aid are often obliged to return the funds received and also to increase their capital base in line with recovery plans. Remuneration policies must be aligned to these circumstances. This may include limiting the award and pay out of variable remuneration; where variable remuneration is awarded, an even stronger risk alignment seems to be appropriate, contributing to the protection of the capital base and aiding the recovery of the institution.

Disclosure

58. The role of transparency and disclosure of remuneration policies is particularly crucial in the case of financial institutions, due to the impact that remuneration schemes can have on the level of risk taking of the institutions. A high level of transparency supported by more consistent and meaningful disclosure regarding remuneration policies, the associated risks and the procedure through which remuneration is determined for the management body and other identified staff can help stakeholders to assess the remuneration policy and how it is aligned to the risk of the institutions. This market discipline in turn facilitates the implementation of an appropriate incentive structure and prudent and long-term-oriented risk taking.

Supervisory review by competent authorities

59. The CRD requires competent authorities to ensure that institutions comply with the requirements under Articles 92 and 94 of the CRD. As part of this, competent authorities need to review the institutions' remuneration policies and practices and their compliance with the CRD provisions and these guidelines.

60. Competent authorities should apply risk-based supervision; resources should be directed primarily to those institutions and areas that pose the greatest risk, taking into account their size and the nature, scope and complexity of their activities. These guidelines provide for specific areas which should be reviewed as part of the supervisory activities of competent

authorities in addition to the reviews required by the EBA guidelines on the supervisory review process³.

61. The assessment methodologies of competent authorities may include both on-site and off-site controls, including the examination of information and data and dedicated meetings as appropriate with the institutions' management body, senior management and other relevant staff, in order to collect additional information and data on remuneration policies, remuneration structures and governance arrangements. The review should identify the potential implementation gaps and non-compliant practices. All findings need to be appropriately addressed to ensure that institutions' remuneration policies and practices comply with the requirements in the CRD, the CRR and these guidelines.

³ <https://www.eba.europa.eu/-/eba-publishes-final-guidelines-on-srep-methodologies-and-processes>

EBA/GL/2015/22

21 December 2015

Guidelines

on sound remuneration policies under
Articles 74(3) and 75(2) of Directive
2013/36/EU and disclosures under
Article 450 of Regulation (EU)
No 575/2013

1. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010⁴. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities, and institutions must make every effort to comply with the guidelines.
2. Guidelines set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by ([dd.mm.yyyy]). In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website to compliance@eba.europa.eu with the reference 'EBA/GL/2015/22'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to the EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

⁴ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

2. Subject matter, scope and definitions

Subject matter

5. These guidelines fulfil the mandate given to the EBA under Articles 74(3) and 75(2) of Directive 2013/36/EU⁵ to issue guidelines on sound remuneration policies for all staff and for staff whose professional activities have a material impact on institutions' risk profile which comply with the requirements set out in Articles 92 to 95 of Directive 2013/36/EU, and provide guidance on disclosures under Article 96 of Directive 2013/36/EU and Article 450 of Regulation (EU) 575/2013⁶.

Scope of application

6. These guidelines set out requirements regarding remuneration policies applicable to all staff of institutions and specific requirements that institutions have to apply to the remuneration policies and variable elements of remuneration of identified staff. Institutions may also apply these specific requirements to additional categories of staff or to all staff. Annex 1 to these guidelines indicates the requirements for which an institution-wide application to all staff in line with the guidelines provided is required or recommended.
7. Institutions should comply and competent authorities should ensure that institutions comply with these guidelines on an individual, sub-consolidated and consolidated basis, including their subsidiaries not subject to Directive 2013/36/EU, in accordance with the level of application set out in Articles 92(1) and 109 of that Directive.
8. Guidelines set out in Title VI only apply to those institutions which are required to comply, in accordance with the level of application set out in Articles 6 and 13 of Regulation (EU) 575/2013, with the obligations laid down in Part Eight of that Regulation.

Addressees

9. These guidelines are addressed to competent authorities as defined in Article 4(1)(40) of the CRR including the European Central Bank with regards to matters relating to the tasks conferred on it by Regulation (EU) No 1024/2013⁷, and to institutions as defined in point 3 of

⁵ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

⁶ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) no 648/2012 (OJ L 321, 30.11.2013, p. 6).

⁷ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ 287, 29.10.2013, p. 63).

Article 4(1)(3) of Regulation (EU) 575/2013, including branches of credit institutions having their head office in a third country.

Definitions

10. Terms used and defined in Directive 2013/36/EU and Regulation (EU) 575/2013 have the same meaning in the present guidelines. In addition, for the purposes of these guidelines, the following definitions apply:

Remuneration	means all forms of fixed and variable remuneration and includes payments and benefits, monetary or non-monetary, awarded directly to staff by or on behalf of institutions in exchange for professional services rendered by staff, carried interest payments within the meaning of Article 4(1)(d) of Directive 2011/61/EU ⁸ , and other payments made via methods and vehicles which, if they were not considered as remuneration, would lead to a circumvention ⁹ of the remuneration requirements of Directive 2013/36/EU.
Fixed remuneration	means payments or benefits for staff which comply with the conditions for its award set out in section 7.
Variable remuneration	means all remuneration which is not fixed.
Routine employment packages	means ancillary components of remuneration that are obtainable for a wide population of staff or staff in specified functions based on predetermined selection criteria, including, for example, healthcare, child care facilities or proportionate regular pension contributions on top of the mandatory regime and travel allowance.
Retention bonus	means variable remuneration awarded on the condition that staff stay in the institution for a predefined period of time.
Staff	means all employees of an institution and its subsidiaries, including subsidiaries not subject to the CRD and all members of their respective management bodies.
Identified staff	means staff whose professional activities have a material impact on the institution's risk profile in accordance with the criteria set out in the Commission Delegated Regulation (EU) 604/2014 ¹⁰ and where appropriate in addition based on institutions' criteria.
Prudential consolidation	means the application of the banking prudential rules set out in Directive 2013/36/EU and Regulation (EU) 575/20132 on a

⁸ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulation (EC) No 1060/2009 and (EU) No 1095/2010 (AIFMD).

⁹ Regarding circumvention please refer to section 10.2 of these guidelines.

¹⁰ Commission Delegated Regulation (EU) 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 (OJ L 167, 6.6.2014, p. 30).

	consolidated or sub-consolidated basis, in accordance with Part 1, Title 2, Chapter 2 of Regulation (EU) 575/2013. The prudential consolidation includes all subsidiaries that are institutions or financial institutions and may include also ancillary services undertakings in and outside the EU.
Consolidating institution	means the institution which is required to abide by the prudential requirements on the basis of the consolidated situation of the banking group, in accordance with Part 1, Title 2, Chapter 2 of Regulation (EU) 575/2013.
Bonus pool	means the maximum amount of variable remuneration which can be awarded in the award process set at the level of the institution or an institution's business unit.
Accrual period	means the period of time for which the performance is assessed and measured for the purposes of determining an award of variable remuneration.
Non-revolving multi-year accrual period	means a multi-year accrual period that does not overlap with other multi-year accrual periods.
Award	means the granting of variable remuneration for a specific accrual period, independently of the actual point in time where the awarded amount is paid.
Vesting	means the effect by which the staff member becomes the legal owner of the variable remuneration awarded, independent of the instrument which is used for the payment or if the payment is subject to additional retention periods or clawback arrangements.
Upfront payments	means payments which are made immediately after the accrual period and which are not deferred.
Deferral period	means the period of time between the award and the vesting of the variable remuneration during which staff is not the legal owner of the remuneration awarded.
Instruments	means those financial instruments or other contracts that fall within one of the two categories referred to in Article 94(1)(l) of Directive 2013/36/EU.
Retention period	means a period of time after the vesting of instruments which have been awarded as variable remuneration during which they cannot be sold or accessed.
Malus	means an arrangement that permits the institution to reduce the value of all or part of deferred variable remuneration based on ex post risk adjustments before it has vested.
Clawback	means an arrangement under which the staff member has to return ownership of an amount of variable remuneration paid in the past or which has already vested to the institution under certain conditions.
Significant institutions	means institutions referred to in Article 131 of Directive 2013/36/EU (global systemically important institutions or 'G-SIIs', and other systemically important institutions or 'O-

SIIs'), and, as appropriate, other institutions determined by the competent authority or national law, based on an assessment of the institutions' size, internal organisation and the nature, the scope and the complexity of their activities.

Share-linked instruments	means those instruments whose value is based on the value of the stock and that have the share value as a reference point, e.g. stock appreciation rights, types of synthetic shares.
Shareholders	means a person who owns shares in an institution or, depending on the legal form of an institution, other owners or members of the institution.
Severance payments	means payments relating to the early termination of a contract.

3. Implementation

Date of application

11. These guidelines apply from 1 January 2017.

Repeal

12. The CEBS Guidelines on remuneration policies and practices published on 10 December 2010 are repealed with effect from 31 December 2016.

4. Guidelines

Title I - Requirements regarding remuneration policies

1. Remuneration policies for all staff

14. In accordance with Article 74 of Directive 2013/36/EU, institutions are required to have in place a remuneration policy for all staff. The remuneration policy for all staff should comply with the principles set out in Articles 92 and 93 of Directive 2013/36/EU and these guidelines, taking into account the mapping of the requirements within Annex I¹¹.
15. The remuneration policy should specify all components of remuneration and include also the pension policy, including, where relevant, the framework for early retirements. The remuneration policy should also set a framework for other persons acting on behalf of the institution (e.g. tied agents), ensuring that the payments made are not providing any incentive for excessive risk-taking or the mis-selling of products. All institutions should consider which elements of the remuneration policy on the variable remuneration of identified staff under Article 94 of Directive 2013/36/EU should be included in the remuneration policy for all staff.
16. The institution's remuneration policy for all staff should be consistent with the objectives of the institution's business and risk strategy, corporate culture and values, long-term interests of the institution, and the measures used to avoid conflicts of interest, and should not encourage excessive risk taking. Changes of such objectives and measures should be taken into account when updating the remuneration policy. Institutions should ensure that remuneration practices are aligned with their overall risk appetite, taking into account all risks, including reputational risks and risks resulting from the mis-selling of products. Institutions should also take into account the long-term interests of shareholders.
17. Institutions should be able to demonstrate to the competent authorities that the remuneration policy and practices are consistent with and promote sound and effective risk management.
18. Where variable remuneration is awarded, such awards should be based on the institutions', business units' and staff's performance and take into account the risks taken. The remuneration policy should make a clear distinction with regard to the variable remuneration and the performance assessment between the operating business units, corporate and control functions.

¹¹ Annex 1 to these guidelines indicates the requirements for which an institution-wide application to all staff in line with the additional guidelines provided is required or recommended.

19. The remuneration policy should support the institution in achieving and maintaining a sound capital base in line with section 6 of these guidelines. The remuneration policy should also take into account, where applicable, the restrictions on distributions under Article 141 of Directive 2013/36/EU.

20. The remuneration policy should contain:

- a. the performance objectives for the institution, business areas and staff;
- b. the methods for the measurement of performance, including the performance criteria;
- c. the structure of variable remuneration, including where applicable the instruments in which parts of the variable remuneration are awarded;
- d. the ex ante and ex post risk-adjustment measures of the variable remuneration¹².

21. Institutions should ensure that potential conflicts of interest caused by the pay out of instruments as part of the variable or fixed remuneration are identified and managed. This includes that the compliance with insider trading rules is ensured and that no measures are taken that can have a short-term impact on the share or instruments price.

22. Where remuneration policies or group remuneration policies are implemented in institutions, including in their subsidiaries, and the staff of the institution are also the majority owners of the institution or the subsidiary, the remuneration policy should be adjusted to the specific situation of these institutions or subsidiaries. For identified staff, the institution should ensure that the remuneration policy complies with the relevant CRD requirements within Articles 92 and 94 and these guidelines.

2. Governance of remuneration

2.1 Responsibilities, design, approval and oversight of the remuneration policy

23. The management body¹³ in its supervisory function (hereafter 'supervisory function') should be responsible for adopting and maintaining the remuneration policy of the institution, and overseeing its implementation to ensure it is fully operating as intended. The supervisory function should also approve any subsequent material exemptions made for individual staff member and changes to the remuneration policy and carefully consider and monitor their effects.

¹² Specific requirements for the remuneration of identified staff and its risk alignment are contained in Titles III and IV of these guidelines.

¹³ Different management body structures can be observed in European countries. In some countries a unitary structure is common, i.e. supervisory and management functions of the board are exercised by only one body. In other countries a dual structure is common, with two independent bodies being established, one for the management function and the other for the supervision of the management function.

24. The supervisory function should collectively have adequate knowledge, skills and experience with regard to remuneration policies and practices as well as of incentives and risks that can arise therefrom. This should include knowledge, skills and experience with regard to the mechanisms for aligning the remuneration structure to institutions' risk profiles and capital structure.
25. The supervisory function should ensure that the institution's remuneration policies and practices are appropriately implemented and aligned with the institution's overall corporate governance framework, corporate culture, risk appetite and the related governance processes.
26. Conflicts of interests with regard to the remuneration policy and remuneration awarded should be identified and appropriately mitigated, including by establishing objective award criteria based on the internal reporting system, appropriate controls and the four eyes principle. The remuneration policy should ensure that no material conflicts of interest arise for staff in control functions.
27. The remuneration policy and practices and the procedures to determine them should be clear, well documented and transparent. Proper documentation on the decision-making process (e.g. minutes of relevant meetings, relevant reports, and other relevant documents) and the reasoning behind the remuneration policy should be maintained.
28. The supervisory and management functions and, where established, the remuneration and the risk committees should work closely together and ensure that the remuneration policy is consistent with and promotes sound and effective risk management.
29. The remuneration policy should provide for an effective framework for performance measurement, risk adjustment and the linkages of performance to reward.
30. Risk and compliance functions should provide effective input in accordance with their roles into the setting of bonus pools, performance criteria and remuneration awards where those functions have concerns regarding the impact on staff behaviour and the riskiness of the business undertaken.
31. The supervisory function should determine and oversee the remuneration of the members of the management function and, if the remuneration committee referred to in section 2.4 has not been established, oversee directly the remuneration of the senior officers in the independent control functions, including the risk management and compliance functions.
32. The supervisory function should take into account the input provided by all competent corporate functions and bodies (e.g. committees, control functions¹⁴, human resources, legal,

¹⁴ Independent control function comprises organisational units, independent of the business and corporate functions that are responsible for controlling and monitoring the operations and risks arising from those operations, ensuring compliance with all applicable laws, rules and regulations and advising the management functions on the matters within their area of expertise. Independent control functions typically comprise risk management, compliance and

strategic planning, budget function, etc.) and business units about the design, implementation and oversight of the institution's remuneration policies.

33. The human resources function should participate in and inform on the drawing up and the evaluation of the remuneration policy for the institution, including the remuneration structure, remuneration levels and incentive schemes, in a way that would not only attract and retain the staff the institution needs but also assure that the remuneration policy is aligned with the institution's risk profile.
34. The risk management function should assist in and inform on the definition of suitable risk-adjusted performance measures (including ex post adjustments), as well as in assessing how the variable remuneration structure affects the risk profile and culture of the institution. The risk management function should validate and assess risk adjustment data as well as be invited to attend the meetings of the remuneration committee on this matter.
35. The compliance function should analyse how the remuneration policy affects the institution's compliance with legislation, regulations, internal policies and risk culture and should report all identified compliance risks and issues of non-compliance to the management body, both in its management and supervisory functions. The findings of the compliance function should be taken into account by the supervisory function during the approval, review procedures and oversight of the remuneration policy.
36. The internal audit function should carry out an independent review of the design, implementation and effects of the institution's remuneration policies on its risk profile and the way these effects are managed in line with the guidelines provided in section 2.5.
37. Within a group context the competent functions within the consolidating institution and subsidiaries should interact and exchange information as appropriate.

2.2 Shareholders' involvement

38. Depending on the institution's legal form and on the applicable national law, the approval of an institution's remuneration policy and, where appropriate, decisions relating to the remuneration of members of the management body and other identified staff may also be assigned to the shareholders' meeting in accordance with national company law. The shareholders' vote may be either consultative or binding.
39. Where the approval of the remuneration of individual members of the management body and other identified staff is assigned to shareholders, shareholders should also explicitly approve the payments that can be awarded to those persons at the termination of their contracts. Where the approval of the remuneration policy is subject to approval by the shareholders they

internal audit functions. Further details on control functions, can be found in the EBA Guidelines on Internal Governance (GL44), points 26 to 29.

should also either approve ex ante the maximum amount of the payments that can be awarded to the management body and other identified staff in the event of early termination of a contract or criteria for the determination of such amounts.

40. In order that shareholders can make informed decisions, the supervisory function should ensure that the institution provides them with adequate information regarding the remuneration policy designed to help them to assess the incentive structure and the extent to which risk-taking is being incentivised and controlled as well as the overall cost of the remuneration structure. Such information should be provided well in advance of the relevant shareholders' meeting. Detailed information on remuneration policies and on their modifications, on procedures and decision-making processes to set a remuneration package should be provided and include the following:

- a. the remuneration components;
- b. main characteristics and objectives of the remuneration packages and their alignment with the business and risk strategy, including the risk appetite and corporate values of the institution;
- c. how the points under (b) are taken into account in ex ante/ex post adjustments, in particular for identified staff.

41. The supervisory function remains responsible for the proposals submitted to the shareholders' meeting, as well as for the actual implementation and oversight of any changes to the remuneration policies and practices.

42. Where shareholders are requested to approve a higher maximum level of the ratio between the variable and fixed component of remuneration of up to 200%, the following should apply:

- a. Shareholders who have the right to vote on a proposed higher maximum level of the ratio between the variable and the fixed components of remuneration are those of the institution where the identified staff concerned by the higher maximum levels of variable remuneration, operates. For subsidiaries, the subsidiary's general assembly of shareholders is competent to decide and not the general assembly of the consolidating institution.
- b. Where an institution exercises its voting rights as a shareholder of its subsidiary with regard to the approval of a higher maximum level of the ratio between variable and fixed remuneration within a subsidiary, one of the following conditions should be met:
 - i. the supervisory function of the institution holding the shares has beforehand called for a vote of its shareholders' meeting on how to exercise the voting rights regarding the increase of such level in its subsidiaries;

- ii. the shareholders' meeting of the consolidating institution has decided, as part of the group remuneration policy, that subsidiaries may introduce a higher maximum level of such ratio.
 - c. In accordance with the first indent of Article 94(1)(g)(ii) of Directive 2013/36/EU, when approving a higher maximum level of the ratio between the fixed and variable components of remuneration, the shareholders' meeting shall act upon a detailed recommendation which provides in particular the reasons, the number of identified staff concerned and their functions within the institution as well as the explanation of how such a higher maximum level of the ratio may affect the requirement to maintain a sound capital base. This information should be provided to shareholders well in advance of the shareholder's meeting.
 - d. Any approval of a higher maximum level of the ratio must be carried out in accordance with the provisions of Article 94(1)(g)(ii) of Directive 2013/36/EU; the 50% threshold for the quorum, and the 66% and 75% majority thresholds required for the vote, as mentioned in that Article, should all be calculated taking into account the voting rights attached to the shares or other equivalent ownership rights in the institution.
 - e. The 75% threshold, which applies when fewer than 50% of ownership rights are represented in the shareholders' meeting and the 66% threshold, which applies when at least 50% of ownership rights are represented, should be calculated in relation to the shareholders' voting rights that are represented, and not the number of natural or legal persons who are shareholders.
 - f. In accordance with the last indent of Article 94(1)(g)(ii) of the CRD, staff who are directly concerned by the higher maximum levels of variable remuneration must not be allowed to exercise, directly or indirectly, any voting rights they may have. Accordingly, their voting rights shall be disregarded when calculating the percentages, both in the nominator and in the denominator.
 - g. Shares are 'represented' where the shareholder is legally able to vote on the proposed higher maximum level of the ratio, regardless of how such a vote is taken. In line with this principle and taking into account national company law, institutions should set their internal policies regarding 'representation' for the purpose of this vote.
43. Shareholders should be able to vote on a reduction of a higher maximum ratio that has been approved in the past. Such a vote should require a majority of shareholder votes in line with the applicable rules for regular decisions foreseen by national law. Where the approved higher maximum was reduced the institution should inform the competent authority of the decision and the approved ratio within five working days.

2.3 Information to competent authorities

44. When informing the competent authority about the recommendation addressed to the shareholders' meeting, in accordance with the fourth indent of Article 94(1)(g)(ii) of Directive 2013/36/EU, the institution should report to the competent authority all the information submitted to the shareholders, including the proposed higher maximum ratio and the reasons therefor, at the latest five working days after having notified to the shareholders that an approval of the higher ratio will be sought.
45. When informing the competent authority about the decision taken by its shareholders, in accordance with the fifth indent of Article 94(1)(g)(ii) of Directive 2013/36/EU, the institution should provide the following information:
- a. the result of the decision and the approved higher maximum ratio, including, where the ratios differ between business areas and functions, the ratio for each business area or function mapped to the business areas and functions set out in the EBA guidelines on the data collection exercise regarding high earners and the EBA guidelines on the remuneration benchmarking exercise, both published on 16 July 2014¹⁵;
 - b. the number of identified staff affected by the higher maximum ratios and, where the ratios differ between business areas and functions, the corresponding level of the ratio for each business area and function;
 - c. an analysis that the proposed higher ratio does not conflict with the obligations under Directive 2013/36/EU and Regulation (EU) 575/2013, having regard in particular to the institution's own funds obligations;
 - d. the information included in Annex 2, using the template provided;
 - e. other information that may be requested by the competent authority.

2.4 Setting up a remuneration committee

46. In accordance with Article 92(1), in conjunction with Article 95(1) of the CRD, all institutions which are themselves significant, considering the individual, parent company and group level, must establish a remuneration committee. Subsidiaries which are regulated by specific sectoral legislation (e.g. AIFMs or UCITS managers) should follow the rules set out in the specific sectoral legislation applying to them in order to determine whether or not they are required to establish a remuneration committee. The consolidating institution should ensure that a remuneration committee is established when legally required.
47. Where a remuneration committee is established in a non-significant institution, the institution should comply with the requirements of these guidelines concerning the remuneration

¹⁵ Both guidelines can be accessed under the following link: <http://www.eba.europa.eu/regulation-and-policy/remuneration>

committee, but may combine the tasks of the remuneration committee with other tasks as long as they do not create conflicts of interest.

48. Where no remuneration committee is established, the requirements of these guidelines concerning the remuneration committee should be construed as applying to the supervisory function.

2.4.1 Composition of the remuneration committee

49. The remuneration committee should be composed of members of the supervisory function¹⁶ who do not perform executive functions. The chair and the majority of members of the remuneration committee should qualify as independent¹⁷. If employee representation on the management body is provided for by national law, it must include one or more employee representatives. Where there are not a sufficient number of qualified independent members, institutions should implement other measures within the remuneration policy to limit conflicts of interest in decisions on remuneration issues.

50. Members of the remuneration committee should have collectively appropriate knowledge, expertise and professional experience concerning remuneration policies and practices, risk management and control activities, namely with regard to the mechanism for aligning the remuneration structure to institutions' risk and capital profiles.

2.4.2 Role of the remuneration committee

51. The remuneration committee should:

- a. be responsible for the preparation of decisions on remuneration to be taken by the supervisory function, in particular regarding the remuneration of the members of the management body in its management function as well as of other identified staff;
- b. provide its support and advice to the supervisory function on the design of the institution's remuneration policy;
- c. support the supervisory function in overseeing the remuneration policies, practices and processes and the compliance with the remuneration policy;
- d. check whether the existing remuneration policy is still up to date and, if necessary, make proposals for changes;

¹⁶ Different management body structures can be observed in European countries. In some countries a unitary structure is common, i.e. supervisory and management functions of the board are exercised by only one body. In other countries a dual structure is common, with two independent bodies being established, one for the management function and the other for the supervision of the management function. In these cases, the remuneration committee should comprise members of the supervisory body.

¹⁷ Independence as set out in the EBA guidelines on internal governance point 5.6.

- e. review the appointment of external remuneration consultants that the supervisory function may decide to engage for advice or support;
- f. ensure the adequacy of the information provided to shareholders on remuneration policies and practices, in particular on a proposed higher maximum level of the ratio between fixed and variable remuneration;
- g. assess the mechanisms and systems adopted to ensure that the remuneration system properly takes into account all types of risks, liquidity and capital levels and that the overall remuneration policy is consistent with and promotes sound and effective risk management and is in line with the business strategy, objectives, corporate culture and values and the long-term interest of the institution;
- h. assess the achievement of performance targets and the need for ex post risk adjustment, including the application of malus and clawback arrangements;
- i. review a number of possible scenarios to test how the remuneration policies and practices react to external and internal events, and back-test the criteria used for determining the award and the ex ante risk adjustment based on the actual risk outcomes.

52. Where the institution has established a remuneration committee, the remuneration of the senior officers in the independent control functions, including the risk management and compliance functions, should be directly overseen by the remuneration committee. The remuneration committee should make recommendations to the supervisory function on the design of the remuneration package and amounts of remuneration to be paid to the senior staff members in the control functions.

2.4.3 Process and reporting lines

53. The remuneration committee should:

- a. have access to all data and information concerning the decision-making process of the supervisory function on the remuneration policies and practices design and implementation, oversight and review;
- b. have adequate financial resources and unfettered access to all information and data from independent control functions, including risk management;
- c. ensure the proper involvement of the independent control and other relevant functions (e.g. human resources, legal and strategic planning) within the respective areas of expertise and where necessary seek external advice.

54. The remuneration committee should collaborate with other committees of the supervisory function whose activities may have an impact on the design and proper functioning of

remuneration policies and practices (e.g. risk, audit and nomination committees); and provide adequate information to the supervisory function, and, where appropriate, to the shareholders' meeting about the activities performed.

55. When established, the risk committee should, without prejudice to the tasks of the remuneration committee, examine whether incentives provided by the remuneration policies and practices take into consideration the institution's risk, capital, liquidity and the likelihood and timing of earnings.

56. A member of the risk committee should participate in the meetings of the remuneration committee, where both committees are established, and vice versa.

2.5 Review of the remuneration policy

57. The supervisory function or, where established, the remuneration committee should ensure that the remuneration policy and practices of the institution are subject to a central and independent internal review at least annually.

58. A central review of the compliance with the regulation, group policies, procedures and internal rules should be performed by the internal audit function of the consolidating institution.

59. Institutions should perform the central and independent review on an individual basis. In a group, non-significant institutions which are subsidiaries may rely on the review performed by the consolidating institution, where the review performed on the consolidated or sub-consolidated basis included the institution and where the results are made available to the supervisory function of that institution.

60. The periodic independent review of remuneration policies may be, partially or totally, externally outsourced by small and less complex institutions. Larger and more complex institutions should have sufficient resources to conduct the review internally. Qualified and independent external consultants¹⁸ may complement and support the institution in carrying out such tasks. The supervisory function is responsible for the review.

61. As part of the central and independent internal review, institutions should assess whether the overall remuneration policies, practices and processes:

- a. operate as intended (in particular, that approved policies, procedures and internal rules are being complied with; that the remuneration pay outs are appropriate, in line with the business strategy; and that the risk profile, long-term objectives and other goals of the institution are adequately reflected);
- b. are compliant with national and international regulations, principles and standards; and

¹⁸ For further details on outsourcing, refer to EBA guidelines on internal governance (GL44).

- c. are consistently implemented across the group, are compliant with Article 141 of Directive 2013/36/EU and do not limit the institution's ability to maintain or restore a sound capital base in line with section 6 of these guidelines.

62. The other relevant internal corporate functions (i.e. human resources, legal, strategic planning, etc.), as well as other key supervisory function committees (i.e. audit, risk and nominations committees), should be closely involved in reviewing the remuneration policies of the institution in order to assure the alignment with the institutions' risk management strategy and framework.

63. Where periodic reviews reveal that the remuneration policies do not operate as intended or prescribed or where recommendations are made, the remuneration committee, where established, or the supervisory function, should ensure that a remedial action plan is proposed, approved and timeously implemented.

64. The results of the performed internal review and actions taken to remedy any findings should be documented, either through written reports or through the minutes of the meeting of the relevant committees or the supervisory function, and made available to the management body, relevant committees and corporate functions.

3. Remuneration policies and group context

65. In accordance with Articles 92(1) and 109 of Directive 2013/36/EU, institutions must comply with all requirements of Articles 92(2), 93, 94, 95 and 96 of that Directive, including the applicable Regulatory Technical Standards regarding remuneration, at the consolidated, sub-consolidated (including subsidiaries and branches in third countries) and individual level. With regard to the individual level, competent authorities may make use of the derogation provided for in Article 7 of the CRR in accordance with Article 109(1) of Directive 2013/36/EU. It is the institutions' responsibility to ensure that the internal remuneration policies comply with any specific requirements regarding activities performed in any relevant jurisdiction.

66. At the consolidated or sub-consolidated level, the consolidating institution and competent authorities should ensure that a group-wide remuneration policy is implemented and complied with for:

- a. all staff in all institutions and other entities within the scope of prudential consolidation, including all branches; and
- b. all identified staff¹⁹ in all institutions and other entities within the scope of prudential consolidation, including all branches.

67. Regarding institutions and entities within a group located in more than one Member State, the group-wide remuneration policy should specify how its implementation should deal with

¹⁹ Regarding the identification process in a group context please refer to section 5.

differences between national implementations of the remuneration requirements of Directive 2013/36/EU, in particular regarding the application of the limitation of the maximum ratio between the variable components of remuneration and the fixed remuneration to 100% (if applicable, up to 200% with shareholders' approval)²⁰, the possibility to apply the notional discount rate²¹ and any restrictions regarding the use of instruments²².

68. In accordance with Articles 92(1) and 109 of Directive 2013/36/EU the consolidating institution must ensure that subsidiaries that fall into the scope of prudential consolidation, but which are not themselves subject to Directive 2013/36/EU, have remuneration policies that are consistent with the group-wide remuneration policy for all staff and comply with the requirements of Articles 92(2), 93 and 94 of Directive 2013/36/EU at least for those identified staff whose professional activities have a material impact on the group's risk profile. This also applies to specific requirements of Directive 2013/36/EU which have not been included in other sectoral legislation (e.g. for staff whose professional activities have a material impact on the group's risk profile, but who are staff of entities that fall within the scope of Directive 2011/61/EU²³ and Directive 2009/65/EC²⁴, the consolidation institution must ensure that the limitation of the variable components of remuneration to 100% (if applicable, up to 200% with shareholders' approval) of the fixed components of remuneration is complied with).²⁵ Where specific requirements of Directive 2013/36/EU conflict with the sectoral requirements (e.g. under Directive 2011/61/EU or Directive 2009/65/EC), the specific sectoral legislation should prevail (e.g. entities subject to Directive 2011/61/EU or Directive 2009/65/EC should pay the variable remuneration of identified staff whose professional activities have a material impact on the group's risk profile in units or shares of the alternative investment fund concerned or units of the UCITS concerned (Annex II(1)(m) of Directive 2011/61/EU and Article 14(b)(m) of Directive 2009/65/EC, respectively)).

69. Staff seconded from a parent undertaking in a third country to an EU subsidiary that is an institution or a branch who, were they employed directly by the EU institution or branch, would fall into the scope of identified staff of that EU institution or branch, are identified staff. Such seconded staff should be subject to the provisions of Articles 92, 93 and 94 of Directive 2013/36/EU as they are implemented in the Member State where the EU institution or branch is established and applicable Regulatory Technical Standards. For the purposes of short-term secondments, for example where a person is only residing in a Member State for a few weeks to carry out project work, that person should be subject to such provisions only if

²⁰ Article 94(1)(g)(i) and (ii) of Directive 2013/36/EU.

²¹ Article 94(1)(g)(iii) of Directive 2013/36/EU.

²² Article 94(1)(l) of Directive 2013/36/EU.

²³ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

²⁴ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

²⁵ Further details on how to identify these staff members are set out under section 5.3, 'Identification process on solo and consolidated level', below.

the person would be identifiable under the Commission Delegated Regulation 604/2014, taking into account the remuneration awarded for the relevant time period and the role and responsibilities during the secondment.

70. Short-term contracts or secondments must not be used as a means of circumventing the remuneration requirements of Directive 2013/36/EU and any related standards or guidelines.
71. Regarding subsidiaries established in third countries that are included in the scope of prudential consolidation of a consolidating institution in a Member State, the group-wide remuneration policy should set the maximum level of the ratio between the variable component of remuneration and the fixed component not higher than 100% (if applicable, up to 200% with shareholders' approval at the group level), specify whether the notional discount rate is applied and ensure that for the pay out of variable remuneration instruments are used in line with these guidelines and Commission Delegated Regulation (EU) No 527/2014²⁶.
72. A subsidiary established in a third country that is included in the scope of prudential consolidation of a consolidating institution in a Member State should have remuneration policies that are consistent with the group-wide remuneration policy and comply with the requirements of Articles 92(2), 93 and 94 of Directive 2013/36/EU at least for those staff whose professional activities have a material impact on the group's risk profile.
73. Competent authorities should ensure that branches in a Member State of credit institutions authorised in a third country are subject to the same requirements as applicable to institutions within Member States. Where these branches want to implement a ratio between the variable and fixed components of remuneration higher than 100%, they should demonstrate to the competent authority that the shareholders of the institution in the third country have approved the higher ratio.
74. The remuneration requirements of Directive 2013/36/EU and these guidelines apply to institutions independent of the fact that they may be subsidiaries of a parent institution in a third country. Where an EU subsidiary of an parent institution in a third country is a consolidating institution, the scope of prudential consolidation does not include the level of the parent institution located in a third country and other direct subsidiaries of that parent institution. The consolidating institution should ensure that the group-wide remuneration policy of the parent institution in a third country is taken into consideration within its own remuneration policies as far as this is not contrary to the requirements set out under relevant EU or national law, including these guidelines.

4. Proportionality

²⁶ Commission Delegated Regulation (EU) No 527/2014 of 12 March 2014 supplementing Directive (EU) No 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the classes of instruments that adequately reflect the credit quality of an institution as a going concern and are appropriate to be used for the purposes of variable remuneration (OJ L 148, 20.5.2014, p. 21). It is published under: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL_2014_148_R_0006

75. The proportionality principle encoded in Article 92(2) of Directive 2013/36/EU aims to match remuneration policies and practices consistently with the individual risk profile, risk appetite and strategy of an institution, so that the objectives of the obligations are effectively achieved.

76. In assessing the application of the requirements in a proportionate manner, institutions and competent authorities should consider a combination of all the following criteria: the size, the internal organisation and the nature, scope and complexity of the institution's activities.

77. For these purposes, institutions and competent authorities should take into account at least the following criteria:

- a. the balance sheet total or the quantity of assets held by the institution and significant entities consolidated for regulatory purposes;
- b. the geographical presence of the institution and the size of the operations in each jurisdiction;
- c. the legal form and the available equity and debt instruments;
- d. the authorisation to use internal methods for the measurement of capital requirements (e.g. IRB, AMA);
- e. whether the institution is part of a group and, if so, the proportionality assessment done for the group;
- f. the type of authorised activity and services (e.g. loans and deposits, investment banking);
- g. the underlying business strategy;
- h. the structure of the business activities and the time horizon, measurability and predictability of the risks of the business activities;
- i. the funding structure of the institution;
- j. the internal organisation of the institution, including the level of variable remuneration that can be paid to identified staff;
- k. the structure of profits and losses of the institution;
- l. the type of clients (e.g. retail, corporate, small businesses, public entity);
- m. the complexity of the products or contracts.

78. When applying requirements in a proportionate way, institutions are responsible to consider their risk profile, risk appetite and other characteristics and to develop and implement remuneration policies and practices which are appropriately aligned to the business strategy,

objectives, values and long-term interest of the institution. However, the obligation to have sound and effective remuneration policies and practices applies to all institutions and with respect to all staff, regardless of the institutions' different characteristics.

79. Before remuneration requirements are applied in a proportionate way, the identification of staff, based on the criteria provided in Commission Delegated Regulation (EU) No 604/2014 and additional internal criteria, should be performed²⁷. The limitation of the maximum ratio between the variable components of remuneration and the fixed components to 100% (200% with shareholders' approval) should be applied to all identified staff in the institution and, regarding its subsidiaries that are in the scope of prudential consolidation, to the identified staff that has an impact on the group risk profile, even if they are not themselves subject to Directive 2013/36/EU, in line with the guidelines in section 3.
80. When implementing specific remuneration policies for different categories of identified staff in line with sections 3 and 4 of these guidelines, the application of proportionality should take into account the impact on the institution's risk profile of that category of identified staff.
81. Competent authorities should ensure that institutions comply with the remuneration requirements in a manner that provides for an equivalent level of conditions for competition between the same categories of institutions.
82. According to the above, large (including significant) and more complex institutions and groups should have more sophisticated remuneration policies and risk measurement approaches, while small and less complex institutions and groups may implement simpler remuneration policies and approaches.

5. The identification process

83. It is the responsibility of institutions to identify the members of staff whose professional activities have a material impact on the institution's risk profile. All institutions should conduct annually a self-assessment in order to identify all staff whose professional activities have or may have a material impact on the institution's risk profile. The identification process should be part of the overall remuneration policy of the institution.
84. The self-assessment should be based on the qualitative and quantitative criteria set out in Commission Delegated Regulation (EU) No 604/2014 and should include, where needed to ensure the complete identification of all staff whose professional activities have a material impact on the institution's risk profile, additional criteria set forth by the institution that reflect the levels of risk of different activities within the institution and the impact of staff members on the risk profile.

²⁷ Please refer to guidelines for the identification process outlined in section 5.

85. In accordance with Article 4 of Commission Delegated Regulation (EU) No 604/2014 regarding the quantitative criteria, the total remuneration awarded to staff in the preceding financial year should be taken into account to ensure that the identification can be performed at the beginning of the following financial year. When applying the quantitative criteria of Commission Delegated Regulation (EU) No 604/2014, institutions should take into account all monetary and non-monetary fixed and variable remuneration components awarded for professional services in the preceding financial year. For the fixed component these are the amounts that have been awarded and usually paid out in the preceding financial year. For the variable component these are the amounts that have been awarded in the preceding financial year for the complete previous accrual period, independent of the fact that only parts of the variable remuneration were paid out in the preceding financial year and other parts were deferred.²⁸ Routine remuneration packages that are not accounted for on an individual level should be taken into account based on the overall sum broken down by objective criteria to the individual staff member.
86. Institutions which award remuneration in a currency other than the euro should convert the thresholds set out in Article 4 of Commission Delegated Regulation 604/2014 as set out in Article 5 of that Regulation using either the internal exchange rate used for the consolidation of the accounts or the exchange rate used by the Commission for financial programming and the budget for the month where the remuneration was awarded²⁹.
87. Where institutions apply Article 5(2) of Commission Delegated Regulation (EU) No 604/2014, they should assign all staff active in entities in the scope of prudential consolidation to the country where the individual exercises his or her predominant activity and apply the criteria in Article 4(1)(b) and (c) on a country by country basis to the staff assigned to a specific country.
88. Where the quantitative criteria are met, staff are identified staff, unless the institution applies Article 4(2) of Commission Delegated Regulation (EU) No 604/2014. In relation to criterion (a), in respect of staff who were awarded total remuneration of EUR 750 000 or more in the preceding financial year, or (b) of Article (4)(1) of Commission Delegated Regulation (EU) No 604/2014, the application of paragraph (2) of Article 4 of that Regulation is subject to the prior approval of the competent authority.
89. The self-assessment should be clear, consistent, properly documented and periodically updated during the year at least with regard to the criteria under Article 3 of Commission Delegated Regulation (EU) No 604/2014. Institutions should ensure that staff that fall or are likely to fall under the criteria in Article 3 for a period of at least three months in a financial year are treated as identified staff.

²⁸ E.g. for the identification in early 2016 the fixed remuneration awarded and paid in 2015 and the variable remuneration awarded in 2015 for the previous accrual period (e.g. 2014) will be added to calculate the amount to be used for the identification under the quantitative criteria.

²⁹ The exchange rates can be found on the website of the European Commission under: http://ec.europa.eu/budget/contracts_grants/info_contracts/infoeuro/infoeuro_en.cfm

90. The following information should at least be included in the documentation of the self-assessment done regarding the identification of staff:

- a. the rationale underlying the self-assessment and the scope of its application;
- b. the approach used to assess the risks emerging from the institution's business strategy and activities, including in different geographical locations;
- c. how persons working in institutions and other entities within the scope of consolidation, subsidiaries and branches, including such located in third countries, are assessed;
- d. the role and responsibilities of the different corporate bodies and internal functions involved in the design, oversight, review and application of the self-assessment process; and
- e. the identification outcome.

91. Institutions should keep records of the identification process and its results and should be able to demonstrate to their competent supervisory authority how staff have been identified according to both the qualitative and quantitative criteria provided for in Commission Delegated Regulation (EU) No 604/2014 and any additional criteria used by the institutions.

92. The documentation of the self-assessment should at least include the number of identified staff including the number of staff identified for the first time, the job responsibilities and activities, the names or another unique identifier and the allocation within the institution of the identified staff to business areas and a comparison with the results of the previous year's self-assessment.

93. The documentation should also include staff members who have been identified under quantitative criteria, but whose professional activities are assessed as not having a material impact on the institution's risk profile, in accordance with Article 4 of Commission Delegated Regulation (EU) No 604/2014. Those assessments should be properly documented, including the rationale underpinning the applied exclusions. Institutions should maintain the documentation for an appropriate time period to enable the review by the competent authorities.

5.1 Notification and prior approval of exclusions

94. Where the institution determines according to Article 4(2) of Commission Delegated Regulation (EU) No 604/2014 that the professional activities of the staff member do not have a material impact on the institution's risk profile and notifies the competent authority or applies for a prior approval, the following should apply:

- a. the management body should decide based on the performed analysis within the annual identification process if staff have in fact no material impact on the institution's risk profile and inform the supervisory function of the decision taken. The supervisory function or the remuneration committee when it is established should review the

criteria and process under which the decisions are taken and approve the exemptions made;³⁰

- b. any notification should be made without delay, but at the latest within six months after the end of the preceding financial year as to ensure that the competent authority has sufficient time for analysing the exclusions made and that the institution can take into account any objections raised by the competent authority and adjust the identification outcome accordingly;
- c. any application for prior approval should be made without delay, but at the latest within six months after the end of the preceding financial year. The competent authority should assess the application and approve or reject the application, to the extent possible, within a three-month period after receiving the complete documentation;
- d. where the staff member was awarded total remuneration of EUR 1 000 000 or more in the preceding financial year the competent authority should immediately inform the European Banking Authority about the application received and provide its initial assessment. On request the competent authority should immediately submit all information received by the institution to the EBA. The EBA will liaise with the competent authority to ensure that the criteria of Commission Delegated Regulation (EU) No 604/2014 are applied in a consistent way before the decision regarding the approval or rejection of the application is taken by the competent authority.

95. The prior approval under Article 4(5) of Commission Delegated Regulation (EU) No 604/2014 regarding exclusions of staff identified in relation to the criterion in point (b) of Article 4(1) of that Regulation should be granted only for a limited time period. The request for prior approval under Article 4(5) of Commission Delegated Regulation (EU) No 604/2014 should be made each year. With respect to staff for whom a decision on the application is taken for the first time, the prior approval should only concern the financial year in which the prior approval was requested and the following financial year. For staff for whom the application of Article 4(2) of Commission Delegated Regulation (EU) No 604/2014 has already been approved for the ongoing financial year, the prior approval should only concern the following financial year.

96. The notification of the application of exclusions under Article 4(4) of Commission Delegated Regulation (EU) No 604/2014, for staff identified in relation to the criterion in point (a) of Article 4(1) of that Regulation, should be made annually, differentiating between exclusions in relation to the criteria in points (a) and (b) of Article 4(2) of that Regulation, but limited to staff who were not notified as being excluded in the previous accrual period in relation to the same criterion (e.g. where a staff member was excluded as the business unit is not material no notification is needed when the same staff member would still be active in the same business unit and the business unit is still not material).

³⁰ Please refer to paragraph 23 with regard to the approval of exemptions to the remuneration policy.

97. Where identified staff would be excluded in subsidiaries which are not themselves subject to Directive 2013/36/EU, the competent authority is the competent authority of the parent institution. For branches of credit institutions where the head office is located in a third country the competent authority is the competent authority responsible for the supervision of institutions in the Member State where the branch is located.
98. Notifications and requests for prior approval should include all names or another unique identifier for identified staff for whom an exclusion should apply, the percentage of internal capital allocated in accordance with Article 73 of Directive 2013/36/EU to the business unit in which the staff member is active in and where required under Commission Delegated Regulation (EU) No 604/2014 the analysis of the impact of staff on the institution's risk profile for each identified staff member. Where identified staff are active in the same business unit and have the same function a joint assessment should be made.

5.2 Governance of the identification process

99. The management body has the ultimate responsibility for the identification process and the respective policy. The management body in its supervisory function should:
- a. approve the identification process policy as part of the remuneration policy;
 - b. be involved in the design of the self-assessment;
 - c. ensure that the assessment for the identification of staff is properly made in accordance with Directive 2013/36/EU, Commission Delegated Regulation (EU) No 604/2014 and these guidelines;
 - d. oversee the identification process on an ongoing basis;
 - e. approve any material exemptions from or changes to the adopted policy and carefully consider and monitor their effect;
 - f. approve or oversee any exclusion of staff in accordance with Article 4(2) of Commission Delegated Regulation (EU) No 604/2014 where the institutions deem that the qualitative criteria defined in Commission Delegated Regulation (EU) No 604/2014 are not met by the staff, as they in fact do not have a material impact on the institutions' risk profile;
 - g. periodically review the approved policy and, if needed, amend it.
100. Where a remuneration committee is established, it should be actively involved in the identification process in line with its responsibilities for the preparation of decisions regarding remuneration. Where no remuneration committee is established, the non-executive and where possible the independent members of the management body in its supervisory function should execute the respective tasks.
101. The independent risk management and independent compliance functions, the business support functions (e.g. legal, human resources) and the relevant committees of the management body (i.e. risk, nomination and audit committees) should be involved in the

identification process in accordance with their respective role and also on an ongoing basis. In particular, where a risk committee is established, it should be involved in the identification process without prejudice to the tasks of the remuneration committee. Institutions should ensure a proper exchange of information among all internal bodies and functions involved in the identification process. The identification process and its result should be subject to an independent internal or external review.

5.3 Identification process on solo and consolidated level

102. The criteria included in Commission Delegated Regulation (EU) No 604/2014 and those additionally set by the institutions should be applied both by institutions on a solo basis, using the figures and considering the situation of the individual institution, and in addition by the consolidating institution on a consolidated and sub-consolidated basis as defined in points (48) and (49) of Article 4(1) CRR, including also all subsidiaries in the scope of prudential consolidation which are not themselves subject to CRD, using the consolidated figures and considering the consolidated situation and the impact on the institutions' risk profile on a consolidated basis. The same applies for the sub-consolidated level.

103. When applying the qualitative criteria in Article 3 of Commission Delegated Regulation (EU) No 604/2014 at consolidated or sub-consolidated level, staff members in a subsidiary are only captured if they are responsible for the functions referred to in these criteria on a consolidated or sub-consolidated basis. E.g. a staff member in a subsidiary who is a member of the management body of such subsidiary should be captured by the criterion set out in Article 3(1) of Commission Delegated Regulation (EU) No 604/2014 ('the staff member is a member of the management body in its management function') only if he or she is also a member of the management body of the EU parent institution.

104. The quantitative criteria within Article 4 of Commission Delegated Regulation (EU) No 604/2014 apply to all staff on a consolidated and sub-consolidated basis, including all subsidiaries in the scope of the prudential consolidation. E.g. staff in a subsidiary earning EUR 500 000 or more are therefore considered identified staff, unless they would be excluded under Article 4 (paragraphs 2 to 5) of these RTS.

105. When applying the qualitative criteria in Article 3 of Commission Delegated Regulation (EU) No 604/2014 on the solo level, institutions should identify the staff responsible for the function named in the qualitative criteria; the main criterion for the identification is not the name of the function but the authority and responsibility conferred on the function.

5.4 Role of the consolidating institution

106. The consolidating institution should ensure the overall consistency of the group remuneration policies including the identification processes and the correct implementation on a consolidated, sub-consolidated and solo basis.

5.5 Role of subsidiaries

107. Institutions that are subsidiaries of a consolidating institution should implement within their remuneration policy the policy issued by the consolidating parent institution and the process for the identification of staff. All subsidiaries should actively participate in the identification process carried out by the consolidating parent institution. In particular, each subsidiary in the scope of prudential consolidation, including those not themselves subject to Directive 2013/36/EU, should provide the consolidating institution with all information necessary to properly identify all staff who have a material impact on the institutions' risk profile on a consolidated or sub-consolidated basis.
108. Subsidiaries that are not themselves subject to Directive 2013/36/EU are not required to perform an identification process on the solo level. For those subsidiaries the assessment should be performed by the consolidating institution, based on information provided by the subsidiary. Institutions falling within the scope of Directive 2013/36/EU (credit institutions and investment firms) should conduct their own self-assessment for the identification of staff on the solo level. Small and less complex institutions which are included in an identification process on a consolidated basis may delegate the practical application of the identification process on a solo level to the consolidating institution.

Branches in a Member State of credit institutions having their head office in a third country and institutions in a Member State which are subsidiaries of parent institutions in third countries should conduct the identification process and inform their parent institution of its results. Institutions in a Member State should also include their subsidiaries that fall in the scope of prudential consolidation and branches located in third countries in their assessment. For branches, the criteria for the identification should be applied in the same way to the functions, business activities and staff located in a Member State as they would be for an institution on an individual level.

6. Capital base

109. Institutions and competent authorities should ensure that the award, pay out and vesting of variable remuneration, including the application of malus and clawback arrangements, under the institutions' remuneration policy is not detrimental to maintaining a sound capital base.
110. When assessing if the capital basis is sound, the institution should take into account its overall own funds and in particular the Common Equity Tier 1 capital, the combined capital buffer requirement as defined in Article 128(6) of Directive 2013/36/EU and the restrictions on distributions set out in Article 141 of Directive 2013/36/EU which applies to the variable remuneration of all staff as well as the result of the internal capital adequacy assessment process. The requirements to maintain the combined capital buffer set out in Article 129 of Directive 2013/36/EU, including the restrictions on distributions set out in Article 141(2) and (3) of that Directive, apply also on a consolidated and sub-consolidated basis. Additionally,

competent authorities should take into account the results of the supervisory review and evaluation process in line with the respective EBA guidelines.

111. Institutions should include the impact of variable remuneration - both upfront and deferred amounts - in their capital and liquidity planning and in their overall internal capital adequacy assessment process.
112. The total variable remuneration awarded by an institution must not limit the ability of the institution to maintain or restore a sound capital base in the long term and should consider the interests of shareholders and owners, depositors, investors and other stakeholders. Variable remuneration should not be awarded or paid out when the effect would be that the capital base of the institution would no longer be sound. In addition to the restrictions on distributions set out in Article 141 of Directive 2013/36/EU, the institution should consider these requirements when determining:
 - a. the overall pool of variable remuneration that can be awarded for that year; and
 - b. the amount of variable remuneration that will be paid out or will be vesting in that year.
113. Institutions which do not have a sound capital basis or where the soundness of the capital base is at risk should take the following measures with regard to variable remuneration:
 - a. reducing the variable bonus pool in line with Article 141 of Directive 2013/36/EU, including the possibility to reduce it down to zero;
 - b. apply the necessary performance adjustment measures, in particular malus;
 - c. use the net profit of the institution for that year and potentially for subsequent years to strengthen the capital base. The institution should not compensate for any reduction of the variable compensation made in order to ensure a sound capital basis in later years or by other payments, vehicles or methods which lead to a circumvention of this provision.
114. Competent authorities should intervene where the awarding of variable remuneration is detrimental to the maintenance of a sound capital base by requiring the institution to reduce or apply a cap to the overall pool of variable remuneration determined until the capital adequacy situation improves; and if necessary to apply performance adjustment measures, in particular malus and require institutions to use net profits to strengthen own funds.

Title II - Requirements regarding the structure of remuneration

7. Categories of remuneration

115. Under Directive 2013/36/EU, remuneration is either fixed or variable remuneration; there is no third category of remuneration. Where remuneration is variable and is paid to identified staff, all requirements of Article 94 of CRD have also to be met in addition to the general requirements contained in Article 92 thereof. For that purpose, institutions should allocate in line with these guidelines the components of remuneration to either fixed or variable remuneration and their remuneration policies should set out clear, objective, predetermined and transparent criteria to assign all remuneration components to either the fixed or variable categories in accordance with the criteria provided in Article 92(2)(g) of Directive 2013/36/EU and these guidelines.
116. Where the clear allocation of a component to the fixed remuneration is not possible based on the criteria provided in these guidelines, it should be considered as variable remuneration.
117. Remuneration is fixed where the conditions for its award and its amount:
- a. are based on predetermined criteria;
 - b. are non-discretionary reflecting the level of professional experience and seniority of staff;
 - c. are transparent with respect to the individual amount awarded to the individual staff member;
 - d. are permanent, i.e. maintained over a period tied to the specific role and organisational responsibilities;
 - e. are non-revocable; the permanent amount is only changed via collective bargaining or following renegotiation in line with national criteria on wage setting;
 - f. cannot be reduced, suspended or cancelled by the institution;
 - g. do not provide incentives for risk assumption; and
 - h. do not depend on performance.
118. Remuneration components that are either part of a general institution-wide policy where they meet the conditions listed in paragraph 117 or payments mandatory under national law, are considered as fixed remuneration. This includes payments which form part of routine employment packages as defined in these guidelines.
119. The following remuneration components should also be considered as fixed, where all similar situations are treated in a consistent way:
- a. remuneration paid to expatriate staff considering the cost of living and tax rates in a different country;

- b. allowances used to increase the basic fixed salary in situations where staff work abroad and receive less remuneration than would be paid on the local employment market for a comparable position where all of the following specific conditions are met:
 - i. the allowance is paid on a non-discriminatory basis to all staff in a similar situation;
 - ii. the allowance is awarded because staff work temporarily abroad or in a different position with a remuneration level requiring adjustment to reflect pay levels in the relevant market;
 - iii. the level of additional payments is based on predetermined criteria;
 - iv. the duration of the allowance is tied to the duration of the situation referred to above.

8. Particular cases of remuneration components

8.1 Allowances

120. The variable and fixed remuneration of institutions may consist of different elements, including additional or ancillary payments or benefits. Institutions should analyse allowances³¹ and allocate them to the variable or fixed component of remuneration. The allocation should be based on the criteria in section 7.

121. In particular where allowances are considered as fixed remuneration, but show any of the following features, the institution should duly document the results of the assessments made under section 7:

- a. they are paid only to identified staff members³²;
- b. they are limited to cases where the ratio between the variable and the fixed components of remuneration would otherwise exceed 100% (if applicable, up to 200% where approved by shareholders);
- c. the allowances are linked to indicators that could possibly be understood as proxies for performance. In that case the institution should be able to demonstrate that these indicators are not linked to the performance of the institution, e.g. by analysing the correlation with the performance indicators used.

³¹ The label may differ according to the institution: 'role based pay, staff allowance, adjustable role allowance, fixed pay allowance', etc.

³² Being an identified staff member should not be considered as a role or function.

122. Where allowances are based on the role, function or organisational responsibility of staff, in order to be correctly mapped to the fixed component of remuneration they should meet the criteria set out in paragraph 117 taking into account all of the following particulars:
- a. the allowance is tied to a role or organisational responsibility and awarded as long as no material changes happen regarding the responsibilities and authorities of the role so that in fact the staff would have a different role or organisational responsibility;
 - b. the amount does not depend on any factors other than fulfilling a certain role or having a certain organisational responsibility and the criteria in paragraph 182;
 - c. any other staff member fulfilling the same role or having the same organisational responsibility and who is in a comparable situation would be entitled to a comparable allowance, without prejudice to paragraph 182 of these guidelines.
123. Competent authorities should ensure that allowances are not a vehicle or method that facilitates the non-compliance of institutions with the CRD.

8.2 Variable remuneration based on future performance

124. When the award of variable remuneration, including LTIPs, is based on past performance of at least one year, but also depends on future performance conditions, the following should apply:
- a. institutions should clearly set out to staff the additional performance conditions that have to be met after the award for the variable remuneration to vest;
 - b. institutions should assess before the vesting of variable remuneration that the conditions for its vesting have been met;
 - c. the additional forward-looking performance conditions should be set for a predefined performance period of at least one year;
 - d. when the additional forward looking performance conditions have not been met, up to 100% of the variable remuneration awarded under those conditions should be subject to malus arrangements;
 - e. the deferral period should end at the earliest one year after the last performance condition has been assessed; all other requirements regarding the deferral of variable remuneration for identified staff set out in section 15 apply in the same way as to variable remuneration that is exclusively based on performance previous to its award;
 - f. for the calculation of the ratio between the variable and the fixed component of the total remuneration, the total amount of the variable remuneration awarded should be taken into account in the financial year for which the variable remuneration, including

LTIPs, was awarded. This should also apply when the past performance was assessed in a multi-year accrual period.

125. Where a prospective remuneration plan for variable remuneration, including LTIPs, is exclusively based on future performance conditions (e.g. where new staff receive an LTIP at the beginning of the first year of employment), the amount should be considered as awarded after the performance conditions have been met, otherwise no award should be made. Awarded amounts should be taken into account for the calculation of the ratio between the variable and the fixed component of the total remuneration in the financial year prior to their award. Where a specific number of instruments are awarded, they should exceptionally be valued for the purpose of the calculation of the ratio between the variable and the fixed component of the total remuneration with the market price or fair value determined at the time the prospective remuneration plan for variable remuneration was granted. Points (a) to (c) of paragraph 124 should apply. All other requirements apply in the same way as to variable remuneration, e.g. the deferral period starts after the award of the variable remuneration.

8.3 Carried interest payments

126. ‘Carried interest’ payments within the meaning of Article 4(1)(d) of the AIFMD are subject to the remuneration provisions of the AIFMD; paragraph 2 of Annex I of the AIFMD specifically includes carried interest in the definition of remuneration³³. The ESMA guidelines on sound remuneration policies under the AIFMD apply³⁴. For the purposes of these EBA guidelines and in particular of calculating the ratio between the variable and fixed components of remuneration for staff identified under section 13 of these guidelines, the following should apply:

- a. all payments made by the alternative investment funds to these staff members through carried interest vehicles which are not representing a pro-rata return on the investment made by these staff members should be considered as variable remuneration and be valued at the time of their award;
- b. all payments made by the alternative investment funds to these staff members through carried interest vehicles which represent a pro-rata return on any investment by these staff members (through the carried interest vehicle) to the alternative investment fund should not be included in the calculation.

³³ Annex I, paragraph 2 of the AIFMD states that ‘The principles set out in paragraph 1 shall apply to remuneration of any type paid by the AIFM, to any amount paid directly by the AIF itself, including carried interest, and to any transfer of units or shares of the AIF, made to the benefits of those categories of staff, including senior management, risk takers, control functions 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 or the risk profiles of the AIF that they manage’ (emphasis added).

³⁴ ESMA/2013/232, available at: http://www.esma.europa.eu/system/files/2013-232_aifmd_guidelines_on_remuneration_-_en.pdf. On the specific treatment of carried interest under the AIFMD, see, in particular, paragraphs 10, 13 and 16 and 159 of the ESMA guidelines.

127. Dividends paid on vested shares or equivalent ownership interests that staff receive as shareholders or owners of an institution, are not part of remuneration for the purpose of these guidelines. However, such payments must not be used as a payment method for variable remuneration which would lead to a circumvention of the remuneration requirements established by the CRD.

8.4 Retention bonuses

128. Institutions should be able to substantiate their legitimate interest in awarding retention bonuses to retain an identified staff member. For example, retention bonuses may be used under restructurings, in wind-down or after a change of control.

129. A retention bonus must comply with the requirements on variable remuneration, including the ex post risk alignment, payment in instruments, deferral, retention, malus and clawback. Retention bonuses are based not on performance, but on other conditions (i.e. the circumstance that the staff member stays in the institutions for a predetermined period of time or until a certain event), hence ex ante risk adjustments are not necessary.

130. Retention bonuses should not be awarded to merely compensate for performance-related remuneration not paid due to insufficient performance or the institution's financial situation.

131. Institutions should set the retention period as a specific period of time or by defining an event when the retention condition should be met. The retention bonuses should be awarded after the retention period ends or the retention condition is met.

132. A retention bonus should be taken into account within the calculation of the ratio between the variable and the fixed remuneration as variable remuneration. The retention bonus should be taken into account either with an annual amount in each year of the retention period which is calculated on a linear pro rata basis independent of the fact that the full amount is awarded after the end of the retention period, or with the full amount when the retention condition is met. Where the exact length of the retention period is not known upfront, the institution should set and duly document a period considering the situation and measures taken that justify the payment of a retention bonus. The calculation of the ratio should be based on the period set.

8.5 Discretionary pension benefits

133. Discretionary pension benefits are a form of variable remuneration. Where the terms of the company's pension scheme include pension benefits that are not based on performance and which are consistently granted to a category of staff, such pension benefits should not be considered discretionary, but should be considered as part of routine employment packages in line with the Section of these guidelines on definitions.

134. The institution should ensure that where a staff member leaves the institution or retires discretionary pension benefits are not paid without the consideration of the economic situation of the institution or risks that have been taken by the staff member which can affect the institution in the long term.
135. The full amount of discretionary pension benefits must be awarded, in accordance with Article 94(1)(o) of the CRD, in instruments referred to in point (l) of this article and:
- a. Where an identified staff member leaves the institution before retirement, the institution must hold the full amount of discretionary pension benefits in instruments at least for a period of five years without the application of pro rata vesting;
 - b. where identified staff member reaches retirement, a five-year retention period must be applied to the full amount paid in instruments.
136. Institutions should ensure that malus and clawback arrangements are applied in the same way to discretionary pension benefits as to other elements of variable remuneration.

9. Exceptional remuneration components

9.1 Guaranteed variable remuneration

137. Guaranteed variable remuneration can take several forms such as a 'guaranteed bonus', 'welcome bonus', 'sign-on bonus', 'minimum bonus', etc., and can be awarded either in cash or in instruments.
138. When awarding guaranteed variable remuneration in accordance with Article 94(1)(d) and (e) of Directive 2013/36/EU when hiring new staff, institutions are not permitted to guarantee variable remuneration for longer than the first year of employment. Guaranteed variable remuneration is exceptional and can only occur where the institution has a sound and strong capital base, in accordance with Article 94(1)(e) of that Directive and section 6 of these guidelines.
139. Institutions should only award once to the same single staff member guaranteed variable remuneration. This requirement should also apply at a consolidated and sub-consolidated level and includes situations where staff receive a new contract from the same institution or another institution within the scope of consolidation.
140. Institutions and competent authorities may not include the amount of guaranteed variable remuneration in the calculation of the ratio between the fixed and variable components of the total remuneration for the first performance period, where the guaranteed variable remuneration is awarded when hiring new staff before the first performance period starts.

141. As part of the arrangements guaranteeing this part of variable remuneration, institutions may not apply the requirements on malus and clawback arrangements to guaranteed variable remuneration. Institutions may pay out the full amount in non-deferred cash.

9.2 Compensation or buyout from previous employment contract

142. The compensation for the buyout of a previous contract should be awarded under the conditions defined in paragraph 138 of these guidelines.
143. Remuneration should be considered as being granted as compensation or for the buyout of a previous contract where the deferred variable remuneration of the staff member was reduced or revoked by the previous employer because of the termination of the contract. For remuneration packages relating to compensation or buyout from contracts in previous employment, all requirements for variable remuneration apply, including deferral, retention, pay out in instruments and clawback arrangements.

9.3 Severance pay

144. Institutions' remuneration policies should specify the possible use of severance payments, including the maximum amount or criteria for the determination of such amounts that can be awarded as severance pay to identified staff. Regular remuneration payments related to the duration of a notice period should not be considered as severance payments.
145. Institutions should have a framework in which severance pay is determined and approved, including a clear allocation of the responsibilities and decision-making powers and the procedural involvement of the control functions.
146. Severance payments should not provide for a disproportionate reward, but for an appropriate compensation of the staff member in cases of early termination of the contract. In accordance with Article 94(1)(h) of Directive 2013/36/EU severance payments must reflect performance achieved over time and must not reward failure or misconduct.
147. Severance pay should not be awarded where there is an obvious failure which allows for the immediate cancellation of the contract or the dismissal of staff.
148. Severance pay should not be awarded where a staff member resigns voluntarily in order to take up a position in a different legal entity, unless a severance payment is required by national labour law.
149. Severance payments may include redundancy remuneration for loss of office, and may be subject to a non-competition clause in the contract. In particular, in the following situations, additional payments made, because of the early termination of a contract, should be considered as severance payment:
- a. the institution terminates the contracts of staff because of a failure of the institution;

- b. the institution wants to terminate the contract following a material reduction of the institution's activities in which the staff member was active in or where business areas are acquired by other institutions without the option for staff to stay employed in the acquiring institution;
 - c. the institution and a staff member agree on a settlement in case of a potential or actual labour dispute, to avoid a decision on a settlement by the courts.
150. Where institutions award severance pay, the institutions should be able to demonstrate to the competent authority the reasons for the severance payment, the appropriateness of the amount awarded and the criteria used to determine the amount, including that it is linked to the performance achieved over time and that it does not reward failure or misconduct.
151. When determining the amount of severance payments to be made, the institution should take into account the performance achieved over time and assess where relevant the severity of any failure. Identified failures should be distinguished between failures of the institution and failures of the identified staff as follows:
- a. failures of the institution should be considered when the total amount of the severance payments for staff is determined, taking into account the capital base of the institution; such severance payments should not be higher than the reduction of costs achieved by the early termination of contracts;
 - b. failures of identified staff should lead to a downward adjustment of the amount of severance pay which would otherwise be awarded when only the performance over time would be considered in the estimation of the severance pay, including the possibility for a reduction of the amount down to zero.
152. Failures of institutions include the following situations:
- a. where the institution benefits from government intervention or is subject to early intervention or resolution measures in accordance with Directive 2014/59/EU³⁵;
 - b. where the opening of normal insolvency proceedings of the institution, as defined in Article 2(1)(47) of Directive 2014/59/EU, has been filed;
 - c. Where significant losses lead to the situation that the institution no longer has a sound capital basis and, following this, the business area is sold or the business activity is reduced.

³⁵ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU and Regulations (EU) No 1093/2010 and (EU) No 648/2012 of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

153. Failures of identified staff should be assessed on a case-by-case basis, and includes the following situations:
- a. where a member of the management body is no longer considered as meeting appropriate standards of fitness and propriety;
 - b. where the identified staff member participated in or is responsible for conduct which resulted in significant losses for the institution, as defined in the institutions' remuneration policy;
 - c. where an identified staff member acts contrary to internal rules, values or procedures based on intent or gross negligence.
154. Severance payments should be considered as variable remuneration. The following amounts of severance payments should not be taken into account for the purpose of the calculation of that ratio and for the application of deferral and the pay out in instruments:
- a. severance payments mandatory under national labour law, mandatory following a decision of a court or calculated through a predefined generic formula set within the remuneration policy in the cases referred to in paragraph 149;
 - b. settlements made for the loss of office where they are subject to a non-competition clause ('gardening leave') in the contract and paid out in future periods up to the amount of the fixed remuneration which would have been paid for the non-competition period, if staff were still employed;
 - c. severance payments under paragraph 149, not fulfilling the condition in point (a) of this paragraph, where the institution has demonstrated to the competent authority the reasons and the appropriateness of the amount of the severance payment.
155. When calculating the ratio between the variable and the fixed components of the total remuneration the following amounts of severance pay should be taken into account as variable remuneration for the purpose of the calculation of that ratio for the last performance period:
- a. the sum of any higher amounts than the fixed remuneration for the future periods under point (b) of paragraph 154;
 - b. any other severance pay not listed in paragraph 154.

10 Prohibitions

10.1 Personal hedging

156. Where an appropriate remuneration policy is aligned with risks it should be sufficiently effective and able to result in practice in a downward adjustment to the amount of variable remuneration awarded to staff and the application of malus and clawback arrangements.
157. Institutions should ensure to the extent possible that identified staff members are not able to transfer the downside risks of variable remuneration to another party through hedging or certain types of insurance, e.g. by implementing policies for dealing in financial instruments and disclosure requirements.
158. Identified staff should be considered to have hedged the risk of a downward adjustment in remuneration, if the identified staff member enters into a contract with a third party or the institution and either of the following conditions is met:
- a. the contract requires the third party or the institution to make payments directly or indirectly to the identified staff member that are linked to or commensurate with the amounts by which the staff member's variable remuneration has been reduced;
 - b. the identified staff member purchases or holds derivatives that are intended to hedge losses associated with financial instruments received as part of the variable remuneration.
159. Identified staff should be considered to have insured the risk of a downward adjustment where staff takes out an insurance contract with a stipulation to compensate them in the event of a downward adjustment in remuneration. This should in general not prevent taking out insurance to cover personal payments such as healthcare and mortgage instalments.
160. The requirement to not use personal hedging strategies or insurance to undermine the risk alignment effects embedded in their remuneration arrangements should apply to deferred and retained variable remuneration.
161. Institutions should maintain effective arrangements to ensure that the identified staff member complies with the requirements of this section. At least a declaration of self-commitment by the identified staff member that he or she will refrain from concluding personal hedging strategies or insurances for the purpose of undermining the risk alignment effects is necessary. Institutions' human resources or internal control functions should perform at least spot-check inspections of the compliance with this declaration with regard to the internal custodianship accounts. Random checks should at least include the internal custodianship accounts of identified staff. Notification to the institution of any custodial accounts outside the institution should also be made mandatory.

10.2 Circumvention

162. Institutions should ensure that variable remuneration is not paid through vehicles or methods which aim at or effectively lead to non-compliance with remuneration requirements for identified staff or, where such requirements are applied to all staff, with remuneration

requirements for all staff. This includes arrangements between the institution and third parties where the staff member has a financial or personal interest in.

163. 'Circumvention' is the non-compliance with remuneration requirements and takes place if an institution is actually not meeting the objective and purpose of requirements when considered together, while formally the institution complies with the wording of the single remuneration requirements.
164. Circumvention takes place in the following circumstances, among others:
- a. where variable remuneration is considered as fixed remuneration in line with the wording of these guidelines, but not with its objectives;
 - b. where variable remuneration other than guaranteed variable remuneration is awarded or vests although, effectively:
 - i. there has been no positive performance measured in line with Title IV of these guidelines by the staff member, business unit or institution;
 - ii. there is no effective risk alignment (i.e. ex ante or ex post risk adjustment); or
 - iii. the variable remuneration is not sustainable according to the institution's financial situation;
 - c. where staff receive payments from the institution or an entity within the scope of consolidation which do not fall under the definition of remuneration, but are vehicles or methods of pay that contain an incentive for risk assumption or provide disproportionate returns on investments on instruments of the firm that are significantly different from conditions for other investors who would invest in such a vehicle;
 - d. where staff receive payments from the institution or an entity within the scope of consolidation which do not fall under the definition of remuneration, but are vehicles or methods to circumvent the remuneration requirements (e.g. non-redeemable loan);
 - e. where fixed remuneration components are awarded as a fixed number of instruments and not as a fixed amount;
 - f. where staff are awarded remuneration in instruments or are able to buy instruments which are not priced at the market value or the fair value in the case of non-listed instruments and the additional value received is not taken into account in the variable remuneration;
 - g. where adjustments to fixed remuneration components are frequently negotiated and adjustments are in fact made to align the remuneration with the performance of staff;
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- h. where allowances are awarded at an excessive amount that is not justified for the underlying circumstances;
 - i. where remuneration is labelled as payment for early retirement and not taken into account as variable remuneration, where in fact the payment has the character of a severance pay, as it is made in the context of the early termination of the contract, or where in fact the staff member does not retire after such award is made or where the payments are not granted on a monthly basis.
- 165. Institutions should ensure that the method for measuring the performance has appropriate controls to ensure that the award criteria cannot be manipulated. Where such controls are not in place the variable remuneration is not appropriately linked to performance and the remuneration policy is not appropriately implemented and any payment of variable remuneration can lead to a violation of regulatory requirements. Possible manipulations include, for instance, courtesy decisions in the bilateral performance measurement process, e.g. where no objective standards exist for the decision-making process regarding staff members' goal attainment.
- 166. Institutions should not provide compensation for any reduction or restructuring of variable remuneration, e.g. made in the context of recovery and resolution measures or other exceptional government intervention, in later years or by other payments, vehicles or methods.
- 167. Institutions should not create group structures or offshore entities or contracts with persons that act on behalf of the institution in order to manipulate the outcome of the identification process and to circumvent the application of the remuneration requirements to staff to which these requirements should otherwise apply.
- 168. Where short-term contracts (e.g. one year) are used and renewed on a regular basis by institutions, competent authorities should review if such contracts form a vehicle or method of circumvention of the remuneration requirements of Directive 2013/36/EU, e.g. as they would in fact create variable remuneration, and take appropriate measures to ensure that institutions comply with the requirements of Articles 92 and 94 of Directive 2013/36/EU.
- 169. Where remuneration is fixed remuneration according to the guidelines in section 7, but is paid out in instruments, institutions and competent authorities should consider if the instruments used turn the fixed component of remuneration to a variable component of remuneration as a link to the performance of the institution is established. Institutions should not use financial instruments as part of the fixed remuneration to circumvent variable remuneration requirements and the instruments used should not provide incentives for excessive risk taking.

Title III – Remuneration of specific functions

11. Remuneration of members of the management and supervisory function of the management body

170. The remuneration of the members of the management body in its management function (hereafter ‘management function’) should be consistent with their powers, tasks, expertise and responsibilities.
171. In order to properly address conflicts of interest and without prejudice to paragraphs 172 and 173, members of the supervisory function should be compensated only with fixed remuneration. Incentive-based mechanisms based on the performance of the institution should be excluded. The reimbursement of costs to members of the supervisory function and the payment of a fixed amount for working hour or day, even if the time to be reimbursed is not predefined, are considered as fixed remuneration.
172. Where the supervisory function in exceptional cases is awarded variable remuneration, the variable remuneration and risk alignment should be strictly tailored to the assigned oversight, monitoring and control tasks, reflecting the individual’s authorities and responsibilities and the achievement of objectives linked to their functions.
173. Where variable remuneration is awarded in instruments, appropriate measures should be taken to preserve the independence of judgement of those members of the management body, including the setting of retention periods until the end of the mandate.

12 Remuneration of control functions

174. The internal control functions should be independent and have sufficient resources, knowledge and experience to perform their tasks with regard to the institutions’ remuneration policy. The independent control functions should cooperate actively and regularly with each other and other relevant functions and committees with regard to the remuneration policy and risks which may arise from remuneration policies.
175. The remuneration of staff in the independent control functions should allow the institution to employ qualified and experienced personnel in these functions. The remuneration of independent control functions should be predominantly fixed, to reflect the nature of their responsibilities.
176. The methods used for determining the variable remuneration of control functions, i.e. risk management, compliance and internal audit function, should not compromise staff’s objectivity and independence.

Title IV – Remuneration policy, award and pay out of variable remuneration for identified staff

13. Remuneration policy for identified staff

177. Institutions must ensure that the remuneration policy for identified staff complies with all principles set out in Articles 92 and 94 and, where applicable, Article 93 of Directive 2013/36/EU.
178. Institutions should implement, for different categories of identified staff, specific remuneration policies and risk alignment mechanisms as appropriate to ensure that the impact of the category of identified staff on the institution's risk profile is appropriately aligned with their remuneration.
179. Where institutions consider paying out less than 100% of the fixed component of remuneration in cash, this decision should be well reasoned and approved as part of the remuneration policy.
180. Where an institution in the legal form of a stock corporation and in particular a listed institution applies a shareholding requirement to some categories of identified staff, in order to achieve a better alignment of the incentives provided to staff with the risk profile of the institution in the long term, the amount should be clearly documented in the institution's policies. When a shareholding requirement is applied, staff should hold a certain number of shares or nominal amount of shares as long as they are employed in the same position or a position of equal or higher seniority.

13.1 Fully flexible policy on variable remuneration

181. Institutions must have a fully flexible policy on variable remuneration for identified staff, in accordance with Article 94(1)(f) of Directive 2013/36/EU. The amount of variable remuneration awarded should appropriately react to changes of the performance of the staff member, the business unit and the institution. The institution should specify how the variable remuneration reacts to performance changes and the performance levels. This should include performance levels where variable remuneration decreases down to zero. Unethical or non-compliant behaviour should lead to a significant reduction of the staff member's variable remuneration.
182. The fixed remuneration of identified staff should reflect their professional experience and organisational responsibility taking into account the level of education, the degree of seniority, the level of expertise and skills, the constraints (e.g. social, economic, cultural or other relevant factors) and job experience, the relevant business activity and remuneration level of the geographical location.

183. The amount of fixed remuneration must be sufficiently high in order to ensure that the reduction of the variable remuneration down to zero would be possible. Staff should not be dependent on the award of variable remuneration as this might otherwise create incentives for short-term-oriented excessive risk taking, including the mis-selling of products, where without such short-term risk taking the performance of the institution or staff would not allow for the award of variable remuneration.
184. The pay out of fixed remuneration in instruments, if any, should not impair the ability of the institution to apply a fully flexible policy on variable remuneration.

13.2 Ratio between fixed and variable remuneration

185. Institution should set in advance in their remuneration policy the appropriate level of the maximum ratio between the variable and fixed components of total remuneration for identified staff, in accordance with the limits and procedures provided in Article 94(1)(g) of Directive 2013/36/EU and national law, taking into account the business activities, the risks and the impact that different categories of staff have on the risk profile. Institutions may set different ratios for different jurisdictions, different business units, corporate and internal control functions and different categories of identified staff. The ratio set is the ratio between the variable component of remuneration that could be awarded as a maximum for the following performance period and the fixed component of remuneration of the following performance period.
186. The maximum ratio should be calculated as the sum of all variable components of remuneration that could be awarded as a maximum in a given performance year, including the amount to be taken into account for the retention bonus, divided by the sum of all fixed components of remuneration to be awarded in relation to the same performance year. In any case, all remuneration components should be correctly allocated to either variable or fixed remuneration in line with these guidelines. Institutions may omit some of the fixed remuneration components, where they are not material, e.g. where proportionate non-monetary benefits are awarded.
187. In exceptional and duly justified cases, the remuneration policy may provide for a different ratio for individual identified staff members belonging to a certain category of staff compared with other staff members included in the same category of staff.
188. The ratios set between the variable and fixed remuneration components for categories of staff or single staff members should be approved by the management body in its supervisory function or, where required, by the shareholders' meeting. The ratio between the variable and fixed remuneration components should be set independent of any potential future ex post risk adjustments or fluctuation in the price of instruments.
189. The effective ratio should be calculated as the sum of all variable components of remuneration that have been awarded for the last performance year as set out in these

guidelines, including amounts awarded for multi-year accrual periods, divided by the sum of fixed elements of remuneration awarded for the same performance year. For multiyear accrual periods that do not revolve annually, institutions may alternatively take into account in each year of the performance period the maximum amount of variable remuneration that can be awarded at the end of the performance period divided by the number of years of the performance period.

190. The effective ratio between variable remuneration awarded and fixed remuneration should increase with the performance achieved and include levels of awards that would only be achieved for performance which is 'above target' or 'exceptional'. The effective ratio must not exceed the maximum ratio set in accordance with Article 94(1)g) of Directive 2013/36/EU, national law and the institution's remuneration policy.
191. When calculating the maximum or effective ratio, institutions should apply the EBA Guidelines on the applicable notional discount rate for variable remuneration under Article 94(1)g)(iii) of Directive 2013/36/EU, only when Member States have implemented Article 94(1)g)(iii) of Directive 2013/36/EU or when the ratio is calculated for identified staff of an institution located in a third country that is a subsidiary of an EU parent institution.

14. Risk alignment process

192. The risk alignment process includes the performance and risk measurement process (section 14.1); the award process (section 14.2); and the pay out process (section 15). At each stage of the risk alignment process the variable remuneration should be adjusted for all current and future risks taken. An institution should ensure that incentives to take risks are balanced by incentives to manage risk.
193. Institution should align the time horizon of the risk and performance measurement with the business cycle of the institution in a multi-year framework. Institutions should set the accrual period and the pay out periods for remuneration at an appropriate length, differentiating between remuneration which should be paid upfront and remuneration that should be paid after deferral and retention periods. The accrual and pay out periods should take into account the business activity and position of the category of identified staff or in exceptional cases of a single identified staff member.
194. Within the risk alignment process an appropriate combination of quantitative and qualitative criteria in the form of absolute and relative criteria should be used at all stages to ensure that all risks, performance and necessary risk adjustments are reflected. Absolute performance measures should be set by the institution on the basis of its own strategy, including its risk profile and risk appetite. Relative performance measures should be set to compare performance with peers, either 'internal' (i.e. within the organisation) or 'external' (i.e. similar institutions). Quantitative and qualitative criteria and the applied processes should be transparent and as much as possible predefined. Both quantitative and qualitative criteria may partly rely on judgement.

195. Where judgemental approaches are used, institutions should ensure a sufficient level of transparency and objectivity when judgements are made by:
- a. setting a clear written policy outlining parameters and key considerations on which the judgement will be based;
 - b. providing clear and complete documentation of the final decision regarding the risk and performance measurement or applied risk adjustments;
 - c. involving relevant control functions;
 - d. considering the personal incentives of the staff making the judgement and any conflicts of interest;
 - e. implementing appropriate checks and balances, including e.g. making such adjustments within a panel involving staff from business units, corporate and control functions, etc.;
 - f. approving the assessment made by a control function or at an appropriate hierarchical level above the function making the assessment, e.g. at the management body in its management or supervisory function or at the remuneration committee.
196. Institutions should make the risk alignment process transparent to identified staff, including any judgemental elements.
197. Institutions should provide detailed information to the remuneration committee or to the supervisory function if the final outcome after applying judgemental measures is significantly different from the initial outcome using predefined measures.

14.1 Performance and risk measurement process

198. The variable remuneration of identified staff should be aligned to all risks and the performance of the institution, the business unit and the individual. The relative importance of each level of the performance criteria should be determined beforehand in the remuneration policies and adequately balanced to take into account the objectives at each level, the position or responsibilities held by the staff member, the business unit he or she is active in and current and future risks.

14.1.1 Risk assessments

199. The institution should define the objectives of the institution, business units and staff. These objectives should be derived from its business and risk strategy, corporate values, risk appetite and long-term interests and consider also the cost of capital and the liquidity of the institution. The institutions should assess the institution's business units' and identified staff members' achievements during the accrual period against their objectives.

200. Institutions should take into account all current and future risks, whether on or off balance sheet, differentiating amongst risks relevant for institution, business units and individuals. Though institutions usually bear all types of risk at institution-wide level, at the level of individual identified staff members or business units only some types of risk may be relevant.
201. Institutions should also use measures for risk alignment of remuneration where an exact quantification of the risk exposure is difficult, such as reputational and operational risk. In such cases the risk assessment should be based on suitable proxies, including risk indicators, capital requirements or scenario analysis.
202. In order to conservatively take into account all material risks at the institution and business unit levels, institutions should use the same risk measurement methods as used for internal risk measurement purposes, e.g. within the Internal Capital Adequacy Assessment Process (ICAAP) and in the institution's individual liquidity adequacy assessment. Institutions should take into account expected and unexpected losses and stressed conditions. For example, if an institution uses an Advanced Measurement Approach (AMA) to calculate its operational capital requirements, this methodology will already include high-severity losses and scenario analysis. Similarly, institutions' credit risk and market risk or economic capital models will also be incorporating stressed conditions.
203. The institutions should be able to demonstrate to the competent authority how the risk calculations are broken down by business units and different types of risks. The extent and quality of methods and models used within the ICAAP should be reflected by the institution in a proportionate way in the remuneration policy. More sophisticated ICAAP methods should lead to a more sophisticated variable remuneration policy, including risk-sensitive adjustment techniques.

14.1.2 Risk sensitive performance criteria

204. Institutions should set and document both quantitative and qualitative, including financial and non-financial, performance criteria for individuals, business units and the institution. The performance criteria should not incentivise excessive risk taking or mis-selling of products.
205. Institutions should use an appropriate balance between quantitative and qualitative as well as absolute and relative criteria.
206. The criteria used to measure risk and performance should be linked as closely as possible to the decisions made by the identified staff member and the category of staff members that is subject to the performance measurement and should ensure that the award process has an appropriate impact on staff's behaviour.
207. Performance criteria should include achievable objectives and measures on which the identified staff member has some direct influence. For example, variables at individual level for a lending officer could be the performance of loans originated or monitored by that

person, while for the manager of a business unit it could be the performance of the management team of that unit. When assessing performance the effectively realised results and outcomes should be measured.

208. Quantitative criteria should cover a period which is long enough to properly capture the risk taken by identified staff members, business units and the institution and should be risk adjusted and include economic efficiency measures. Examples of performance criteria are risk-adjusted return on capital (RAROC), return on risk-adjusted capital (RORAC), economic profit, internal economic risk capital, net economic contribution, risk-adjusted cost of funding, risk figures derived from the internal capital adequacy assessment process or financial figures which relate to the budget of functions (e.g. for corporate function, including legal and human resources) or to their operational risk profile, or pure accounting adjustments.
209. Operating efficiency indicators (e.g. profits, revenues, productivity, costs and volume metrics) or some market criteria (e.g. share price and total shareholder's return) do not incorporate explicit risk adjustment and are very short-term and therefore not sufficient to capture all risks of the identified staff member's activities. Such performance criteria require additional risk adjustments.
210. Qualitative criteria (such as the achievement of results, compliance with strategy within the risk appetite and compliance track record) should be relevant at an institution, business unit or individual level. Examples of qualitative criteria are the achievement of strategic targets, customer satisfaction, adherence to risk management policy, compliance with internal and external rules, leadership, team work, creativity, motivation and cooperation with other business units, internal control and corporate functions.

14.1.3 Specific criteria for control functions

211. Where control functions' staff receive variable remuneration, it should be appraised and the variable part of remuneration determined separately from the business units they control, including the performance which results from business decisions (e.g. new product approval) where the control function is involved.
212. The criteria used for assessing the performance and risks should predominantly be based on the internal control functions' objectives. Variable remuneration for control functions should predominantly follow from control objectives, e.g. the Tier 1 ratio, the non-performing loan ratio, the non-performing loan recovery rate or audit findings. Their variable remuneration may be based also to some extent on the performance of the institution as a whole. The institution should consider setting a significant lower ratio between the variable and the fixed components of remuneration for control functions compared to the business units they control.

213. If the head of the risk management function (Chief Risk Officer or CRO) is also a member of the management body the principles set out in paragraphs 211 and 212 should also apply to the CRO's remuneration.

14.2 Award process

214. Institutions should set a bonus pool. When determining bonus pools or individual awards, institutions should consider all current risks, expected losses, estimated unexpected losses and stressed conditions associated with the institution's activities.

215. Variable remuneration should be awarded after the end of the accrual period. The accrual period should be at least one year. Where longer periods are used different accrual periods may overlap, for example if a year a new multi-year period starts each year.

216. After the accrual period, the institution should determine the individual identified staff members' variable remuneration by translating the performance criteria and risk adjustments into actual remuneration awards. During this award process the institution should adjust remuneration for potential adverse developments in the future ('ex ante risk adjustment').

14.2.1 Setting of bonus pools

217. Institutions should define one or more bonus pools for the period for which variable remuneration is awarded and calculate the overall institution-wide bonus pool as a sum of these bonus pools.

218. When setting the bonus pools, institutions should take into account the ratio between the variable and the fixed components of total remuneration applicable to categories of identified staff, performance and risk criteria defined for the overall institution, control objectives and the financial situation of the institution, including its capital base and liquidity. The performance indicators used to calculate the bonus pool should include long-term performance indicators and take into account the realised financial results. A prudent use of accounting and valuation methods should be in place which ensures a true and fair evaluation of the financial results, capital base and liquidity.

219. The bonus pools should not be set at a certain level to meet remuneration demands.

220. Institutions should have appropriate processes and controls in place when determining the overall bonus pool.

221. Where institutions use a top-down approach, they should set the amount of the bonus pool at the level of the institution, which is then fully or partially distributed among the business units and control functions after the evaluation of their performance. The individual awards should subsequently be based on the assessment of the individual's performance.

222. Where institutions set the bonus pool in a bottom-up approach the process should start at the level of the individual staff member. Depending on the performance criteria by which the staff are assessed, a bonus pool allocation should be made for the staff member; the bonus pool of the business unit and the institution equals the sums of potential awards allocated to the respective subordinated levels. The institution should ensure that the institution's overall performance is appropriately taken into account.
223. When distributing the bonus pool to the level of the business unit or individual staff member, the allocation should be based as appropriate on predefined formulae and judgemental approaches. Institutions may use scorecards or other appropriate methods to combine different approaches.
224. When choosing the approach, institutions should take into account the following: formulae are more transparent and, therefore, lead to clear incentives, as the staff member knows all factors determining his or her variable remuneration. However, formulae may not capture all objectives, especially the qualitative ones, which can be better captured by judgemental approaches. The judgemental approach gives more flexibility to management and can, therefore, weaken the risk-based incentive effect of the performance-based variable remuneration. It should, therefore, be applied with appropriate controls and in a well-documented and transparent process.
225. Factors such as budget constraints, retention of staff and recruiting considerations, subsidisation among business units etc. should not dominate the distribution of the bonus pool as they can weaken the relationship between performance, risk and remuneration.
226. Institutions should maintain records on how the bonus pool and the staff's remuneration were determined, including how estimates based on different approaches were combined.

14.2.2 The ex ante risk adjustment in the award process

227. Institutions should determine the bonus pool and variable remuneration to be awarded based on an assessment of performance and risks taken. The adjustment for risks before the award is made ('ex ante risk adjustment') should be based on risk indicators and ensure that the variable remuneration awarded is fully aligned with the risks taken. The criteria used for the ex ante risk adjustment should be sufficiently granular to reflect all relevant risks.
228. Depending on the availability of risk adjustment criteria, institutions should determine at what level they apply ex ante risk adjustments to the calculation of the bonus pool. This should be at the level of the business unit or at the level of organisational substructures thereof, e.g. the trading desk or the individual staff member.
229. Risk alignment should be achieved by using risk-adjusted performance criteria, including performance criteria that are adjusted for risk based on separate risk indicators. Quantitative and qualitative criteria should be used.

230. The ex ante risk adjustments made by institutions, where based on quantitative criteria, should largely rely on existing measures within the institutions, used for other risk management purposes. Where adjustments to such measures are made within risk management processes, institutions should also make consistent changes in the remuneration framework. Quantitative criteria include:
- a. economic capital, economic profit, return on risk-weighted assets and return on allocated equity;
 - b. the cost and quantity of the capital required for the risks of its activities, whereas the distribution of capital costs should reflect the risk profile of the institution and the whole of the institution's equity should be fully allocated and charged;
 - c. the cost and quantity of liquidity risk assumed in the course of business;
 - d. indirect liquidity costs (i.e. mismatch liquidity costs, cost of contingent liquidity risk and other liquidity risk exposures that an institution may have).
231. When measuring the profitability of the institution and its business units, the measurement should be based on the net revenue where all direct and indirect costs related to the activity are included. Institutions should not exclude costs of corporate functions, e.g. IT costs, group overheads or discontinued businesses.
232. Institutions should make qualitative ex ante risk adjustments when determining the bonus pool and identified staff's remuneration through, for example, the use of balanced scorecards that explicitly include risk and control considerations such as compliance breaches, risk limit breaches and internal control indicators (e.g. based on internal audit results) or other similar methods.

15. Pay out process for variable remuneration

233. Institutions should pay the variable remuneration partly upfront and partly deferred and in an appropriate balance between equity, equity-linked and other eligible instruments and cash in accordance with Article 94(1) of Directive 2013/36/EU. Before paying out the deferred part of cash or the vesting of deferred instruments, a reassessment of the performance and, if necessary, an ex post risk adjustment should be applied to align variable remuneration to additional risks that have been identified or materialised after the award. This applies also where multi-year accrual periods are used.

15.1 Non-deferred and deferred remuneration

234. Institutions should implement a deferral schedule that appropriately aligns the remuneration of staff with the institution's activities, business cycle and risk profile and the activities of the identified staff members, so that a sufficient part of the variable remuneration can be adjusted for risk outcomes over time through ex post risk adjustments.

235. A deferral schedule is defined by different components:
- a. the proportion of the variable remuneration that is being deferred (section 15.2);
 - b. the length of the deferral period (section 15.2);
 - c. the speed at which the deferred remuneration vests, including the time span from the end of the accrual period until the vesting of the first deferred amount (section 15.3).
236. Institutions should take into account within the deferral schedule the form in which the deferred variable remuneration is awarded and should, where appropriate, differentiate their deferral schedules by varying these components for different categories of identified staff. The combination of these components should lead to an effective deferral schedule, in which clear incentives for long-term-oriented risk taking are provided by transparent risk alignment procedures.

15.2 Deferral period and proportion of deferred remuneration

237. The deferral period starts after the award is made (e.g. at the moment the upfront part of the variable remuneration is paid out). Deferral can be applied to both types of variable remuneration, cash and instruments.
238. When setting the actual deferral period and proportion to be deferred in accordance with the minimum requirements under Article 94(1)(m) of Directive 2013/36/EU institutions should consider:
- a. the responsibilities and authorities by identified staff and the tasks they performed;
 - b. the business cycle and nature of the institution's activities;
 - c. expected fluctuations in the economic activity and performance and risks of the institution and business unit and the impact of identified staff on these fluctuations;
 - d. the approved ratio between the variable and fixed components of the total remuneration and the absolute amount of variable remuneration.
239. Institutions should determine for which categories of identified staff deferral periods longer than the required minimum period of at least three to five years should be applied to ensure that the variable remuneration is aligned with the risk profile in the long term. Where longer multi-year accrual periods are used and where the longer accrual period provides more certainty about the risks that have materialised since the beginning of the accrual period, institutions should consider this fact when setting deferral and retention periods and may, where appropriate, introduce deferral periods that are shorter than the deferral periods which would be appropriate when a one-year accrual period would be used. The minimum requirement of a three-year deferral period applies in any case.

240. Significant institutions should in any case apply, at least for members of the management body in its management function and senior management, deferral periods of at least five years and defer a significant higher portion of the variable remuneration paid in instruments.
241. Institutions should set an appropriate portion of remuneration that should be deferred for a category of identified staff or a single identified staff member at or above the minimum proportion of 40% or respectively 60% for particularly high amounts.
242. Institutions should define what level of variable remuneration constitutes a particularly high amount, taking into account the average remuneration paid within the institution, the EBA remuneration benchmarking report and, where available, national and other remuneration benchmarking results and the thresholds set by competent authorities. When implementing the guidelines, competent authorities should set an absolute or relative threshold, considering the above criteria. Remuneration at or above that threshold should always be considered as being of a particular high amount.
243. Where institutions determine the proportion that is deferred by a cascade of absolute amounts (e.g. part between 0 and 100: 100% upfront; part between 100 and 200: 50% upfront and the rest is deferred; and part above 200: 25% upfront and the rest is deferred), institutions should be able to demonstrate to the competent authority that on an average weighted basis for each identified staff member the institution respects the 40% to 60% minimum deferral threshold and that the deferred portion is appropriate and correctly aligned with the nature of the business, its risks and the activities of the member of identified staff in question.
244. Where the general principles of national contract and labour law prevent the substantial reduction of variable remuneration where subdued or negative financial performance of the institution occurs, institutions should apply a deferral scheme and use instruments for the award of variable remuneration that ensure that ex post risk adjustments are as far as possible applied. This may include any of the following:
- a. the setting of longer deferral periods;
 - b. avoiding the use of pro rata vesting in situations where malus can be applied, but the application of clawback would be subject to legal impediments;
 - c. awarding a higher portion of variable remuneration in instruments that are aligned to the performance of the institution and subject to sufficiently long deferral and retention periods.

15.3 Vesting of deferred remuneration

245. The first deferred portion should not vest sooner than 12 months after the start of the deferral period. The deferral period ends when the awarded variable remuneration has vested or where the amount was reduced to zero as malus was applied.

246. Deferred remuneration should either vest fully at the end of the deferral period or be spread out over several payments in the course of the deferral period in accordance with Article 94(1)(m) of Directive 2013/36/EU.
247. Pro rata vesting means for e.g. a deferral period of three years that at the end of years $n+1$, $n+2$ and $n+3$, one third of the deferred remuneration vests, with n being the moment at which the upfront part of awarded variable remuneration is paid.
248. Vesting should not take place more frequently than on a yearly basis to ensure a proper assessment of risks before the application of ex post adjustments.

15.4 Award of variable remuneration in instruments

249. The instruments used for the award of variable remuneration should contribute to the alignment of variable remuneration with the performance and risks of the institution.
250. Where instruments issued by an institution in the scope of consolidation under points (i) and (ii) of Article 94(1)(l) of the CRD are available, the variable remuneration should consist of a balance of different types of instruments. Institutions should, where such instruments are available, prioritise the use of instruments subject to bail-in, in line with the instruments set out in the RTS on instruments, and shares, rather than the use of value-based items like share-linked instruments.
251. The availability of instruments under Article 94(l)(i) of the CRD depends on the legal form of an institution:
- a. Shares, for institutions in the legal form of a stock corporation; and also share-linked instruments for non-listed stock corporations, are available; listed stock corporations must not use share linked instruments in line with the above mentioned Article.
 - b. For institutions which are non-stock corporations, ownership interests which are equivalent to shares, depending on the legal form of the institution, or non-cash instruments that are equivalent to share-linked instruments are available for the award of variable remuneration in instruments.
252. Share-linked or other equivalent non-cash instruments (e.g. stock appreciation rights, types of synthetic shares) are those instruments or contractual obligations, including instruments based on cash, whose value is based on the market price or, where a market price is not available, the fair value of the stock or equivalent ownership right and track the market price or fair value. All such instruments should have the same effect in terms of loss absorbency as shares or equivalent ownership interests.
253. The availability of 'other instruments' under Article 94(l)(ii) of Directive 2013/36/EU depends on whether an institution or an institution in the scope of consolidation has already issued such instruments and sufficient amounts of such instruments are available. Where

institutions are primarily wholesale funded, or rely to a large extent on additional Tier 1, Tier 2 or bail-in-able debt to meet their capital requirements, such instruments should be available for the purposes of variable remuneration, provided that these ‘other instruments’ comply with Commission Delegated Regulation (EU) No 527/2014.

254. Where there are no specific factors or national laws that prevent the use of ‘other instruments’ under Article 94(I)(ii) of Directive 2013/36/EU, or factors that prevent institutions from issuing instruments in compliance with Commission Delegated Regulation (EU) No 527/2014, then such instruments should be used for the award of variable remuneration, where they are available.
255. Where both equity or equity-linked and other eligible instruments defined under Commission Delegated Regulation (EU) No 527/2014 are available, it is possible to pay variable remuneration as a balance of different instruments. In that case institutions must ensure that the portion of variable remuneration that is paid in instruments comprises an appropriate balance of instruments under point (i) and point (ii) of Article 94(1)(I) of Directive 2013/36/EU. Institutions should be able to demonstrate that they have taken into account the interests of shareholders, creditors, bondholders and other stakeholders when setting the balance between different instruments.
256. Instruments should be priced at the market price or their fair value on the date of the award of these instruments. This price is the basis for the determination of the initial number of instruments and for later ex post adjustments to the number of instruments or their value. Such valuations should also be done before the vesting to ensure that ex post risk adjustments are applied correctly and before the retention period ends. Small and non-complex institutions that are not listed may establish the value of the ownership interests and ownership interest-linked instruments based on the last annual financial results.
257. Institutions may award a fixed number or nominal amount of deferred instruments using different techniques, including trustee depot facilities and contracts, provided that in every case the number or nominal amount of the instruments awarded is provided to identified staff at vesting, unless the number or nominal amount is reduced by the application of malus.
258. Institutions should not pay any interest or dividend on instruments which have been awarded as variable remuneration under deferral arrangements to identified staff; this means also that interest and dividends payable during the deferral period should not be paid to staff after the deferral period ends. Such payments should be treated as received and owned by the institution.
259. Competent authorities should not limit the possibility to use instruments under Article 94(1)(I) to such an extent that institutions cannot establish an appropriate balance between instruments under point (i) and point (ii) of Article 94(1)(I) of Directive 2013/36/EU.

15.5 Minimum portion of instruments and their distribution over time

260. The requirement to pay, in accordance with Article 94(1)(I) of Directive 2013/36/EU, at a minimum 50% of any variable remuneration in instruments, should be applied equally to the non-deferred and the deferred part and both parts should consist of a balance of instruments in line with the guidelines in section 17.4.
261. Institutions should prioritise the use of instruments rather than award variable remuneration in cash. Institutions should set the percentage which must be awarded in a balance of instruments in accordance with Article 94(1)(I) of Directive 2013/36/EU at or above 50% separately for the deferred and non-deferred parts of variable remuneration. Where institutions award a higher portion than 50% of the variable remuneration in instruments, they should prioritise a higher share of instruments within the deferred portion of the variable remuneration component.
262. The ratio of variable remuneration that is paid out in instruments should be calculated as the quotient between the amount of variable remuneration awarded in instruments and the sum of the variable remuneration awarded in cash and in other benefits. All amounts should be valued at the point of award unless stated otherwise in these guidelines.

15.6 Retention policy

263. The retention period applied to variable remuneration paid in instruments should be set at an appropriate length in order to align incentives with the longer-term interests of the institution.
264. The institution should be able to explain how the retention policy relates to other risk alignment measures and how they differentiate between instruments paid upfront and deferred instruments.
265. When setting the retention period, institutions should consider the overall length of the deferral and the planned retention period and the impact of the category of identified staff on the institutions' risk profile and the length of the business cycle relevant for the category of staff.
266. A longer retention period as applied in general to all identified staff should be considered in cases where the risks underlying the performance can materialise beyond the end of the deferral and standard retention period, at least for the staff with the highest impact on the institutions' risk profile.
267. For awarded instruments a retention period of at least one year should be set. Longer periods should be set in particular where ex post risk adjustments mainly rely on changes of the value of instruments which have been awarded. Where the deferral period is at least five

years, a retention period for the deferred part of at least six months may be imposed for identified staff other than members of the management body and senior management for whom a minimum retention period of one year should be applied.

15.7 Risk adjustment

15.7.1 Malus and clawback

268. Malus or clawback arrangements are explicit ex post risk adjustment mechanisms where the institution itself adjusts remuneration of the identified staff member based on such mechanisms (e.g. by lowering awarded cash remuneration or by reducing the number or value of instruments awarded).
269. Without prejudice to the general principles of national contract or labour law, institutions must be able to apply malus or clawback arrangements up to 100% of the total variable remuneration in accordance with Article 94(1)(n) of Directive 2013/36/EU regardless of the method used for the payment, including deferral or retention arrangements.
270. Ex post risk adjustments should always be performance or risk related. They should respond to the actual risk outcomes or changes to persisting risks of the institutions, business line or staff's activities. They should not be based on the amount of dividends paid or the evolution of the share price.
271. Institutions should analyse whether their initial ex ante risk adjustments were sufficient, e.g. whether risks have been omitted or underestimated or new risks were identified or unexpected losses occurred. The extent to which an ex post risk adjustment is needed depends on the accuracy of the ex ante risk adjustment and should be established by the institution based on back-testing.
272. When setting criteria for the application of malus and clawback in accordance with Article 94(1)(n) of Directive 2013/36/EU, institutions should also set a period during which malus or clawback will be applied. This period should at least cover deferral and retention periods. Institutions may differentiate between criteria for the application of malus and clawback. Clawback should in particular be applied when the identified staff member contributed significantly to the subdued or negative financial performance and in cases of fraud or other conduct with intent or severe negligence which led to significant losses.
273. Institutions should use at least the initially used performance and risk criteria to ensure a link between the initial performance measurement and its back-testing. Institutions should, in addition to the criteria set out in Article 94(1)(n)(i) and (ii) of Directive 2013/36/EU, use specific criteria including:
- a. evidence of misconduct or serious error by the staff member (e.g. breach of code of conduct and other internal rules, especially concerning risks);

- b. whether the institution and/or the business unit subsequently suffers a significant downturn in its financial performance (e.g. specific business indicators);
 - c. whether the institution and/or the business unit in which the identified staff member works suffers a significant failure of risk management;
 - d. significant increases in the institution's or business unit's economic or regulatory capital base;
 - e. any regulatory sanctions where the conduct of the identified staff member contributed to the sanction.
274. Where malus can only be applied at the moment of vesting of the deferred payment, institutions may choose, where possible, to apply clawback after paying out or vesting of the variable remuneration.
275. Malus and clawback arrangements should lead to a reduction of the variable remuneration where appropriate. Under no circumstances should an explicit ex post risk adjustment lead to an increase of the initially awarded variable remuneration or, where malus or clawback was already applied in the past, to an increase of the reduced variable remuneration.

15.7.2 Implicit adjustments

276. Institutions should use instruments for variable remuneration where the price reacts to changes of the institution's performance or risk. The evolution of the stock price or the price of other instruments should not be considered as a substitute for explicit ex post risk adjustments.
277. Where instruments were awarded and staff, after deferral and retention periods, sell these instruments or the instrument is paid out in cash at its final maturity, staff should be able to receive the amount due. The amount can be higher than the initially awarded amount where the market price or the instrument's fair value has increased.

Title V – Institutions that benefit from government intervention

16. State support and remuneration

278. In line with section 6 of these present guidelines, where institutions benefit from exceptional government intervention, competent authorities and institutions should establish regular contacts with regard to the setting of the pool of possible variable remuneration and the award of variable remuneration to ensure compliance with Articles 93 and 141 of Directive 2013/36/EU. Any payment of variable remuneration should not endanger compliance with the established recovery and exit plan from exceptional government intervention.

279. The Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis (2013/C 216/01) should be applied within the remuneration policies. Any condition with regard to remuneration imposed on institutions when state aid has been approved by the Commission and granted and within any related acts should be reflected appropriately in the institutions' remuneration policy.
280. The variable remuneration of an institution's staff, including members of the management body, should not prevent an orderly and timely payback of the exceptional government intervention or the achievement of objectives set in the restructuring plan.
281. The institution should ensure that a bonus pool or the vesting and paying out of variable remuneration does not pose a detriment to the timely building up of its capital base and a decrease in its dependence on exceptional government intervention.
282. Without prejudice to any existing conditions imposed by the Member State or the Union with regard to remuneration, the relevant competent authority should set, for institutions that have been given exceptional government support, the percentage of the net revenue under point (a) of Article 93 of Directive 2013/36/EU that can be used for variable remuneration and assess if the variable remuneration is aligned with sound risk management and long-term growth and take measure to restructure the remuneration where necessary.
283. Strict limits to the variable remuneration of members of the management body should be applied in the context of restructuring remuneration within the meaning of point (b) of Article 93 of Directive 2013/36/EU when:
- a. the relevant competent authority requires the institution not to pay out variable remuneration for members of the management body from the date on which the exceptional government intervention was received or to apply malus and clawback to variable remuneration taking into account potential failures of the management body;
 - b. the relevant competent authority may require the institution not to award any variable remuneration to members of the management body as long as the exceptional government support is not yet paid back, or until a restructuring plan for the institution is implemented or accomplished. Such measures should be limited in time. The period during which the limits apply or the criteria for the application of such limits should be clearly recorded and communicated to the institution when government support is given.
284. In order to restructure remuneration in accordance with Article 93(b) of Directive 2013/36/EU in a manner aligned with sound risk management and long-term growth, competent authorities should require:

- a. where appropriate, limiting variable remuneration for members of the management body to amounts up to zero so that the variable remuneration has no considerable impact on the recovery of the institution;
 - b. to align performance measures used for determining variable remuneration with the recovery progress of the institution and the contribution of identified staff, including the management body in this regard;
 - c. to apply clawback and malus for earlier award periods as appropriate, in particular to staff who significantly contributed to the situation under which that institution required state aid;
 - d. to increase the percentage of variable remuneration which is deferred up to 100%;
 - e. to align the accrual and deferral periods with the recovery or restructuring phase and plans.
285. Institutions and competent authorities should take into account that there may be the need to provide for the possible award of variable remuneration to newly appointed members of the management body who are hired during the recovery or restructuring phase of the institution to ensure that suitable members of the management body can be appointed during that phase.

Title VI – Disclosures by institutions and internal transparency

17. Requirements on disclosure

286. When disclosing information required by Article 450 of Regulation (EU) 575/2013, institutions should comply with the general principles included in Title I of Part Eight of that Regulation and the related 'EBA guidelines on materiality, proprietary and confidentiality and on disclosure frequency under Articles 432(1), 432(2) and 433 of Regulation (EU) 575/2013'³⁶.
287. Article 432(1) and (2) of Regulation (EU) 575/2013 do not provide for the possibility of omitting an item of information from Article 450 of Regulation (EU) 575/2013 for materiality, proprietary or confidentiality reasons. The disclosure requirements in Article 450 must be complied with without prejudice to the requirements of Directive 95/46/EC³⁷.
288. Without prejudice to Article 96 of Directive 2013/36/EU, institutions should make available the information on how they comply with the requirements of Articles 92 to 95 of Directive 2013/36/EU together with the disclosures required by Article 450 of Regulation (EU) 575/2013, and should ensure that the disclosures are easily accessible.

³⁶ <http://www.eba.europa.eu/-/eba-publishes-final-guidelines-on-disclosure-requirements-for-the-eu-banking-sector>

³⁷ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

289. Institutions should ensure that the disclosures on remuneration provide appropriate cross-references to other information and disclosures which may be of relevance, to provide a complete view on all disclosures on remuneration policy and practices.
290. In accordance with Article 6(3) and Article 13(1) of Regulation (EU) 575/2013, disclosures are to be made on an individual basis by institutions unless they are a parent undertaking, or a subsidiary or included in the consolidation pursuant to Article 18 of Regulation (EU) 575/2013, on a consolidated basis by the consolidating institution and on an individual or sub-consolidated basis by significant subsidiaries of EU parent institutions. Subject to the condition in Article 13(3) being met, EU parent entities consolidated by a parent undertaking established in a third country may not have to provide disclosures required by Article 450 of Regulation (EU) 575/2013.
291. Disclosures should take into account the size of the institution and the nature, scope and complexity of its activities in line with section 4 of these guidelines. Small and non-complex institutions should comply with the disclosure requirements by providing information commensurate with their internal organisation and applied remuneration policy.
292. Information to be disclosed in accordance with Article 450 of Regulation (EU) 575/2013 and specified in these guidelines should be provided on an annual basis in a qualitative and quantitative section, illustrated by tables and charts where relevant to ease the understanding of users.

18. Policy and practices

Article 450(1): remuneration policy

293. Institutions should disclose and make available to all members of the management body detailed information regarding their remuneration policies and practices for identified staff. Institutions should adequately disclose externally and make transparent internally the approach, principles and objectives of compensation incentives. Institutions should also provide sufficient general information about the basic characteristics of their institution-wide remuneration policies and practices.
294. Where relevant, institutions should disclose significant differences of the remuneration policy for different categories of identified staff and a description of the regional scope of the institution's remuneration policies and relevant differences between regions or between different institutions within the scope of consolidation.
295. Where applicable, institutions should disclose an explanation of the link between the remuneration policy at group level and the remuneration policies applied at the parent institution level and at the (EU and foreign) subsidiary and branch level, stating, where applicable, the differences between the remuneration policies applicable at group, parent and subsidiary level. These disclosures should include for instance differences related to the ratio between the variable and fixed components of remuneration, the notional discount rate,

remuneration plans and vehicles available or the remuneration instruments that can be awarded, and the reasons for those differences, as well as their impact on the determination of bonus pools for different business areas.

296. Institutions should outline any material changes made in the remuneration policy, including when they came into effect, the impact on the composition of variable and fixed remuneration components, and the governance process used to determine the remuneration policy.

Article 450 (1): identification of staff

297. Institutions should disclose how they have applied the requirements on remuneration policies and variable remuneration, including the requirements set out in Commission Delegated Regulation (EU) No 604/2014.

298. Institutions should disclose the number of identified staff broken down by business area, senior management and other identified staff and an explanation of significant changes of these numbers.

Article 450(1) point (a): information about the decision-making process used for determining the remuneration policy

299. Institutions should clearly set out the governance procedure relating to the development of the remuneration policy considering the specifications in Title I of these guidelines and information about the bodies that played a significant role in the development of the remuneration policy, including their composition and mandate, such as the remuneration committee, risk committee and independent control functions.

300. Information should also be provided on the role of external consultants and all other relevant stakeholders, including shareholders, involved in the determination or the periodic review of the remuneration policy or whose advice has been sought.

Article 450(1) point (b): information on link between pay and performance

301. The information that institutions must disclose on how pay and performance are linked should include:

- a. main performance objectives;
- b. the scope of staff for whom variable remuneration is foreseen in the remuneration policy;
- c. how variable remuneration reacts to changes in the institution's performance.

Article 450(1) point (c): most important design characteristics of the remuneration system

302. The information that institutions must disclose on the design and structure of their remuneration system should include:
- a. the key features and objectives of the remuneration policy and processes and how it promotes sound and effective risk management;
 - b. a description of the main quantitative and qualitative performance and risk metrics used for the assessment of performance of the institution, the business unit and individuals, how different metrics were combined and how current and future risks are taken into account;
 - c. information on the criteria used to apply ex ante and ex post risk adjustment;
 - d. a description of the different forms in which variable and fixed remuneration are paid, the respective forms (i.e. cash, equity, other capital instruments, short-term and long-term incentive plans) and amounts, and the rationale for using these different forms and for allocating them to different categories of identified staff, in particular for members of the management body in its management function and for staff in control functions;
 - e. how the institution ensures that staff in control functions are remunerated independently of the business units they control;
 - f. the categorisation of different remuneration components as variable or fixed remuneration, as well as the rationale for this classification in the case of fixed remuneration elements;
 - g. the mechanisms used to adjust remuneration to take into account the long-term performance, including:
 - i. the parameters used to decide on the length of the deferral period and the ratio of deferred and non-deferred remuneration, and the vesting schedule and retention periods for different categories of identified staff, including the applied ratios and periods of deferral and retention, separate for different instruments awarded;
 - ii. the framework for applying ex ante and ex post performance adjustments, including the application of malus and clawback;
 - iii. shareholding requirements that may be imposed on identified staff;
 - h. how proportionality is taken into account within the remuneration system and a reasoning outlining how remuneration policies are consistent with and promote sound and effective risk management;
 - i. policies and criteria applied for the award of guaranteed variable remuneration and severance payments.
-

Article 450(1) point (d): the ratios between fixed and variable remuneration set in accordance with Article 94(1)(g) of Directive 2013/36/EU

303. Institutions should provide a tabular disclosure of the different ratios between the variable and fixed remuneration components of total remuneration implemented at the consolidated level, separate for the management body and where relevant by business area, corporate and internal control functions, with at least a breakdown between senior management and other identified staff, entities and geographical locations taking into account the business areas defined within the EBA Guidelines on the Remuneration Benchmarking Exercise.

304. Where the decision has been made to apply a higher ratio than 100% between the variable and fixed components of total remuneration of up to 200%, institutions should disclose:

- a. the percentage of voting rights represented and of shareholders' voting rights in favour of increasing the ratio or, depending on the applicable company law, the number and percentage of persons who are in favour of increasing the ratio instead of the voting rights where each person has one vote;
- b. the approved ratios, including, where the ratios differ between business areas, the respective ratio for each business area;
- c. the date of the decision.

305. In addition to information on ratios, institutions should disclose, if applicable, the following information on the application of the discount rate on a country-by-country basis:

- a. the extent to which the discount rate is used (the maximum being its application to 25% of the total variable remuneration or a lower percentage prescribed by the Member State); and
- b. the number of identified staff for whom the discount rate has been applied to their variable remuneration.

Article 450(1) point (e): information on the performance criteria on which the entitlement to shares, options or variable components of remuneration is based

306. Institutions must disclose information on the specific performance indicators used to determine the variable components of remuneration and criteria used to determine the balance between different types of instruments awarded, including shares, equivalent ownership interests, share-linked instruments, equivalent non cash-instruments, options and other instruments under Commission Delegated Regulation (EU) No 527/2014.

Article 450(1) point (f): the main parameters and rationale for any variable component scheme and any other non-cash benefits

307. The information that institutions must disclose on the main parameters and rationale for any variable component scheme and any other non-cash benefits should include long-term incentive plans and the details of any remuneration element which is considered to be a non-routine remuneration practice, including for instance the use of role- or position-based allowances and discretionary fringe benefits, as well as the conditions under which such allowances or benefits can be withdrawn or changed in value.

18.1 Aggregate quantitative information

308. When providing quantitative information on remuneration as required by points (g) to (h) of Article 450(1) of Regulation (EU) 575/2013 and paragraph 2 of that Article by business area, institutions should report the information separately for each of their major business areas, including investment banking, retail banking and asset management, and aggregated for (i) all other business areas, (ii) the management body in its management and supervisory function, (iii) internal control functions and (iv) corporate functions.

309. The above information should be broken down by senior management and other identified staff.

310. Institutions should also disclose the aggregate figures on the total number of staff and their total remuneration broken down into the fixed and variable remuneration components.

311. Significant institutions should disclose the quantitative information required in Article 450(1)(h) of Regulation (EU) 575/2013 at the level of members of the management body as separate aggregated figures for the members of the management body in its management function and for the members of the management body in its supervisory function.

312. When publishing quantitative information as required by points (g), (h) and (i) of Article 450(1) of Regulation (EU) 575/2013, institutions should take into account the information to be collected by competent authorities under the EBA Guidelines on the Remuneration Benchmarking Exercise³⁸. Under point (h)(iii) of Article 450(1) of Regulation (EU) 575/2013, institutions should disclose the unvested amount of outstanding deferred remuneration and separately the amount that has vested in the previous financial year. When disclosing the amount of severance payments awarded under point (h)(vi) of Article 450(1) of Regulation (EU) 575/2013, institutions should disclose separately the amount awarded and already paid during the financial year and the amount deferred and how severance payments were taken into account in the calculation of the ratio between the variable and the fixed remuneration.

³⁸ Published on the EBA website under: <http://www.eba.europa.eu/documents/10180/757286/EBA-GL-2014-08+%28GLs+on+remuneration+benchmarking+%29.pdf/9d87c18b-ed79-4ceb-a3f6-64928cc26065>

18.2 Internal transparency

313. The remuneration policy of an institution should be internally disclosed to all staff and accessible for all staff at all times. In addition institutions should ensure that information regarding the remuneration policy which is disclosed is available internally. Confidential quantitative aspects of the remuneration of single staff members are not subject to internal disclosure.
314. Staff should be informed about the characteristics of their variable remuneration, as well as the process and criteria that will be used to assess the impact of their activities on the risk profile of the institution and their variable remuneration. In particular the appraisal process with regard to the individual's performance should be properly documented and should be transparent to the staff concerned.

Title VII - Requirements for competent authorities

19. Remuneration policies

315. Competent authorities should ensure, taking into account these guidelines, the EBA guidelines on the applicable notional discount rate and the EBA guidelines on the supervisory review process, that institutions comply with the requirements on remuneration policies set out in Directive 2013/36/EU, Regulation (EU) 575/2013, Commission Delegated Regulation (EU) No 604/2014 and Commission Delegated Regulation (EU) No 527/2014, including that they have appropriate remuneration policies for all staff and for identified staff. Competent authorities should apply a risk-based approach when supervising the remuneration policies of institutions.
316. Without prejudice to other supervisory and disciplinary measures and sanctions, competent authorities should require institutions to take adequate actions in order to remedy any identified deficiencies. Where institutions do not comply with such request, appropriate supervisory measures should be taken.
317. Competent authorities should ensure that institutions align their remuneration policy and practices to the business strategy and the long-term interest of the institution taking into account its business and risk strategy, corporate culture and values, and risk profile.
318. Competent authorities should ensure that institutions' remuneration policies, practices and processes are appropriate and review, in addition to the reviews required under the EBA guidelines on the supervisory review process, in particular:
- a. the governance arrangements and processes for designing and monitoring the remuneration policy;

- b. that appropriate exchange of information among all internal bodies and functions, including within the group, involved in designing, executing and monitoring the remuneration policy, is carried out;
 - c. the process developed for conducting the annual review of the remuneration policies and practices and its main results;
 - d. that a remuneration committee with sufficient powers and resources to perform its functions is established where required;
 - e. the impact of the remuneration policy and practices on the conduct of business, including advising and selling of products to different customer groups;
 - f. that remuneration policies are taken into account within the internal capital adequacy assessment process and the liquidity planning and vice versa.
319. As part of the above reviews competent authorities should in particular, but not only :
- a. use the minutes of the deliberation of the supervisory function on remuneration policies, in particular with respect to the results of the oversight over the institution's remuneration systems design and processes and the tasks conducted by the remuneration committee;
 - b. use the minutes of the remuneration committee and other committees, including the risk committee, involved in the oversight of the remuneration system's design and operation;
 - c. hold meetings with members of the institution's management body and other relevant functions.
320. Competent authorities should ensure that institutions supervised on a consolidated and sub-consolidated basis have implemented a remuneration policy at the group level, including subsidiaries which are not themselves subject to Directive 2013/36/EU, that is consistent within the group, including for the purposes of the determination of identified staff.
321. Competent authorities should ensure that the institutions' identification process includes the qualitative and quantitative criteria set out in Commission Delegated Regulation (EU) No 604/2014 and that they are applied appropriately on an individual, sub-consolidated and consolidated level, including subsidiaries which are not themselves subject to Directive 2013/36/EU and that notifications and requests for prior approval are processed in accordance with these guidelines. Competent authorities should be satisfied with the overall outcome of the identification process and should assess if all staff members whose activities have or may have a material impact on the institution's risk-profile have been identified and that any exclusions of staff from the category of identified staff, where staff were only identified by the quantitative criteria under Article 4 of Commission Delegated Regulation (EU)

No 604/2014, are well-reasoned and that the respective processes set out in these guidelines and requirements of Commission Delegated Regulation (EU) No 604/2014, including notifications and necessary prior approvals, have been complied with.

20. Specific forms of remuneration

322. With regard to specific forms of remuneration under section 8 of these guidelines, competent authorities should, without prejudice to Section 20:

- a. review any guaranteed variable remuneration arrangements (amount, duration, conditions, etc.);
- b. check whether an institution has a framework in place to determine and approve severance payments;
- c. assess whether the objectives for control function staff are function specific;
- d. review the remuneration of members of the management and supervisory function of the management body.

21. Variable remuneration

323. Competent authorities should review:

- a. the performance and risk assessment and alignment process and the appropriateness of its time horizon;
- b. the appropriate combination of quantitative and qualitative criteria used to measure performance and risk and determine whether:
 - i. the criteria are aligned with the institution's objectives;
 - ii. they are realistic compared with the individual's, business unit's and institution's objectives;
 - iii. the individual criteria are appropriate to measure the individual's performance;
- c. whether internal control functions, in particular the risk management function, are appropriately involved in the determination of ex ante risk adjustments;
- d. the appropriateness of the top-down and bottom-up approaches used to calculate the bonus pool;
- e. whether the institution is complying with the limitation of the ratio between the variable and fixed components of the total remuneration and the capping of its overall bonus pool to the limits set by Article 141 of Directive 2013/36/EU;

- f. the time horizon of the applicable deferral and retention schedules and how it relates to the business cycle of an institution;
- g. the combination of shares or equivalent ownership interests or share-linked and equivalent non-cash instruments that the institution uses to meet the 50% threshold referred to in Article 94(1)(l) of Directive 2013/36/EU to ensure that it adequately reflects the long-term interests of the institution;
- h. whether explicit ex post risk adjustments are based on the performance assessment of the staff member, business unit and institution and the criteria used to measure the performance of the staff member;
- i. whether malus and clawback have been appropriately applied to both the cash and equity part of the deferred and non-deferred variable remuneration and the criteria on which malus and clawback rely;
- j. that variable remuneration is not paid through vehicles or methods which aim at or effectively lead to non-compliance with remuneration requirements for identified staff or, where applicable, for all staff.

22. Disclosure

324. Competent authorities should review the public disclosures on remuneration made by institutions in accordance with Article 96 of Directive 2013/36/EU, Article 450 of Regulation (EU) 575/2013 and these guidelines, and should establish for which institutions a regular review of disclosures should be performed.

325. In addition to the benchmarking of remuneration practices required under Article 75(1) of Directive 2013/36/EU and the exercise on data collection regarding high earners under Article 75(3) of that Directive, competent authorities should require periodic (or ad hoc) supervisory reporting on remuneration disclosures as appropriate in order to monitor the development of remuneration practices within institutions and in particular within significant institutions.

23. Colleges of supervisors

326. Colleges of supervisors established pursuant to Article 116 of Directive 2013/36/EU should discuss remuneration issues in line with the supervisory review process, taking into account the additional areas of supervisory review required under these guidelines.

Annex 1 - MAPPING OF THE REMUNERATION REQUIREMENTS INCLUDED IN DIRECTIVE 2013/36/EU AND REGULATION (EU) 575/2013 AND THEIR SCOPE OF APPLICATION

Remuneration requirements: Articles 74 and 92 to 96 of DIRECTIVE 2013/36/EU and Article 450 of REGULATION (EU) 575/2013	All staff (institution-wide including identified staff)	Mandatory for identified staff; institutions should consider applying the requirements to all staff	Comments
Art. 74	x		
Art. 92	x		
Art. 93	x		
Art. 94(1)(a)		x	
Art. 94(1)(b)		x	
Art. 94(1)(c)	x		
Art. 94(1)(d)	x		
Art. 94(1)(e)	x		
Art. 94(1)(f)		x	
Art. 94(1)(g)		x	
Art. 94(1)(g)		x	
Art. 94(1)(g)		x	Application of the discount rate is not mandatory
Art. 94(1)(h)		x	
Art. 94(1)(i)		x	
Art. 94(1)(j)	x		
Art. 94(1)(k)	x		
Art. 94(1)(l)		x	
Art. 94(1)(m)		x	
Art. 94(1)(n)		x	
Art. 94(1)(o)		x	
Art. 94(1)(p)		x	
Art. 94(1)(q)		x	The circumvention provisions should be applied to all staff regarding elements which are applied to all staff
Art. 95	Obligatory for significant institutions, other institutions should consider establishing such a committee		
Art. 96	x		
Art. 450 CRR	Identified staff and all staff as set out in these guidelines		

Annex 2 – Information with regard to the approval of higher ratios

Institution name	<i>text</i>
Legal Entity Identifier	<i>text</i>
Number of staff (end of the last financial year)	<i>number</i>
Number of identified staff (outcome of the last identification process)	<i>number</i>
Balance sheet total (end of the last financial year)	<i>number</i>
Decision taken	<i>dd/mm/yyyy</i>
Decided ratio	<i>number (percentage)</i>
Where different ratios within the institution were approved, please provide the business areas and approved percentages as free text and the maximum approved ratio above	<i>text</i>

Accompanying documents

5. Cost-Benefit Analysis / Impact Assessment

5.1 Problem identification and baseline scenario

1. Article 16(2) of the EBA Regulation provides that the EBA should carry out an analysis of ‘the potential related costs and benefits’ of any guidelines it develops. This analysis should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options.
2. The CRD contains requirements on remuneration and institutions’ internal governance, including sound remuneration policies. For both areas the CRD explicitly mandates the EBA (Articles 74 and 75 of the CRD) to issue GL. The CRD considered besides other points the following which should be taken into account by EBA when issuing GL on remuneration policies:
 3. Remuneration policies which encourage excessive risk-taking behaviour can undermine sound and effective risk management of credit institutions and investment firms³⁹. The run-up phase to the financial crisis which broke out in 2008 clearly demonstrates the significance of that risk. Therefore, under the current market structure and regulatory framework, the promotion of sound remuneration policies is an important element of regulatory action in this area.
 4. Remuneration policies and the application of proportionality differ significantly between Member States and institutions. The guidelines on remuneration policies and practices published by the Committee of European Banking Supervisors on 10 December 2010 (CEBS guidelines) lead to some harmonisation regarding remuneration policies; however, the achieved level of harmonisation is not yet sufficient. In particular the identification of staff whose professional activities have a material impact on the institution’s risk profile, the ratio of variable to fixed remuneration and the application of deferral of pay out of variable remuneration still show significant differences.⁴⁰

³⁹ EBA: Report on Principles on Remuneration Policies and the Use of Allowances (2014).

⁴⁰ EBA: Report on Benchmarking of Remuneration Practices at Union Level (2014).



5. The baseline scenario for the IA includes CRD III, existing CEBS guidelines and the changes introduced by CRD IV and CRR. Those changes include in particular:
- a. definitions for the variable and fixed components of remuneration (Article 92(2)(g) of the CRD);
 - b. stricter requirements on guaranteed variable remuneration and remuneration packages relating to compensation or buy out from contracts (Article 94(1)(d) and (i) of the CRD);
 - c. the introduction of a limit on the ratio between the variable components of remuneration to the fixed components of remuneration at 100% (200% with shareholders' approval), including provisions on the approval process (Article 94(1)(g) of the CRD);
 - d. the pay out of variable remuneration in a balance of equity and where possible other instruments (Article 94(1)(l) of the CRD);
 - e. the introduction of stricter rules regarding the application of malus or clawback to up to 100% of the total variable remuneration (last subparagraph of Article 94(1)(n) of the CRD);
 - f. mandates to issue RTS with criteria for the identification of staff and the eligible instruments for the pay out or remuneration in other instruments, GL on the notional discount rate for variable remuneration for which a separate IA has been provided and GL on the notification of the approved higher ratio between variable and fixed remuneration (Article 94(1)(g)(ii) of the CRD);
 - g. amended requirements regarding institutions which benefit from government support and the setting up of remuneration committees (Article 93 and 95 of the CRD);
 - h. additional requirements for the disclosure of remuneration (Article 450 of the CRR).
6. The issuance of these GL, mandated under Articles 74 and 75 of the CRD, is necessary to provide further detail on these requirements.

5.2 Policy objectives⁴¹

7. As mentioned above, the EBA is updating previously issued CEBS guidelines. The underlying reasons are mainly additions made in the CRD and the CRR to the existing regulatory framework. The GL were also restructured to increase their clarity and consistency with other work issued by the EBA in the meantime, in particular regarding the RTS on identified staff, instruments, supervisory review process, internal governance and disclosures.

⁴¹ Financial Stability Forum: Principles for Sound Compensation Practices (2009) and Financial Stability Board: Principles for Sound Compensation Practices – Implementation Standards (2009)



8. In order to protect and foster financial stability within the Union and to address any possible avoidance of the requirements laid down in the CRD, competent authorities should ensure compliance with the principles and rules on remuneration for institutions on a consolidated basis, that is at the level of the group, parent undertakings and subsidiaries, including the branches and subsidiaries established in third countries and subsidiaries to which the CRD does not directly apply on an individual level.
9. In order to ensure that institutions have in place sound remuneration policies, it is appropriate to specify clear principles on governance and on the structure of remuneration policies. In particular, remuneration policies should be aligned with the risk appetite, values and long-term interests of the credit institution or investment firm.
10. The provisions on remuneration should reflect differences between types of institutions in a proportionate manner, taking into account their size and internal organisation and the nature, scope and complexity of their activities.
11. In order to ensure a well-functioning internal market, transparent, predictable and harmonised supervisory practices and decisions are necessary for conducting business. The EBA should therefore enhance harmonisation of supervisory practices.
12. The EBA aims for the maximum possible harmonisation as a means to (a) reach a level playing field; (b) prevent regulatory arbitrage opportunities; (c) enhance supervisory convergence; and (d) achieve legal certainty. In addition, the development of common procedures and practices is expected to reduce the compliance burden on the institutions and contribute to efficient and effective cooperation among competent authorities.
13. The EBA is updating the aforementioned GL based on the experience gathered since the introduction of remuneration requirements within CRD III, reinforced requirements within CRD IV (e.g. the bonus cap) and the findings within the remuneration benchmarking report in order to achieve a higher level of harmonisation and ensure that remuneration policies are consistent with and promote risk management, are aligned with the business cycle of the institution and do not contain incentives for excessive risk taking.
14. The variable remuneration should contain appropriate and balanced incentives for risk taking and management and be based on an ex ante risk adjustment which is followed by ex post risk adjustments to ensure that in the long run the remuneration policy is consistent with and promotes sound risk management. The application of the CRD IV provisions should be ensured, including that no circumvention of remuneration requirements takes place.
15. In particular the guidelines should:
 - specify how remuneration policies are applied in a group context in different entities which are or are not themselves subject to the CRD;
 - clarify how the principle of proportionality is applied;

- specify how the identification of staff, based on the RTS of the European Parliament and of the Council on criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile (RTS on identified staff), should be implemented;
- set clear criteria for the allocation of remuneration to the fixed or variable component to ensure that the ratio between them can be correctly calculated;
- specify the involvement of shareholders in the setting of this ratio to ensure that the CRD provisions are effectively applied;
- specify how specific remuneration elements should be taken into account when calculating the ratio, including specific elements such as guaranteed variable remuneration, retention bonus and severance payments and how the other requirements for variable remuneration are applied to these specific elements;
- set out how variable remuneration is paid out and in particular where it is possible to use other instruments as part of such payments;
- specify how deferral and retention periods are applied in line with the proportionality principle and in a more harmonised way;
- specify how requirements for remuneration policies are applied in institutions that have government support;
- specify the disclosure provisions set out in the CRR in order to achieve a high level of transparency to inform shareholders and other stakeholders about institutions' remuneration policies for identified staff;
- set out requirements for competent authorities that ensure a high level of harmonisation in the supervision of institutions' remuneration policies and which ensure that institutions comply with the requirements.

16. The IA comprises GL developed on the abovementioned additional EU legislation and GL where the policy has changed. Areas which have not changed in substance and the underlying changes of the CRD and CRR have not been assessed. The IA considers in particular the relevant GL on the following areas where the GL were amended:

- a. the governance arrangements;
- b. the approach to proportionality;
- c. the application in a group context;
- d. the identification process taking into account the RTS on identified staff, including GL on notifications and prior approval of exclusions under the RTS on instruments;

- e. the definition of fixed and variable remuneration;
- f. allowances, including so-called ‘role- or function-based allowances’;
- g. the pay out of fixed and variable remuneration;
- h. the application of deferral and retention.

5.3 Options considered and their assessment

Shareholders’ involvement

17. CRD IV introduced a limitation of the ratio between variable and fixed components to 100%. The level of this ratio can be increased, subject to national law, by shareholders to up to 200%. The CRD sets out the voting and involvement provisions. The GL clarify the shareholders’ involvement, how the votes should be counted and when shareholders are represented. Information on the increase of the ratio should be submitted to the competent authority and subsequently to the EBA.

- a. Option A: no further guidelines to be provided as national company law is applicable;
- b. Option B: guideline to clarify the shareholder involvement and the notion of represented shares or ownership rights, taking into account the existing processes around the shareholders’ involvement;
- c. Option C: requiring a dedicated process to involve shareholders or owners separate from the annual general meeting;
- d. Option D: requiring an annual confirmation/review of approved rates by the shareholders or owners;
- e. Option E: setting out information to be provided by institutions to competent authorities according to Article 94(1)(g)(ii) of the CRD in terms of the represented votes, the majority and the information provided to shareholders;
- f. Option F: setting out guidelines for the benchmarking of approved higher ratios by competent authorities and the reporting of approved higher ratios to the European Banking Authority.

18. The guidelines should be consistent with the answer regarding the voting process provided in the QA process already published.

19. Option A would not be effective as the process needs further clarification.

20. Option C would be too burdensome; it is more cost efficient to use existing procedures.

21. An annual review (Option D) involving the shareholders or owners is an efficient way to ensure that the remuneration policy is and remains aligned with a sound capital basis; this is consistent with the requirement to review annually remuneration policies. In the draft Shareholders' Rights Directive it is proposed that listed companies will have to involve their shareholders annually in the remuneration process (say on pay). Such an involvement is considered as best practice also for other firms. The additional costs for an annual involvement of the shareholders or owners are low to medium, as the process is integrated with the processes to be performed anyway under the applicable company law. However, additional costs arise from the preparation of documents and additional voting procedures and the notification of voting results. Where the ratio is just to be confirmed, an annual process might be perceived as increasing the uncertainty about the remuneration package paid to staff. However, shareholders and owners in any case have the right to put this topic on the agenda and to review the approval that has been given. The approved higher ratios are subject to disclosure anyway. The costs and uncertainties created for staff outweigh the benefits of an increased oversight of remuneration policies. Option D has therefore not been retained.
22. Option E is efficient, as it contains the information provided for the decision and its outcome. Only very low costs for the reporting arise, as all this information is available at the institution.
23. Option F should be pursued outside these guidelines; the benchmarking process itself pursues a different objective from these guidelines.
24. Options B and E are retained.

Remuneration committee

25. Significant institutions are required to establish a remuneration committee. With regard to the notion of 'significant' the following options were considered:
- a. Option A: having institutions referred to in Article 131 of the CRD (G-SIIs and O-SIIs) and other institutions considered by competent authorities as significant establish a remuneration committee in line with Article 95 of the CRD;
 - b. Option B: setting one single threshold based on, for example, balance sheet total or number of staff as criterion to determine significant institutions;
 - c. Option C: leaving the assessment of which institutions are significant solely to the competent authorities.
26. Option A is in line with definitions provided in the EBA GL on the supervisory review process for the category 1 institutions. It comprises the institutions with the highest balance sheet totals and with the highest impact on the financial markets, but leaves appropriate discretion to include other large and relevant institutions, where a remuneration committee is expected to contribute to the implementation of sound remuneration policies. As usually the largest

firms already have established remuneration committees, the expected additional costs are low and affect only firms which do not yet follow this practice.

27. It is not practical to provide one fixed threshold for significance, as markets differ and the assessment would need to take into account not only the mere size, but also the importance of institutions for specific parts of the financial market as well as their complexity and risk profile. Given differences in the financial markets between Member States and the size of institutions within such markets and given that the risk profile of institutions of the same size could still differ, Option B is not effective. However, it would result in a high level of harmonisation.

28. Option C would not achieve the desired level of harmonisation and is therefore not effective.

29. Option A is retained.

Remuneration policies in a group context

30. The guidelines clarify how the CRD remuneration provisions under Articles 92 to 95 should be applied in a group context; however, most of the content is a direct consequence of the CRD, the consolidation rules of CRR, the national discretion of Member States regarding the ratios and the requirement to implement equivalent requirements for branches of parent institutions in third countries.

31. With regard to the inclusion of firms in the group context which are themselves not subject to the CRD, the EBA consulted the European Commission; and it was confirmed that all subsidiaries that are included in the scope of prudential consolidation are subject to the CRD provisions when applied on a group level, including the limitation of the variable remuneration to 100% (200% with shareholders' approval) of the fixed remuneration. Some Member States have implemented a more far-reaching approach and apply these requirements in the scope of accounting consolidation. The guideline clarifies how the CRD requirements and the guidelines are to be applied to subsidiaries and branches, including such in third countries. The following options were considered:

- a. Option A: the ratios applicable for the limitation of variable remuneration and the application of the discount rate should follow the group policy and no higher ratios can be applied in subsidiaries;
- b. Option B: the ratios applicable under national law are applied to subsidiaries;
- c. Option C: the ratios applicable under national law are applied to subsidiaries, where the group remuneration policy allows. The GL clarify how different ratios set in different Member States should be applied by different group entities located in those Member States;

- d. Option D: for subsidiaries in third countries the maximum ratio set by the CRD, the notional discount rate and the available instruments as defined in the RTS on classes of instruments that are appropriate to be used for the purposes of variable remuneration should be applied;
 - e. Option E: for subsidiaries in third countries the maximum ratio, the notional discount rate and the available instruments as applicable for the parent institution should be applied.
32. The application of the requirements to branches of third country parent institutions and subsidiaries in third countries should follow the above principles to ensure a level playing field between institutions active in Member States.
33. Option A would ensure consistent group remuneration policies, but would have a negative impact on the competition of firms within one Member State.
34. Option B is not efficient as it does not ensure that consistent group policies are applied, though it would level the playing field between institutions in one Member State.
35. Option C combines the advantages of Option A and B, without necessarily having a negative impact on competition, as the institutions can adopt remuneration policies which are consistent in a group context, but where subsidiaries have leeway to set their own ratios.
36. Options D and E would ensure compliance with the CRD in a group context in jurisdictions where the CRD is not implemented. Option D implies a lower potential impact on the conditions for competition than Option E, but would not be consistent with the requirement that group remuneration policies need to be consistent. Option E ensures consistent group policies with regard to the staff who have a material impact on the groups' risk profiles. As the CRD requirements apply only to staff who have a material impact on the group's risk profile, Option D would imply that the subsidiary has to apply the rules for all identified staff on a solo basis, which is not the intention of the CRD.
37. Options C and E are retained.
38. For situations where the CRD requirements and requirements under other directives (e.g. UCITS and AIFMD) differ, the following options were considered for subsidiaries that do not themselves fall under the scope of the CRD on an individual basis:
39. Option A: where different requirements do not contradict each other, but, for example, one requirement is more specific, both requirements should apply;
40. Option B: where different requirements contradicting each other in such a way that only one requirement can be applied, different options exist about which regulation could be applied. Institutions could be asked to apply:
- a. the requirement under the CRD;

- b. the requirement under the specific sectoral directive;
- c. one of the requirements under (a) or (b) above.

41. Option A, considering the content of both directives, which include mostly consistent conditions, is easy to apply and ensures that institutions have sound remuneration policies in place. The costs are low, as institutions have to implement existing group policies and potentially some sector-specific requirements. However, the requirements have also to be implemented by competing firms. The application of the bonus cap in particular needs to be seen against the background that these subsidiaries form part of a banking group and have an impact on their risk profile. If Option A were not retained, this would allow firms to restructure their business activities in a way that excludes identified staff from this provision. In addition one needs to consider that the number of identified staff in such subsidiaries will be very low and hence the cost impact for such firms to apply group remuneration policies is low compared with the advantages they have over competitors by being part of a group of institutions, which has benefits in terms of capital, liquidity and overhead costs.

42. Under Option B, the application of CRD requirement (a) would not be costly, as it would follow the group policy; the benefit would be a consistent group policy, but the effect on the risk alignment of the remuneration to the institution's specific activities might not be efficient. Under (b) the risk alignment of the remuneration policy should be achieved in the same way as for competing institutions. However, the group policy would not be consistent in this one specific point, but as a general principle of legislation the more specific legislation should be applied. Under (a) it would not be possible to structure the pay out in a way that takes into account the specific institution's situation, including the size and weight of the AIFMD or UCITS activities. Under (c), as both the CRD and the AIFMD or UCITS Directive aim to align the remuneration of staff with the risks of the institution, the fact that the group policy may not be consistent is therefore not important and does not provide a sufficient reason to deviate from the general principle that more specific legislation should prevail.

43. Option A and Option B(ii) are retained.

Proportionality

44. Under the baseline scenario, the approach taken was not sufficiently effective and did not lead to an appropriate level of harmonisation in particular regarding the application of deferral, retention, pay out in instruments and the application of malus and clawback. For many institutions the respective requirements were 'neutralised' using thresholds that differed significantly and sometimes without performing specific risk assessments. The same holds true for so-called neutralisations of the above provisions that were applied where identified staff received low levels of variable remuneration.



45. Article 92 has to be complied with by all institutions, including the identification of staff, to ensure that the firm has an appropriate remuneration policy. Article 94 sets out specific requirements for identified staff's variable remuneration.
46. The limitation of the ratio between variable remuneration and fixed remuneration at 100% (200% with shareholders' approval) has to be applied in any case in line with the CRD recitals and the political intention to introduce such a limitation to avoid excessive risk taking within institutions.
47. Options for the approach to proportionality were:
- a. Option A: requiring that all provisions have to be applied in any case in all institutions;
 - b. Option B: retaining the approach of 'neutralisation' taken under the CEBS GL.
 - c. Option C: providing guidelines in line with Article 92(2) of the CRD that the GL has to be applied in a manner and to the extent that is appropriate.
48. Option A would be effective regarding the application of CRD provisions, but would lead to significant costs (and possible unintended consequences on the structure of the remuneration schemes) for small institutions where normally not very sophisticated remuneration systems and risk management tools are used and the level of variable remuneration is low. In such institutions the previous CEBS guidelines allowed for the neutralisation of these provisions. Institutions provided estimates of the costs for a full implementation of all these provisions. The feedback statement within the present document contains further explanations of the comments received. The estimated costs depend on the size of institutions and the extent of the provisions that have not yet been implemented.

Analysis of the major costs related to these Guidelines based on quantitative information provided during the consultation process			
	direct costs		indirect costs
type of institution	one-off	on-going	on-going
large credit institutions	1 - 5 Mio EUR	500 000 -1.5 Mio EUR	increase in fixed remuneration
	mainly related to HR and IT	mainly related to HR and IT	increase in capital requirements
small credit institutions	100 000 - 500 000 EUR	50 000 - 200 000 EUR	increase in fixed remuneration
	mainly related to HR, IT and advisory	mainly related to HR, IT and advisory	increase in capital requirements
large investment firms	1 - 2 Mio EUR	400 000 - 500 000 EUR	3 - 5 times higher fixed remuneration
	mainly related to HR and IT	mainly related to HR and IT	higher risk to business continuity
small investment firms	100 000 - 500 000 EUR	50 000 - 200 000 EUR	3 - 5 times higher fixed remuneration
	mainly related to HR, IT and advisory	mainly related to HR, IT and advisory	higher risk to business continuity

49. Option B would not be in line with the interpretation of the CRD provisions provided by the EBA, supported by the European Commission. However, the majority of the Member States have implemented waivers within their national framework deeming the wording of Article 92(2) of the CRD as a sufficient legal basis.

50. Option C has been retained as the only viable option that ensures compliance with the CRD and forms an acceptable framework until subsequent to the review of remuneration provisions more clarity is provided about the intentions of the co-legislators to allow or not allow for the application of provisions to an extent that effectively leads to a neutralisation of the provisions. As the implementation costs for the limitation of the ratio between the variable and the fixed remuneration are low, all institutions should comply with this limitation, which also ensures a level playing field between EU institutions. The application of this limitation to identified staff in third countries is one of the topics that are analysed as part of the review of the remuneration provisions.

Identification process

51. The identification process has to be based on the RTS on criteria to identify categories of staff whose professional activities have a material impact on the institutions' risk profile. The approach of a self-assessment by institutions based on the criteria included in the RTS and additional internal criteria was maintained.

52. Additional guidelines were provided for the assessment process on the solo and consolidated levels and in particular for the assessment within subsidiaries which are only covered by the CRD provisions in a group context. As the consolidating institution is responsible for the compliance on the group level and as the CRD does not apply to all subsidiaries on an individual basis there is no option other than to require that the consolidating institution does the assessment. This must be based on the consolidated situation; hence it must be based on the consolidated figures, consolidated organisation and risk impact, but must consider all the subsidiaries included in the scope of prudential consolidation. The situation has to be treated as if all these entities formed one institution. For this purpose it is mandatory that all subsidiaries cooperate and provide the required information. Here, too, no alternative options exist.
53. The notification and prior approval processes regarding the exclusion of staff who were only identified by the quantitative criteria in the RTS is set out in the guidelines. Regarding the time periods for such ex ante notifications three options exist:
- a. Option A: requiring an ex ante notification at a point in time which allows the assessment of the competent authority before the performance period starts for the prior approval of competent authorities without the specification of a period;
 - b. Option B: setting a period for such notifications of two months, which is deemed to be sufficient for both institutions and competent authorities, and including the involvement of the EBA where exclusions would be asked for staff receiving EUR 1 million or more;
 - c. Option C: requiring a notification at the latest six months after the end of the financial year to enable the competent authority to object to or to approve exclusions for the next financial year. For newly identified staff the decision should cover the actual and the following performance year.
54. Option A would not be efficient as it would not enable competent authorities to object to exclusions before the next performance period starts.
55. Option B, in most cases, would enable the competent authority to respond, if needed, to such notifications before the next performance period starts. A period of two months should be set; shorter periods would increase the cost for competent authorities, and longer periods would increase the uncertainty of institutions about the outcome. Two months seemed to be appropriate. However, during the public consultation institutions suggested longer periods, and also the assessment by the competent authority may require more time.
56. Option C allows institutions sufficient time as the quantitative criteria can be calculated immediately after the end of the previous financial year or even before its end. A six-month period for the completion of the process and to hand in the necessary documentation is deemed sufficient. In most cases the decision of the competent authority will be made before the next performance period starts, providing legal certainty for staff and the institution. For newly identified staff there is no other option than to make a decision after the start of the

performance period. For this reason institutions should reserve the right to make the necessary contractual changes. The additional administrative costs are low, as the quantitative criteria start at a level where remuneration is negotiated individually.

57. Option C is retained.

Fixed and variable elements of remuneration

58. The guidelines clarify, in particular, how elements of remuneration should be mapped to either the variable or the fixed component. The correct mapping is crucial for the calculation of the bonus cap and therefore guidelines on remuneration are only effective when they set clear enough guidance on the mapping criteria.

59. In any case the criteria have to ensure an unambiguous mapping of all remuneration elements. Two general approaches were considered:

- a. Option A: providing mapping criteria and assigning all elements which cannot be mapped in line with the criteria to the fixed remuneration;
- b. Option B: providing mapping criteria and assigning all elements which cannot be mapped in line with the criteria to the variable remuneration.

60. In order to ensure compliance with the bonus cap and given that the criteria are not exhaustive, the approach of Option B is the only effective approach and is retained. Institutions have to map all elements to variable and fixed remuneration in any case. Providing harmonised criteria does not create additional costs.

61. The guidelines contain clear criteria under which elements of remuneration have to be allocated to the variable component or to the fixed component. The criteria are based on the CRD, its recitals and the EBA opinion on the use of allowances. They aim to ensure that amounts are treated as fixed remuneration only where staff can permanently assume that the remuneration is paid with the predetermined amount and that adjustments happen only in line with the national wage-setting processes. Where fixed remuneration would depend on non-transparent conditions or the sole discretion of the institution, the remuneration policy would not be consistent with and promote sound risk management and would not be compliant with the scope of fixed remuneration. Hence, to ensure compliance with the CRD, the conditions were set in a way that only predetermined, permanent (i.e. maintained over time tied to a specific role or position), non-discretionary and non-revocable elements are considered as fixed remuneration.

62. Where variable remuneration is awarded, the relevant requirements apply. Already the CRD (Recital 64) explains that routine remuneration elements (e.g. mobile phones, etc.) do not form part of the variable remuneration; the guidelines provide additional clarity. Other options which are in line with the CRD requirements were not identified.

63. For some specific cases additional guidelines were set:



- a. Option A: additional payments for expatriated staff where all similar situations are treated in the same way;
 - b. Option B: additional payments for staff who are temporarily substituted for more highly remunerated staff and where all similar situations are treated in the same way.
64. Options A and B do not create additional burdens for institutions as they allow remuneration elements to be considered as fixed remuneration. Where such elements are not used as a method for circumvention they also do not create costs or disadvantages in terms of supervision or with regard to the appropriateness of remuneration policies.
65. Option A in particular may reduce costs for administrative procedures, which could include the refund of travel expenses and similar costs where staff are temporarily active in other jurisdictions.
66. Option B balances the principle that staff should receive fixed remuneration that reflects their organisational responsibility with the need to be responsive to fill unplanned vacancies. This would be more difficult were such payments to be considered as variable remuneration. However, if such elements were discretionary they would not form part of standard remuneration packages and therefore would be variable remuneration.
67. Options A and B are retained.
68. The criteria for the mapping of variable and fixed remuneration components will lead to the need for institutions to adjust their remuneration policy, which may create one-off costs. However, these adjustments ensure that the remuneration policies comply with the CRD provisions, which should have been already the case. The detailed criteria lead to a higher level of harmonisation and avoid institutions implementing remuneration policies that later on have to be changed again, as they would potentially not meet the expectations of competent authorities.
69. A higher fixed remuneration which cannot be adjusted may reduce the cost flexibility of institutions, but also, when combined appropriately with variable remuneration, provides incentives to act in line with the risk strategy and to take prudent risks. This should lead to more stable financial results. These benefits outweigh the costs. However, the aspect of cost flexibility is not further assessed, as it directly results from the CRD provisions regarding the bonus cap. According to EBA's benchmarking results, in 2013 the variable remuneration of identified staff accounted for only 3.6% of the total remuneration of all staff.
70. To ensure that institutions map the components correctly to variable or fixed remuneration the following options were considered:
- a. Option A: rely on the review by competent authorities and require appropriate documentation by institutions for new remuneration components;



- b. Option B: require institutions to notify to competent authorities new fixed remuneration components unless they are standard remuneration components as set out in the guidelines, including their analysis, and perform respective timely reviews;
- c. Option C: same as Option B, but competent authorities should inform the EBA about newly observed fixed remuneration components;
- d. Option D: require institutions to explicitly disclose new remuneration elements introduced in their remuneration policy.

71. Option A would enable a supervisory review and be effective, but has limitations regarding the timeliness of such reviews. Options B and C would ensure a timely review; Option C allows also the timely development of further guidance as necessary by the EBA and ensures a consistent application of the guidelines, but would require additional resources. The costs of Options B and C are slightly higher for the supervisory review, as more frequent reviews are necessary. Institutions need to map all remuneration elements correctly anyway; further marginal costs may emerge for the notification. The benefit is that compliance with the provisions is better ensured.

72. Option D is effective to increase transparency on remuneration policies. The additional information to be disclosed is minor and therefore the costs are negligible; the benefit is that stakeholders are informed about relevant changes to the remuneration policy, which should be the case anyway. However, it may not be sufficiently clear what falls under new components. The institutions are in any case required to disclose changes to their remuneration policy. This includes also material changes to elements of remuneration components.

73. Option A is retained.

Allowances

74. The use of allowances and of so-called 'role-based allowances' requires particular attention, as the valuation of allowances and their nature need to be reviewed to ensure compliance with the CRD provisions regarding the bonus cap. The provisions point to certain aspects which should be further analysed where observed. These guidelines ensure a harmonised treatment of these remuneration elements and that new remuneration elements are assessed based on the criteria provided for the mapping of remuneration components.

75. The guidelines also clarify which conditions need to be met so that allowances can be considered as fixed remuneration. There are no other options.

76. There are no additional costs for the respective review, as competent authorities have under the CRD IV the responsibility to ensure that institutions comply with the CRD provisions anyway. The guidelines may even reduce the costs as they clarify this specific remuneration

element and the actions which need to be taken. The benefits are a more efficient supervision of remuneration practices.

Retention bonus

77. The guidelines were clarified regarding the award of a retention bonus and how it is considered within the bonus cap. As all variable remuneration, including a retention bonus, has to be taken into account, there are only the following options:

- a. Option A: the retention bonus has to be considered pro rata;
- b. Option B: the full amount is taken into account when the retention bonus is awarded.

78. Option A would effectively ensure that the limitation of the ratio is complied with and allow for a pay out of sufficient scope for additional performance-related variable remuneration.

79. Option B may lead to a situation where the retention bonus limits the possibility for the institution to award additional performance-related variable remuneration or even a situation where the ratio would not be complied with and would not promote sound risk management, as only a relatively low remaining performance-related bonus could be awarded in the year when a retention bonus would be awarded.

80. Where the choice is left to the institution, Options A and B could be effective, depending on the amount awarded. As situations where retention bonuses are necessary are usually subject to closer supervision, institutions should be able to choose one of the approaches.

81. Options A and B are retained.

Guaranteed variable remuneration

82. The guidelines were clarified regarding the situations where guaranteed variable remuneration can be awarded and how it is considered within the bonus cap.

83. The following options were considered:

- a. Option A: the guaranteed variable remuneration has to be considered in any case in the first year of employment;
- b. Option B: the guaranteed variable remuneration should not be taken into account in the first performance year when it is considered as awarded before the first performance period starts.

84. Option A would be effective in ensuring that the limitation of the variable remuneration is observed in any case. However, it would lead to a situation where the variable remuneration for the first performance year would be limited or even no variable remuneration could be paid at all. Given that the guaranteed variable does not need to be subject to malus and clawback (as it is guaranteed and there is no risk assumed by the staff member when he or she

is employed, which could change over time) this would reduce the possibility of aligning the incentives for staff with the risk of the institution. It would also contradict the possibility provided by the CRD of paying such guaranteed amounts to attract staff, as the employment conditions would have other restrictions, or of buying out staff from other contracts.

85. Option B is effective and ensures compliance with the bonus cap starting from the beginning of the first performance year and allows the institution to make use of such guaranteed variable remuneration when the contract with a new member of staff is agreed at a point of time before the actual performance of that staff member is being measured. However, these may leave room to circumvent the CRD provisions and therefore the following options to ensure compliance were considered:

- a. Option B(i): setting guidelines that staff can receive such a guaranteed variable remuneration only once in a group context, when already employed by another group company, and provide for additional clarification of the use of such remuneration components;
- b. Option B(ii): requiring that competent authorities review situations where contracts are renewed on a regular basis to avoid circumvention.

86. Options B, B(i) and B(ii) are retained as all are effective and a consequence of the CRD requirements.

87. With regard to amounts awarded for the buy out of contracts, the CRD requires that all remuneration principles are applied. There is no other option. The guidelines should provide for a clear definition of a buy out compared with guaranteed variable remuneration.

Severance payments

88. The guidelines clarify how such payments are considered within the bonus cap.

89. The following options were considered:

- a. Option A: the severance payment has to be considered as variable remuneration;
- b. Option B: the severance payment is not considered in the bonus cap where national labour or contract law makes such payments mandatory. The GL should specify the situations in which this is applied;
- c. Option C: the severance payment, when it is considered as mandatory or is in line with the fixed remuneration which would have been paid for future periods, should be considered to not fall into the last performance period and therefore not be considered when the ratio is calculated for the former staff member. Other elements would be considered in the calculation. Variable elements of severance pay would be specified and be taken into account in the calculation of the ratio for the last performance period.

90. Option A would be effective as it ensures that the limitation of the variable remuneration is observed in any case, but it may contradict labour law. It may also conflict with contractual obligations to pay out performance-related variable remuneration where earned. It would also not cater for situations where institutions need to reduce fixed costs in the long run when business activities are sold or reduced.

91. Option B recognises national contract and labour law. In well-reasoned cases and specific situations set out in the guidelines the award of severance pay will help the institution to recover and maintain a sound capital basis. Option B would be effective where the amounts do not lead to any risk assumption.

92. Option C would be effective as it would specify the amounts that are considered as fixed severance pay and the amounts to be considered as variable severance pay. The option provides for sufficient flexibility of severance pay awards, while not increasing the amount of variable remuneration which could be awarded and ensuring that the bonus cap is applied. Such fixed mandatory payments have more the character of compensation than remuneration.

93. Option B and C were retained.

Ratio between variable and fixed remuneration

94. The limitation of the ratio between the variable remuneration and the fixed remuneration to a maximum of 100% (200% with shareholders' approval) was introduced by CRD, including the underlying approval procedures. Institutions should set an amount up to the maximum percentage within their remuneration policies.

- a. Option A: Provide further detailed guidelines on how the percentage (potentially below the maximum ratio) should be set by institutions.
- b. Option B: Do not provide detailed guidelines but general principles on how institutions can set a ratio within the regulatory limits based on their own considerations for categories of staff.

95. Given that the maximum ratios provided in the CRD set an effective limit which ensures that there are no incentives for excessive risk taking, Options A and B are effective. Option A would create limitations and additional processes in institutions. Option B leaves the process to the discretion of the institution and is therefore less burdensome while ensuring that key aspects are considered.

96. Option B is retained.

97. The guidelines specify how the ratio should be calculated as a ratio between the variable remuneration in the denominator and the fixed remuneration in the nominator. The following options were considered:



- a. Option A: All remuneration components must be mapped to variable and fixed remuneration and used in the calculation;
- b. Option B: All remuneration components (excluding some specific elements like mandatory severance pay, severance pay made in other situations where it does not create incentives for risk assumption, or guaranteed variable remuneration) must be mapped to variable and fixed remuneration and all variable remuneration elements must be used in the calculation, while some proportionate non-monetary fixed elements can be disregarded;
- c. Option C: As Option B, but also non-monetary variable remuneration elements can be disregarded.

98. Option A and B are effective to ensure that institutions calculate the ratio in a way that ensures compliance with the bonus cap. The costs of Option A are higher than for Option B as they require the valuation of these instruments separately for each staff member.

99. Option C is not effective, as it could lead to breaches of the limitation of the variable remuneration.

100. Option B is retained.

Pay out of fixed and variable remuneration

101. The guidelines introduce provisions to implement the requirement that remuneration policies can be fully flexible regarding the variable remuneration.

- a. Option A: institutions need to be able to apply a fully flexible remuneration policy on variable remuneration and therefore the fixed part needs to be paid in a way that does not impair the possibility to apply a fully flexible policy on variable remuneration;
- b. Option B: further guidelines on the pay out of fixed remuneration and restrictions regarding the pay out in certain instruments should be set, ensuring that at least 50% is paid out in cash.

102. Option A was implemented under the CEBS guidelines and CRD III, leading to different instruments being paid out as fixed remuneration and not leading to a sufficient level of harmonisation. Some instruments could be understood to align the fixed remuneration to the performance of institutions and vary over time and can therefore not be part of fixed remuneration. Staff cannot always sell instruments due to insider rules and market liquidity. However, together with a clear definition of fixed remuneration and clearer provisions regarding methods which lead to a circumvention of the requirements, including measures that are directed to the pay out of fixed remuneration, this approach will be effective, even if no minimum cash amount is defined.

103. Option B would be effective, but would restrict the flexibility of firms, in particular in situations where very high amounts of remuneration would be awarded. A set percentage might not be appropriate for each and every situation.
104. Regarding the costs the options have no significant differences; both will lead to minor adjustments of the remuneration policy and the pay out process for fixed remuneration limited to mainly large and complex institutions that use instruments to pay out fixed remuneration, in particular for their senior management and executive directors.
105. Option A is retained.
106. The CRD provisions regarding the pay out of variable remuneration in instruments were amended and the guidelines adjusted accordingly. The guidelines specify where it is possible to use both categories of instruments as defined in points (i) and (ii) of Article 94(1)(l) of the CRD.
- a. Option A: as it is always possible to create instruments, a balance of instruments should always be used;
 - b. Option B: this differentiates between situations where instruments are readily available in the institution or the group context or can be created without material costs, taking into account the legal form of the institution and their activities, and situations where instruments cannot be provided easily;
 - c. Option C: the available instruments should be not only those of the institution, but also those issued in a group context.
107. Option A would be effective, but could lead to material costs, in particular in small institutions or depending on the legal form.
108. Option B is effective taking into account the principle of proportionality and the availability of instruments. In particular, listed companies and companies that already issue eligible instruments should be able to use them for the purpose of variable remuneration without material additional costs and should prioritise the use such instruments. Costs for the administration of the deferred remuneration were not considered, as they are triggered by the CRD.
109. Option C reduces the costs for additional issuances and ensures that consistent group remuneration policies are applied. The methodology for using instruments issued in a group context is also consistent with the approach taken in Commission Delegated Regulation (EU) No 527/2014 of 12 March 2014 supplementing Directive (EU) No 2013/36/EU of the European Parliament and of the Council with regard to RTS specifying the classes of instruments that adequately reflect the credit quality of an institution as a going concern and are appropriate to be used for the purposes of variable remuneration.
110. Options B and C are retained.

Deferral and retention and pay out of variable remuneration in instruments

111. The framework under CRD III and the CEBS guidelines was not effective. As shown in the EBA's Remuneration Benchmarking report, the practices for deferral and retention and the pay out of variable remuneration in instruments differ significantly between institutions and Member States.
112. To ensure a more harmonised approach the following were considered:
- a. Option A: in line with the CRD, not introducing the explicit possibility to not apply provisions for deferral or pay out in instruments;
 - b. Option B: providing appropriate guidelines for institutions on instruments which can be used for the payment of variable remuneration;
 - c. Option C: introducing more specific guidelines on minimum retention periods of in general at least one year and specifying the situations where longer deferral periods of at least five years should be used.
113. Option A would be effective, as it ensures full compliance with the CRD provisions. The general principle of proportionality set out in Article 92(2) of the CRD applies.
114. As the RTS on instruments apply only to instruments under Article 94(1)(l)(ii) of the CRD it is appropriate to set out guidelines on shares and share-linked instruments in order to ensure that they are appropriate for use as part of variable remuneration and do not lead to a circumvention of the respective CRD provisions (Option B). This will lead to a higher level of harmonisation.
115. Option C ensures that the minimum standards to be used are harmonised. The costs for clarifying the use of such periods are low, as they are within the range of the CRD requirements and established practices.
116. Options A, B and C are retained.
117. Institutions must be able to apply malus and clawback to up to 100% of the variable remuneration without prejudice to national labour and contract law. Where it is difficult or not possible to apply clawback under national laws, institutions should reflect this in their remuneration policies and ensure that malus or implicit risk alignments are applied to the extent possible.
118. Taking into account that, in particular, clawback cannot be effectively applied in many Member States, the following options were considered:
- a. Option A: require institutions to ensure that malus can be applied (where possible) when clawback cannot be applied effectively;



- b. Option B: increase the portion which is paid out in instruments;
 - c. Option C: use longer deferral periods and not use pro rata vesting, to ensure that malus can be applied;
 - d. Option D: use longer retention periods to ensure that implicit risk alignments can take place (via the change of market prices to instruments).
119. All the options can contribute to a situation where malus and clawback can be applied more effectively. The institutions' remuneration policy needs to take into account the national framework. The costs of this provision for adjusting the procedures and resulting from staff being able to have access to the funds at a later stage are triggered by the CRD provision.
120. All options are retained, but should be applied considering the national laws.

Institutions under government support

121. The guidelines clarify further how remuneration policies should ensure a closer risk alignment, ensuring that a sound capital base can be re-established. However, compared with the previous guidelines they only specify in more detail the pay out provisions which could be applied by competent authorities in order to ensure a more efficient application of the provisions, specifying that the deferred portion could be increased to 100%, to apply longer deferral periods and to align the awards with the recovery phase and plans. These options ensure that variable remuneration is better aligned with the risk and ensures that it does not conflict with the re-establishment of a sound capital bases. These will be applied as appropriate. This was already possible under the previous framework and therefore no additional costs emerge, but the range of possible actions becomes more transparent.

Disclosure

122. The provisions contained in the previous guidelines were updated and aligned with the CRR provisions.
- a. Option A: the CRR disclosure requirements apply to identified staff; the guidelines should suggest that such information is also disclosed for all staff;
 - b. Option B: no further disclosure requirements, beyond the disclosure of the total number of staff and the total variable and fixed remuneration, should be implemented, but the requirements for identified staff should be clarified by providing further guidance also with regard to newly introduced disclosure requirements.
123. Option A would ensure a high level of transparency and would allow stakeholders to assess better the overall remuneration policy applied to all staff. Not only identified staff but also other staff, in particular collectively, have an impact on the risk profile. In particular, sales staff remuneration, when containing inappropriate incentives, could also give rise to conduct



risk and consumer protection issues. Remuneration policies need to be appropriate for all staff and transparent to them. Therefore, and to ensure the appropriate information of stakeholders regarding all this information, Option A is effective, but would create medium additional costs for such disclosures. However, there is the risk that too much information impairs the transparency of the relevant information.

124. Option B is effective regarding the information to be provided for identified staff. Information on the remuneration paid for all staff is also included in the profit and loss accounts and the results are disclosed. Option B provides a sufficient level of transparency taking into account that for supervisory purposes additional information can always be requested. The aggregated information for all staff is needed to derive benchmarks.

125. Option B is retained, as the overall costs are lower and the disclosure should focus on the more relevant remuneration policies for identified staff. However, aggregated information on the total amount of variable and fixed remuneration of all staff should be disclosed in any case to allow a better understanding of the structure of costs.

Guidelines for supervisors

126. The guidelines were aligned with the amended CRD provisions and restructured to ensure better readability. The level of guidance was reduced to focus on critical areas and because other guidelines (e.g. EBA guidelines on the supervisory review process) also contain respective provisions and set out the review process. The general principle that competent authorities have to perform reviews to ensure that institutions comply with the CRD provisions was maintained. No additional options were considered and it is assumed that the revamped guidelines have no cost impact. Where additional areas were added (e.g. the review of the bonus cap) the additional costs are directly triggered by the CRD and were not assessed.

5.4 Conclusion

127. The overall cost impact of the guidelines compared with the baseline scenario is low, while the benefits are medium. With regard to the effects of a different approach to allow for neutralisations, reference is made to the assessment and table provided in section 5.3 under the heading of proportionality. The implementation of the guidelines will, in particular, create one-off costs for the change of policies and procedures in credit institutions and investment firms. They create a long-term benefit by achieving a higher level of harmonisation, providing a clear definition of variable and fixed remuneration and achieving sound risk management, and thus ensuring that compliance with the remuneration requirements implemented by the co-legislators can be affectively ensured. In that way, these guidelines contribute to ensuring the safety and soundness of the European banking system and to promoting the effective, efficient and stable functioning of the European financial system.

6. Feedback on the public consultation and on the opinion of the Banking Stakeholder Group (BSG)

The EBA publicly consulted on the draft proposal on guidelines on sound remuneration policies contained in this paper.

The consultation period lasted for three months and ended on 4 June 2015. A total of 127 responses were received, of which 72, including the response of the BSG, were published on the EBA website.

This paper presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments and the actions taken to address them if deemed necessary.

In many cases several industry bodies made similar comments or the same body repeated its comments in response to different questions. In such cases, the comments, and the EBA's analysis, are included in the section of this paper where the EBA considers them most appropriate.

Changes to the draft guidelines have been incorporated as a result of the responses received during the public consultation.

Views of the BSG

The BSG submitted its comments⁴² to the draft GL during the period of public consultation, stressing that it supports remuneration guidelines which promote sound and effective risk management. In general the BSG is supportive with regard to many parts of the guidelines, including the provisions on fixed remuneration and allowances and suggested further clarifications in some areas. However, the BSG highlights the need for a proportionate application, including the possibility to apply so-called neutralisations, and pointed to the specific incentives for sales staff.

Among other points, the BSG suggests aligning remuneration with the interest of consumers and in particular that institutions take into account conduct risks in their remuneration policies. The BSG is concerned that the profits of firms are often adjusted and that operational risks are not appropriately taken into account.

⁴² The response of the BSG can be found under the following link: <https://www.eba.europa.eu/documents/10180/1002374/BSG+response+to+Consultation+Paper+%28EBA-CP-2015-03%29-+4+June+2015.pdf>

Moreover the BSG recommends better information for shareholders regarding the award criteria for variable remuneration and the measures to ensure risk alignment. Unethical or non-compliant behaviour of staff should lead to a reduction of variable remuneration. Results of independent reviews in the area of remuneration should be published and effective whistleblowing arrangements should be ensured. The BSG points out that severance pay and discretionary pension benefits should be treated as variable remuneration.

The BSG expressed the view that the EBA cannot interfere with pay agreed in collective agreements. To this end the guidelines should be clarified to ensure that institutions do not extend the scope to too many staff members who are not immediately concerned with risk taking.

Summary of key issues and the EBA's response

Most respondents generally supported the need for new, harmonised remuneration guidelines and welcomed the opportunity to comment on the proposals. In most cases, general comments were made on various issues, although some technical drafting proposals and supporting legal analysis were also provided. Many respondents raised concerns on the changes to the approach on remuneration policies as a result of the draft guidelines. The key issues raised by respondents were in relation to:

Proportionality: The vast majority of respondents did not agree with the change in approach to the application of proportionality from the previous CEBS guidelines. This included the application of the remuneration rules to smaller and less complex institutions; application to entities not directly subject to the CRD, such as asset managers and alternative investment fund managers; and the inclusion of staff who receive low amounts of variable remuneration.

Scope of application: Some respondents considered that the guidelines went beyond the scope of the delegation under the CRD/CRR, in particular regarding the broad definition of 'staff'; the definition of categories of remuneration; and the requirements regarding severance payments.

Long-Term Incentive Plans (LTIPs): Many respondents raised concerns regarding the definition and valuation of LTIPs. In particular, respondents suggested that requiring certain LTIPs to be valued at vesting for the purposes of the limit on variable to fixed remuneration would not achieve the intended outcome and instead suggested valuation at award.

Use of financial instruments: Respondents suggested that the requirements on the use of financial instruments would negatively impact both listed and non-listed institutions. In particular, respondents raised concerns regarding the mandatory use of shares for listed companies; the costs for the valuation of instruments at smaller institutions; and the prohibition on paying dividends during deferral periods.

Shareholder voting: A number of respondents requested clarity on the shareholder voting requirements in relation to increasing the maximum limit of variable to fixed remuneration. Respondents suggested that the overall process could be streamlined and less burdensome.



Some respondents also commented on the need for a transitional period prior to the entry into force of the guidelines.

The EBA welcomes the comments received from respondents and the BSG, which were constructive and helpful. The EBA will be working on separate guidelines aimed at aligning the interest of consumers with the remuneration policy of sales staff. The EBA has provided advice to the European Commission with regard to the proportionate application of the remuneration provisions.

The approach to the valuation of LTIPs has been revised and the application of CRD provisions in the group context was further clarified, stressing that the parent institution has to ensure that the CRD provisions are applied also to staff within subsidiaries that are financial institutions or ancillary services undertakings where the professional activities of staff have a material impact on the groups risk profile.

While collective bargaining may also affect some identified staff, collective bargaining must not lead to a circumvention of the remuneration requirements set out by the European co-legislators. Such agreements need to be compatible with the CRD.

For more detailed responses to the issues raised, please refer to the feedback table.



Summary of responses to the consultation and the EBA's analysis

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
General comments			
Detail of GL	Some respondents considered the GL as too prescriptive and criticised the fact that they set requirements instead of recommendations. GL should be set as soft law.	The mandate of the EBA is to ensure that the requirements set in the CRD are applied in a consistent way across EU and to ensure harmonisation. To ensure a level playing field a certain degree of detail is needed to set out how the specific principles should be applied. However, the GL will be implemented by competent authorities on a comply or explain basis. In line with the EBA Regulation, institutions should do their best to comply with the guidelines.	No change
Collective bargaining	A few respondents noted that the overall GL do not properly take into account the collective agreements which the remuneration of staff members might be based on; the provisions entailed therein cannot be amended by the institutions and should be out of the scope of the remuneration rules. Collective bargaining agreements should be able to deviate from the requirements set by the CRD.	<p>The arguments presented by respondents are related to the hierarchy of norms and can be grouped into two main points, both of which involve the compatibility of EBA GL on sound remuneration policies with other legal acts, namely (i) Article 28 of the EU Charter of Fundamental Right on the Right of Collective Bargaining and Action, and (ii) Article 153(5) of the TFEU.</p> <p>With respect to point (i) on the fundamental right of collective bargaining, it has to be considered that following the European Court of Justice decisions Viking [C-438/05] and Laval [C-341/05] it is increasingly unlikely that a party can argue that, since the matter falls in the purview of collective bargaining or collective action, EU law does not apply. This has been confirmed in Hennings [C-297/10], where the Court said 'where the right of collective bargaining proclaimed in Article 28 of the Charter is covered by provisions of European Union Law, it must, within the scope of that law, be exercised in compliance with that law'. Guidelines issued by the EBA are non-binding legal acts adopted with a view to ensuring, inter alia, the common, uniform and</p>	No change



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		<p>consistent application of European Union law. The EBA GL on sound remuneration policies set out how to implement and be in compliance with CRD and require competent authorities and financial institutions to make every effort to comply with them. Thus, the right of collective bargaining should be exercised within the framework laid down by EBA GL on sound remuneration policies.</p> <p>With respect to point (ii), it has to be remembered that Article 153(5) of the TFEU – to which Recital 69 of the CRD makes reference – states that the provisions on remuneration ‘shall not apply to pay’. In the Del Cerro Alonso decision [Case C-307/05], the European Court of Justice held that the ‘pay’ exception ‘cannot, however, be extended to any question involving any sort of link with pay’. Further, in the Impact decision [C-268/06], the Court held that ‘the exception must therefore be interpreted as covering measures – such as the equivalence of all or some of the constituent parts of pay and/or the level of pay in the Member States, or the setting of a minimum guaranteed Community wage – which amount to direct interference by Community law in the determination of pay within the Community’. Neither the CRD nor EBA GL on sound remuneration policies are contrary to Article 153(5) of the TFEU, since they do not set a uniform level of pay within the European Union or the equivalence of the constituent parts of pay.</p>	
Mandate of the EBA	A few respondents referred to Article 75 of the CRD and commented that it would define the scope of the EBA competences with regard to setting GL on remuneration policies. Article 75 makes no reference to Article 109 (according to which the parent company is responsible for	The EBA regulation empowers the EBA to set GL in the field of its competency. This includes the complete Directive 2013/36/EU, including Article 109 of the CRD, which covers in its scope remuneration provisions. GL on the application in a group	No change



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	the implementation of the CRD rules to all subsidiaries), hence the EBA should not set out GL on the group application of remuneration provisions.	context are needed to ensure a sufficient level of harmonisation.	
Title I, Section 1 Subject matter	<p>A transitional period for the entry into force of the GL has been suggested by several respondents (see also comments on the identification process and on disclosure requirements); this would also ensure that the new remuneration policy could be prepared, consistent with the GL, in time for the next shareholders' meeting.</p> <p>One respondent also suggested clarifying that the GL do not apply retroactively to existing contracts.</p>	<p>The EBA has set a date of entry into force that allows sufficient time for competent authorities and institutions to implement the GL. Institutions should do their best to implement the guidelines and have to comply with the national implementation of them; this may include the need to change existing contracts with staff. The CRD provisions as such came into force on 1 January 2014 and need to be complied with in any case in line with their national implementation.</p>	No change
Title I, Section 2 Scope of application	<p>Some respondents considered the scope institutions captured by the GL as too broad. It has been suggested that the following be kept out of the scope of application of the GL:</p> <ul style="list-style-type: none"> i. the low-risk profile entities carrying out specialised activities (investment firms, leasing, consumer credit, auto loan, etc.); as an alternative the neutralisation of certain rules should be provided for; ii) staff members who are not employees of the institutions (see also Q1); iii) subsidiaries that are subject to the AIFMD, UCITS or Solvency II. <p>Some respondents claimed that the identification process would lead to too high a number of identified staff, and institutions belonging to a group and branches located in third countries should not be required to do an identification exercise.</p>	<p>The scope of the requirements is set by the CRD provisions; the guidelines do not deviate from the scope set by the CRD. The GL do not apply directly to financial institutions (e.g. AIF or UCITS), but have to be applied by the parent institution to the identified staff that have a material impact on the risk profile of the group. The CRD lays down that the parent institution should ensure the application of the requirements also to subsidiaries in third branches, unless the application of the CRD rules would be considered unlawful.</p> <p>Insurance companies are not financial institutions and therefore are not affected by the application of CRD provisions via Article 109 of the CRD. However, institutions owned by insurance companies are institutions and fall in the scope of the CRD, even if their business is mainly to support the business of the insurance part of a group.</p> <p>The CRD specifies the scope of application of remuneration provisions and sets the minimum requirements. The EBA can only issue guidelines in line with the scope of the CRD</p>	Definition of staff amended



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		requirements. The definition of staff was reviewed to exclude from the scope ‘any other person acting on behalf of the institutions and subsidiaries’. Provisions have been added in the section related to circumvention to avoid institutions using such contractual arrangements to alter the identification outcome.	
Responses to questions in Consultation Paper EBA/CP/2015/03			
Question 1 (Title I, Section 3, ‘Definitions’, and Section 4, ‘Currency conversion’)			
Para 4	<p>One respondent suggested changing the wording ‘routine employment package are...’ into ‘routine employment package include...’ or something similar.</p> <p>One respondent deemed the definition to be useless.</p>	The majority of respondents found the definition sufficiently clear.	No change
Para 4 Long-term incentive plans (LTIPs)	<p>While a few respondents suggested deleting the definition of LTIP, many others deemed it appropriate to redraft it in order to:</p> <p>duly take into account market practices related to this kind on incentive plan, based on the awarding of shares over a predetermined period of time and subject to specific conditions;</p> <p>clarify that deferred bonuses, which vest according to a normal remuneration plan, are not included in the definition.</p> <p>In some cases, drafting suggestions were provided: exclude the ‘arrangements operated on an all-employee basis’; ‘long-term incentive plans’ are variable remuneration components, where a <i>all or</i> part of the remuneration is vests awarded at one a predefined point in of time and</p>	<p>Awards of remuneration under long-term incentive plans (LTIPs) are variable remuneration and as such should be based on performance during a past performance period of at least one year and must meet all requirements for variable remuneration, including deferral, pay out in instruments and malus. In addition forward-looking performance criteria can be used in parallel.</p> <p>The guidelines were amended to allow for a prospective long-term framework for variable remuneration, including LTIPs, that is based on future performance conditions (e.g. where new staff receive an LTIP at the beginning of the first year of employment). In this case the amount should be considered as awarded after the performance conditions have been met. Awarded amounts should be taken into account for the calculation of the ratio between the variable and the fixed component in the performance year prior to their award. All other requirements apply in the same way as to variable remuneration, e.g. the</p>	The section on LTIPs has been revised



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>under the same plan additional awards are made at future points in time subject to <i>appropriate performance conditions</i>, including e.g. retention of staff within the institution'; (e.) LTIPs are 'variable remuneration components which are granted at a point in time and which vests at a later date subject to specified conditions.'</p> <p>It has also been recommended that para. 120 be amended accordingly, as the term 'award' seems to be improperly used instead of the term 'vest'.</p>	<p>deferral period starts after the award of the variable remuneration.</p> <p>The recognition of LTIPs in the calculation of the bonus cap and the provisions on their valuation have been amended considering the comments made in order to ensure that institutions can determine ex ante the maximum ratio between the variable and the fixed remuneration for identified staff.</p>	
Para 4 Retention bonus	Some respondents noted that the definition of retention bonus is too broad and unclear, as it would include also deferred remuneration (which is paid only if the staff member stays in the institution).	Retention bonuses that are awarded based on a retention condition are distinct from deferred remuneration that was awarded based on performance and may or may not be withdrawn if staff leaves the institution.	No change
Para 4 Retention Bonus	A few respondents also pointed out that it is not always possible to identify a predetermined period of time for the retention of staff (e.g. where restructuring processes occur) and suggested amending the definition consequently.	A retention bonus has to be included in the calculation of the bonus cap. To overcome the practical challenge of the calculation the EBA has amended the GL. Institutions can either take into account the full amount of a retention bonus when it is awarded, or take it into account on a pro rata basis, setting an appropriate period, if the exact period is not known at the time of the award.	Section 12.2 of the CP amended
Para 4 Retention Bonus	One respondent highlighted that the definition should make it clear that retention bonuses are usually made outside the normal framework of short- and long-term variable remuneration.	A retention bonus is variable remuneration and has to comply with the respective CRD provisions. In this respect, the GL set out specific provisions that apply to a retention bonus.	No change
Para 4	Many respondents observed that the definition of staff is too broad and not in line with the scope of staff members	The definition of staff is in line with the approach already followed by the previous GL and is intended to better clarify the	Definition of staff



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Staff	<p>considered in CRD IV; some respondents also pointed out that it is inappropriate in comparison with the ESMA GL, which only define identified staff.</p> <p>Among the suggestions made to narrow the definition, the majority of respondents recommended including only employees and clearly excluding executive and non-executive directors, external contractors, providers, third parties and seconders, advisors, attorneys (<i>i.e.</i> self-employed persons or persons employed by others). Consequently, the remuneration of such persons should also be out of the scope of the GL.</p> <p>According to a very few respondents, persons operating in non-core business areas of relevant institutions should be taken out as well.</p> <p>One respondent suggested that partners or members or employees owning common equity in an investment firm organised as a limited liability partnership or limited partnership should not be considered as staff.</p>	<p>consistent application of the CRD IV rule on an institution-wide basis.</p> <p>Staff members need to be mapped regardless of their contractual relationship with the institution but according to their roles and responsibilities and their ability to take risks for the institution itself.</p> <p>The definition of staff was reviewed to exclude from the scope ‘any other person acting on behalf of the institutions and subsidiaries’. This part has been inserted in the section related to circumvention.</p>	amended
	<p>One respondent asks for clarification of how ex-pats or staff members seconded from one institution to another are included in the definition of staff.</p>	<p>All employees and members of the management body are staff. The definition applies on a solo and a consolidated basis. For the definition of staff it does not matter if staff are seconded from or to another institution in a group context to another country. The guidelines on the identification of staff clarify how such staff are to be considered in the identification process.</p>	No change
Para 4 Identified staff	<p>No major concerns arose regarding the definition of identified staff; only a few respondents recommended clarifying that the category is determined by each institution based on its own internal assessment and to clarify how to assess the professional activities’ ‘material’</p>	<p>The RTS on identified staff set the criteria for the identification of staff. The CRD requirement to identify staff is not based on the systemic impact of the institution, but the risk profile of the institution and the impact the staff member has on it are the</p>	<p>Definition of identified staff amended Reference to RTS on</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	impact on the institution's risk profile (also with quantitative indicators).	baseline for the assessment. See further comments under Q7.	identified staff added
Para 4 Award and vesting of the variable remuneration	Some respondents suggested that the EBA better clarify at which point in time the value of the awarded remuneration is defined, in addition to solving some drafting inconsistencies (e.g. in GL no 120). A few respondents requested that it consider also the possibility that the staff member becomes the beneficial (and not the 'legal') owner of the vested remuneration in the pertaining definition.	The GL set out for variable remuneration the points in time when the variable remuneration is to be valued. With regard to para. 120 the GL were amended to ensure that the institution is able to calculate ex ante the maximum ratio between the variable and the fixed remuneration.	Section 11 of the CP amended
Para 4 Bonus pool	A few respondents noted that the definition of bonus pool is not suitable for those institutions using a mix of top-down and bottom-up approaches; it has been also suggested that it be clarified that the bonus pool refers to identified staff only, and whether LTIP awards are included or just annual bonus awards should be.	See also the EBA's analysis under Q1 and Q13. It is important for institutions to be aware of the total amount of variable remuneration awarded in a financial year. The concept of a bonus pool can also be applied under a bottom-up approach. It is, as set out by the GL, the aggregate of the individual bonus contributions. This holds true also for the variable remuneration of all staff. According to Annex I of the GL the application of these provisions is possible for all staff as part of sound governance arrangements required under Article 74 of the CRD. However, Article 94 of the CRD is to be applied only to the variable remuneration of identified staff. LTIP awards are variable remuneration and all the requirements on variable remuneration need to be applied to LTIPs as well. In general the GL have been clarified in some places regarding the scope of staff to whom they are applied.	No change



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Para 4 Accrual period	The definition should be amended in order to take into account the three performance layers to be taken into account according to the GL themselves (<i>i.e.</i> institution, business area, individual performances).	Accrual periods are set by the institution for the measurement of performance. The requirement for variable remuneration is indeed that performance has to be measured on all three suggested levels. The GL on performance measurement set out in detail how this measurement should be done. The definition was simplified and refers now only to the measurement of performance.	The definition was amended
Para 4 Significant institutions	Several respondents deem it inappropriate to consider as significant institutions the institutions which are subsidiaries of a significant institution, without any consideration of their specific characteristics.	The requirement to have a remuneration committee applies to significant institutions. A definition is needed to ensure a harmonised application. In line with the definition every institution is assessed on its own. If the institution is a subsidiary of a significant institution it is not automatically significant itself. However, in a group context there can be more than one significant institution. While the institutions should have a remuneration policy that is consistent with the group committee, it is important for significant institutions to establish a remuneration committee, to ensure that the members of the management body receive the appropriate support in fulfilling their duties with regard to the remuneration provisions that apply on the individual level of the institution, independent of the fact that it is a subsidiary of a significant parent institution.	No change
Other definitions	One respondent asked for the use of the term ‘significant’ to be harmonised throughout the GL. A few respondents suggested amending other definitions (e.g. variable and fixed remuneration, consolidating institution, payments made upfront, malus and clawbacks, shareholders) and using some terms consistently across the GL (e.g. ‘remuneration policy’ referring to the general	The EBA is using the term ‘significant’ in a consistent way. If other terms are used they have a different meaning. The CRD requirements apply to all institutions independent of their legal form or applicable company law. Not all institutions are joint stock companies. For the sake of simplicity the guidelines refer to all owners of institutions by using the word ‘shareholder’. However, different company laws use different	No change



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>remuneration concept or to the document). For example, single respondents found for 'shareholders' the terms 'other owners' and 'members of the institution' not clear.</p> <p>A few respondents recommended providing a definition for:</p> <ul style="list-style-type: none"> i. deferral arrangements; ii. corporate functions (see also Q2) iii. discretionary pension benefits (see also Q11) – in this case it has been suggested to clarify that those payments are discretionary and do not include pension entitlements acquired under the national law; iv. group. 	<p>terms for the owners of the company; e.g., for cooperatives they are also often referred to as 'members'.</p> <p>The guidelines only contain terms that are later on referred to in the guidelines in different places. The EBA deemed it sufficient to define the term 'deferral period' and to set out the requirements on deferral in the main part of the guidelines.</p> <p>The term 'corporate functions' is used only in a very few provisions in the guidelines, in a context that does not require an exhaustive legal definition. In general all functions that have responsibilities for the whole institution can be understood as corporate functions, but the exact responsibilities of such functions depends on the individual organisation and on the organisation in a group context. Hence a specific definition of such functions was not provided.</p> <p>Discretionary pension benefits are defined within Article 4 of the CRR.</p>	<p>No change</p>
<p>Para 7</p> <p>Currency conversion</p>	<p>Several respondents noted that the currency conversion proposed in the GL, while standardising the compensation by using a single exchange rate, might cause delays and inconsistencies in the identification process, as well as a duplication of activities for those institutions already converting remuneration with market or IFRS rates. The criteria provided for in EU Regulation no 604/2014 should not be changed by the GL.</p> <p>The respondents proposals were to: use individual rates or an average exchange rate of the performance year to which the remuneration relates; refer the date of the conversion to the end of the performance year of the</p>	<p>Institutions which award remuneration in a currency other than euro must convert the thresholds within Article 4 of the RTS on identified staff in line with Article 5 of the RTS. The GL set out how the conversion is applied in practice. The guidelines were amended to allow using either the internal exchange rate used for the consolidation of the accounts or the exchange rate used by the Commission for financial programming and the budget for the month when the remuneration was awarded.</p>	<p>Section 4 of the CP amended</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>institution (not December for all institutions); make reference to the IFRS accounting standards.</p>		
	<p>Moreover, according to some respondents the GL would not properly consider the effect of foreign exchange rates' volatility as a result of which some staff members would not be considered as identified staff because of external conditions which make their EUR pay below/above the threshold.</p> <p>Also the high rates of inflation in some countries should be properly taken into account, in order to better reflect the purchasing power of staff members in the environment they are located in.</p>	<p>The RTS on identified staff sets those thresholds in a legally binding form. Given the possibility to apply for exclusions under the RTS of identified staff, the EBA does not see at this point the need to suggest any changes to the RTS. The GL set out how the provisions should be applied. The onus is on the institution to notify or apply for exclusions of staff from the scope of identified staff if they are identified but in fact have no material impact on the institution's risk profile.</p>	No change
Question 2 (Title II, Section 5, 'Remuneration policies for all staff, including identified staff')			
General comments	<p>The majority of comments received on Title II, Section 5, stemmed from the three core topics of the revised GL, which are:</p> <p>the changes made to the proportionality principle, which affect also this part (e.g. in the past it was possible for institutions benefiting from waivers for identified staff to have in place one remuneration policy for all staff members);</p> <p>the inconsistency with CRD IV of this part of the GL, which is deemed to overstep the level 1 text referring to identified staff only and be outside the EBA's mandate under founding Regulation no 1093/2010;</p> <p>the inclusion of staff members operating in the asset management area.</p>	<p>The GL set out how the CRD provisions should be applied with regard to the proportionality principle.</p> <p>The co-legislators imposed specific requirements for the remuneration of identified staff, while for all staff sound remuneration policies are required (Article 74 of the CRD). Annex I provides a clear overview on the CRD provisions and the expected scope of application.</p> <p>The EBA is mandated to issue guidelines on all aspects of the CRD, which requires the application of the CRD provisions to single identified staff members in subsidiaries of institutions (see comments on the scope of application).</p> <p>The CRD sets out the scope of institutions to which the CRD is applied and the scope of consolidation. On a consolidated basis the parent institution must ensure that the provisions are complied with for all identified staff whose professional activities</p>	Change made to the section on proportionality



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Para 8 and subsequent	A few respondents suggested that the categories of staff should be further developed in order to:	have a material impact on the consolidated risk profile of the institution. This includes subsidiaries that are asset managers, as these are financial institutions.	
Categories of staff	clarify if it is correct to use the categories of staff provided for in CRD IV (senior management, high earners, etc.); include also staff engaged in distribution networks, who should, however, be exempted if newly hired (e.g. first three years) provided that they are not risk takers.	The concept of categories of staff was introduced by the CRD in the context of the remuneration provisions for identified staff. The guidelines follow the same approach. The concept is important to allow institutions to simplify the remuneration policies, while still taking into account the specific remuneration incentives that are important for a specific group of identified staff members for which the same policy can be applied. It should be noted that also the qualitative criteria within the RTS on identified staff follow the same concept by differentiating between e.g. the management body, senior management, credit risk and market risk takers and control functions etc. Institutions should set out within their remuneration policy how it applies to certain categories of staff taking into account its own organisation. It is not possible to develop an exhaustive list of categories of staff that suits all institutions. Staff in distribution networks should usually be included in the scope of all staff to whom only certain CRD remuneration provisions apply. In most cases these staff members are not identified staff. The EBA is also developing guidelines to avoid the remuneration of such staff providing incentives for, for example, mis-selling of products.	No changes
Para 8 and subsequent Remuneration policy for all staff members	Some respondents recommended distinguishing in a more granular way the treatment of 'normal wages for ordinary employees on the one hand, and the remuneration of high-ranking risk takers and managerial staff on the other' in terms of compliance function and shareholders' involvement, which is not deemed necessary for the	While section 5 of the consultation paper focused on the general need to implement remuneration policies for all staff and remuneration policies for identified staff, most sections of the guidelines deal with the requirements for identified staff that are set out in Article 93 and Article 94 of the CRD. The CRD provisions do not provide for specific rules applicable to specific	Section 5 clarified



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>former.</p> <p>In contrast a very few respondents objected to the ‘excessive granularity’ expected regarding the remuneration policy for all staff members, making reference to staff’s different roles and responsibilities in different business areas and the existence of different performance objectives and measurements and structures of variable remuneration.</p> <p>Some respondents felt a lack of clarity on the distinction with regard to the variable remuneration for the various categories of staff operating in the business units, corporate or control functions, as well as about the rules applicable to the whole staff and to identified staff only.</p>	<p>categories of staff; the minimum requirements have to be met in any case.</p> <p>Article 74 of the CRD applies to institutions and requires that appropriate remuneration policies are in place for all staff, including identified staff. For identified staff additional specific requirements apply. The guidelines specify how institutions should comply with the respective CRD requirements.</p> <p>Annex I of the present guidelines provides an overview of the provisions that should be applied institution-wide to all staff, in order to ensure that the remuneration policy for all staff is appropriate as required by the CRD, and to identified staff. Institutions may implement more sophisticated remuneration policies for all staff in line with the provisions applicable only to identified staff where appropriate.</p> <p>The GL were amended to better clarify which requirements apply to all staff and which apply to identified staff.</p>	
Para 8 and Annex I	One respondent suggested restoring Annex I as it was in the CEBS GL (references to both level 1 text and GL).	Annex I has been maintained and further simplified, as it is not appropriate to merely repeat CRD provisions in EBA guidelines.	Annex 1 simplified
Para 12 Link with performance (also raised under Q14)	One respondent suggested clarifying that the link between the variable remuneration and the ‘overall results of the institution’ applies to identified staff only, as only identified staff may have an impact on such dimension.	While the impact of single staff members on the performance of an institution might be small, the total amount of variable remuneration paid is a material cost factor for institutions and is in most cases mainly driven by non-identified staff. Hence it seems appropriate that institutions consider their performance when setting bonus pools and decide on variable remuneration for staff. In addition Article 93 and Article 141 of the CRD, which apply to the institution (including all staff), need to be complied with in specific circumstances to ensure a sound capital base.	No changes
Para 14	It has been suggested that the remuneration policy under	Institutions should have remuneration policies for all staff in	



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Contents of the remuneration policy	<p>paragraph 14 should refer to the identified staff only; the detailed requirements under such paragraph pose concerns also in terms of disclosure of the remuneration policy (individual detailed objective should remain part of the individual performance assessment and ‘not included in the institution disclosed remuneration policy itself’).</p> <p>A few respondents pointed out that it is appropriate to clarify that the remuneration policy adopted by the management body, in its supervisory function, should not contain details but general provisions. See also Q3 (para 23).</p> <p>A great level of detail would also make the remuneration policy difficult to understand for staff members and not transparent.</p> <p>One respondent ask for clarifications on what ‘performance objectives’ actually mean.</p>	<p>order to ensure that they meet the requirements in Article 74 of the CRD. Within the policy the institution may differentiate between all staff and identified staff. In general all variable remuneration should be based on performance.</p> <p>The remuneration policy cannot set out each and every specific performance objective for an individual. However, it should set out the objectives in general and provide a framework to set out specific objectives.</p> <p>The CRD assigns to the supervisory function some specific responsibilities regarding the remuneration policy. The adopted remuneration policy should set out sufficiently clearly the framework under which remuneration practices are implemented. If this were not the case the implementation would be subject to multiple conflicts of interests.</p> <p>Only a sufficient transparent remuneration policy ensures that there is the intended behavioural impact on staff. With regard to performance assessments please refer to section 16 of the consultation paper.</p>	<p>Amendments to the proposals</p> <hr/> <p>Para 15 of the CP was clarified</p>
Para 15 Insider trading rules and short-termism	<p>Some respondents found the requirement not sufficiently clear and did not see sources of conflicts with the insider trading rules, but asked for examples of which measures could have a short-term impact on the share price and should therefore be avoided. While a few suggested redrafting the paragraph, others deemed it appropriate but would have liked concrete examples.</p>	<p>It is important that institutions have a framework to manage conflict of interest. Conflicts in this area can emerge as the staff receives an economic interest that is linked to a specific instrument that is payable at a specific point of time. Hence there may be the danger that short-term measures are taken to influence the price of instruments. In the long run there should not be a conflict of interest caused by holding instruments of an institution where one is employed. However, in an adverse situation, where staff would have insider information about a probable decline of shares’ or other instruments’ prices, institutions need to take measures to ensure that insider rules</p>	<p>Para 15 of the CP was clarified</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<p>are complied with. Institutions should also not take measures that themselves cause short-term changes of prices, e.g. by buying shares from the market in bulk in a very short timeframe just before the variable remuneration is awarded in shares.</p>			
<p>Question 3 (Title II, Section 6, 'Governance of remuneration' – Shareholders' involvement)</p>			
<p>General comments</p>	<p>Some respondents deemed the GL on the governance of the remuneration to be too prescriptive and to not adequately consider the characteristics of the investment firms. According to some respondents, the GL fail in addition to consider that many (small and less complex) institutions may not have enough staff to fill all the roles required.</p>	<p>The CRD applies to credit institutions and investment firms. EBA GL cannot exempt investment firms from the scope of application defined in the CRD. The provisions should be applied in a proportionate way.</p>	<p>No change</p>
<p>Para 17</p>	<p>A few respondents suggested that the supervisory function should not be required to agree remuneration policies in their entirety, but rather the general principles which govern remuneration as per Article 92(2)(c) of the CRD. Any review of implementation should be left to the audit functions.</p>	<p>In line with Article 92 of the CRD the supervisory function is responsible for adopting the general principles of the remuneration policy to review it regularly and to oversee its implementation.</p> <p>The remuneration policy adopted by the supervisory function needs to be sufficient clear to ensure that its implementation leads to remuneration practices as intended. Hence it is appropriate that the supervisory function, which also bears part of the overall responsibility for the institution together with the management function, adopts the policy document that also applies to the remuneration of the management function.</p> <p>It is not necessary that the remuneration policy contains each and every detail of remuneration practices, e.g. the individual objectives for staff will regularly be set by the management of the institution in line with the framework provided in the policy.</p>	<p>No changes</p>
<p>Para 23</p>	<p>A couple of respondents noted that it is not the purpose of</p>	<p>The remuneration should take into account, among other things,</p>	



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	the remuneration policy to set role descriptions, which should be carried out elsewhere.	the professional activities of staff. Hence the remuneration policy needs to link the remuneration to the role of staff within the institution.	
Para 24	A few respondents noted that it is outside the mandate of the compliance function to be engaged in setting the amount of the bonuses, as it is involved in setting the performance criteria and participating in the assessment of staff members in terms of performance and behaviours.	The bonus pool that forms the basis for the further distribution of variable remuneration needs to be set appropriately taking into account the risk-adjusted performance of the institution. Hence the risk control and compliance functions, the latter involved in the management of compliance risks, should provide their input in order to achieve the needed risk alignment, while not being responsible for the setting of the overall amount.	Para 24 of the CP amended
Para 25	One respondent suggested referring to heads of control functions instead of ‘senior officers’.	The GL use for the sake of consistency the language used in the CRD.	No change
Para 26	One respondent pointed out that internal audit is not meant to control (as the GL say referring to all internal control functions) but to audit. The audit function is a separate independent function. This should be clarified.	According to guidelines issued by other international standard setters and in line with the EBA guidelines on internal governance, internal auditing is generally referred to as one of the institution’s control functions. However, additional requirements apply to the internal audit function, e.g. it is independent, reports directly to the management body and forms a third line of defence that also audits the activities of other control functions.	No change
Para 28	A couple of respondents suggested that the risk function should be required to provide input rather than mandated to attend meetings of the remuneration committee.	It is not necessary for the risk management function to participate in all meetings, but should have the possibility to participate when appropriate.	Para 28 of the CP amended
Para 32	Some respondents were not supportive of suggestions that shareholders should vote on remuneration policy, which was considered to go beyond the CRD, and in particular the role defined under Article 94(1)(g)(ii) of the CRD. It was	The GL do not establish a requirement to seek shareholders’ approval regarding the remuneration policy. However, it is possible to seek the shareholders’ approval where this is required under the national company law.	A reference to national company law was added



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>suggested by a couple of respondents that any shareholder involvement must be limited to decisions on the remuneration of management and identified key persons and not of the overall staff.</p> <p>Some respondents also noted that the shareholders' involvement is regulated in national company law.</p>		
Para 33	<p>Some respondents noted that payments for early termination are usually calculated with reference to the last year's compensation and therefore cannot be determined at the time of the shareholder vote.</p> <p>Some respondents also suggested that this requirement goes beyond Article 94(1)(h) of the CRD, which only requires that 'payments relating to the early termination of a contract reflect performance achieved over time and do not reward failure or misconduct' rather than requiring a shareholder vote.</p>	<p>The GL only establish a requirement for shareholders to approve the severance payment framework in cases where the remuneration policy was subject to the shareholders' approval, as the severance payments arrangements should be part of the remuneration policy. Institutions can also set out in their policy criteria for the determination of amounts rather than the actual amounts that can be paid.</p>	<p>The provision has been clarified</p>
Para 36	<p>A number of respondents requested clarity on the frequency of a shareholder vote to increase the maximum ratio. One suggestion was that the vote should take place once, and be repeated every three to five years as necessary.</p> <p>In addition, to reflect the interests of mutuals, one respondent suggested that a distinction should be drawn between many individuals casting one vote and a small number of institutional shareholders casting many votes, as would be the case in publicly owned banks.</p>	<p>Article 94 of the CRD does not envisage the need for the shareholders to repeat the vote on a higher ratio. As the CRD sets minimum requirements, national company laws could potentially lay down that such a ratio is subject to a periodical approval.</p> <p>The CRD also determines the needed majority for such a vote, not differentiating between different legal forms of entities or different company laws.</p> <p>The CRD is silent on the shareholders' possibility to revert to a lower ratio. Shareholders should be able to vote also on a reduction of the ratio. In such cases the normal majority needed for such votes should be sufficient.</p>	<p>Section 2.2 amended regarding the votes on lowering the ratio</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Para 36(a) and (b)	<p>A significant number of EU-headquartered respondents raised concerns regarding the requirement for the general assembly of the subsidiary to vote on increasing the higher ratio of variable to fixed remuneration.</p> <p>Respondents considered that this would add unnecessary administrative burden, particularly where the consolidating institution was already required to hold a vote on increasing the ratio at group level.</p> <p>The most common suggestion was that, for EU-headquartered firms, one vote at the consolidating institution should be sufficient to apply at group level and also for all subsidiaries to which the CRD bonus cap applied. For non-EU-headquartered firms, this vote could take place at the immediate non-EU parent of the subsidiary. One proposed amendment to this solution was that the vote by shareholders of the consolidating institution should apply at the group level and any subsidiaries in which the institution holds >75% shareholding, in line with the threshold for a vote being passed.</p> <p>It was also suggested that the requirement under para 36(b)(ii) whereby the parent company shareholders must have already agreed to a higher ratio across the group prior to a vote on the ratio for the subsidiary was a duplication of effort and time-consuming, particularly in the case of 100% owned subsidiaries.</p> <p>In addition, a few respondents noted that this requirement assumes that shareholders have competence for setting remuneration in other jurisdictions.</p> <p>One respondent also questioned whether this was imposing</p>	<p>Article 94 of the CRD applies to institutions on an individual basis, independent of the fact that they might be subsidiaries of a EU parent institution. Competent authorities should ensure compliance with these provisions at group, parent company and subsidiary levels, including offshore financial centres.</p> <p>Article 109 of the CRD sets additional requirements regarding the application of the requirements aiming at the implementation of remuneration requirements in subsidiaries that are not themselves subject to the CRD. This includes subsidiaries that are institutions but are located in third countries and subsidiaries that are financial institutions, and can include ancillary services undertakings. In line with Article 109(3) of the CRD, the requirements of the CRD do not apply if the EU parent undertaking can demonstrate to the competent authority that the application of the provisions to the subsidiary in the third country is unlawful.</p> <p>It is therefore necessary that each institution that intends to increase the maximum ratio between the variable and the fixed remuneration receives its shareholders' approval.</p> <p>On a consolidated basis the requirements apply as if the consolidated basis would form one entity. Hence on a consolidated basis it should be sufficient if the approval is granted by the shareholders of the parent company for the staff whose professional activities have a material impact on the group's risk profile. However, if such staff members belong to a subsidiary that is subject to the CRD provisions on a solo basis, the approval is also needed from the shareholders of the institution where the staff member is employed.</p> <p>In addition it needs to be taken into account that the possibility</p>	No change



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>shareholder voting requirements on non-EU shareholders of overseas subsidiaries which are not themselves subject to CRD IV or the bonus cap.</p> <p>Respondents from non-EU-headquartered firms considered that the requirement to vote at the level of the consolidating institution was disproportionate where the bonus cap does not apply to the consolidating institution.</p> <p>The reasoning behind the extraterritorial nature of subsidiaries being required to vote even when not subject to CRD, simply because some staff members were identified as MRTs at the group level, was also unclear according to some respondents.</p> <p>The bonus cap would cause conflicts in jurisdictions such as Russia, where variable remuneration must not be lower than 40% of total remuneration, leaving almost no flexibility and hence limiting the ability of institutions to link remuneration to performance.</p>	<p>of approving a higher maximum ratio is subject to national discretion and therefore national laws regarding this issue may not allow the increase of the ratio for institutions, independent of the fact that it may be possible for the parent institution to increase the ratio as it is located in a different Member State.</p> <p>The guidelines are addressed to institutions in Member States. Where an institution in a Member State is a subsidiary of an institution in a third country, the institution in a Member State is the addressee of the CRD and the guidelines. Where the institution in a Member State has itself a subsidiary, it is the consolidating institution. The shareholders of the consolidating institution will cast the vote on the approved higher ratio on a consolidated basis.</p>	
Para 36(b)(ii)	A respondent suggested that it should be made clear that the CRD shareholder vote requirements are separate from the group remuneration policy and must be voted on under national law.	Please refer to the explanations above. The approval of shareholders is required for each individual institution intending to increase the maximum ratio between the variable and the fixed components of remuneration.	No change
Para 37	A number of respondents requested that the deadline for informing the competent authority of the outcome of the shareholder vote be extended from five working days to at least thirty working days.	It is difficult to understand why information that is provided to the shareholders should not be provided at the same time to the competent authority. Five working days are deemed to be sufficient for the forwarding of the information provided to shareholders.	No change
Para 38	A couple of respondents noted that, given the shareholder vote will take place part-way through a performance year,	In general the information as of the end of the last financial year will be sufficient. In case where significant changes can be	No change



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>any information on number of staff affected and relative remuneration levels will only be with reference to the previous year.</p>	<p>expected due to exceptional cases, the institutions should liaise closely with the competent authority.</p>	
Question 4 (Title II, Section 7, 'Remuneration policies and group context')			
<p>Para 39</p>	<p>Many respondents questioned the need for a remuneration committee to be established at subsidiary level in addition to the consolidation level. It was suggested that this would result in significant costs, increase administrative burden, and reduce efficiency in return for questionable governance benefit. This was particularly the case for 100% owned subsidiaries that would typically expect to act in accordance with decisions regarding remuneration taken at the group level.</p> <p>Respondents suggested that whether a subsidiary or a sub-consolidation entity should have a separate remuneration committee should be decided by the institution and the relevant competent authority taking into account the oversight that is currently exercised by the group remuneration committee. It was also suggested that institutions should have the option of delegating to the parent company where an activity is already being carried out at the parent level for the entire group.</p> <p>Some respondents deemed also that the role the remuneration committee is entrusted with is too executive and could conflict with tasks conferred on other functions.</p> <p>If a remuneration committee for all significant subsidiaries was to be retained, some respondents proposed that the guidelines should make clear that it need only be responsible for monitoring and implementation of the</p>	<p>The CRD requires that all institutions that are significant have a remuneration committee; the requirement applies also to the individual institutions that are part of a group.</p> <p>The definition of significant institution is set in the guidelines and limited to large and complex institutions; competent authorities may deem additional institutions to be significant. This includes significant institutions that are subsidiaries.</p> <p>As national legal frameworks and business models of institutions differ it is appropriate to require for significant institutions an individual remuneration committee that monitors the implementation of the remuneration policy and reviews its appropriateness and compliance with national law.</p> <p>The guidelines were clarified that this requirement applies only to institutions that are themselves significant and not to all subsidiaries of significant institutions.</p>	<p>Para 39 of the CP amended</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	group-wide remuneration policy, and specific tasks need not be separated.		
Para 42	A number of respondents commented that the requirement for the remuneration committee to be composed of members of the supervisory function was not appropriate. This conflicts with national laws (notably Germany), which require that decisions on remuneration for staff must be taken by the management board.	Even in Member States where company laws require a two-tier system, such as in Germany, the remuneration committee shall be exclusively composed of members of the supervisory function and shall support the supervisory function in conducting its tasks. The guidelines acknowledge that tasks of supervisory functions might differ between different board structures (in particular one-tier vs. two-tier structure) by making an explicit reference to differences in the national implementation due to different company law.	A footnote was added to clarify the different board structures
Paras 52 and 53	A number of respondents from smaller institutions raised concerns regarding the requirement for an annual independent review of the remuneration policy. The respondents stated that this would increase costs, whether carried out by the internal audit function or outsourced. Larger firms also considered that this would be impractical for each entity within a group.	Article 92(2)(c) and (d) of the CRD requires such reviews. The intensity of a review should also take into account the complexity of the remuneration policy and the nature, size and complexity of the institution.	No change
Para 60	Some respondents requested clarification that companies in a group that are subject to sectoral rules do not have to apply rules on CRD remuneration on a consolidated (or sub-consolidated) basis, except for some individuals who have specific functions at the group level. A few respondents stated that the application of CRD remuneration rules should only apply for the remuneration that relates to activities having a material impact on the risk	Institutions have to establish group-wide remuneration policies and have to meet the CRD requirements on an individual basis. However, Article 109 of the CRD requires the parent institution to meet the requirements of Section II of Chapter 2 of the CRD on a consolidated and sub-consolidated basis. For identified staff in its subsidiaries that have a material impact on the group's risk profile the responsible institution has to	No change



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>profile of the group.</p>	<p>ensure that the specific requirements on remuneration are complied with. This requirement does not differentiate between financial institutions that are subject to different sectoral rules (e.g. MiFid, Payments Directive, AIFMD, and UCITS).</p> <p>The specific requirements for identified staff are applied to identified staff of institutions (as defined in the CRD) and identified staff of subsidiaries that are financial institutions and can include identified staff of ancillary service undertakings in the scope of consolidation whose professional activities have a material impact on the sub-consolidated or consolidated risk profile.</p> <p>The CRD requirements are not applied to staff whose professional activities have only an impact on the financial institution’s risk profile, but not a material impact on the groups risk profile. Still, for the identification of staff the criteria set in the RTS on identified staff are to be applied.</p>	
<p>Para 63</p>	<p>The vast majority of respondents strongly objected to the application of CRD remuneration principles to institutions which are not subject to the CRD. The arguments against this approach were:</p> <ul style="list-style-type: none"> The nature of risks in the banking sector differs from those in the asset management sector: CRD remuneration rules are intended to align risks from dealing on own account with the need for credit institutions to ‘rebuild their capital levels when operating within the buffer range’ (Recital 83 of the CRD); remuneration rules for asset management companies are intended to improve the alignment of the interests of the portfolio manager with the 	<p>See also comments above to paragraph 60.</p> <p>The CRD does not directly apply to other entities than institutions in the EU; however, as explained above the CRD has some impact in particular on the identified staff of financial institutions that have a material impact on the group’s risk profile.</p> <p>Besides the so-called bonus cap, the requirements of the AIFM and UCITS V Directives are comparable with the CRD requirements.</p> <p>The EBA guidelines took into account situations where these directives cannot be applied in parallel and set out, for the pay out in instruments, provisions that ensure that the remuneration</p>	<p>No change on substance; some of the provisions regarding the identification of staff have been further clarified</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>interests of its clients.</p> <ul style="list-style-type: none"> • Proportionality (see question 5): had it been the EU legislature's intention to limit the application of the proportionality principle by issuing a new interpretation of the CRD remuneration principles, it would have expressly stated so at the time of negotiating CRD. • Remuneration policy for UCITS/AIFMD firms is the responsibility of ESMA, which recognised that the CRD and AIFMD remuneration principles have equivalence and consistency of outcomes, the latter of which were modelled on CRD and specifically retained the principle of proportionality. • The EU co-legislators specifically debated the issue of a bonus cap for UCITS firms, and voted against introducing such a cap, which would result from this requirement. • Article 109 of the CRD states that national supervisors are required to ensure that only parents and subsidiaries 'subject to this Directive' meet the remuneration obligations of CRD. • AIFMD and UCITS firms are required to apply prudential requirements which safeguard the consolidating institution from risk in relation to these subsidiaries, including on authorisation, operating conditions, transparency requirements, product rules and a risk framework. • The requirement would also create an arbitrary uneven playing field between asset managers in a banking group and those that are not, leading to a competitive disadvantage for these firms and making it less 	<p>policy follows the more specific sectoral provisions.</p> <p>Please refer also to the explanations provided under proportionality.</p>	



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	<p>attractive for CRD firms to diversify risks to non-banking business.</p> <ul style="list-style-type: none"> The application of CRD remuneration rules to these subsidiaries would compromise the operational autonomy and independence of a group subsidiary, by requiring them to align incentives with banking group profits rather than client-based asset management profits. 		
Para 64	<p>A respondent noted the detrimental impact of including those on secondment within the scope of identified staff. A couple of respondents further noted that staff on short-term secondments should not be included even where they would be identified. The inclusion would unnecessarily increase administrative burden in order to apply remuneration principles to a small quantum of remuneration received for a limited time period.</p>	<p>It is important that institutions identify all staff that have a material impact on the institution's risk profile to avoid inappropriate incentives for risk taking.</p> <p>This also applies to staff seconded from a parent institution located in a third country.</p>	Para 64 of the CP clarified
Para 66	<p>A few respondents stated that the requirement to apply group-wide remuneration rules at subsidiaries established in third countries would lead to competitiveness and level playing field concerns when compared with firms established in third countries carrying out the same activities but which are not part of an EU banking group and do not have to apply the same remuneration requirements.</p>	<p>Please refer also to the comments above under paragraphs 60 and 63.</p> <p>Subsidiaries in third countries are not directly subject to the CRD. The EBA is aware of the concerns raised, which are a consequence of Article 109(2) of the CRD.</p> <p>The wording of the paragraph was clarified.</p>	Para 66 of the CP clarified
Para 67	<p>A couple of respondents raised concerns regarding shareholder votes for subsidiaries established in third countries, which were considered extraterritorial and unnecessary where the bonus cap does not exist in local regulations.</p> <p>An alternative was suggested whereby all 100% subsidiaries</p>	<p>A subsidiary established in a third country that is included in the scope of prudential consolidation of a consolidating institution in a Member State should have remuneration policies that are consistent with the group-wide remuneration policies and comply with the requirements of Articles 92(2), 93 and 94 of the CRD at least for those staff whose professional activities have a</p>	Para 67 has been amended



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>should be exempt where the ultimate parent company has obtained approval from shareholders to operate a higher ratio for all its subsidiaries.</p>	<p>material impact on the group's risk profile.</p>	
Question 5 (Title II, Section 6, 'Governance of remuneration' – Proportionality)			
Proportionality	<p>The majority of respondents suggested that the EBA should retain the approach taken within the CEBS Guidelines regarding proportionality and the 'neutralisation' of requirements, as otherwise institutions had to bear significant implementation and ongoing costs for the administration of remuneration policies, deferred payments and pay out in instruments.</p> <p>Many respondents provided their legal analysis, which concluded that the CRD would allow such neutralisations. However, a few respondents specified that the CRD would allow firms to not apply all remuneration provisions, but that the whole set of remuneration provisions should be applied in a manner and to the extent that is proportionate, allowing in particular some investment firms to apply only an appropriate subset of these provisions.</p> <p>The main legal arguments brought forward are the wording 'in a manner and to the extent' within Article 92(2) of the CRD and Recital 66, which explains that in particular not all investment firms should not be required to comply with all principles. 'In particular' suggests that this could also be the case for some credit institutions. The text has not changed since CRD III and therefore respondents deem it unjustified to change now the interpretation of the underlying provisions. The impact assessment of CRD III also states that the proportionate application would reduce the</p>	<p>Article 92(1) of the CRD requires that competent authorities shall ensure that institutions comply with the remuneration principles in a manner and to the extent that is appropriate for their size and internal organisation and the nature, scope and complexity of their activities.</p> <p>The scope of consolidation is defined in the CRR. Asset managers are financial institutions for the purposes of the CRD and fall, like all other subsidiaries that are institutions or financial institutions, in the scope of consolidation. Ancillary undertakings may also fall in the scope of consolidation.</p> <p>Consequently the specific remuneration requirements of the CRD are to be applied to their identified staff who have a material impact on the group's risk profile. This also includes staff in subsidiaries in third countries.</p> <p>When adopting the AIFMD or UCITS Directive, the co-legislators did not amend the respective CRD provisions. There is no reason to assume that it was intended to not apply the bonus cap to staff in such financial institutions that are subsidiaries of CRD institutions provided that the staff have a material impact on the group's risk profile.</p> <p>The number of identified staff in such firms that fall into this category should be limited. When the criteria of the RTS on identified staff are applied, institutions need to apply them on a consolidated basis, considering the whole group as if it were one</p>	Section redrafted



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compliance costs of firms; it would be difficult to understand how this should be achieved when all the requirements have to be applied by all institutions.

In addition the EBA is mandated to take into account the Commission's recommendation from 30 April 2009, which states that only a significant bonus should be deferred and also required the proportionate application of remuneration principles. Respondents also referred to the FSB principles and that these would only apply to large and internationally active institutions.

A few respondents, in particular investment firms and their associations, suggest that the bonus cap as such should be subject to proportionality, while many respondents seem to have accepted the fact that the cap should be applied in all cases. The underlying reason is that the cap only applies to a subset of asset management firms and that this would lead to a distortion of competition between such firms which are acting in or outside a group that is subject to the CRD and also with firms in other sectors that compete for the same talents in staff on a global basis. The co-legislators did not include a bonus cap in the UCITS or AIFM directives.

In addition the administrative costs for smaller firms would be significantly higher. They would also be less likely to withstand volatilities in their business, as the remuneration of staff is a dominant cost factor, while larger firms have the means to internally balance the increased fixed costs.

In addition some firms would have to comply in parallel with the AIFMD, UCITS, MiFID and CRD provisions. Asset managers usually have to apply carried interest models,

legal entity. Hence, only if the subsidiary would be a material business unit should staff fall under the qualitative criteria. The quantitative criteria, however, must be applied as well.

The GL set out how carried interest models are taken into account. The provisions are in line with the ESMA GL, ensuring that carried interest is only taken into account when it can provide incentives for inappropriate risk taking.

The administration of the bonus cap is not burdensome, but will lead to an increase of the fixed remuneration and a reduction of the variable remuneration. The reduction of the ratio between the variable and the fixed remuneration was the intended result of the bonus cap to ensure that remuneration does not provide for inappropriate incentives to take risks.

The pay out of instruments is only needed when the variable remuneration awarded in instruments vests. Institutions should be able to create relatively simple instruments in line with the GL (see also comments to Q16) and RTS on instruments. It is not necessary that financial instruments are issued.

The deferral of remuneration is a precondition for the application of malus. The administration costs for deferring small amounts seemed high for many respondents compared with the prudential benefits; however, in many cases they did not provide further evidence. To reduce the burden, institutions may consider using cliff vesting, which in turn would reduce the net present value of the award and may also have some tax implications.

The EBA has taken into account the comments received and developed advice to European Commission for a legislative change on how proportionality should be encoded within the

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which are in their interest and required by investors. The application of the bonus cap could make such arrangements more difficult to apply and due to this such firms could lose business to asset managers that are not subject to the bonus cap. Financial institutions would also have to increase the fixed remuneration, leading to higher fixed costs, and in some cases this would even increase their regulatory capital requirements. It should also be considered that such investment firms or asset managers have a lower systemic impact. It should also be remembered that there is a general review of the appropriateness of applying the CRD to investment firms.

Depending on the legal form it would be disproportionate to require the pay out in instruments, as the creation and administration of them would be difficult. In addition instruments would be less attractive for staff, in particular if there were no market where they could sell the instrument after deferral and retention periods. Also for listed institutions the use of shares would also lead to additional administration costs and the dilution of voting rights.

Neutralisations for deferral and the pay out in instruments should be possible based on the low amount of variable remuneration paid to single staff members and for small and non-complex institutions that have a low risk profile. Neutralisation should also be possible for subsidiaries based on the nature of the group entities (e.g. such as asset managers). The administrative costs for the implementation would be significant and institutions would need more staff for the ongoing administration. In addition the fixed remuneration costs would increase. The costs

CRD to ensure a harmonised application of remuneration requirements which takes appropriately into account the differences between institutions' sizes, business models and risk profiles.



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	<p>were estimated only by a few firms (see also Q21 and Q22), but did not appear to be significant for most of the institutions compared with the overall costs for staff.</p> <p>Some respondents propose thresholds between DKK 100 000 (ca EUR 13 000) and EUR 150 000 or 1-2 monthly salaries below which requirements could be neutralised, or make reference to the rules implemented in the Member States, e.g. the categorisation in the UK, which is based on GBP 500 000 and a 33% ratio between variable and fixed remuneration.</p> <p>Thresholds for institutions were suggested by a few respondents in line with the national implementation by some Member States between EUR 10 billion and EUR 15 billion.</p>		
Question 6 (Title II, Section 9, 'The identification process')			
General comments	<p>While many respondents deemed the section was appropriate and sufficiently clear and no amendments were needed, many others deemed the new identification process burdensome and costly, and raised several comments, mainly related to:</p> <p>the group dimension (coverage of subsidiaries out of the CRD IV scope, namely asset managers);</p> <p>the need for the application of the proportionality principle in order to make the consolidated process consistent and distinguish between significant and less complex institutions;</p> <p>the frequency of the identification process and its updates;</p>	<p>Please refer also to the comments made above regarding proportionality and the scope of application, and the specific comments below.</p> <p>It is worth noting that the identification process is based on the criteria defined in the RTS on identified staff. In line with the CRD and the RTS the assessment must be conducted by all institutions, regardless of their specific characteristics and how the remuneration principles are applied to their identified staff.</p> <p>Indeed, staff members of small and less complex institutions may also have an impact on the risk profile of such institutions and therefore are relevant (even if not systemically) with regard to that institution.</p> <p>It is also worth noting that the EBA GL cannot amend the RTS (i.e.</p>	<p>The wording of this section has been improved to provide further clarity</p>



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	<p>the length of the exemptions given by the competent authorities pursuant to Regulation (EU) No 604/2014.</p> <p>A few respondents also suggested providing for a transitional period for the application of the guidelines related to the identification process, in order to allow the transition to the new regulatory framework.</p>	<p>the criteria defined for the identification of staff), the CRD's scope of application (i.e. all institutions) or their entry into force and date of application.</p>	
Quantitative criteria within the RTS on identified staff	<p>A very few respondents suggested providing clarifications of how the quantitative criteria under Article (4)(1)(b) and (c) of the Regulation (EU) No 604/2014 shall be used on a 'country' basis for the identification of MRT self-assessment process.</p>	<p>Those criteria (0.3% or remuneration brackets) are based on a comparative analysis between the total remuneration of an individual and if the remuneration belongs to the 0.3% of the highest amounts paid to staff within the institution, or the identified staff identified according to the specified qualitative criteria with the lowest remuneration.</p> <p>Clarifications have been added on how the thresholds set in the RTS should be calculated based on the remuneration awarded in a financial year. In addition the mapping of staff to different countries was clarified. Staff should be taken into account in the country where they exercise their predominant part of professional activities.</p>	<p>Para 86 of the CP clarified and para 87 added</p>
Para 86	<p>A few respondents commented on the impossibility of splitting multi-year accrual periods into annual accrual periods (e.g. where the multi-year performance is subject to average financial criteria or conditions at the end of each vesting period).</p> <p>Respondents recommended excluding from the calculation of the total compensation to which the RTS make reference the monetary and non-monetary fixed components (e.g. medical insurance, life insurance, etc.), which are not material, as they could vary by country and during the year,</p>	<p>The guidelines were clarified in order to ensure that the remuneration for the purpose of applying the criteria in the RTS on identified staff can be calculated. The amounts are taken into account in the year of the award, independent of the length of the previous accrual period. Only for non-revolving multi-year accrual periods should institutions also be able to take into account the maximum amount of variable remuneration which can be awarded divided by the length of the accrual period. In line with the definition of remuneration, all remuneration elements need to be taken into account in the calculation of the thresholds. The criteria set in the RTS are based on the total</p>	<p>Para 86 of the CP amended</p>



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	and may be minimal when looking at the overall pay.	remuneration awarded in a financial year. To reduce the burden of the calculation the amounts for routine employment packages can be allocated based on suitable methods where they are not individually accounted for.	
<p>Para 88</p> <p>Update of the self-assessment</p>	<p>The requested update of the self-assessment process ‘at all times during the year’, at least for MRT identified according to the quantitative criteria, was deemed inappropriate; some respondents suggested making the update quarterly, others aligning it with the award process which occurs yearly. It was also requested that the terms ‘periodically’ and ‘annually’, used referring to the self-assessment, be aligned.</p>	<p>Periodical updates of the list of identified staff are needed in particular when new staff are employed or staff change positions within the institution. This is to ensure that all identified staff are subject to the relevant requirements. Institutions should in general consider with all such changes of positions if the staff will become identified staff, to ensure that the contractual arrangements are made accordingly. However, for the purpose of the administration of the remuneration policy, the EBA is aware that a periodical update of the arrangement might be more practical, in particular to avoid swift changes in cases where staff only take over a position for a short time period. Institutions should ensure that staff who fall or are likely to fall under the criteria in Article 3 for a period of at least three months in a financial year are treated as identified staff.</p>	<p>Para 88 of the CP amended</p>
<p>Para 88</p> <p>Information re the self-assessment</p>	<p>It has been suggested that clarification be provided on the type of documentation supporting the self-assessment for the MRT identification, as many terms are vague and the request unclear (e.g. ‘business strategy and models’; ‘documentation of the identification outcome’)</p>	<p>The provisions need to be read in the context of the guidelines and in particular the whole of section 9.</p> <p>The self-assessment needs to be documented, including the responsible persons, assessment criteria and the identification outcome so that an internal or external expert can review the appropriateness of the process and the correctness of the assessment result.</p> <p>The requirements about how the self-assessment process should be documented were clarified.</p>	<p>Para 88 of the CP amended</p>



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<p>Para 92(a)</p> <p>Decision and review of the exclusion</p>	<p>It has been suggested that the supervisory function be allowed to review the overall principles set by the management body for exclusions, rather than each single decision of exclusion. A few respondents deemed the time limits set for overall governance of the identification process difficult to meet.</p>	<p>The decision of the management body is based on the analysis performed within the annual identification process. While it is necessary that staff to be excluded be clearly identifiable, it is not required by the guidelines that a single decision or assessment be made for each single staff member to be excluded. The exclusion criteria (e.g. if staff are active in a material business unit) can be assessed collectively and approvals can be made for staff who fall under the same grounds for exclusion. However, as staff with remuneration of EUR 1 million or more in the financial year should only be excluded in exceptional cases, such exclusions should be decided on only based on the individual merits.</p> <p>The time period for the identification process and necessary information of competent authorities is sufficient, as the identification process can be performed at the beginning of the year based on the remuneration awarded in the previous financial year (e.g. in 2016 the variable remuneration awarded in 2015 for the performance period 2014 – independent of the timing of its actual pay out – is added to the fixed remuneration awarded and paid in 2015). Six months is deemed to be sufficient to complete the internal identification process.</p>	<p>Para 92(a) of the CP amended</p>
<p>Para 92(b) and (c)</p> <p>Paras 93-94</p> <p>Frequency and notification of exclusions from MRT</p>	<p>Several respondents suggested admitting that the exclusions from the group of MRT need not be notified and approved every year for staff members already excluded in a specific performance year (exclusions could be valid until there is a change of position or a significant salary increase).</p> <p>A very few respondents advised clarifying whether the ‘exemption requests have to be presented each year or every two years’. A very few respondents also suggested providing derogations on the time limits for the exemption</p>	<p>The GL are in line with the RTS, which require that the remuneration awarded in the preceding financial year be taken into account and do not provide for the possibility of a permanent exclusion.</p> <p>The guidelines differentiate between situations in which the exclusions are notified and where approval is sought. Already in the CP, situations were defined under which no repeated notification is needed.</p>	<p>No change</p>



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	<p>requests in cases of reorganisation, as it is problematic to comply with those provided for in the GL (one respondent said 'in June').</p> <p>It has been suggested that a 'temporary exception' be provided for in the case of MRT who have 'taken up role part way through the year' or senior managers of the non-EU parent who have 'the minimis involvement with the CRD entity'.</p>	<p>The application for exclusions at the competent authority has to be done annually and the approval will be valid including the next performance period. As a result of this, the first time exclusion is valid for a period longer than one year.</p> <p>The guidelines have been clarified (compare explanations regarding paragraph 88) with regard to staff who take on a role temporarily. In any case where staff are identified staff for a period of three months or where it can be expected that the period will reach three months, staff should be treated as identified staff when they meet one of the criteria set in the RTS or by the institution.</p>	
<p>Paras 97-99</p> <p>Governance of the identification process</p>	<p>A very few respondents deemed that this guidance goes beyond the governance requirements set out in the 'regulations and legislations'. Some others recommended clarifying that the involvement of the control functions does not imply their direct operational responsibility in the identification process.</p>	<p>The identification process must be based on appropriate governance arrangements, which are required in general under Article 74 of the CRD and in particular under Article 92(2) of the CRD.</p> <p>The involvement of the control functions was clarified. While they do not carry the operational responsibility for the identification process, their input to the identification process, in particular with regard to the assessment of the risk profile of the institution and business areas, is necessary.</p>	<p>Para 99 of the CP clarified</p>
<p>Para 100</p> <p>Identification on a solo and consolidated basis</p>	<p>A few respondents pointed out the uneven playing field for the institutions not belonging to a banking group, as the simplifications admitted under para 101 refer only to institutions within groups; a few respondents only suggested specifying that subsidiaries referred to in this paragraph are only those subject to the consolidation reporting by the consolidating institution.</p>	<p>See also the EBA analysis regarding proportionality.</p> <p>The guidelines refer to the consolidated situation in line with the scope of consolidation defined within the CRD and CRR. It was further clarified that only subsidiaries in the scope of prudential consolidation on a consolidated or sub-consolidated basis as defined in point (48) and (49) of Article 4(1) CRR are included in the scope of the identification process on a consolidated and sub-consolidated basis.</p>	<p>Section 9.3 of the CP clarified</p>



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Para 106 Role of subsidiaries	Clarifications are welcomed on whether or not non-CRD entities are subject to the identification process on a solo basis.	Para 106 states that ‘Subsidiaries that are not themselves subject to the CRD are not required to perform an identification process on the solo level. For those subsidiaries the assessment should be performed by the consolidating institution’	No change
Para 106 Small and less complex institutions	It has been recommended that it be clarified which institutions qualify as small and less complex for the purposes of this paragraph; in this respect, it has been suggested that the capital required to be held against RWAs by the institution itself be taken into account.	In general, small or non-complex institutions will not have the necessary resources to perform such assessments and should be able to rely on the assessment made by the parent institution. However, this assessment needs to take into account the individual institution. It is not possible to provide an exhaustive set of mapping criteria; if in doubt, the competent authority will make a case-by-case assessment.	No change
Para 107 Identification process by branches located in third countries	<p>Some respondents deemed it inappropriate to require the third countries branches of EU institutions also to carry out their own self-assessment in order to identify their MRT, especially when they are small and the identification process could result in a repetitive exercise or in identifying all the staff members (proportionality issue).</p> <p>A few respondents deemed that the parent company should not be involved in the identification process carried out on a solo basis by the subsidiaries located in other EU countries.</p> <p>One respondent proposed redrafting the requirement: ‘Branches of credit institutions located in third countries and institutions which are subsidiaries of parent institutions in third countries should conduct the identification process and inform their parent institution of its results. Consolidating institutions should also include their subsidiaries and branches in third countries in their assessment. For branches, the criteria for the identification</p>	<p>The language of the provision has been clarified.</p> <p>Branches are an independent part of an institution. If an institution in a Member State has branches in third countries, the CRD rules apply also to these branches and are to be covered in the institution’s assessment.</p> <p>According to the CRD, Member States need to apply equivalent rules to branches of third country institutions.</p> <p>Institutions in a Member State that are subsidiaries of a third country institution are subject to the CRD requirements. To ensure that information about the parent institution was provided, the guidelines introduced information obligations; these will enable the international group to meet international remuneration standards.</p>	Para 107 of the CP amended



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	<p>should be applied in the same way to the functions, business activities and staff located in a Member State as they would be for an institution on an individual level.'</p>		
Question 7 (Title II, Section 10, 'Capital base')			
<p>Paras 108-114</p> <p>General comments</p>	<p>The vast majority of respondents deemed the section to be appropriate and sufficiently clear.</p> <p>However, others complained about the lack of flexibility, stemming from the changes to the proportionality principle and from the proposed application of the cap to staff members operating in group entities not directly subject to CRD IV (e.g. asset managers). The most-perceived negative consequence of such a new approach is an increase in fixed costs, which might also have an impact on the maintenance of a sound capital base as it reduces the possibility to reduce the variable remuneration in periods of poor performance.</p>	<p>The section was clarified by making clearer the application of Article 141 of the CRD, which imposes limitations on the maximum distributable amount, and how it relates to the variable remuneration.</p> <p>See also comments regarding proportionality.</p> <p>The introduction of the so-called 'bonus cap' is part of the CRD and cannot be amended by EBA guidelines and was not subject to this consultation.</p> <p>Benchmarking studies show that the variable remuneration of identified staff is relatively low compared with the total staff costs; in addition the application of malus and clawback is limited. In a lasting adverse situation institutions should be able to reduce even the fixed remuneration via renegotiations. Hence, the effect of a restructured remuneration policy in terms of cost flexibility and sound capital base should be rather limited.</p>	<p>Section 10 of the CP clarified regarding the effects of Article 141 of the CRD, otherwise no change</p>
<p>Para 112</p> <p>Lack of a sound capital base</p>	<p>One respondent asked for clarification of the functioning of the malus and clawback mechanisms in institutions which do not have a sound capital base, also having in mind the overall ex post risk-adjustment framework set out in the GL.</p>	<p>Please refer to the further provision within the guidelines on the application of malus.</p> <p>According to para 112, the lack of a sound capital base is one of the events triggering the application of malus and clawbacks where necessary (in general it can be assumed that the capital basis was reduced as risks manifested at a level not foreseen in the past), the reduction of the bonus pool and, where possible, the individual remuneration; this provision adds to the other GL on the ex post risk-adjustment process. Those measures aim to</p>	<p>No change</p>



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		stabilise the capital base.	
	<p>One respondent proposed the following amendment to para 112 in order to take into account situations in which a business area/entity does not generate profits and produces a low amount of capital:</p> <p>add '(d) where variable remuneration is not determined based on the performance of an individual institution, take other appropriate measures to strengthen the capital base.'</p>	<p>Variable remuneration must be based on performance and can only be based on other conditions in exceptional cases (e.g. on the retention of key staff in a restructuring). Article 141 of the CRD applies in any case. The addition of the suggested provision would not be consistent with the provisions set out in the CRD and these guidelines.</p>	No change
<p>Para 113 Reduction of variable remuneration</p>	<p>A few respondents commented on the impossibility of compensating in the future the reduction of the variable remuneration that occurred in a specific year, which they deemed to be not logical.</p>	<p>Variable remuneration must be based on performance and can only be based on other conditions in exceptional cases (e.g. on the retention of key staff in a restructuring). Potential future performance is not sufficient for an award of variable remuneration. Article 141 of the CRD applies in any case. As malus is a correction for a manifested different risk adjustment of variable remuneration awarded for an accrual period that has already ended it appears to be illogical to allow such reductions to be compensated in the future by performance in a future period for which also variable remuneration may be awarded.</p>	<p>No change in substance, paragraph deleted as redundant with para 272 of the CP</p>
Question 8 (Title III, Section 11, 'Categories of remuneration')			
General comments	<p>A respondent questioned the basis for introducing guidelines on categories of remuneration in the light of Article 153(5) of the TFEU. In addition, in certain jurisdictions even normal base salary would not meet the requirements for fixed remuneration.</p>	<p>With regard to the hierarchy of norms and Article 153(5) of the TFEU please refer to the explanations under collective bargaining. Member States will implement the guidelines, taking into account national law as appropriate, e.g. where labour law does not allow certain conditions to be met. However, so far the EBA has not identified any concrete reasons why the criteria for fixed remuneration cannot be met.</p>	No change
Para 116	<p>A few respondents questioned why remuneration which</p>	<p>The EBA guidelines set how the ratio between the variable and</p>	No change



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	cannot be allocated should be classed as variable by default. They proposed that discretion should be open to the competent authority to determine the allocation.	the fixed component is calculated. This includes that all remuneration must be consistently mapped to either the fixed or the variable remuneration. As there are only these two categories all remuneration that does not meet the criteria to be considered as fixed must be variable.	
Para 117(a)	Clarity was sought that, in accordance with Article 92(2)(g) CRD, the definition of 'predetermined' fixed remuneration is permitted to take into account criteria such as 'relevant professional experience, skills, organisational responsibility and marketability'.	The aspects mentioned should be taken into account when setting the remuneration; please compare para 177 of the consultation paper. The comment was accommodated under point (b) of this paragraph.	Para 117 of the CP amended
Para 117(b)	A respondent questioned this requirement – in the UK, salary can be increased at the sole discretion of the institution.	Increases of the fixed remuneration, e.g. as an annual pay rise, promotion or similar, are not contrary to the criteria for fixed remuneration. The guideline was clarified.	Para 117 of the CP amended
Para 117(c)	A number of respondents queried the definition of 'transparent' – whether this required that fixed remuneration for individuals is clear to only the individual staff member concerned or to all staff.	'Transparent' refers to the amount awarded to the individual staff member.	Para 117 of the CP amended
Para 117(e)	Many respondents stated that base salary can also be reduced in jurisdictions without collective bargaining – such as management decisions to reduce salaries.	Unilateral reductions are not consistent with the principle that fixed remuneration is predetermined and transparent.	No change
Para 117(f)	A few respondents also suggested that institutions also reserve the right to reduce or suspend base salary where an individual is under investigation or on maternity leave etc.	Where such arrangements are part of the contract, e.g. maternity leave or where a framework for part time exists, this is not in conflict with the criteria for fixed remuneration. The guidelines have been clarified. With regard to investigations such suspensions of payment will need to be well justified and must not lead to a circumvention of remuneration provisions that allow for suspensions, e.g. for poor performance or losses caused without intent, where such	Para 117 of the CP amended



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		payments would be made after a suspension period if, for example, no further disciplinary measures are decided in line with national labour law.	
Para 118	A respondent requested clarity that routine employment allowances (flexible benefits, housing, relocation, etc.) are not intended to be captured by the definition of variable remuneration.	The guidelines set out specific provisions for such routine employment packages, which, when in line with the guidelines, are fixed remuneration.	No change
Para 119(a)	A couple of respondents suggested that tax equalisation or expatriation packages vary based on individual circumstances and tax rates between the home and host countries, and therefore should not be classed as variable by default if every single situation is not treated the same.	Where such compensations are made in a consistent way they should in general be fixed remuneration. This does not require that the exact same amounts are paid to all staff. It is possible to consider differences in tax rates – as long as the framework for considering the rates is applied consistently. The guidelines were clarified.	Para 119 of the CP amended
Para 120	<p>The vast majority of respondents raised significant concerns regarding the approach to valuation of long-term incentive plans (LTIPs):</p> <ul style="list-style-type: none"> • The fundamental characteristic of an LTIP is one award, which vests in the future according to performance conditions, rather than a series of annual awards. • Positive performance of the firm would lead to the LTIP value at vesting exceeding the bonus cap, and not allow for the award of an annual bonus for that year – reducing the alignment between pay and performance. • Share price growth between award and vesting is difficult to predict and means it would be difficult to plan for a total variable award which does not exceed the cap. 	Long-term incentive plans are variable remuneration components and as for all variable remuneration their award has to be based on performance. The recognition of LTIPs in the calculation of the bonus cap and the provisions on their valuation have been amended considering the comments made in order to ensure that institutions can determine ex ante the maximum ratio between the variable and the fixed remuneration for identified staff.	Para 120 amended



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	<ul style="list-style-type: none"> • It is unclear why deferred annual bonuses whose value are based on share price movements are taken into account at award for the purposes of the cap, whereas LTIPs with performance conditions based on similar share price movements are taken into account at vesting. • The impact of a change in role or MRT status between award and vesting was also unclear. • The valuation approach would therefore lead to LTIPs being abandoned, possibly being replaced by increased fixed pay and short-term annual bonuses, which would weaken the alignment of incentives between employees and shareholders. <p>Almost all respondents suggested that LTIPs be valued at award using appropriate accounting principles (such as fair value/Black-Scholes). In addition, this value at grant could be apportioned across the deferral or performance period.</p> <p>Many respondents requested clarification that the LTIP requirements do not include annual bonuses.</p> <p>Many respondents also wanted clarity on the implications for LTIP awards granted prior to the final guidelines, which they suggested should not be included in a future calculation of the cap on vesting.</p>		
Para 121	<p>Respondents raised concerns that carried interest payments do not warrant the full rules on variable remuneration being applied to them.</p> <p>A couple of respondents noted that it was unclear how carried interest is valued for the purposes of the cap,</p>	<p>Carried interest payments are valued at their award and should be treated as variable remuneration in line with the specific ESMA guidelines regarding such payments.</p> <p>The guidelines have been clarified.</p> <p>Interests on personal investments do not fall under the definition</p>	Para 121 amended



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	<p>suggesting this should also be at award.</p> <p>Individual personal investments should not be considered variable remuneration.</p>	<p>of remuneration and are therefore not subject to the CRD provisions on remuneration.</p>	
Question 9 (Title III, Section 12, 'Particular cases of remuneration components' – Allowances)			
Para 117(d)	<p>A respondent also questioned the criterion 'permanent' for the definition of fixed remuneration, and suggested a three-year review clause for allowance arrangements.</p> <p>In addition, it was argued that the EUR 500 000 total remuneration threshold under the RTS could be used as a proxy for determining whether an allowance could be removed.</p>	<p>So-called 'allowances' are remuneration and all the provisions of the CRD and the guidelines, including the criteria to assign them to the variable or fixed remuneration, apply to them. Where they are periodically subject to review by the institution they are not permanent. As explained in the EBA opinion on allowances, published in July 2014, such allowances can set inappropriate incentives for risk taking. Therefore, allowances that are subject to such review clauses are variable remuneration.</p>	No change
Para 117(e)	<p>A few respondents raised concern that, in many countries in the EU, salaries are not standardised and/or are not varied by collective bargaining or national criteria - in most cases variations are agreed individually. Given this, allowances and even base salary would not meet this criterion.</p>	<p>In line with the consulted draft guidelines, fixed remuneration can also be changed based on bilateral renegotiation.</p>	No change
Para 123(a)	<p>A couple of respondents requested clarity on how to 'duly document' the reason for an allowance being classed as fixed.</p> <p>A couple of respondents made the point that role-based allowances are paid mainly to people with high responsibilities or a high degree of expertise, and most of these people are in the identified staff, due to the criteria defined by the EBA for the identification of such staff.</p>	<p>All institutions should assess all remuneration components and allocate them to either the fixed or the variable remuneration. The assessment should be documented.</p> <p>The EBA has observed that some institutions have used allowances to increase the fixed remuneration, while they were in fact variable remuneration. In such cases the features included in the guidelines were often observed. Therefore a careful assessment and documentation is warranted in the cases set out in the guidelines.</p>	Para 123 of the CP amended



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Para 124(c)	<p>A number of respondents raised concerns about the requirement that allowances should be comparable for those staff members fulfilling the same role or organisational responsibility. The key issue raised was that fixed pay, including salary for individuals with the same organisational responsibility, grade, etc., can vary depending on the skills, professional experience and marketability of the individual. It was suggested that allowances should also do so. This would create a pay grading structure for allowances which does not exist for other forms of fixed remuneration.</p> <p>In addition, the point was made that para 177 requires fixed remuneration to ‘reflect the professional experience and organisational responsibility taking into account the level of education, the degree of seniority, the level of expertise and skills, the constraints (e.g. social, economic, cultural or other relevant factors) and job experience, the relevant business activity and remuneration level of the geographical location.’</p> <p>If fixed remuneration must reflect these differences, it is unclear why allowances may not do the same.</p> <p>A couple of respondents also suggested that the requirements would lead to an increase in base salaries.</p> <p>A few respondents would appreciate a clarification on the calculation of the value of allowances (% of base salary or absolute values).</p>	<p>Allowances are remuneration and are therefore subject to the remuneration requirements, including the need to reflect the personal skills and experience of staff. A reference to para 177 of the CP was included.</p> <p>The correct categorisation of remuneration components will prevent the circumvention of remuneration provisions. As a consequence of the introduction of a limitation of the ratio between the variable and the fixed components of remuneration it may be that the fixed remuneration increases. This is not caused by the guidelines, which ensure the correct application of the CRD provisions.</p> <p>It is up to the institution to structure the remuneration they pay in line with the CRD and these guidelines. Therefore the guidelines do not set out which amounts should be paid in the form of allowances.</p>	Para 124 of the CP amended
Question 10 (Title II, Section 12.2, ‘Retention bonuses’) Cross-reference to Q1			
Paras 126-129	A few respondents commented on the disproportionate	The CRD does not provide for a specific framework for retention	Section 12.2 of the



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	<p>and counter-productive effect of applying very stringent provisions to the retention bonuses awarded in the context of restructuring process, etc., where the need to maintain key employees is essential.</p> <p>A few respondents pointed out that it is inappropriate to consider (all) the retention bonuses as variable remuneration since they are fixed in the amount; they should be treated at least as guaranteed variable remuneration.</p> <p>A few other respondents asked for better clarification of the difference between the guaranteed variable remuneration and the retention bonuses, in terms of applicable rules.</p> <p>A few respondents also pointed out that the proposed approach is not consistent with the treatment of the deferred bonuses and LTIPs.</p> <p>The reasons why the retention bonuses should be considered pro rata or valued on an actuarial basis have been objected to and considered not clear; option B within the IA should be therefore reconsidered and better explained.</p> <p>It has been suggested examples of retention bonuses be provided and that the timing of the award and vesting and the functioning of the ex post risk adjustments be specified (it is stressed that they are linked to the retention rather than the performance of the staff concerned).</p>	<p>bonus that would allow for the deviation from the remuneration provisions. A retention bonus must comply with the requirements on variable remuneration, including the ex post risk alignment, payment in instruments, deferral, retention, malus and clawback. The guidelines set out the requirements in a principle-based way. Retention bonuses are exceptional cases that ensure the retention of staff, e.g. in restructuring situations. No further examples were provided.</p> <p>To be considered as fixed remuneration, remuneration needs to meet all criteria for fixed remuneration. It is not sufficient that a fixed amount is set that is provided when a certain condition is met. This approach is consistent with the CRD requirements on variable remuneration.</p> <p>A retention bonus has to be included in the calculation of the bonus cap. To overcome the practical challenge of the calculation, the EBA has amended the GL.</p> <p>The retention bonus should be taken into account with an annual amount in each year of the retention period which is calculated either on a linear pro rata basis independent of the fact that the full amount is awarded after the end of the retention period or with the full amount when the retention condition is met.</p> <p>Guaranteed variable remuneration can only occur in the first year of employment. A retention bonus is not comparable to a sign-on bonus.</p>	<p>CP redrafted</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	It has been proposed that the scope of the retention bonuses be limited to the identified staff only.	The CRD requirements on variable remuneration apply to identified staff. Institutions may include such arrangements also in the remuneration policy for all staff. The section on the remuneration policy has been clarified. Please refer also to Annex I.	No change
<i>Title II, Sections 12.3 and 13.1, ‘Discretionary pension benefits’ and ‘Guaranteed variable remuneration’</i>			
Section 12.3 Discretionary pension benefits	While the vast majority of respondents did not raise concerns on this section, a few deemed it not consistent with the existing pension schemes and local labour law, especially in the light of the requirements related to awarding in financial instruments.	Member States need to implement the CRD provisions in such a way that the minimum requirements can be met. The guidelines are consistent with the CRD.	No change
	It has been suggested that the discretionary pension benefits for which only the eligibility is at the discretion of the institution, but which are not linked to performance, be considered as fixed remuneration.	Discretionary pension benefits are defined in Article 4 of the CRR: ‘discretionary pension benefits’ means enhanced pension benefits granted on a discretionary basis by an institution to an employee as part of that employee’s variable remuneration package, which do not include accrued benefits granted to an employee under the terms of the company pension scheme.	No change
Paras 137-139	<p>A few respondents sought further clarity regarding the application of this paragraph, especially about what relates to the possibility to pay the full guaranteed bonus in non-deferred cash.</p> <p>A number of respondents were concerned that this could incentivise the use of sign-on bonuses in non-deferred cash rather than buyouts which are structured similarly to the variable remuneration foregone at the previous employer.</p> <p>A few respondents deemed this provision not to be in line with Article 94(1)(e) of CRD IV on guaranteed variable</p>	<p>The differentiation between sign-on bonus and buy out of a previous contract was clarified.</p> <p>It is important for a buy out of a contract to comply with all remuneration provisions, to avoid inappropriate incentives for changing contracts. A sign-on bonus is not based on performance and is usually awarded at the moment or even before the employment starts and does not compensate for lost deferred variable remuneration, as it is guaranteed that no ex post risk adjustments are usually made. Hence, a pay out in non-deferred cash seems to be in line with the concept of a guaranteed</p>	Para 138 of the CP amended



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>remuneration; they proposed that buy-outs not be considered as variable remuneration and be excluded from the calculation of the cap. A few respondents also noted that it is impossible for the new employer to apply clawbacks in such circumstances.</p> <p>One respondent also stressed that, according to the national legislation, guaranteed variable remuneration, unlike what is stated in the GL, can be subject to malus clauses if the institution is not meeting the requirements on the sound capital base.</p> <p>One respondent did not agree with the exclusion of the guaranteed variable remuneration from the calculation of the cap, because of the potential distortion it could cause in comparison with other forms of variable remuneration such as the retention bonuses or payments for buy-outs.</p>	<p>variable remuneration.</p> <p>The CRD sets out minimum requirements, and EBA guidelines are subject to a 'comply or explain' approach for competent authorities. Member States can implement stricter rules as set out in the CRD or the guidelines.</p> <p>The guidelines lay down the possibility to include guaranteed variable remuneration in the calculation of the bonus cap.</p>	
Question 11 (Title III, Section 13.2, 'Severance payments')			
Paras 140-153	<p>Many respondents questioned the proposed section on severance payments, as it would go beyond the scope of CRD IV and does not consider the several triggers for them.</p> <p>Some respondents also objected to the application of the remuneration rules also to the severance payments, as they are exceptional and intended to provide a safety net to a staff member in case of early termination of the contract. A few others recommended excluding from the definition of severance payments the payment of settlement amounts from potential litigations.</p> <p>Many respondents also pointed out that severance payments are often defined according to the collective</p>	<p>Article 94(1)(h) of the CRD regarding the early termination of contracts applies to all identified staff. The guidelines set out how this provision should be applied in the context of all remuneration requirements.</p> <p>The guidelines were amended to allow institutions to determine the maximum amount or criteria for the determination of such amounts that can be awarded as severance pay to categories of identified staff. The severance payments mandatory under national labour law, mandatory following a decision of a court or calculated through a predefined generic formula set within the remuneration policy should not be taken into account for the</p>	Section 13.2 of the CP, in particular paras 148 and 152(c), redrafted



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	labour agreements and are very country specific; as a consequence, it is difficult among the others to identify both the whole set of relevant criteria and a maximum amount of severance payments that can be awarded. A reference to the national law is welcomed.	purpose of the calculation of the ratio between the variable and fixed components of remuneration for the last performance period.	
	Clarifications have been suggested regarding what would be the early termination of a contract in case of permanent agreements.	Where a contract does not allow cancellation under a set notice period, any cancellation before the retirement of the staff member is considered to be an early termination. As this is obvious, the guidelines were not amended.	No change
Paras 140-141 Severance pay framework	Some respondents deemed it inappropriate to document a prescriptive severance pay framework in the institutions' remuneration policy (including the maximum amount that can be awarded), as this could give rise to a contractual right for all employees and limit the flexibility for the institution to exercise discretion and achieve a mutual agreement with staff members.	Article 94(1)(h) of the CRD regarding the early termination of contracts applies to all identified staff. Remuneration policies should set a framework for the implementation of the remuneration requirements into the institution's remuneration practices.	No change
	It has been recommended to insert a reference to the need for institutions to set internal criteria for determining severance payments.	The comment was accommodated.	Para 140 of the CP amended
Para 142 Ex post risk adjustments	A few respondents observed that it is not clear what would be the expected risk adjustment to be made to the awarded severance payments, as they are not performance-related amounts.	In general all the requirements apply to all variable remuneration, including severance payments. However, severance payments are exceptional and it is not always possible to apply all the requirements, e.g. in the case of court decisions regarding the amount of a payment that may exceed the ratio possible for variable remuneration to the fixed remuneration. For amounts taken into account in the calculation of the ratio between the variable and the fixed remuneration, the institution should apply all requirements on variable remuneration. The	Section 9.3 clarified



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Para 143	<p>A few respondents stipulated that it is not possible to identify with legal certainty the circumstances in which severance payments shall not be paid. Clarifications were also welcomed on the point in time at which the judgement for failure should be made and which periods should be taken into account.</p> <p>It has been noted that this paragraph is not applicable in certain jurisdictions, where redundancy situations are managed via mutual agreements where the employee voluntarily resigns (this should not remove the right to award a severance payment).</p> <p>It has been suggested a ‘potential labour dispute’ be defined better: indeed, staff members might often look to fall within this case, as the severance payment would not be considered in the calculation of the cap.</p>	<p>guidelines were clarified.</p> <p>To recognise the exceptional nature of such payments and to avoid any circumvention with regard to the so-called bonus cap in particular in the case of failures, restructurings and potential labour disputes, the guidelines introduced a role for competent authorities to decide if a specific payment needs to be included in the calculation of the bonus cap and if consequently all other requirements on the variable remuneration should be applied.</p> <p>Para 143(c) of the consultation paper should also be applied to such arrangements based on mutual agreements.</p>	Paras 148 and 152 amended
Para 151 Failure of the identified staff	<p>Some respondents suggested to make the list of circumstances in which a failure occurs exhaustive, for the sake of transparency and legal certainty.</p> <p>A few respondents also objected that loss of experience by a member of the management body would be a reason for not awarding severance payments (e.g. such loss may be a consequence of the growing complexity of the business, which however does not diminish the work done by the staff member).</p>	<p>It was not deemed possible to create an exhaustive list that would include all possible failures. Failures and the extent to which staff contributed to them will often depend on case-by-case assessments.</p> <p>With regard to the experience of the members of the management body, the guidelines are in line with CRD. In this regard, the sentence has been redrafted to be in line with the exact wording of CRD.</p>	Para 151 of the CP amended
Paras 152-153 Predetermined	<p>It has been noted that it is difficult for institutions operating in a large number of jurisdictions to set in the remuneration policy one ‘predefined generic formula’; moreover in some</p>	<p>The fact that severance payments are negotiated does not imply that they may fall outside the rule governing the whole remuneration policy, including the consistency with capital and</p>	Para ... amended



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generic formula	jurisdictions severance payments are negotiated and not determined according to a predetermined formula.	liquidity, performance, failures, etc.	
	Some respondents noted that the reference to gardening leave is senseless since it usually applies during a notice period and the related payments are expressly excluded by para 145.	Where the gardening leave is granted in the form of a prolonged notice period, the remuneration awarded is not considered to be severance pay. There is, however, also the practice of granting such payments for a longer time than the notice period and the institution reserves the right to object to new staff contracts if they would be detrimental to the competitiveness of the institution. The latter payments are considered as severance pay in line with the guidelines.	No change
Question 12 (Title III, Section 13, 'Exceptional remuneration elements and prohibitions' - Circumvention)			
Para 159	The vast majority of respondents stated that the requirement to carry out spot-checks on employees to ensure compliance with the personal hedging provisions was onerous and administratively burdensome. In order to do so, firms would be required to seek express consent from individuals and any random checks may be illegal in certain jurisdictions (UK, France and Hungary).	Equivalent provisions were already included in the previous CEBS guidelines. Institutions should implement a framework that ensures that ex post performance adjustments can be done and have the intended effect. This is only the case if positions in instruments are not hatched. The EBA understands the practical challenges of the proposed guidelines, and redrafted the provisions to allow a practical implementation of measures that should ensure to the extent possible that no personal hedging is conducted. Spot-checks were limited to the internal custodianship accounts. The collection of declarations of self-commitment is now formulated as a minimum requirement that has to be met in any case.	Paras 155 and 159 amended
	More importantly, it was also stated that this would not achieve the objective – hedging can be carried out through external accounts.		
	Most respondents suggested that firms include the prohibition of personal hedging in the compensation policy and in the plan rules provided annually to the beneficiaries, mentioning, in addition, that any prohibited action would be considered as an act of misconduct implying the application of malus and clawback clauses.		
	A few respondents requested clarity on what action, if any,		



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	is required beyond notification of external custodian accounts.		
Para 162(b)(i)	<p>Many respondents sought clarity on what constitutes ‘positive performance’. For example, if an individual’s business unit has incurred a loss in the year in which the awards vest, would the vesting of the prior year’s awards be considered as circumvention?</p> <p>In addition, this requirement does not effectively recognise guaranteed variable remuneration awards, which could be interpreted as circumvention under this paragraph.</p>	<p>Please refer to the comments made under paragraph 120 and to the section on performance measurement. A respective cross-reference was added to the guidelines.</p> <p>The vesting normally depends on the ex post risk adjustments done for previous periods.</p> <p>The guidelines have been clarified with regard to the use of payments for early retirement.</p>	Para 162 of the CP amended
Para 168	A respondent requested clarity that where non executive directors are required to invest shares in the firm this should not be regarded as variable remuneration or circumvention.	Interests and dividends on personal investments are no remuneration and do not constitute circumvention. The circumvention section needs to be read together with the rest of the guidelines.	No change
Question 13			
Para 171	<p>Many respondents raised concerns with the presumption against awarding variable remuneration to control/supervisory functions, particularly where the variable remuneration is not determined according to the financial performance of the institution.</p> <p>Other respondents suggested that even the pay out in instruments to staff in control functions could create conflicts of interest, as the price of instruments is related to the institution’s performance.</p>	<p>The remuneration requirements of Article 94 of the CRD apply to all identified staff, including identified staff in control functions. The variable remuneration of control functions should be based on control objectives to avoid conflicts of interest in the execution of their role.</p>	No change
Para 174	A respondent questioned the need to justify why fixed remuneration is not awarded in cash, for example in instruments, which are presumed not to be defined as	<p>The remuneration policy should provide the framework for the implementation of the institution’s remuneration practices, including the fixed remuneration. Specific attention is necessary if fixed remuneration is paid in instruments, to ensure that this</p>	No change



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	variable.	part of the remuneration still complies with the criteria for fixed remuneration, hence an additional assessment and its documentation is appropriate to ensure compliance with remuneration provisions.	
Para 180	<p>A number of respondents raised concerns with the requirement to calculate the ratio in advance. This was not seen to be consistent with current practice whereby the bonus pool is determined and individual awards are allocated afterwards.</p> <p>Many respondents linked their comments on LTIPs to the references in paras 180 and 185 requiring that the ratio should take account of the maximum variable remuneration that could be awarded in the following performance period.</p> <p>It is unclear how LTIPs would be taken into account as part of the maximum variable remuneration if they are only valued at vesting – the value of such awards could vary depending on share price at the time of vest and the underlying conditions attached to the LTIP.</p> <p>A few of the unions also suggested that a reference should be made to collective agreements.</p>	<p>Please refer also to the comments under paras 4 and 120 regarding LTIPs and collective bargaining.</p> <p>The remuneration framework must ensure that the maximum ratio set in the policy is in line with the CRD requirements. The requirement aims at the ex ante calculation of the maximum ratio that could be awarded in line with the remuneration policy. The wording has been clarified.</p>	Para 180 amended
Para 181	<p>A notable number of respondents considered that setting ratios for individual staff members and comparing them amongst ‘categories’ of staff was unduly onerous and burdensome.</p> <p>In addition, it was suggested that applying the same ratio for categories of staff was inconsistent with the requirement to operate a fully flexible policy with the</p>	<p>The paragraph was clarified: institutions have to set the maximum ratio for a category of staff and not a ratio for each individual staff member. However, institutions can choose to take a more granular approach. The effective ratio can differ for individual staff members, but must not exceed the maximum ratio set in the policy and national law.</p> <p>The guidelines were clarified as to how the effective ratio should</p>	Paras 181 and 183, 184, 185 of the CP amended



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	possibility of awarding no variable remuneration.	be calculated.	
Question 14			
General comments	<p>A number of respondents stated that the risk alignment requirements are more suited to large deposit takers than smaller investment firms. Given this, those with less tangible risk data should not be required to apply such prescriptive rules and metrics as those for banks.</p> <p>A few respondents also suggested limiting the provisions under this section to the identified staff only.</p>	See comments under paragraph 12 and section 5 regarding the application of remuneration policies to all staff and identified staff.	No change
Para 202	A couple of respondents suggested that examples of risk-adjusted performance criteria such as RAROC/RORAC were not appropriate, given that they are used to take the decision to enter into an operation rather than for measuring risk ex post.	The guidelines require that risk-adjusted performance measures are used or that performance measures are adjusted by risk measures. The examples are considered as suitable, but examples do not form a mandatory requirement.	No change
Para 206	<p>Many respondents suggested that the restrictions on variable remuneration for staff in control functions were excessive. Control functions should be incentivised to meet specific targets and rewarded for their performance. Whilst it was recognised that control staff should be remunerated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control, further restrictions were considered disproportionate.</p> <p>A few respondents commented that the overall performance of the institution should be considered, while others argued that even the pay out in instruments to staff in control functions would create a conflict of interest, as their price will depend on risk taking and performance of</p>	The guidelines were clarified to specify that the criteria used for assessing the performance and risks should predominantly be based on the internal control functions' objectives. Variable remuneration for control functions should predominantly follow from control objectives. Their variable remuneration may be based also to some extent on the performance of the institution as a whole.	Para 206 amended



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	the institution.		
Paras 225 and 229	A respondent suggested that the use of ‘ex ante’ was incorrect when referring to individual remuneration adjustments and taking account of compliance breaches, as these are used to inform ex post risk adjustments instead.	The term ‘ex ante risk adjustment’ was explained in the guidelines; it refers to the adjustment of performance based on risk assessments before the award is made.	Para 224 amended
Question 15 (Title IV, Section 17, ‘Pay out process for variable remuneration’ - Deferral)			
General comments	<p>Respondents from investment firms again stated that the requirements under the guidelines do not recognise the inherent differences in business models and risk time horizons at their firms as compared with large banks.</p> <p>A few respondents also suggested that the deferral requirements should reflect the size of firm.</p>	Please refer to the general comments made under the section proportionality and scope of application. The CRD applies to investment firms.	No change
Para 235	A respondent suggested that the requirement for a minimum three-year deferral period to apply to awards with multi-year accrual periods should be amended for LTIPs. In this case, the accrual period should be counted as the deferral period because ex ante adjustments can be made prior to vesting.	The deferral period starts after the award of the variable remuneration. This is independent of the length of the applied accrual period. Where longer multi-year accrual periods are used, the guidelines set out that institutions should consider this fact when setting deferral and retention periods and may, where appropriate, introduce deferral periods that are shorter than the deferral periods which would be appropriate when a one-year accrual period would be used. The minimum requirement of a three-year deferral period applies in any case.	No change
Para 236	<p>The majority of respondents were concerned about raising the minimum deferral requirements to the upper end of the CRD minimum of three to five years. This was considered to go beyond of the scope of the CRD and to not be appropriate for all firms, possibly also leading to an increase in fixed pay.</p> <p>Most investment firms stated that this upper limit was not</p>	<p>The CRD sets a minimum deferral period of at least three to five years. The decisions of the management body on the institutions strategy and risk appetite have a long-lasting impact on the risk profile, hence it is appropriate to apply longer deferral periods.</p> <p>Most investment firms do not fall under the definition of a significant institution.</p>	Para 236 amended



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>aligned to the business model and time horizon of risks in their sector.</p> <p>Clarity was requested by a respondent that this provision did not apply to the management body of each separate subsidiary.</p>	<p>The requirement applies to all significant institutions, including the subsidiaries of a significant institution that are themselves significant. The guideline was clarified.</p>	
Question 16 (Title IV, Section 17.4, 'Award of the variable remuneration in instruments')			
<p>Paras 246-256 General comment</p>	<p>Proportionality-related issues have been raised on the following aspects:</p> <p>the need for a simpler and more flexible approach, allowing institutions to define the best remuneration scheme for compliance with Article 94(1)(l), keeping therefore the possibility of using, for example, phantom share and share-linked instruments regardless of the nature of the institution (stock vs. non-sock corporation);</p> <p>the use of financial instruments in a group context, namely clarifications are sought on if and when it is possible to use the instruments issued by the parent company. A few respondents noted that, lacking this possibility, great costs would be borne especially by non-listed subsidiaries.</p> <p>In addition, better coordination has been recommended with other EU legislation (e.g., AIFMD rules requiring fund managers to receive fund's shares with no restrictions on the interests/dividend they generate; see also comments under para 253).</p> <p>Many also objected to the overall underlying CRD rule as such, including the use of contingent capital for all</p>	<p>The CRD rules apply to all institutions and were not subject to this consultation. See also comments under the section of proportionality.</p> <p>Article 94 of the CRD requires that listed institutions use shares and does not provide for the possibility to use share linked instruments.</p> <p>The consulted guidelines already specified in para 247 in line with the RTS on instruments that instruments that were issued in a group context (scope of consolidation) can be used for the award in instruments. It is not necessary that financial instruments are created; institutions can also use other contracts.</p> <p>The consulted guidelines already include references to guidelines issued by ESMA. The consulted guidelines with regard to remuneration policies for investment firms have been developed in close cooperation with ESMA.</p>	<p>No change</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Para 247 Availability of the financial instruments	<p>identified staff.</p> <p>The issuance of financial instruments for remuneration purposes only would cause disproportionate and extraordinary costs (e.g. for their yearly external valuation), while the objectives of the CRD could be achieved by applying the rules to the variable remuneration paid in cash. In this perspective, financial instruments are deemed not to be ‘available’ when not issued, not certificated or not negotiable (also grandfathered instruments shall not be deemed as available).</p> <p>A few respondents suggested providing clarifications on the expected effects of this paragraph, requiring a balance of different types of instruments to be used, with, however, a preference for the bail-in-able ones.</p>	<p>The effects and incentives provided by variable remuneration awarded in deferred cash and deferred instruments differ. The CRD requires that institutions award at least 50% of the variable remuneration in instruments and use where possible a balance of the different categories of instruments as set out in Article 94(1)(l) of the CRD.</p> <p>All institutions should be able to create relatively simple equity-linked instruments that participate in losses in the same way as equity.</p> <p>The preference to use instruments is based on the resolution of the European Parliament of 3 July 2013 on reforming the structure of the EU banking sector (2013/2021(INI)). The use of instruments is able to establish a longer-lasting link between performance and pay, as linked instruments are usually settled in cash at one point of time.</p> <p>However, the use of value-linked instruments might in some cases be more feasible if instruments are not available for an award.</p>	No change
Para 248 Instruments for stock vs. non-stock corporations	<p>Many respondents objected to the prohibition to use share-linked instruments in listed institutions, due to the main following reasons:</p> <ul style="list-style-type: none"> i. the process for the issuance of shares in order to pay variable remuneration is much more complex than the one followed for the issuance of share-linked instruments (e.g. extraordinary shareholders’ meeting approval); ii. in some cases it is impractical/impossible to 	<p>Article 94(1)(l)(i) of the CRD allows the use of share-linked instruments only for non-listed institutions. The EBA will consider the comments within its analysis of the need to change CRD remuneration provisions under the review clause of Article 161 of the CRD.</p>	No change



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>determine the fair value of the financial instrument where no market price is available;</p> <p>iii. the awarding of shares would provide the staff members not only with economic interests but also with voting rights (this could be detrimental especially in institutions with restricted ownership structures);</p> <p>iv. in some (third) countries it is forbidden/too costly to award shares to staff members and the obligation to use only shares would make the CRD requirement inapplicable;</p> <p>v. in some Member States the use of shares to pay out the variable remuneration is decided by shareholders (what if the shareholders' meeting does not approve their use?);</p> <p>vi. high operating and administrative costs would be faced for amending the existing remuneration schemes as well as for the ongoing administration of such instruments (FTE, software, monitoring, IT and HR costs, etc.); someone estimated such costs to be about EUR 1 million.</p> <p>Some respondents also highlighted the difficulties in valuing shares for remuneration purposes, as the share price include the expectation of a dividend and therefore the remuneration awarded in shares should be discounted for the dividend yield in order to value the variable pay awards at their fair market value (also in view of the calculation of the ratio between variable and fixed remuneration).</p>		
Para 249	A few respondents welcomed further explanations on the	Equity has, besides others, the function of absorbing losses that	No change



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Share-linked and equivalent non-cash instruments	'loss absorbency' concept.	cannot be covered by other means. Losses that affect the equities' value or the market price should also affect the holder of an equity-linked instrument.	
Para 253 Price of the instruments	<p>Regarding the points in time for the valuation of the financial instruments, it has been suggested that it be clarified that the one made before vesting is only aimed at potentially ex post risk-adjusting the remuneration awarded in financial instruments.</p> <p>Many respondents reported tax problems, stemming from the fact that the valuation of the instruments and the corresponding payment of taxes are made at the time of the awarding of the instruments themselves but their actual value could be lower when instruments are paid out (with no taxes in excess being refunded).</p> <p>Tax concerns could also arise when the charge for the shares issued at the parent company and received in a subsidiary is re-invoiced but is not tax deductible.</p>	<p>The wording was clarified. The valuation before the vesting is necessary to ensure that ex post risk adjustments are applied correctly. The valuation should also be done before the retention period ends, as in many cases the amount is afterwards settled. This is to ensure that the implicit risk adjustments are applied.</p> <p>The tax regimes of Member States differ and are not subject to EBA guidelines.</p>	Para 253 amended
Para 255 Prohibition on paying interest and dividends under deferral	<p>Besides the fact that it reduced the overall alignment between staff members and shareholders, many respondents objected to this provision because of the following negative consequences:</p> <ul style="list-style-type: none"> i) lowered perceived value of the deferred compensation in instruments, which may cause an increase in the level of the variable/total remuneration to compensate for that effect; ii) increased difference between identified staff and other staff members benefiting from the normal share scheme, granting dividends/interest; iii) reduced attractiveness of the institutions' 	<p>An equivalent provision was already included in the previous CEBS guideline. The EBA is mandated to provide guidelines on the pay out in instruments; this includes any arrangements relevant in the context of the remuneration requirements.</p> <p>The pay out of interest and dividends on awarded instruments that have not yet vested would limit the possibility to adjust the variable remuneration awarded down to zero. Such payments would also limit the effect that implicit risk adjustments via the change of share or instrument prices have.</p> <p>Moreover, the staff member is not yet the owner of the instrument, as it will only vest at a later point in time. Staff</p>	No change



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	<p>remuneration policy and capability to retain skilled resources in comparison with other financial centres/countries.</p> <p>Many respondents recommended therefore amending the GL in order to permit the payment of dividends on deferred remuneration awards, under the condition that these are in line with dividends awarded to shareholders and ‘only paid when, and to the extent that, the underlying deferred share award vests or is payable’ (risk-alignment and no reward for failure).</p> <p>Moreover, this prohibition has been considered out of the scope of the GL, as it is not set out in the CRD.</p>	<p>should receive interests and dividends therefore only when the award has vested. There is no legal basis for the staff to receive the amounts paid before vesting; if this were part of the remuneration package such amounts would be themselves subject to all remuneration provisions.</p> <p>For the valuation of instruments at award, institutions should use the current share price and also ensure that any share-linked instrument is linked to the value of the share when the amounts are settled. This includes that no corrections to the value of the share-linked instrument are made because, for example, dividends have been paid on the shares to which the value is linked.</p>	
Question 17 (Title IV, Section 17.6, ‘Retention policy’)			
<p>Paras 259-264</p> <p>General comment</p>	<p>One respondent objected to the obligation to pay the upfront and deferred portions of the variable remuneration using an equal portion of financial instruments.</p> <p>Another respondent suggested at least asking for a higher share of instruments in the deferral component than in the upfront component (maximisation of the long-term alignment of interests).</p>	<p>Please refer to paragraphs 257 and 258 of the consulted guidelines. The minimum requirement to pay out at least 50% of the variable remuneration in shares applies in line with the CRD to parts, the deferred and the non-deferred part. It is not necessary that institutions apply the same ratio for both parts, provided that each ratio is at least 50%.</p>	<p>No change</p>
<p>Para 263</p> <p>Minimum retention of one year</p>	<p>Many respondents deemed that the requirement of a one-year minimum retention period is inappropriate and disproportionate, as it does not duly consider:</p> <ul style="list-style-type: none"> i) the length of the deferral period, which already ensures a long-term perspective; ii) the tax issues related to the fact that taxes are paid at the time of the awarding of the instruments, while the 	<p>To ensure a better risk alignment of remuneration it is important to apply appropriate deferral and retention periods. The use of retention periods is less intrusive, as staff are able to receive interests and dividends on instruments awarded.</p> <p>The guidelines already differentiated the use of retention periods depending on the impact of staff on the risk profile and the applied deferral periods. Where the deferral period is at least</p>	<p>Para 263 of the CP clarified</p>



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	<p>instruments can be sold only afterwards (this may also cause discrepancies between the price/value used for the taxation and the one actually realised);</p> <p>iii) the decrease in the perceived value of the variable remuneration where retained for longer periods, with an increase in the fixed costs and in the total remuneration levels;</p> <p>iv) the greater costs for non-stock institutions.</p> <p>Some respondents recommended deleting this requirement, some recommended setting the retention period at 6 months, and others recommended increasing the minimum deferral period instead of the retention one.</p>	<p>five years, a retention period for the deferred part of at least six months may be imposed for identified staff other than members of the management body and senior management, for whom a minimum retention period of one year should be applied.</p>	
	<p>It has been suggested that it be clarified whether the five-year deferral period referred to herein vests pro-rata or at the end of the deferral period.</p>	<p>The EBA deemed it sufficient to define the term ‘deferral period’ and to set out the requirements on deferral in the main part of the guidelines. The definition does not differentiate between the different vesting arrangements.</p>	<p>No change</p>
	<p>A few respondents pointed out the need to provide for a different regime for the remuneration awarded to staff members in control functions (who are not members of the management/senior management), in order to:</p> <p>i) shorten the minimum retention period even if the deferral period is shorter than five years;</p> <p>ii) not require a minimum retention period where a five-year deferral period is in place.</p>	<p>The minimum deferral period and the use of retention periods are required in the CRD. They apply also to the control function. However, in most cases the control function staff should be less affected by the provisions. The guidelines only require a minimum deferral period of five years for the management body and senior management of significant institutions.</p>	<p>No change</p>
<p>Question 18 (Title IV, Section 17.7, ‘Ex post risk adjustment; malus and clawback’)</p>			
<p>General comments</p>	<p>The majority of respondents wanted further clarity on whether amounts returned by the employee following clawback should be returned gross or net of taxes paid by</p>	<p>The tax regimes of Member States differ and are not subject to EBA guidelines.</p>	<p>No change</p>



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	<p>the employee, with a preference that the net amount is returned due to the difficulty in recovering tax payments already made.</p> <p>A couple of respondents also made the point that applying clawback will be difficult in some EU jurisdictions, especially in those where malus and clawback are prohibited by the national law.</p> <p>A respondent also considered that the length of the clawback period should align with the deferral period relating to the original award.</p>		
Para 266	A few respondents also raised the point that Article 94(1)(n) CRD IV only requires institutions to apply malus <u>or</u> clawback, whereas para 266 implies both should be applied to 100% of variable remuneration. This would suggest all variable remuneration must be deferred, not allowing for upfront payments, and going beyond the scope of the CRD.	The comment was accommodated.	Para 266 amended
Question 19 (Title V, 'Institutions that benefit from government intervention')			
General comments	<p>Most respondents were content with the approach set out.</p> <p>However, unions suggested that Article 44 of the BRRD requires that neither fixed nor variable remuneration regulated by a collective bargaining agreement shall be written down in exceptional cases such as during recovery or resolution, and requested that para 277 reflect this approach.</p> <p>A few respondents also observed that this provision should refer to a small number of organisations.</p>	<p>The provisions in Article 44 of the CRD with regard to the variable remuneration do not apply to the variable remuneration of identified staff. A reference has been added to Article 141 of the CRD; the variable remuneration that can be awarded is limited when the institution does not have a sound capital base.</p> <p>The mandate to provide guidelines includes the application of Article 93 of the CRD.</p>	No change besides the introduction of a reference to Article 141 of the CRD
Question no. 20 (Title VI, 'Disclosures by institutions and internal transparency')			



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<p>Title VI</p> <p>General comments</p>	<p>Proportionality concerns have been highlighted stemming from the detail and great amount of information to be disclosed, which make the disclosure requirements highly costly (quality instead of quantity). Some respondents suggested therefore that the proportionality principle stated under para 288 be further developed across the entire Title VI.</p>	<p>The disclosure requirements are part of Article 450 of the CRR. The required detail of the disclosures can differ based on proportionality as set out in the guidelines. However, all items required in the CRR have to be disclosed.</p>	No change
	<p>Moreover, many of the disclosure requirements under the GL have been deemed as going beyond Article 450 of the CRR (e.g. paragraphs 288, 294, 304, 305, 306, etc.).</p>	<p>Article 450 of the CRR refers to the remuneration requirements for identified staff. This includes the criteria for the remuneration system. In general (Article 435 of the CRR) institutions have to disclose their strategies and processes to manage risks. It needs to be transparent which staff are identified in institutions, hence it is appropriate and covered by the CRR that institutions disclose the criteria used for the identification of staff. The requirements in paragraph 304 and 305 refer to identified staff.</p> <p>The disclosure of the number of staff and the total remuneration broken down in variable and fixed remuneration required by paragraph 306 are in general already part of the financial statement. This information is needed to understand the effect that the remuneration policy for identified staff will have on the institution.</p>	No changes besides some clarifications
	<p>A transitional period has been required for the first publication of the information in accordance with the new GL (disclosure requirements should apply from 2016 performance year onwards).</p>	<p>The CRR disclosure requirements are in force since January 2014. Information pursuant to Article 450 of the CRR shall already be disclosed by institutions.</p> <p>The EBA has set an implementation date that allows a sufficient timeframe to implement the requirements.</p>	No change
	<p>It has been suggested that this title also include the disclosure requirements pursuant to Article 75 of the CRD</p>	<p>The requirements on disclosure need to be differentiated from requirements to report information to competent authorities.</p>	No change



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	and a reference to the GL on the discount rate and the supervisory review process.	Reporting and disclosure requirements included in other EBA guidelines apply in parallel with these guidelines.	
	Concerns were raised related to the burdensome disclosure requirements for groups operating in different jurisdictions and to their detrimental effects in the context of the SSM.	Disclosure requirements apply to institutions and on a consolidated level in line with the CRR. Supervisors should have appropriate processes and procedures in place to analyse the information disclosed by institutions or provided to supervisors as part of supervisory reporting or other requests.	No change

