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EBA Peer Review Report

On the RTS on criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile

Contents

List of figures

List of tables

Abbreviations

BoS	Board of Supervisors
BST	balance sheet
CA	competent authority
CET1	Common Equity Tier 1
CRD IV	Capital Requirements Directive (Directive 2013/36/EU)
ECB	European Central Bank
EEA	European Economic Area
JST	joint supervisory team
LSI	less significant institution
O-SII	other systemically important institution
RTS	regulatory technical standards
SI	significant institution
SSM	Single Supervisory Mechanism
SREP	Supervisory Review and Evaluation Process

1. Executive summary

Directive 2013/36/EU (the Capital Requirements Directive – CRD or CRD IV) requires institutions to have robust governance arrangements and effective processes to identify, manage, monitor and report the risks that they are or might be exposed to. As part of these governance arrangements, the framework for prudential supervision set out in Directive 2013/36/EU requires that all institutions identify all members of staff whose professional activities have a material impact on the institution's risk profile. The qualitative and quantitative criteria used to identify staff set out in the regulatory technical standards (RTS) on criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile are based on the materiality of the staff member's influence on the institution's risk profile. Institutions should provide proper incentives in their remuneration policies to ensure the prudent behaviour of staff and should ensure the identification of those members of staff whose professional activities have a material impact on the institution's risk profile. To reflect the level of risk of different activities within the institution, institutions should, where appropriate, establish internal criteria for the identification of risk-takers in addition to the criteria set out in the RTS.

The purpose of the RTS is to achieve a good level of harmonisation with regard to the scope of application of remuneration policies. The RTS ensure that staff responsible for risk-taking and management are covered by those policies. Competent authorities (CAs) have to ensure that institutions keep records of the assessments made.

This peer review aims to assess the supervisory practices followed and measures taken by CAs with respect to the requirements of the RTS. With a view to gaining a deep understanding of the entire identification process, which begins with practices within the institutions themselves, the review panel selected a small number of institutions forming a representative sample, including one significant institution (SI) for each Member State and two less significant institutions (LSIs).[1] These institutions were requested to provide data on the numbers of staff identified under the qualitative and quantitative criteria set out in the RTS and through the application of additional internal criteria. This assessment was intended to enable the EBA and the review panel to flag any issues that the institutions face in the application of the requirements and any possible interpretation issues or loopholes resulting from the current text of the RTS.

The review panel identified a number of best practices and weaknesses that the EBA has to make publicly available in accordance with Article 30(4) of the EBA founding regulation. Within the European Economic Area (EEA), the CAs applied the RTS properly during the reference period, starting on 1 January 2015 and finishing on 31 December 2017. The review panel did not detect any widespread deficiencies or major issues with regard to the application of the RTS in those years.

This report highlights the following observed best practices in more detail:

[1] For Single Supervisory Mechanism (SSM) countries, the European Central Bank (ECB)/SSM selected the SIs and the CAs chose the LSIs.

- CAs collect information from institutions to ensure that the required information is all included in the documentation;
- institutions have a notification and prior approval process regarding exemptions for identified staff[2] under Article 4(4) and (5) of the RTS;
- the application of exemptions for individual staff is assessed under Article 4(2) to (4) of the RTS;
- the use of supervisory tools for assessing the institutions' compliance.

The review panel also identified some weaknesses in the application of some parts of the RTS. CAs typically follow a risk-based approach. However, some CAs had some difficulties in distinguishing between their standard risk-based methods of supervision and the application of the proportionality principle, leading to diverging approaches with regard to the latter and in a few cases the exclusion of certain institutions from supervisory review on a systematic basis.

With a view to improving the consistent application of the RTS and harmonising CAs' practices, the review panel suggested carrying out a targeted review of the application of the RTS after their amendment following the entry into force of Directive 2019/879/EU (CRD V). However, time should be allowed before this review takes place, as both supervisors and institutions will need time to implement Directive 2019/879/EU and the amended RTS on identified staff. The review will aim to ensure that the observed weaknesses are addressed in a consistent manner by CAs.

[2] Please note that the expressions 'identified staff' and 'risk-takers' will be used interchangeably throughout the report, as they refer to the same staff members.

2. Background and rationale

2.1 Mandate

1. The purpose of this peer review is to assess the supervisory practices followed and measures taken by CAs with respect to the requirements of the RTS. The framework prescribed by the RTS sets out directly applicable requirements for institutions and relies significantly on the input that they provide to CAs for the purposes of reviewing and approving, where applicable, requests for exemption under the RTS. The peer review also evaluates how the RTS are applied within the prudential scope of consolidation in line with Articles 92 and 109 of Directive 2013/36/EU. In addition, the peer review considers the application of the proportionality principle.

2. In accordance with the terms of reference of the peer review approved by the EBA's Board of Supervisors (BoS) in September 2018, the peer review also assesses how CAs comply with the RTS and ensure the compliance of financial institutions including with regard to the following.

- Supervising the application of the quantitative and qualitative criteria set out in Articles 3 and 4 to identify staff within the management body or the senior management and other staff with key functions or managerial responsibilities over other identified staff within institutions, and the application of the criteria based on the authority of staff to commit to credit risk exposures and market risk transactions above certain thresholds calculated as a percentage of Common Equity Tier 1 (CET1) capital to ensure their proportionate application.

- In accordance with Article 4(2) of the RTS, the application of the exemption set out in Article 4(2), when the institution determines that the professional activities of the staff member do not have a material impact on the institution's risk profile because that staff member (or the category of staff to which the staff member belongs):

  – carries out professional activities and has authority only in a business unit that is not a material business unit; or

  – has no material impact on the risk profile of a material business unit through the professional activities carried out.

- The application of the notifications required under Article 4(4) for the above exemptions.

- The supervision of institutions with regard to the correct application of the RTS.

- The prior approval process[3] set out in Article 4(5) in case of awarded total remuneration of EUR 750 000 or more in the preceding financial year or in relation to the 0.3% criterion set out in Article 4(1)(b) and how the conditions under Article 4(2) are assessed.

- The assessment of exceptional circumstances that has to be performed if the institution applies for the CA's prior approval to exclude staff from the category of identified staff in the case of staff members who have been awarded total remuneration of EUR 1 million or more in the preceding financial year under Article 4(5).

- The application of the proportionality principle, in particular with respect to waivers regarding the requirement to identify staff, which was one of the elements considered in the EBA opinion published in 2015,[4] with the aim of gaining a clear picture of the existing situation as regards the existence of any such waivers.

- The application of the RTS within the scope of prudential consolidation to financial institutions that are not themselves subject to Directive 2013/36/EU in line with Articles 92 and 109 of Directive 2013/36/EU.

3. The peer review also evaluates how CAs supervise the correct application of the RTS, the application of the abovementioned exclusions by institutions and CAs, and the effectiveness of the criteria set out in the RTS.

4. To assess supervisory practices in relation to the RTS, it is important to understand the entire identification process, which begins with institutions' practices. The peer review aimed therefore to select a small number of institutions as a representative sample for the purposes of the review. In this regard, the exercise included the collection of data regarding exclusions requested by institutions and approved by CAs for staff who received EUR 750 000 or more and the 0.3% of staff who received the highest remuneration. In addition, a review of the appropriateness of institutions' internal exclusion processes (in relation to staff receiving remuneration of EUR 500 000 or more), their supervision and the processes implemented by CAs was also performed. With regard to the effectiveness of the identification criteria, data on the numbers of staff identified under the qualitative criteria set out in the RTS and the numbers of staff identified in addition by the quantitative criteria set out in the RTS were also collected.[5] Furthermore, information on additional internal criteria was requested, where relevant.

2.2 Reference to the EBA founding regulation

5. The review panel conducts its peer reviews based on self-assessments provided by CAs. Peer review exercises are conducted in accordance with the provisions of Article 30 of the EBA

[3] Prior approval of the CA responsible for prudential supervision of the institution concerned is required for all staff falling under those criteria that the institution intends to exclude from the category of identified staff.

[4] Opinion of the EBA on the application of the principle of proportionality to the remuneration provisions in Directive 2013/36/EU (https://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-25+Opinion+on+the+Application+of+Proportionality.pdf).

[5] Only three CAs provided this data: BE, DE, ES.

founding regulation and the EBA decision establishing the review panel (EBA DC 035). A peer review entails an assessment and comparison of the effectiveness of CAs' supervisory activities and their implementation of the relevant provisions in relation to those of their peers. It must include an assessment of:

- the adequacy of the resources and governance arrangements of CAs, especially regarding the application of regulatory and implementing technical standards;
- the degree of convergence reached on the application of Union law and on supervisory practices;
- the best practices developed by CAs.

6. Following a peer review, the EBA is entitled to submit an opinion to the European Commission if the peer review or any other information acquired in carrying it out shows that a legislative initiative is necessary to ensure further harmonisation of prudential rules (Article 30(3)(a) of the EBA founding regulation). The EBA also has to make publicly available the best practices that have been identified from the peer review. In addition, all other results of the peer review may be disclosed publicly, subject to the agreement of the CA that is the subject of the peer review (Article 30(4) of the EBA founding regulation).

2.3 Methodology

7. The peer review followed the EBA review panel methodology for the conduct of peer reviews (EBA BoS 2012 107), approved in June 2012. In line with the methodology, each peer review has four phases:

   - Phase 1 – preparatory:
     - preparation and finalisation of a self-assessment questionnaire.
   - Phase 2 – self-assessment:
     - CAs are asked to submit their responses to the self-assessment questionnaire.
   - Phase 3 – review by peers:
     - the review panel considers the questions, self-assessments and benchmarks, revising them as necessary to promote consistency of responses across CAs.
   - Phase 4 – on-site visits:
     - Small teams visit a number of CAs. The review panel decided during its face-to-face meeting in May 2019 not to organise on-site visits, as the responses to the questionnaire were comprehensive. Members considered that on-site visits, usually

helpful in complementing the desk-based analysis, would not bring added value to this specific peer review exercise.

8. According to the review panel methodology, the EBA is expected to establish a benchmark to facilitate a transparent and objective evaluation of the degree to which each CA is effectively implementing the supervisory provisions or practices subject to peer review and of the degree to which the intended supervisory outcomes are being achieved. Furthermore, the methodology requires that the benchmark be clearly set out at the beginning of each exercise. In so doing, the EBA has to use a specific grade scale ranging from 'fully applied' to 'not applied' and including two additional categories, 'not applicable' and 'non-contributing', to rate the level of compliance reached by each CA. For this peer review, review panel members agreed to use a different scale, as the RTS requires full harmonisation and compliance with its provisions. Consequently, the scale used for benchmarking is as follows:

   - **Fully comprehensive:** a process may be considered 'fully comprehensive' when all the assessment criteria specified in the benchmarks are met without any significant deficiencies.

   - **Largely comprehensive:** a process may be considered 'largely comprehensive' when some of the assessment criteria are met with some deficiencies, which do not raise any concerns about the overall effectiveness of the competent authority, and no material risks are left unaddressed.

   - **Partially comprehensive:** a process may be considered 'partially comprehensive' when some of the assessment criteria are met with deficiencies affecting the overall effectiveness of the competent authority, resulting in a situation where some material risks are left unaddressed.

   - **Weak:** a process may be considered 'weak' when the assessment criteria are not met at all or not met to a significant degree, resulting in a significant deficiency in the application of the provisions.

   - **Not applicable:** a practice under review may be considered 'not applicable' when it does not apply given the nature of a competent authority's market.

   - **Non-contributing:** a competent authority is to be classified as 'non-contributing' if it has not provided its contribution by the deadline set.

3. Summary of the assessment of the responses to the self-assessment questionnaire provided by the competent authorities

9. Most CAs participating in the peer review exercise confirmed their strict application of the RTS. The self-assessment questionnaire contained five benchmarked questions focusing on:
   - the supervision of the application of the RTS at group level (Question 6);
   - the supervisory process to ensure the completeness of the documentation of the assessment done by institutions (Question 9);
   - the determination by the CA that the professional activities of a staff member do not have a material impact on the institution's risk profile in accordance with Article 4(2) of the RTS (Question 16);
   - the notification and request processes for prior approval under Article 4(5) (Question 29);
   - the prior approval process when the legislation requires that the EBA be notified in accordance with Article 4(5) of the RTS (Question 31).

10. Questions 12 to 37 focused on the exemptions that CAs may apply in accordance with Article 4(2) of the RTS. CAs that do not exempt any staff members who have a material impact on an institution's risk profile did not have to answer those questions. Those CAs answered only two of the five benchmarked questions.

11. One CA from one of the three European Free Trade Association countries stated that the remuneration provisions under CRD IV had not been implemented in its national legislation at the time the peer review started.[6] Consequently, this CA did not participate in this peer review exercise. However, the CA pointed out that, according to its national legal provisions on remuneration, restrictions on remuneration apply to all staff of credit institutions and no exemptions can be permitted by the CA.

12. It should be noted that data reported by the CAs participating in the SSM in the figures below relate only to LSIs, while figures for SIs were provided by the ECB/SSM.

[6] Icelandic Financial Supervisory Authority.

*Table 1: Summary table of all competent authorities' benchmarked responses **before review**[7]*

	Number of responses – fully comprehensive process	Number of responses – largely comprehensive process	Number of responses – partially comprehensive process	Number of responses – weak process	Number of responses – not applicable	Number of responses – non-contributing
AT	2	0	0	0	3	0
BE	5	0	0	0	0	0
BG	0	0	0	2	3	0
CY	1	1	0	0	3	0
CZ	2	0	0	0	3	0
DE	2	0	0	0	3	0
DK	4	0	0	1	0	0
ECB/ SSM	5	0	0	0	0	0
EE	1	0	1	0	3	0
EL	1	0	0	1	3	0
ES	2	0	0	0	3	0
FI	0	2	0	0	3	0
FR	2	0	0	0	3	0
HR	1	1	0	0	3	0
HU	5	0	0	0	0	0
IE	1	1	0	0	3	0
IS	N/A	N//A	NA	N/A	N/A	N/A
IT	5	0	0	0	0	0
LI	1	1	0	0	3	0
LT	0	1	1	0	3	0
LU	1	4	0	0	0	0
LV	0	1	1	0	0	0
MT	0	0	1	1	3	0
NL	0	0	0	2	3	0
NO	0	2	0	0	3	0
PL	0	2	0	0	3	0
PT	0	2	0	0	3	0
RO	1	1	0	0	3	0
SE	0	4	1	0	0	0
SI	0	1	1		3	0
SK	2	0	0	0	3	0
UK	5	0	0	0	0	0
Total	**49**	**24**	**6**	**7**	**66**	**0**

[7] Some CAs revised their self-assessments during the review.

13. The self-assessment questionnaire is in Annex 1.

4. Results of the self-assessment questionnaire

4.1 Findings of the data collection

14. A summary of the data collection is in Annex 2.

4.2 Assessment of the legal framework

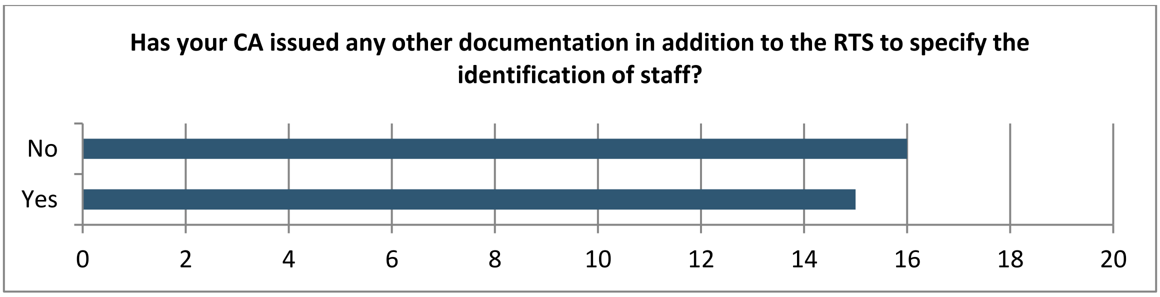
15. The self-assessment questionnaire contained four questions on the legal framework applied in the CAs' jurisdictions.

16. Questions 1 and 2 ask whether CAs have issued any documentation, instrument or tools, in addition to the RTS, to specify the processes for identifying staff who have a material impact on an institution's risk profile. Specifically, information on two main aspects of any such specification were sought:

- a brief description of the type of further specification of the provisions of the RTS by the CAs;
- the legal nature of any such instrument, in particular whether it is legally binding or mandatory.

17. Figure 1 shows a breakdown of the CAs by those that have published any other documentation, instruments or tools, in addition to the RTS, and those that have not produced any additional documentation.

Figure 1: Responses to Question 1 about additional documentation produced by CAs

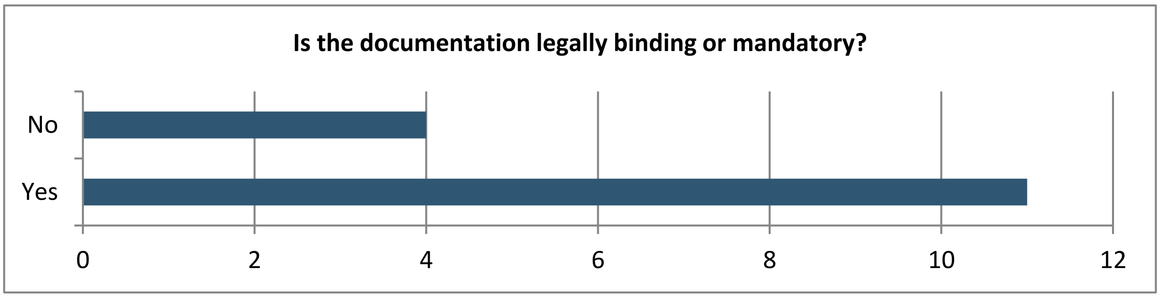


18. Among the respondents, 15 CAs indicated that they had published additional documentation.[8] The nature of these additional documentations varies. Predominantly, they are circulars or guidance/guidelines. Some other instruments were also mentioned, such as manuals, recommendations, rulebooks, banking acts, remuneration ordinances, memoranda, executive orders, supervisory statements and websites.

19. The content of the additional documentation is mainly about the responsibilities and expectations with regard to the identification process at solo and group level. In addition, one CA has defined its minimum expectations by stating that at least 1% of all an institution's employees must qualify as identified staff.[9] In its circular, one CA stipulates that the relevant information on the outcome of the policy on the identification process, including possible exemptions, must be transmitted to the institution's shareholders and approved by them.[10]

20. Question 2 focuses on the legal nature of the additional documentation, instruments or tools (Figure 2).

Figure 2: Responses to Question 2 about the legal nature of the additional documentation produced by CAs



21. According to the responses to Question 1, 15 CAs have published documentations, and 11 CAs have classified it as legally binding or mandatory for the supervised institutions, while four CAs[11] have classified it as legally non-binding.

22. Question 3 relates to potential thresholds or waivers under national legal frameworks that would allow institutions not to identify staff.

23. Figure 3 shows how many CAs have introduced quantitative thresholds or waivers under the national framework that would allow institutions not to identify staff.

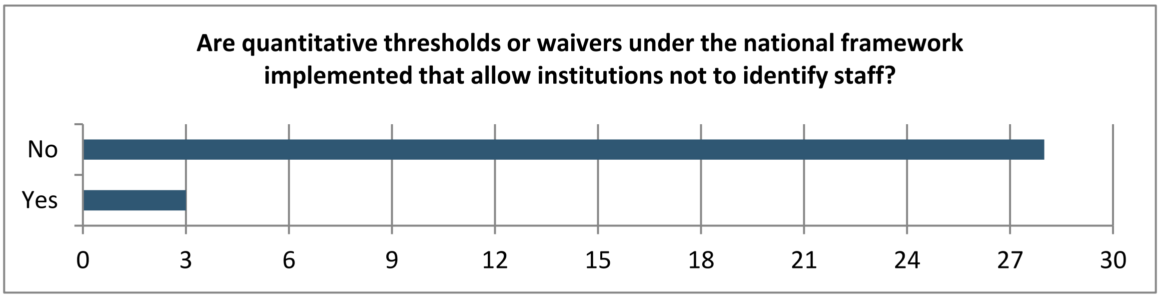
[8] BE, DE, DK, ES, HR, HU, IT, LI, LU, LV, NO, PT, SK, UK, ECB/SSM.

[9] BE.

[10] IT.

[11] BE, HU, LI, SK.

Figure 3: Response to Question 3 about the quantitative thresholds or waivers applied under the national framework



24. Three CAs[12] indicated that a quantitative threshold or waiver had been introduced under the national framework that allows institutions to waive the requirement to identify staff.

25. One of these CAs[13] explained that under the national law implementing Directive 2013/36/EU only significant institutions had to identify staff with a material impact on the risk profile of the institution. In its jurisdiction, the national remuneration ordinance specifies which institutions are being considered significant for the purpose of that ordinance. An institution is regarded as significant if its total balance sheet reaches or exceeds EUR 15 billion (three-year average), unless the institution provides the supervisory authority with a risk analysis showing that it is not a significant institution. In addition, the national remuneration ordinance specifies which institutions are to be classified as significant in any case, for example institutions categorised as having the potential to pose a systemic threat within the meaning of the national Recovery and Resolution Act. The CA may classify an institution with a total balance sheet less than EUR 15 billion as a significant institution if it seems necessary based on the institution's remuneration design and the nature, scale, complexity, riskiness and internationality of its business activities. Where an institution belonging to a group is classified as a significant institution, all other institutions that are part of the same group and whose total balance sheet is at least EUR 15 billion (three-year average) are also regarded as significant institutions.

26. Another of these CAs[14] explained that under the national law implementing Directive 2013/36/EU entities other than asset management companies and insurance companies (which are both exempted) that belong to a banking group and have a total balance sheet less than EUR 10 billion and which do not pose any risks to the solvency and liquidity of the group do not have to identify risk-takers. If the consolidated balance sheet is higher than EUR 10 billion, the individual credit institutions, investment companies and finance companies are exempted individually if their total balance sheet is less than EUR 10 billion, whereas identification of staff is done at consolidated level and at individual level for any entity with a total balance sheet higher than EUR 10 billion.

[12] DE, FR, NO.

[13] DE.

[14] FR.

27. The third of these CAs stipulated that the RTS did not apply to annual variable remuneration that does not exceed 1.5 months' fixed salary per year.[15]

28. Question 4 requests CAs to list all problems in application or examples of room for improvement in relation to the RTS identified by institutions or CAs.

29. Thirteen CAs provided details of issues identified by institutions or the CA regarding the application of the RTS that might require further clarification of the applicable legal requirements.[16]

30. Some CAs pointed out that in practice members of the management body in its management function and in its supervisory function (falling under the qualitative criteria) were often not included in the list of identified staff (Article 3(2) of the RTS). The following reasons led to non-identification:[17]

- Only the quantitative factors were taken into account. The qualitative factors, for example whether or not non-executive directors received variable remuneration, were mostly overlooked.
- The term 'staff' was misinterpreted (e.g. only persons with an employment contract were included, whereas those with personal service contracts and monthly regular remuneration were excluded, or only members of the management body in its supervisory function were identified, as they were staff representatives, while (external) members of the supervisory board were excluded).
- Market participants understood that the members of the management body in its supervisory function did not carry out executive tasks and therefore should not be recognised as risk-takers.

31. In addition, some CAs[18] emphasised that the definition of 'material business unit' is often difficult to apply in practice, for example if no specific internal (group) capital has been allocated to a specific activity or if an activity is scattered over different legal and/or geographical entities. Further clarification of the requirement seems to be necessary in the event that the institution does not have a system for allocating internal capital to business units and, under the RTS, must nonetheless identify its material business units.

32. The identification process at group level is not properly applied by some institutions. Accordingly, it needs to be explained that a material business unit at individual level is not necessarily material at group level and/or that not everyone identified at solo level needs to be a risk-taker at group level as well. One CA explained that an institution interpreted the scope

[15] NO.

[16] AT, BE, DE, HR, HU, IE, IT, LI, LU, LV, NL, SI, UK.

[17] DE, HU, IE, LU, LV, UK.

[18] BE, DE, IT, UK.

of the identification process at group level in such a way that the institution identified only those employees who had a material impact on the group and not on the credit institution at solo level itself.[19]

33. Regarding the identification of material risk-takers with respect to credit and trading risk, one CA has provided additional guidance.[20] Regarding the criterion on credit risk exposure (Article 3(11) of the RTS), another CA observed that one institution used not the nominal amount per transaction but, rather, a capital equivalent as the identification criteria.[21]

34. One CA pointed out that Article 4(1)(c) of the RTS (one of the quantitative criteria) was problematic for institutions in conjunction with Article 3 of the RTS, as some employees receive relatively low remuneration, which can lead to many or even all staff members being classified as identified staff.[22]

35. Moreover, one CA raised the practical question of whether the number of staff excluded under Article 4(2) of the RTS must be disclosed.[23]

36. Furthermore, one CA explained that, depending on its business model and operational features, an institution should adopt further specific criteria where necessary to identify all material risk-takers.[24]

37. In addition, two CAs pointed out that the scope of the qualitative and quantitative criteria is very broad and requires an in-depth identification process of small and medium-sized banks. The thorough application of the RTS is viewed as burdensome for these banks, especially for LSIs. Consequently, those two CAs concluded that the proportionality principle should be better applied (e.g. through thresholds or waivers for small banks, in accordance with the Guidelines on sound remuneration policies (EBA/GL/2015/22), paragraph 75).[25]

4.3 Assessment of the supervision of the application of the RTS at solo and group level and the application of the proportionality principle

38. Question 5 aims to collect information on how the CAs ensure that institutions correctly apply the RTS at solo and consolidated level, including to subsidiaries that are not themselves subject to the CRD and subsidiaries located in third countries (outside the EU).

[19] IE.
[20] UK.
[21] DE.
[22] AT.
[23] HR.
[24] IT.
[25] LI, SI.

39. The replies revealed that CAs had in place various methods and procedures to ensure that institutions comply and apply the RTS in the expected way.

40. Usually, CAs ensure that institutions correctly apply the RTS at an appropriate level as part of the Supervisory Review and Evaluation Process (SREP),[26] i.e. as part of a periodic assessment of the internal governance of institutions (off-site analysis), and this may also be checked by external auditors.[27] In some cases, the SREP includes on-site visits, and sometimes specific information is requested *ex ante* to feed into the assessment.

41. Some CAs[28] mention data quality analysis, consistency checks with data collected on high earners and examining the minutes of remuneration committee meetings as part of their checks on the level of application of the RTS, and some CAs also use annual reporting.[29] Some CAs carry out on-site examinations in the context of targeted or broad-scope inspections.[30] It should also be mentioned that one CA[31] reported not having supervised the application of the RTS by institutions so far and another[32] had not carried out an exercise to ensure that the RTS were fully operational at both solo and group levels for all institutions.

Potential best practices observed

- ⇨ Reconciliation of data collected on high earners identified as risk-takers, i.e. whether any high earners are not regarded as identified staff (and supervisory follow-up).

- ⇨ General sample testing, such as a comparison of the identification outcome of the institution with those of its peers.

- ⇨ On-site inspections where the CAs rely on either external auditors' or other independent reviewers' reports.

42. It could also be discussed whether there might be interest in expanding the collection of data on high earners to include data on the identification of risk-takers. At the moment, reconciliation of data collected on high earners with identified risk-takers can be done only by starting a dialogue with the reporting institutions.

43. Question 6 is a benchmarking question aimed at collecting information on whether the CAs include the following institutions when supervising group-level application in line with national regulatory provisions:

(a) all institutions within the EU including ancillary services undertakings;

[26] AT, EL, ES, FI, FR, HR, IE, IT, LI, LT, LU, LV, PL, RO, SE, SK.
[27] AT, DE, LI.
[28] AT, BE, DE, EE, FR, HR, LU.
[29] FR, LI, MT.
[30] DE, IT, LV.
[31] BG.
[32] MT.

(b) all non-CRD institutions within the EU including ancillary services undertakings;
(c) all institutions outside the EU including ancillary services undertakings;
(d) all financial institutions outside the EU including ancillary services undertakings.

Table 2: Result of the benchmarking of Question 6 on whether the CAs include certain institutions when supervising group-level application in line with national regulatory provisions

Member State	Initial assessment	Revised assessment (by CA)	Revised assessment (by the review panel)	Final assessment
AT	Largely comprehensive process	Fully comprehensive process		Fully comprehensive process
BE	Fully comprehensive process			Fully comprehensive process
BG	Weak process			Weak process
CY	Fully comprehensive process			Fully comprehensive process
CZ	Largely comprehensive process		Fully comprehensive process	Fully comprehensive process
DE	Fully comprehensive process			Fully comprehensive process
DK	Fully comprehensive process			Fully comprehensive process
ECB/SSM	Fully comprehensive process			Fully comprehensive process
EE	Partially comprehensive process	Fully comprehensive process		Fully comprehensive process
EL	Fully comprehensive process			Fully comprehensive process
ES	Partially comprehensive process	Fully comprehensive process		Fully comprehensive process
FI	Largely comprehensive process		Partially comprehensive process	Partially comprehensive process
FR	Fully comprehensive process			Fully comprehensive process

HR	Largely comprehensive process		Fully comprehensive process	Fully comprehensive process
HU	Largely comprehensive process	Fully comprehensive process		Fully comprehensive process
IE	Largely comprehensive process	Fully comprehensive process		Fully comprehensive process
IT	Fully comprehensive process			Fully comprehensive process
LI	Largely comprehensive process			Largely comprehensive process
LT	Largely comprehensive process			Largely comprehensive process
LU	Largely comprehensive process			Largely comprehensive process
LV	Partially comprehensive process		Fully comprehensive process	Fully comprehensive process
MT	Partially comprehensive process			Partially comprehensive process
NL	Weak process			Weak process
NO	Largely comprehensive process			Largely comprehensive process
PL	Largely comprehensive process			Largely comprehensive process
PT	Largely comprehensive process			Largely comprehensive process
RO	Largely comprehensive process			Largely comprehensive process
SE	Partially comprehensive process			Partially comprehensive process
SI	Largely comprehensive process			Largely comprehensive process

SK	Fully comprehensive process			Fully comprehensive process
UK	Fully comprehensive process			Fully comprehensive process

44.The approach followed in assessing the responses was that when legislation/regulatory provisions covered all the criteria but, due to the absence of such supervisory practices (e.g. in the case of groups having no subsidiaries or ancillary services undertakings outside the EU), the review panel decided that this should not lead to downgrading the self-assessment. The review panel considered upgrading some CAs' assessments on Question 6 when national regulatory provisions were consistent with all four criteria and the CA would supervise the relevant institutions outside the EU if the situation arose.

45.The review panel suggested downgrading one CA's assessment[33] from largely to partially comprehensive because the CA supervises the application of the RTS by a large proportion of its market participants but excludes the rest, following a risk-based approach.[34]

46.A large majority of the CAs were assessed as having deployed fully or largely comprehensive processes in respect of institutions included in the scope of the RTS. Some CAs referred to the proportionality principle and a risk-based approach to justify the fact that they had not entered into a very detailed analysis for some entities on the prudential perimeter of consolidation. This is in line with the provisions of the CRD on proportionality and has not been considered to have an impact on the effectiveness of processes related to the supervision of the RTS.

47.Only two CAs[35] were assessed as having in place a weak process, for the following reasons:

- One CA stated that it had in place in its national regulation all the elements required to ensure that institutions were compliant with the RTS, but that it had not so far supervised the application of the RTS by the institutions because this activity was not considered a priority.[36]
- The other CA indicated that under national law the remuneration restrictions for identified staff applied by default to all staff and no waivers were granted. This CA stated that, for this reason and as a consequence of its risk-based approach to ongoing supervision of institutions, it did not systematically check all self-assessments.[37]

[33] FI.
[34] 95% supervised on a regular basis and 5% following a risk-based approach.
[35] BG, NL.
[36] BG.
[37] NL.

48. Question 7 deals with the powers of the CAs to exclude institutions or their subsidiaries from the requirements (i.e. to waive the requirements) on a case-by-case basis and looks at a number of institutions to which such waivers have been granted.

49. All the CAs but one replied that institutions were not permitted to waive the requirement to identify material risk-takers. One CA may exercise this power if it is provided for by national legislation but so far no waiver of this kind has been granted.[38] The CA clarified that any exemptions from the requirement to identify risk-takers would follow the conditions laid down in the RTS and the CA's decisions. However, in certain cases, national legislation may exempt certain subsidiaries from the application of the RTS, for example due to sectoral regulations other than the banking ones. In such a case, the CA would follow national legislation. At the moment, the CA is not aware of any such cases.

50. Based on the above, all institutions should carry out the identification process. Institutions may apply proportionality through waivers and exemptions granted by the law, while CAs may do so through their supervisory policies, focusing on a risk-based approach, and resource allocation. This was covered in detail in the EBA Opinion on the application of the principle of proportionality.[39]

4.4 Assessment of supervisory processes to ensure the application of the qualitative and quantitative criteria under Articles 3 and 4 of the RTS within institutions' processes

51. Question 8 asked CAs to provide the total number of identified staff per year since 2015 for all institutions on a best effort basis and to provide, where available, the split by qualitative and quantitative sub-criteria

52. In order to better understand the scope of the data provided in the first instance and carry out a more detailed analysis, the review panel requested additional information and clarifications as follows.

- CAs were asked to give the number of identified staff and the number of total staff separately for SIs and LSIs (for SSM countries) per year (2015, 2016 and 2017). If this information was not available, CAs were asked to clarify the scope of the data already provided.
- CAs were asked to give the average percentage of identified staff in all staff per year.

53. The data provided had different scopes and degrees of granularity and therefore did not allow a proper cross-country comparison. Some CAs provided data only on the level of LSIs or SIs (or according to SREP categories), some CAs provided data for both SIs and LSIs and did not split the data for SIs and LSIs as was required. As the information was requested on a best effort basis, the number of institutions and the market coverage also differed. Table 3 shows the

[38] ECB/SSM.

[39] EBA Opinion on the application of the principle of proportionality to the remuneration provisions.

information provided on the percentages of identified staff in all staff and indicates the scope of the data provided by the CAs.

Table 3: Identified staff as a percentage of total staff (i)[40]

MS	Categories 1-4 (SREP) or SI/LSI	Year			Identified staff/total staff (%)			Comments
		2015	2016	2017	2015	2016	2017	
AT	LSI+SI	9487	8935	8435	n/a	n/a	n/a	No split for SIs and LSIs provided
BE	LSI	80	106	108	2.2%	2.7%	3.0%	
BG	SI	1022	1040	926	4.0%	4.0%	3.8%	
	LSI	1022	1040	926	20.0%	22.9%	27.9%	
CY	LSI	137	104	187	n/a	n/a	n/a	
CZ	LSI+SI	395	395	395	n/a	n/a	n/a	No split for SIs and LSIs provided. Same estimated figures over 3 years. The reporting institutions are five largest credit institutions that constitute 70% of the market
DE	LSI	538	1036	1043	n/a	n/a	n/a	Based on annual remuneration benchmarking of LSIs: (2015: 3 LSIs; 2016: 11 LSIs; 2017:11 LSIs)
DK	LSI+SI	2476	2534	1831	5.1%	5.2%	4.3%	No split for SIs and LSIs provided
ECB/SSM	SI	n/a	n/a	8991	n/a	n/a	1.3%	Data covering only the largest SI in each SSM country
EE		n/a	n/a	n/a	n/a	n/a	n/a	
EL	SI	1583	1208	1207	7.0%	7.4%	8.3%	The reporting credit institutions constitute 97% of the sector
	LSI	191	196	151	10.0%	10.8%	8.3%	

[40] The split between LSIs and SIs could not always be made due to time constraints.

ES	**LSI**	972	869	967	5.6%	5.1%	5.6%	
FI	**LSI**	n/a	n/a	n/a	n/a	n/a	n/a	
FR	**LSI**	n/a	n/a	35	n/a	n/a	2.3%	Data for two LSIs due to EUR 10 billion threshold
HR		909	378	478	n/a	n/a	n/a	2015: all credit institutions 2016 and 2017: O-SIIs constituting 90% of the banking system's total assets
HU	**SI**	599	609	788	1.2%	1.2%	1.5%	
	LSI	1875	1380	780	n/a	n/a	n/a	
IE	**LSI**	158	160	158	4.5%	4.5%	4.4%	
IT	**LSI**	1610	1864	2039	2.1%	2.2%	2.6%	The reporting institutions constitute 20% of the banking system's total assets or 60% of the total assets of the LSIs
LI	**SI**	75	103	103	n/a	n/a	n/a	Data for three SIs that constitute 90% of the market's total assets
LT	**SI**	714	168	127	16.4%	4.0%	4.0%	
	LSI	90	75	75	10.8%	9.7%	10.0%	
LU		n/a	n/a	n/a	n/a	n/a	n/a	
LV	**SI**	122	171	153	17.4%	24.3%	20.7%	Data available for three SIs (excludes one SI that ECB reviewed)
	LSI	802	487	1026	13.4%	9.4%	19.2%	
MT	**SI**	163	165	144	5.0%	5.0%	4.3%	
	LSI	299	318	276	18.7%	17.6%	15.0%	
NL	**SI**	1507	n/a	n/a	n/a	n/a	n/a	
	LSI	613	n/a	n/a	n/a	n/a	n/a	
NO	**SI**	353	364	190	2.9%	3.1%	2.0%	
	LSI	204	206	171	6.0%	6.6%	5.6%	
PL		n/a	n/a	n/a	n/a	n/a	n/a	

PT	**LSI+SI**	4332	3856	2850	n/a	n/a	n/a	No split for SIs and LSIs provided. The reporting institutions hold 86.4% of the banking system's total assets
RO	**SI**	148	236	200	0.7%	1.1%	0.9%	Data available for the three largest credit institutions
	LSI	1281	1355	1266	4.0%	4.4%	4.1%	Including CreditCoop
SE	**Cat 1**	21099	6152	3907	27.1%	8.1%	5.2%	Data available for the four largest credit institutions
SI	**LSI+SI**	155	170	250	2.8%	3.4%	5.6%	No split for SIs and LSIs provided. Approximated data
SK	**SI**	n/a	134	143	n/a	3.6%	4.0%	
	LSI	n/a	91	108	n/a	14.3%	16.3%	
UK		9079	9096	9224	1.3%	1.4%	1.5%	Data available for the 13 largest credit institutions

54. One CA reported a significant decrease in the percentage (from 27.1% in 2015 to 5.2% in 2017).[41] The reduction was due to changes in the identification of risk-takers in the retail banking area that took place between 2015 and 2016. The institutions in scope carried out a very rigorous assessment in 2015 to ensure that they kept to the rules but took a more realistic approach in 2016. In addition to this reduction, a reclassification of staff in control functions was carried out in 2016.

55. The RTS provide a set of qualitative and quantitative criteria to identify the core categories of staff whose professional activities have a material impact on an institution's risk profile. Only two CAs were able to provide a breakdown of identified staff by qualitative and quantitative criteria.[42]

56. Question 9 is a benchmarking question and aims to collect information on whether CAs ensure that the following information is contained in the documentation of the assessment done by institutions:

(a) the rationale behind the assessment by the institution and the scope of its application;

(b) the approach used to assess the risks arising from the institution's business strategy and activities, including in different geographical locations;

[41] SE.
[42] BE, ES.

(c) how many persons working in institutions and other entities within the scope of consolidation, including subsidiaries located in third countries – were assessed;

(d) the roles and responsibilities of the different corporate bodies and internal functions involved in the design, oversight, review and application of the self-assessment process.

57. During the analysis of the replies and discussions within the review panel, a need for clarification on how to approach the question emerged. For a process to be assessed as fully comprehensive, the CAs needed to ensure that all four criteria were met by the documentation for **all** supervised institutions (larger and smaller). The documentation of smaller institutions' assessments could be less detailed or less frequent but should still include all the items of information (a) to (d).

58. Most CAs consider their supervisory processes to be aimed at ensuring that institutions' documentation is adequate.

Table 4: Responses to benchmarked Question 9 on documentation

Member State	Initial assessment	Revised assessment (by CA)	Revised assessment (by the review panel)	Final assessment
AT	Fully comprehensive process			Fully comprehensive process
BE	Fully comprehensive process			Fully comprehensive process
BG	Weak process			Weak process
CY	Largely comprehensive process			Largely comprehensive process
CZ	Fully comprehensive process			Fully comprehensive process
DE	Fully comprehensive process			Fully comprehensive process
DK	Weak process			Weak process
ECB/SSM	Fully comprehensive process			Fully comprehensive process
EE	Partially comprehensive process			Partially comprehensive process

EL	Weak process			Weak process
ES	Largely comprehensive process	Fully comprehensive process		Fully comprehensive process
FI	Largely comprehensive process		Partially Comprehensive Process	Partially Comprehensive Process
FR	Fully comprehensive process			Fully comprehensive process
HR	Largely comprehensive process	Fully comprehensive process		Fully comprehensive process
HU	Fully comprehensive process			Fully comprehensive process
IE	Largely comprehensive process			Largely comprehensive process
IT	Largely comprehensive process	Fully comprehensive process		Fully comprehensive process
LI	Fully comprehensive process			Fully comprehensive process
LT	Partially comprehensive process			Partially comprehensive process
LU	Largely comprehensive process			Largely comprehensive process
LV	Largely comprehensive process		Fully comprehensive process	Fully comprehensive process
MT	Weak process			Weak process
NL	Weak process			Weak process
NO	Largely comprehensive process			Largely comprehensive process
PL	Largely comprehensive process			Largely comprehensive process
PT	Largely comprehensive process			Largely comprehensive process

RO	Fully comprehensive process			Fully comprehensive process
SE	Largely comprehensive process		Partially comprehensive process	Partially comprehensive process
SI	Partially comprehensive process		Weak process	Weak process
SK	Partially comprehensive process	Fully comprehensive process		Fully comprehensive process
UK	Fully comprehensive process			Fully comprehensive process

59. As reported in Table 4, three CAs[43] changed their self-assessments from largely to fully comprehensive and one CA[44] changed its self-assessment from partially to fully comprehensive, providing evidence to support the upgrade. The review panel upgraded one CA[45] from largely to fully comprehensive after receiving the additional information on the supervisory activities carried out to ensure that institutions' documentation includes the information in question.

60. The review panel downgraded the assessment from largely comprehensive to partially comprehensive for two CAs.[46] One of the CAs[47] stated that, following a risk-based approach to supervision of investment firms, it had not so far carried out any specific supervisory activities with respect to the RTS in these institutions. The other CA[48] explained that because it supervises the application of the RTS for a large proportion of its market participants but excludes the rest of them following a risk-based approach it has not performed any specific supervisory activities with respect to the RTS in those excluded institutions.[49]

61. One CA[50] stated that it had a strong supervisory expectation that every bank should have appropriate documentation of the assessment process, including all four of the items of information specified; however, no specific supervisory measures had been taken so far in this regard due to low remuneration levels. The review panel downgraded the self-assessment of

[43] ES, HR, IT.
[44] SK.
[45] LV.
[46] FI, SE.
[47] SE.
[48] FI.
[49] 95% supervised on a regular basis and 5% following a risk-based approach.
[50] SI.

the CA from partially comprehensive to weak for consistency with the assessments of other CAs that rely on self-assessment performed by the institution alone.

62. Those CAs[51] whose processes were characterised by some flaws (other than the possible application of a risk-based approach/the proportionality principle) were assessed as having largely comprehensive processes. The slight deficiencies reported by the CAs derive, for example, from the fact that verifications are exclusively carried out on site;[52] that the off-site verification is conducted on an ad hoc basis, on the sidelines of an annual benchmarking exercise on remuneration practices;[53] or that one of the four criteria is not met.[54]

63. Those CAs that have not yet carried out specific activities meant to ensure that institutions' documentation includes the aspects specified were assessed as having weak processes. In some cases, CAs stated that they relied on the self-assessment performed by the institutions, emphasising institutions' responsibility for identifying material risk-takers.[55]

64. It should be noted that several CAs[56] underlined that with respect to item (b) they conduct the analysis with different degrees of granularity in different circumstances. Most CAs seem to consider (i) that a comprehensive assessment is strictly necessary only in the context of the examination of notifications or applications for prior approval of exemptions and (ii) that, where institutions are characterised by relatively small size, a simple organisational structure and a not complex business model, a specific risk assessment for identification purposes is not necessary.

65. With regard to the timing and the type (on site or off site) of the assessment, 15 CAs responded that the verifications were carried out mostly off site as part of the SREP assessment[57] and/or performed when notification/exemption requests were received from institutions. A number of CAs carry out analyses predominantly or exclusively on site,[58] sometimes in the context of thematic reviews.[59]

66. Supervisory practices converge in relation to the application of the proportionality principle/risk-based approach in the following regards.

[51] IE, NO, PL, PT.

[52] NO.

[53] PT.

[54] IE.

[55] DK and NL. The Danish Financial Supervisory Authority also specified that the CA guides the institutions in their assessments if asked or if it becomes aware of information that causes it to require an identification process.

[56] HR, IE, IT, LV, SI, ECB/SSM.

[57] AT, EL, FI, FR, HR, IE, IT, LI, LT, LV, PL, RO, SE, SK, ECB/SSM.

[58] EE, LI, NO, SI.

[59] EE, LV.

- Five CAs[60] made express reference to the proportionality principle, while 11 CAs specified in their answers to Question 9 that they followed a risk-based approach;[61] that is, the scope, depth and frequency of supervisory assessments are graduated, taking into consideration the size of the institution, the number of staff, and the complexity and nature of the business and structure.[62] These CAs perform their assessments mainly off site, based on submitted supervisory reports; as part of the SREP; and/or when assessing notifications of/requests for exemptions transmitted by institutions. In many jurisdictions, both thematic on-site reviews and off-site reviews are carried out if this is deemed necessary or if any sign that further checks are required arises from (i) the annual SREP, (ii) the annual remuneration benchmarking exercise or (iii) compliance checks. In one case,[63] with regard to smaller institutions, the supervisory approach does not provide for a specific assessment of the application of the RTS as part of the SREP. In another,[64] the institutions submit all relevant documentation at the request of the CA.
- In addition to the CAs that made express reference to the proportionality principle and/or a risk-based approach, other CAs referred to areas of discretion that represent de facto an application of the aforementioned principles. On this basis, the CAs require clarification/additional information and/or perform deep dives where they deem it necessary. For example, in one case,[65] if an institution is considered low risk and the remuneration data give no grounds for doubting the correctness or plausibility of the institution's assessment, the CA's assessment may focus on the institution's self-assessment and less on comprehensively reviewing its internal documentation. In another case, the CA carries out a review when institutions make changes to their remuneration policies[66] or when a notification of/request for an exemption is received.[67]

67. Only five CAs[68] made reference to a template that institutions use to report the items of information (a) to (d). In some cases, the template is used only for some institutions (e.g. only for larger institutions or for those chosen following a risk-based approach) or only in the event that a notification of/request for an exemption is received.

68. The results of the review suggest that issues relating to item (b) could be further explored, since, based on the answers, for most LSIs it does not seem necessary to perform only for remuneration purposes a specific assessment of the risks emerging from an institution's business strategy and activities. Most CAs seem to consider (i) that a comprehensive assessment is strictly necessary only in the context of the examination of notifications or

[60] EL, FR, LV, NL, SE.

[61] BE, FR, HR, IT, LI, LU, LV, SE (for larger institutions), SI, SK, ECB/SSM.

[62] For instance, one CA noted that, for SIs, remuneration is reviewed when a member of the management board resigns and receives severance pay.

[63] SE.

[64] HR.

[65] AT.

[66] LT.

[67] UK.

[68] FR, IE, IT, LI, SE.

applications for prior approval of exemptions, and (ii) that a specific risk assessment for identification purposes may not be necessary where institutions are characterised by relatively small size, a simple organisational structure and a not complex business model.

Potential best practices observed

- ⇨ Carrying out deeper dives (including on site, sometimes in the context of a thematic review) on a case-by-case basis where a specific need for further investigation emerges.
- ⇨ Inserting a provision into the national framework on the content of internal documentation regarding the identification process.

69. Question 10 assesses whether CAs take into account additional internal criteria used by institutions in addition to those set out in Articles 3 and 4 of the RTS to ensure that all staff who have a material impact on the risk profile are identified.

70. Twenty-one CAs[69] responded that institutions based their assessments on the RTS and did not use additional criteria. Only six CAs[70] replied that institutions did use additional internal criteria that were taken into account by the CAs in their reviews. In four cases[71,72,73,74], national regulations set out specific additional criteria and/or make clear the expectation that institutions will go beyond the RTS in identifying risk-takers.

71. For different reasons, three CAs[75] were not able to report on the use of additional criteria by institutions: two authorities[76] had not reviewed the identification process conducted by institutions.[77]

72. Question 11 refers to the most common criteria used by institutions in addition to the criteria set out in Articles 3 and 4 of the RTS.

[69] AT, CY, DK, EE, EL, ES, FI, FR, HR, HU, IE, LI, LT, LU, LV, NL, NO, PT, RO, SE,,SI.

[70] BE, CZ, DE, IT, UK, ECB/SSM.

[71] Based on a National Bank of Belgium regulation, (i) all staff members who are authorised to perform risky transactions and who are employed in trade departments should in any case be considered identified staff and (ii) institutions are required to select as identified staff at least 1% of the total number of staff.

[72] The German Remuneration Ordinance and the Federal Financial Supervisory Authority Interpretation Guide clarify that the identification process has to consider at least the criteria of the RTS, which means that, where necessary, the institution has to consider also 'own' criteria (in addition to those set out in the RTS) for identifying staff with a material impact on the institution's risk profile.

[73] In Italy, the regulatory provisions require banks (i) to adopt criteria in addition to the RTS criteria where necessary in order to identify all material risk-takers and (ii) to include in the scope of the identification process also agents and consultants in the bank's distribution network.

[74] The expectation that firms will go beyond the RTS in identifying material risk-takers is set out in the UK Prudential Regulation Authority Supervisory Statement SS2/17, 'Remuneration' (see in particular paras. 3.7 and 3.8).

[75] BG, LI, MT.

[76] BG, MT.

[77] In one case, this was because of the lack of materiality at national level. The other CA said that it was not aware of any additional internal criteria used by institutions. The third CA reported not having any data.

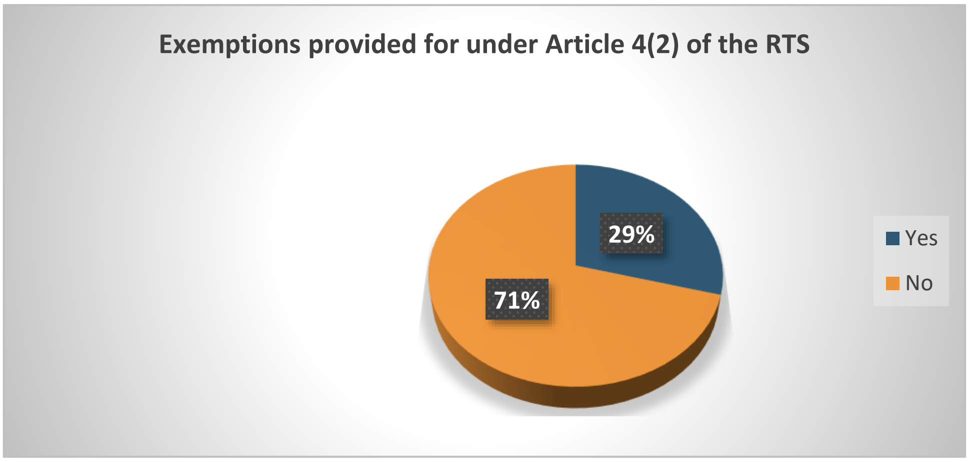
73. The answers provided by six CAs[78] indicated a high level of heterogeneity in the additional criteria used by institutions. That said, the most common criteria were clustered in the following areas: (i) risk profile, (ii) remuneration level and (iii) hierarchical position.[79]

74. The review panel had difficulties in assessing additional criteria because the CAs provided very generic comments. With this caveat in mind, no peculiarities in the processes followed by the CAs can be highlighted and no common patterns were identified during the assessment.

75. Question 12 assesses whether the CAs have received any notifications or applications for prior approval of exemptions since 2015.

76. Of the 30 responding CAs, eight[80] stated that they had received a notification or application for prior approval in the relevant period in relation to the exemption available under Article 4(2) of the RTS.

Figure 4: Percentage of CAs that had received a notification or application for prior approval in relation to the exemption available under Article 4(2) of the RTS



77. Questions 13 and 14 evaluate whether the CAs received all the notifications or applications for prior approval at the latest within six months after the end of the preceding financial year as required by paragraph 94(b) and (c) of the EBA Guidelines on sound remuneration policies and how many institutions submitted the notification or application after the six-month period.

[78] BE, CZ, DE, IT, UK, ECB/SSM.

[79] Examples of the use of additional criteria are including individuals exposing firms to conduct risk; extending the definition of 'material business units' based on a more qualitative approach; including employees with annual remuneration exceeding certain thresholds or individuals with total remuneration less than EUR 500 000 in the current year if they were identified staff under the quantitative criteria in the previous year; considering function level (e.g. the Hay classification is used as an additional indicator for risk-taking).

[80] BE, DK, IT, HU, LU, SE, UK, ECB/SSM.

78. Of the eight responding CAs, five[81] indicated that they had received all the notifications or applications for prior approval within six months after the end of the financial year. Three CAs[82] noted that some notifications were received after the six-month deadline. One CA[83] clarified that one institution was late in submitting its application for prior approval because the exemption request was due to fluctuations in the EUR/GBP exchange rate that brought the remuneration for the identified staff member just over the EUR 750 000 limit.[84] Another CA[85] noted that, while two institutions submitted a notification after the six-month deadline, this was because until October 2018 there was no binding provision in this regard in the national regulations. This has changed and, based on current national regulations, institutions in this jurisdiction are now required to comply with the six-month notification deadline. The last CA[86] identified one institution that had submitted the notification after the six-month deadline; however, the institution submitted the notification only shortly after the deadline.

79. Question 15 asks CAs to describe their processes, including relevant steps and timelines, starting from receipt by the CA of an institution's notification regarding the exemptions for identified staff under Article 4(4) of the RTS.

80. Of the seven CAs[87] that reported having received notifications/applications for prior approval from institutions regarding exemptions for identified staff under Article 4(4) of the RTS, five[88] set up a formal and detailed process to handle these notifications/applications. One CA[89] reported that such cases were handled on a case-by-case basis, without providing further details.

81. Of the 23 CAs that had not received any notifications/applications for prior approval under Article 4(4) of the RTS, three[90] had nonetheless set up a process or reported that they would follow the ECB/SSM approach (and notably ECB Decision (EU) 2015/2218[91]) in particular if such a notification were received from an LSI.

82. The formal processes set up by the CAs generally include performing an evaluation of the completeness of the documentation and challenging the rationale provided.

[81] DK, HU, SE, UK, ECB/SSM.
[82] BE, IT, LU.
[83] BE.
[84] The UK business unit had paid the identified staff member GBP 559 395, which converted to EUR 759 100.37 that year.
[85] IT.
[86] LU.
[87] BE, DK, IT, LU, SE, UK, ECB/SSM.
[88] IT, LU, SE, UK, ECB/SSM.
[89] DK.
[90] BE, FR, HU.
[91] For details, see https://www.ecb.europa.eu/ecb/legal/pdf/celex_32015d0038_en_txt.pdf

83. Three CAs[92] specified a time limit for handling the notification (ranging from 30 days to 3 months).

84. Two CAs[93] provided the institution with a template to fill in.

Potential best practices observed

- ⇨ CAs should consider designing a template for institutions requesting an exemption under Article 4(4) of the RTS to fill in. The template should require a precise explanation of the rationale for considering that the professional activities of the staff member do not have a material impact on the institution's risk profile or that the staff member carries out their professional activities or has authority in a non-material business unit.
- ⇨ CAs should consider specifying a maximum time period for the assessment of the notification or application for prior approval.

85. Question 16 is a benchmarking question about the assessments by CAs of determinations by institutions that the professional activities of staff members do not have a material impact on the institution's risk profile.

Table 5: Responses to benchmarked Question 16 on CAs' assessments of institutions' determinations on professional activities

Member State	Initial assessment	Revised assessment (by CA)	Revised assessment (by the review panel)	Final assessment
AT	N/A			N/A
BE	Fully comprehensive process		Fully comprehensive process	Fully comprehensive process
BG	N/A			N/A
CY	N/A			N/A
CZ	N/A			N/A
DE	N/A			N/A
DK	Fully comprehensive process		Fully comprehensive process	Fully comprehensive process

[92] HU, IT, SE.
[93] IT, UK.

ECB/SSM	Fully comprehensive process		Fully comprehensive process	Fully comprehensive process
EE	N/A			N/A
EL	N/A			N/A
ES	N/A			N/A
FI	N/A			N/A
FR	N/A			N/A
HR	N/A			N/A
HU	Fully comprehensive process		Fully comprehensive process	Fully comprehensive process
IE	N/A			N/A
IT	Fully comprehensive process		Fully comprehensive process	Fully comprehensive process
LI	N/A			N/A
LT	N/A			N/A
LU	Largely comprehensive process		Largely comprehensive process	Largely comprehensive process
LV	N/A			N/A
MT	N/A			N/A
NL	N/A			N/A
NO	N/A			N/A
PL	N/A			N/A
PT	N/A			N/A
RO	N/A			N/A

SE	Largely comprehensive process		Largely comprehensive process	Largely comprehensive process
SI	N/A			N/A
SK	N/A			N/A
UK	Fully comprehensive process		Fully comprehensive process	Fully comprehensive process

86. Of the 30 responding CAs, between 2015 and 2018 eight[94] were required to assess the rationale provided by an institution for the purpose of an exemption under Article 4(2) of the RTS under paragraph (b) (i.e. the staff member's professional activities have no material impact on the risk profile of a material business unit).

87. Regarding point (a) of Article 4(2) of the RTS, no specific procedure for the assessment was reported by one[95] CA out of eight that had been required to make such an assessment.

88. The CAs mostly reported referring to the details contained in Article 4(3) and (4) of the RTS.[96]

89. Some CAs[97] may request additional information (e.g. the information listed in Article 5 of ECB Decision (EU) 2015/2218) if the information provided by the institution is not deemed sufficient to enable the CA to ascertain that the staff member does not have a material impact on the institution's risk profile.

90. One CA[98] requires its supervised institutions to complete annually a template for notifications and prior approvals with regard to the exclusion of material risk-takers.

91. Two CAs[99] require the outcomes of the exclusion process to be approved by the management body of the institution based on the analysis performed as part of the annual identification process. In one case,[100] the outcomes of the exclusion process are also required to be approved annually at a shareholders' meeting.

[94] BE, DK, HU, IT, LU, SE, UK, ECB/SSM
[95] DK.
[96] IT, LU, UK, ECB/SSM.
[97] IT, ECB/SSM.
[98] UK.
[99] IT, LU.
[100] IT.

92. One CA[101] has developed an internal template and process to be used by joint supervisory teams (JSTs) when they need to notify such requests to the EBA.

93. Question 17 looks at how CAs assess, for the purpose of exemptions under Article 4(2) paragraph (a) of the RTS, if staff carry out their professional activities or have authority in a non-material business unit.

94. The CAs mostly reported referring to the details contained in Article 3(5) of the RTS.[102] Thus, CAs assess if the staff member concerned has overall responsibility for risk management within a business unit as defined in Article 142(1)(3) of Regulation (EU) No 575/2013 that has had internal capital distributed to it, in accordance with Article 73 of Directive 2013/36/EU, that represents at least 2% of the internal capital of the institution. One CA[103] further specified that where an internal capital allocation system is not in place in the institution, *ex ante* alternative objective criteria are expected to be set by the institution in order to assess the materiality of the business units.

95. The following additional information may be requested by CAs:[104]

- the significance of the total assets and the total assets under management of the business unit at consolidated level;
- the complexity of the activity of the business unit;
- an organisational chart of the business unit;
- a clear explanation of the reasoning behind the decision;
- a list of the roles and responsibilities of the person in question, including with regard to their sitting or potentially sitting on risk committees.

96. Question 18 looks at how CAs assess, for the purpose of exemptions under Article 4(2) paragraph (b) of the RTS, if staff's professional activities have no material impact on the risk profile of a material business unit.

97. Seven CAs[105] provided information regarding their assessments of whether the professional activities of a staff member have a material impact on the risk profile of a material business unit.

98. One CA[106] declared that when an institution argues that the relevant staff member carries out professional activities only in a business unit that is not material the institution has to demonstrate that this business unit in fact is not material. The assessment is based on the

[101] ECB/SSM.
[102] BE, IT, LU, SE, UK, ECB/SSM.
[103] IT.
[104] BE, IT, LU, SI, UK, ECB/SSM.
[105] BE, IT, LU, SE, SI, UK, ECB/SSM.
[106] ECB/SSM.

documentation provided by the institution and/or further explanations requested, if deemed necessary. According to Article 4(3) of the RTS, the assessment made by the institution must be based on objective criteria that take into account all relevant risks and performance indicators used by the institution to identify, manage and monitor risks for other risk management purposes, in accordance with robust governance arrangements as required by Article 74 of CRD IV, and based on the duties and authorities of the staff member or category of staff and their impact on the institution's risk profile.

99. The supervisors within this CA also take into account, for example, a detailed and comprehensive description of the duties and responsibilities of affected staff; an organisational chart of the business unit to which the affected staff belongs, including staff members' hierarchical positions and reporting lines; and a detailed account of the objective criteria under Article 4(3) of the RTS that have been used to determine that the staff member in question or the relevant category of staff has no material impact on the risk profile of a material business unit, and in particular of how these criteria have been applied and how all the relevant risk and performance indicators have been assessed. Usually, for each staff member, the following information is considered: relevant business unit and department, job title, management responsibility, reporting to management body or senior management, risk-taking/control activity, membership of any relevant committee, reporting level and the degree of authority of the committees to take risk decisions in terms of percentage of CET1 capital).

100. As the assessment carried out may differ between institutions, supervisors are requested to assess whether and how an institution assesses the possible influence of the staff member on major risks such as credit risk, market risk, operational risk and reputational risk. Institutions are expected to use the same risk measurement methods that they use for internal risk measurement purposes. In general, the more sophisticated the risk measurement methods in an institution are, the more sophisticated this specific analysis concerning the influence of a staff member should be.

101. One CA[107] stated that, for the purposes of this assessment, supervisors have regard to the institution's policy and practices on the identification of material business units. This has been the subject of discussion among supervisors since the entry into force of the RTS. The available templates for institutions to use to apply for exemptions require them to provide information on material business unit identification. This information includes information on an institution's policy on identification of material business units, including the formula used, and a list of material business units (and the internal capital allocated to them), business units and departments.

102. One CA[108] stated that it assessed whether or not staff's professional activities had a material impact on the risk profile of a material business unit on the basis of objective criteria, taking into account all relevant risk and performance indicators used by the institution to identify, manage and monitor risk, and on the basis of the duties and authority of the staff member or

[107] UK.
[108] SE.

category of staff and their impact on the institution's risk profile in comparison with the impact of the professional activities of staff members identified by the criteria set out in Article 3 of the RTS.

103. Another CA[109] indicated that the starting point for the assessment would be an evaluation of the results of ICAAP/ILAAP reports and supervisory findings in from the SREP. The identified material risks and corresponding internal capital requirements would provide input into the assessment of how the relevant staff's professional activities were connected with areas and business processes that exposed the material business unit/bank to risk. This part of the assessment would include an examination of business lines and internal control functions. The CA would consider whether the person had a business decision role in a material business unit and whether the person was a member of relevant committees in relation to business portfolios (e.g. asset-liability committees). With regard to support functions (i.e. human resources, accounting, general services), there is a general presumption that these functions do not have a material impact on risk profile unless proved otherwise.

104. One CA[110] reviews the rationale provided by the institution and asks, if necessary, to be provided with further evidence or clarifications (a clear description of the staff member's role and responsibilities, the risks related to the material business unit concerned and how they are mitigated, etc.). The reasons for allowing the application of Article 4(2) of the RTS should be duly documented.

105. One CA[111] takes into account the maximum risk that each staff member involved could assume and the related impact on the risk profile of the relevant business unit and the institution as a whole. Clearly, additional/alternative criteria may be used by banks to support exclusions (e.g. based on the role, duties and powers of the staff member), and their robustness is assessed on a case-by-case basis.

106. Another CA[112] just mentioned that the overall SREP examination / risk-based approach was considered.

107. Question 19 relates to the assessment by CAs of institutions' own assessments under Article 4(3) of the RTS.

108. One CA[113] stated that institutions were asked to explain the rationale for exclusion, including with reference to their overall risk assessment policy. Where information provided is insufficient or not compelling, supervisors ask further questions, seek additional justification or challenge the institution's assessment. The templates for notifications and applications for

[109] SI.
[110] LU.
[111] IT.
[112] FR.
[113] UK.

prior approval require detailed information about the characteristics of an individual's role. In specific cases, for example where an individual has the authority to trade financial products, additional information such as value-at-risk limits and stop-loss limits are requested to ensure that an appropriate assessment has been conducted.

109. Another CA[114] assesses whether the explanation provided by the institution is valid and reliable, in particular whether the criteria to identify the condition set out in point (b) of Article 4(2) have been assessed properly by the institution. The supervisors have to understand, among other things, how the institution calculated the 0.3% threshold under Article 4 of the RTS and what the relevant amount is.

110. In order to ensure that the specific conditions specified under Article 4(3) of the RTS are met, one CA[115] performs a case-by-case analysis informed by the specificities of the case submitted for its evaluation. An assessment is carried out with the aim of verifying whether the criteria used by the institution to assess the overall impact of the staff member on the business unit's risk profile are objective and exhaustive. The following are examples of criteria:

- allocation of internal capital for operational risk attributable to each individual involved;
- individual contribution to the bank's or unit's intermediation margin;
- a risk score attributed to each staff member involved, based on a scoring system developed by the internal control functions;
- qualitative elements related, in particular, to the duties and authorities of the staff members;
- for private bankers, quantitative data relating to the portfolios under direct and indirect management.

4.5 Assessment of the application of exemptions for staff under Article 4(4) of the RTS – notifications

111. Question 20 requires CAs to provide the numbers of institutions that submitted notifications and the numbers of staff concerned per year since 2015. Notifications are required under the RTS if institutions decide to exclude from identification staff who have received more than EUR 500 000 in variable remuneration and who have not been identified under the qualitative criteria. Six CAs[116] had received such notifications from institutions.

[114] ECB/SSM.

[115] IT.

[116] DK, IT, LU, SE, UK, ECB/SSM.

112. Question 21 asks CAs whether they have created a notification template with the information to be provided under Article 4(4) of the RTS.

113. Only two CAs[117] have a standard notification template outlining the information to be provided under Article 4(4) of the RTS. One CA has a template for institutions to use to apply for exemptions for certain staff from being classified as identified staff, which is available on the Bank of England website.[118]

Potential best practice observed

⇨ CAs should consider making a standard template publicly available to allow institutions to apply for exclusions/exemptions in a consistent manner.

114. Question 22 aims to discover how many institutions disagreed with a CA's assessment when the CA had taken measures.

115. None of the CAs that received prior notifications regarding Article 4(4) of the RTS took any measures against an institution as specified under Article 104 of CRD IV. One CA[119] noted that, while it had not taken any measures against an institution, a number of institutions had made the decision to withdraw their notifications after receiving questions from supervisors.

116. Question 23 evaluates what the three main activities/business units are for which the exemptions are requested.

117. Table 6 outlines the main activities for which exemptions were requested under Article 4(4).

Table 6: Main activities for which exemptions were requested under Article 4(4)

Competent authority	Main activities for which exemptions were requested
DK	Wholesale banking, investment banking, corporate finance
IT	Asset management
LU	Client relationship management
SE	Investment banking, asset management, corporate functions
UK	Advisory activities, sales, research
ECB/SSM	Asset management, consumer and business banking, corporate banking

[117] IT, UK.

[118] https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/strengthening-accountability/rps-table-8-material-risk-takers-exclusions.xlsx

[119] UK.

4.6 Assessment of the application of exemptions for staff under Article 4(5) of the RTS — EUR 750 000 prior approval

118. Question 24 requests CAs to provide the numbers of institutions that submitted applications for prior approval and the numbers of staff concerned per year since 2015.

119. Between 2015 and 2018, six CAs[120] received applications for prior approval regarding the exclusion of material risk-takers who had been awarded total remuneration of EUR 750 000 or more in the preceding financial year.

120. Question 25 focuses on the numbers of prior approvals granted per year since 2015, including the numbers of staff concerned, while Question 26 seeks to identify the numbers of refusals per year since 2015, including the numbers of staff concerned.

121. Most of the applications for prior approval regarding the exclusion of material risk-takers who had been awarded total remuneration of EUR 750 000 or more in the preceding financial year received between 2015 and 2018 by the six CAs were accepted (1 915 out of 1 986, representing an approval rate of 96.42%). Only three CAs[121] rejected some requests. One CA[122] was responsible for the largest number of refusals (62), all made in 2015.

122. The reason why two CAs[123] had a 100% approval rate despite a high number of requests was that there were instances in which, upon questioning by supervisors, institutions decided to withdraw notifications or applications for prior approval before a formal decision had been made.

123. Question 27 assesses whether CAs have created an application template with the information to be provided under Article 4(5) of the RTS.

124. Three CAs[124] have created an application template with the information to be provided under Article 4(5) of the RTS. For participating CAs, ECB/SSM internal guidance includes a comprehensive list of documentation that can be requested from institutions notifying or applying for approval of exclusion of staff from identified staff under Article 4(5) of the RTS.

125. Given that the number of requests for exemptions under Article 4(5) is very limited and that these requests are concentrated on two CAs,[125] requiring CAs to create an application template based on the information contained in Article 3 of ECB Decision (EU) 2015/2218 is not deemed appropriate.

[120] BE, IT, LU, SE, UK, ECB/SSM.
[121] BE, SE, ECB/SSM.
[122] ECB/SSM.
[123] IT, UK.
[124] IT, UK, ECB/SSM.
[125] UK, ECB/SSM.

126. Question 28 seeks to discover what the three main activities/business units for which the exemptions are requested are.

127. The three main activities/business units for which the exemptions under Article 4(5) of the RTS are requested are:

- asset management
- sales/commercial banking
- corporate banking.

128. Other relevant activities/business units are client relationship management, control functions in the retail segment, advisory services and research activities.

129. Question 29 is a benchmarking question about the completeness of notifications and applications for prior approval.

Table 7: Responses to benchmarked Question 29 on completeness of notifications and applications

Member State	Initial assessment	Revised assessment (by CA)	Revised assessment (by the review panel)	Final assessment
AT	N/A			N/A
BE	Fully comprehensive process		Fully comprehensive process	Fully comprehensive process
BG	N/A			N/A
CY	N/A			N/A
CZ	N/A			N/A
DE	N/A			N/A
DK	Fully comprehensive process		Fully comprehensive process	Fully comprehensive process
ECB/SSM	Fully comprehensive process		Fully comprehensive process	Fully comprehensive process
EE	N/A			N/A

EL	N/A			N/A
ES	N/A			N/A
FI	N/A			N/A
FR	N/A			N/A
HR	N/A			N/A
HU	Fully comprehensive process		Fully comprehensive process	Fully comprehensive process
IE	N/A			N/A
IT	Fully comprehensive process		Fully comprehensive process	Fully comprehensive process
LI	N/A			N/A
LT	N/A			N/A
LU	Largely comprehensive process		Largely comprehensive process	Largely comprehensive process
LV	N/A			N/A
MT	N/A			N/A
NL	N/A			N/A
NO	N/A			N/A
PL	N/A			N/A
PT	N/A			N/A
RO	N/A			N/A
SE	Largely comprehensive process		Largely comprehensive process	Largely comprehensive process
SI	N/A			N/A

SK	N/A			N/A
UK	Fully comprehensive process		Fully comprehensive process	Fully comprehensive process

130. Regarding the information that a CA should collect to assess notifications of or applications for prior approval, some CAs[126] have created an application template with the information to be provided under Article 4(5) of the RTS. The application template contains the information listed in Article 3 of ECB Decision (EU) 2015/2218. Moreover, ECB/SSM internal guidance includes a comprehensive list of documentation that can be requested from institutions notifying or applying for approval of exclusion of staff from identified staff under Article 4(5) of the RTS.

131. One CA[127] does not have a specific template to be filled in by the institutions but performs a detailed assessment of the completeness of the documentation provided by the institution concerned.

132. One CA[128] does not provide institutions with details regarding how it ensures that notifications and applications for prior approval include all the required elements.

133. One CA[129] does not request the assessment that the staff member does not meet the qualitative criteria for identification, but it may question if the staff member should be identified as a material risk-taker based on a particular qualitative criterion under Article 3 of RTS, specifying the criterion in question.

4.7 Assessment of the application of exemptions under Article 4(5) of the RTS — prior approval requiring an EBA opinion

134. Question 30 focuses on CAs' processes including relevant steps and timelines starting from receipt by the CA of an application for prior approval of an exemption for identified staff under Article 4(5) of the RTS.

135. In the SSM, the ECB has defined in its Decision (EU) 2015/2218 the information to be provided with applications for prior approval to exclude a staff member being awarded total remuneration of EUR 1 million or more in the preceding financial year pursuant to Article 4(5) of the RTS.[130] This decision is applicable to significant supervised entities within the SSM but does not apply to LSIs. It is envisaged that the process starts when a credit institution submits an approval request to the ECB for the exclusion of a staff member or a category of staff.

[126] BE, IT, UK, ECB/SSM.

[127] LU.

[128] HU.

[129] LU.

[130] For details on the required documentation, process and timing, see https://www.ecb.europa.eu/ecb/legal/pdf/celex_32015d0038_en_txt.pdf

Information substantiating any exclusion should be submitted at the right level of consolidation, i.e. solo, subconsolidated or consolidated. A JST checks whether the approval request is complete, including all relevant information and documents, and decides whether further information is needed. The EBA is notified, using a specific template, about the final decision taken by the ECB/SSM, once it has been approved by the Supervisory Board and the Governing Council.

136. Another CA[131] provides templates to the supervised institutions to fill in when requesting prior approval. In addition, institutions are expected to inform their direct supervisors that they intend to or are making such an application. Institutions need then to provide additional explanatory reasoning for these applications. When supervisors have checked the completeness of the template, it is sent to the EBA for review and comments. The decision-making process following the supervisory assessment is carried out in accordance with the supervision decision-making framework. When the final decision is made, the CA informs the EBA. The timeline for this process is the same as for other applications for prior approval (i.e. within three months, to the extent possible); however, in the case of applications for staff members whose remuneration was over the EUR 1 million threshold in the preceding year, the timeline is likely to be longer on account of the additional information required from institutions and the more detailed assessment undertaken.

137. One CA[132] stated that as soon as it receives an application for prior approval by an LSI, it first evaluates the completeness of the documentation, i.e. verifies that the LSI has given all the relevant information on which the exclusion is based in accordance with the RTS and national regulations. Once the complete set of information has been acquired, the CA starts its supervisory assessment. A three-month period is allowed for the CA to conclude the assessment of the notification and if necessary make formal observations to the institution. The request must be supported by a certain amount of information as specified in national provisions in accordance with ECB Decision (EU) 2015/2218. The request must be transmitted without delay, and within six months after the end of the preceding financial year. If the CA approves the exemption, the exclusion is valid for the next year. In the case of applications relating to staff members awarded total remuneration of EUR 1 million or more, the CA informs the EBA before the approval is granted or refused.

138. Only two CAs[133] indicated that their internal procedures/national regulations regarding the process, including the steps and timelines relating to applications for exemptions from LSIs, were aligned with ECB Decision (EU) 2015/2218. Another CA[134] specified that the provisions under Articles 4(4) and (5) of the RTS were not a part of its legal framework.

139. Questions 31 to 37 aim to assess the applications for exemptions submitted by institutions to CAs under Article 4(5) of the RTS relating to a staff member awarded total remuneration of

[131] UK.

[132] IT.

[133] BE, IT.

[134] NO.

EUR 1 million or more in the preceding financial year. Question 31 is a benchmarking question on the procedures followed by CAs where a staff member was awarded total remuneration of EUR 1 million or more in the preceding financial year.

140. The RTS on identified staff set out qualitative and quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile. According to Article 4(2) of the RTS, the quantitative criteria must not be deemed to be met if the institution determines that the professional activities of the staff member do not have a material impact on the institution's risk profile because that staff member (or the category of staff to which the staff member belongs):

- carries out professional activities and has authority only in a business unit that is not a material business unit; or
- has no material impact on the risk profile of a material business unit through the professional activities carried out.

141. According to Article 4(5) of the RTS, where total remuneration of EUR 1 million or more was awarded to the staff member in the preceding financial year the CA may give its prior approval only in exceptional circumstances. In order to ensure the consistent application of this article the CA must inform the EBA before giving its approval in respect of such a staff member.

142. The EBA Guidelines on sound remuneration policies specify that institutions should apply for exclusions without delay, but at the latest six months after the end of the preceding financial year. The decision of the CA should be taken, to the extent possible, within a three-month period after receiving the complete documentation.

143. Questions 31 to 37 cover notifications of/applications for prior approval made since 2015 by a sample of institutions to observe the supervisory practices in the EU/EEA. Two CAs[135] submitted specific information on applications to exclude staff awarded total remuneration of EUR 1 million or more in the preceding financial year. All the remaining CAs indicated that they had not receive any such requests and therefore did not answer these specific questions.

144. Question 36 deserves to be considered further. It relates to the assessment of exceptional circumstances. Under the RTS, supervised institutions are expected to provide an analysis of the individual's impact on the institution's risk profile, and further information may be requested where necessary.

145. The exceptional circumstances test is an additional test that institutions need to consider in addition to the risks posed by individuals on the institution's risk profile. The EBA is notified before a CA makes a final decision.

146. The existence of exceptional circumstances has to be demonstrated by the institution and assessed by the CA. In this regard, the concept of 'exceptional circumstances' entails a

[135] IT, ECB/SSM.

situation that is unusual, very infrequent or far beyond what is usual in magnitude or degree. The exceptional circumstances have to relate to the staff member or category of staff concerned.

147. The abovementioned two CAs indicated that the EBA's definition was taken into account in assessing whether or not the criterion of exceptional circumstances was met. In addition, one of these CAs assesses exceptional circumstances following a conservative and risk-based approach, taking into account the impact on the sound capital base as well.[136] The assessment is carried out on a case-by-case basis, depending on the nature of the role and the seniority of the individual in question.

148. One CA[137] indicated that its approach to assessing exceptional circumstances had been reviewed in November 2018; where it is accepted that exceptional circumstances exist, this is deemed to be a one-off and not to be repeated case, usually when an individual has received a one-off award for one year only. Exclusions for the same individual year on year would probably be rejected due to the repeat nature of the application, unless the institution could explain why the application for the second year met the exceptional circumstances test.

149. According to the information provided by CAs, the exceptional circumstances test was met in the following cases:

- In one case, the circumstances were exceptional because the individual had left his or her role at the institution and had no responsibilities that came within the scope of the RTS. His or her only relationship with the institution was to provide advice for six months if this was required. For this, no variable remuneration was paid. In other cases, the circumstances were exceptional because the individuals had fallen within the scope of the quantitative criteria under the RTS due to having received one-off 'earn-out' payments; however, looking forward, their total remuneration would be below the thresholds. The earn-out payments for all these individuals were directly linked to attracting funds under management to the institution. Finally, another example of an exceptional circumstance was provided by a CA, relating to staff working in a real estate subsidiary that was neither a material business unit nor a credit institution. Due to its size and nature, this subsidiary was considered to have a limited impact on the risk profile of the group and therefore the condition of exceptional circumstances was met.

- One CA specified that the primary rationale provided by asset management firms subject to CRD IV on a consolidated basis was that they considered themselves to be in a unique position when compared with the whole of the population of institutions subject to the regime. Asset management firms are of the view that individuals who earn over EUR 1 million do not necessarily create material risks for the firm. The remuneration commanded by the role does not reflect the risks inherent in the role, due to the highly competitive London market for the specific skillset required of a portfolio manager. They

[136] ECB/SSM.
[137] UK.

consider these to be exceptional cases in virtue of the limited responsibilities yet high pay of these roles. The case was considered to be Exceptional' as , compared with the overall headcount of the banking group, the numbers for which exclusion was being sought in the asset management business were comparatively low.

- Another case of exceptional circumstances is staff who have received additional payments for a limited time period because they have brought investor portfolios into the company. Such payments reflect the business brought to the institution and not performance in the institution. The staff's professional activities did not have a material impact on the institution's risk profile and, in the absence of these payments, the total remuneration would have been far below the threshold of EUR 1 million.

150. Rejections by CAs were motivated by the following reasons:

- the staff had a material impact on the institution's risk profile;
- in other cases, no exceptional circumstances were brought forward; for example, working in asset management is not an exceptional circumstance, even where institutions must compete with firms that do not have to comply with the so-called bonus cap.

Table 8: Responses to benchmarked Question 31 on CAs' processes regarding exemptions for staff receiving remuneration exceeding the EUR 1 million threshold

Member State	Initial assessment	Revised assessment (by CA)	Revised assessment (by the review panel)	Final assessment
AT	N/A			N/A
BE	Fully comprehensive process		Fully comprehensive process	Fully comprehensive process
BG	N/A			N/A
CY	N/A			N/A
CZ	N/A			N/A
DE	N/A			N/A
DK	Fully comprehensive process		Fully comprehensive process	Fully comprehensive process
ECB/SSM	Fully comprehensive process		Fully comprehensive process	Fully comprehensive process

EE	N/A			N/A
EL	N/A			N/A
ES	N/A			N/A
FI	N/A			N/A
FR	N/A			N/A
HR	N/A			N/A
HU	Fully comprehensive process		Fully comprehensive process	Fully comprehensive process
IE	N/A			N/A
IT	Fully comprehensive process		Fully comprehensive process	Fully comprehensive process
LI	N/A			N/A
LT	N/A			N/A
LU	Fully comprehensive process		Fully comprehensive process	Fully comprehensive process
LV	N/A			N/A
MT	N/A			N/A
NL	N/A			N/A
NO	N/A			N/A
PL	N/A			N/A
PT	N/A			N/A
RO	N/A			N/A
SE	Largely comprehensive process		Largely comprehensive process	Largely comprehensive process

SI	N/A			N/A
SK	N/A			N/A
UK	Fully comprehensive process		Fully comprehensive process	Fully comprehensive process

151. It should be noted that the exceptional circumstances test should be applied systematically, as it is an additional condition explicitly specified in Article 4(5) of the RTS.

Potential best practice observed

⇨ Requesting institutions to demonstrate how and why the circumstances on which the exclusion is based are exceptional.

4.8 Assessment of the ongoing supervision carried out by CAs in relation to the RTS

152. Questions 38 and 39 aim to collect information about the institutional set-ups and internal procedures of CAs, namely the units within CAs responsible for:

- the supervision of the application of the RTS by institutions;
- the processing of exemptions under the RTS.

153. There are clear similarities between the organisational set-ups of the CAs. In most CAs, the responsibility for supervising the application of the RTS lies with the supervisory units, with support from the legal and methodological expertise functions. In many cases, the duty is performed jointly by off-site and on-site supervisory functions.

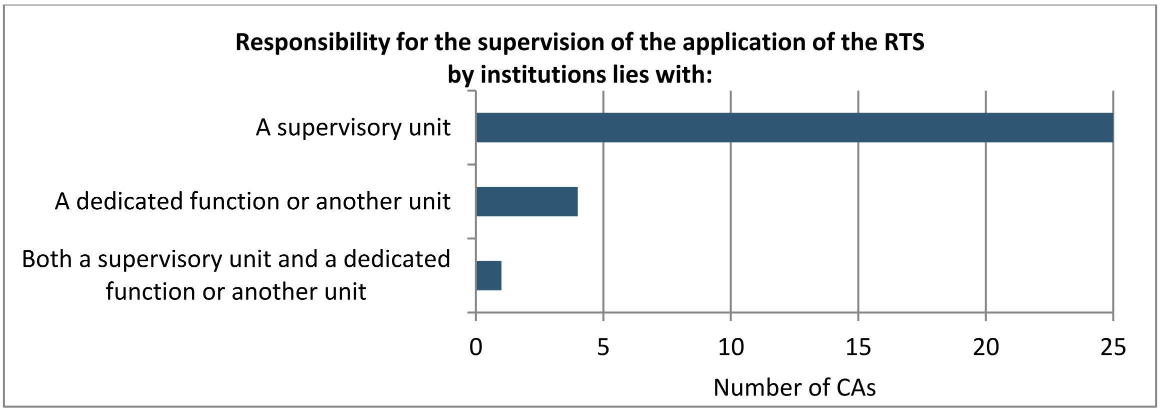
154. A limited number of CAs has either a dedicated unit or specialised teams dealing with remuneration issues.[138] One CA reported having a dedicated task force that includes experts on off-site supervision, on-site supervision, regulation, methodologies and reporting;[139] the task force supports and complements the assessments performed by both the off-site and the on-site supervisory units. In some CAs, the function is performed by several units, depending on the type of institution in question (e.g. large credit institutions, small and medium-sized credit institutions, investment firms).

155. Some CAs also indicated that exemptions had not been identified so far or that they did not have any experience in the application of the RTS; however, they did have the necessary set-up and processes to perform relevant analyses and carry out supervisory actions.[140]

[138] CZ, LU; the responsibility lies with a unit other than a supervisory or a dedicated unit in the cases of DK, EE and PT.
[139] IT.
[140] BG, EL, PT, RO.

156. In the SSM, significant institutions are under ECB/SSM responsibility, while LSIs are under the responsibility of specific CAs. In the ECB/SSM, JSTs are responsible for developing the Supervisory Examination Programme and for conducting related ongoing supervisory work at consolidated, subconsolidated and solo levels. These tasks encompass assessments of an institution's internal governance, including the application of sound remuneration policies. Furthermore, JSTs are responsible for assessing applications for prior approval of the exclusion of staff members from the presumption of having a material impact on an institution's risk profile. In such cases, an ECB decision based on a proposal from the Supervisory Board will be issued by the Governing Council.

Figure 5: Responses to Question 39 on responsibility for the supervision of the application of the RTS



157. Questions 40 to 44 focus on the different methods that supervisors use to assess institutions' policies and practices for the identification of those staff members who have a material impact on the institution's risk profile in general, and in particular:

- the supervisory tools used, including relevant steps and timelines (Question 40);
- the frequency of the supervisory assessment (Question 41);
- whether it relies on an on-site or an off-site assessment or both (Question 42);
- how the use of the correct remuneration figures by the institution is assessed (Question 43);
- if there are any other relevant aspects (Question 44).

158. In general, the assessment of institutions' identification processes is part of the SREP in the context of assessing institutions' remuneration policies and practices as part of the internal governance and control framework. One CA reported making no assessment of institutions' application of the RTS or identification processes at all.[141]

[141] BG.

159. With regard to the supervisory tools used for assessing institutions' compliance, the responses demonstrate that a wide variety of instruments is used. Two types of practices may be distinguished. On the one hand, some CAs perform a general assessment of institutions' remuneration policies and practices based on aggregated data/information. On the other hand, they may carry out a deeper assessment including the examination of data from specific reporting templates, horizontal reviews, off-site deep dives or, finally, on-site examinations.

160. Some CAs base their assessments on institutions' internal documents, which need to be sent to the line supervisors either regularly, on demand and/or whenever changes occur. This relates in particular to remuneration policies in general, but in some cases also to documented (annual) self-assessments for the identification of staff. Furthermore, some CAs receive institutions' internal audit and compliance reports on a regular basis. Sometimes, interviews with institutions' staff, members of remuneration committees and/or executives and board members are used to obtain information.

161. Three CAs[142] also rely on periodic assessments of policies and practices by external auditors, including assessments of the identification process, in the context of the supervisory assessment of remuneration policies and practices.

162. Most CAs reported using data from the annual benchmarking exercise and/or on high earners to assess institutions' compliance. In some cases, they also use disclosed information. However, it must be acknowledged that the information disclosed in accordance with Article 450 of the CRR and the information reported in the above mentioned data collections is of rather limited benefit for the purpose of assessing the application of the RTS due to aggregation of data. This information may be useful in giving a first impression of the average number of identified staff per business unit and/or institution and in helping to benchmark institutions' practices before starting deeper investigations.

163. For a more detailed assessment, including of data on individual staff, most CAs tend to use on-site examinations or deep dives, which are in most cases performed not regularly but following a risk-based approach. In contrast, in two CAs[143] a regular on-site examination plan exists and they perform regular on-site examinations approximately every three years.

164. A few CAs mentioned that there was a relatively low level of variable or total remuneration in their jurisdictions. This led these CAs to consider risk stemming from remuneration policies and practices a low-level risk.[144] They adjusted their supervisory assessments accordingly.

165. Three CAs[145] have in place regular, even annual, assessments of the identification process based on specific reporting templates at the level of individual staff. These reporting obligations usually apply to larger firms.

[142] AT, DE, LI.
[143] HU, LV.
[144] CY, LT, MT.
[145] BE, SE, UK.

Potential best practices observed

166. A few CAs have developed special reporting templates in order to verify practices by institutions, either as part of a thematic review or as part of the regular/annual reporting framework.

⇨ **A tailored list of material risk-takers based on the risk profile of the institution**

- The largest institutions report a list of material risk-takers and any notifications or applications for prior approval for exclusion, which is reviewed by line supervisors. After an assessment (including, where necessary, further information requests and/or meeting with the institution), the supervisors communicate the outcome to the institution.

- The following information is requested for large institutions: (i) a list of the employees (the positions and the number of employees holding each position) who have a material impact on the undertaking's risk level, and (ii) the analysis performed to identify the employees who have a material impact on the undertaking's risk level. This information feeds, together with other data, into the overall assessment of remuneration policies and practices.

⇨ **A horizontal remuneration benchmarking exercise**

- A horizontal remuneration benchmarking exercise is performed among a number of selected institutions (including the most important SIs and LSIs). The review goes beyond the EBA's benchmarking and also covers the identification of staff (including the application of the qualitative and quantitative criteria of the RTS). Weaknesses identified during this exercise are subject to individual follow-up with the institutions concerned.

- Institutions send an annual report on internal control to the CA, covering different items relating to governance and remuneration, including risk-takers identified. This information includes data relating to third-country undertakings and subsidiaries. In addition, a mapping of the material business units needs to be included.

⇨ **A self-assessment questionnaire completed by institutions and reviewed by CAs**

- A specific self-assessment questionnaire is designed for the SREP, including, inter alia, questions covering the criteria applied by banks to identify staff, requiring a detailed description of those criteria.

Table 9: Most frequently used sources of information used for the supervisory assessment

CA	On-site exami-nations	External auditors	Internal audit or other review reports	Rem. policies and other docu-mentation	Specific reporting obligation	Horizontal review	High earner and/or bench-marking data	Dis-closure	Other
AT	x	x					x		
BE					x	x			
BG	n/a	n/a	n/a	n/a	n/a		n/a	n/a	
CY									
CZ	x							x	
DE	x	x					x		
DK	x				x				
ECB/SSM	x			x					x
EE	x							x	
EL					x				
ES	x				x				
FI			x						
FR	x		x	x	x		x	x	
HR			x	x					
HU	x			x				x	
IE						x	x		
IT	x		x	x					x
LI	x	x					x		
LT				x					
LU	x			x		x			
LV	x			x		x	x		
MT							x		
NL				x					
NO	x		x				x		
PL	x				x				
PT									
RO	x			x					
SE				x		x			
SI	(x)								
SK					x				
UK					x				

167. With regard to the frequency of the assessment (Question 41), a majority of CAs either assess annually or follow the SREP frequency in accordance with the EBA's SREP guidelines

(EBA/GL/2014/13), which stipulates an annual frequency for large institutions and for other institutions a frequency of two to three years.

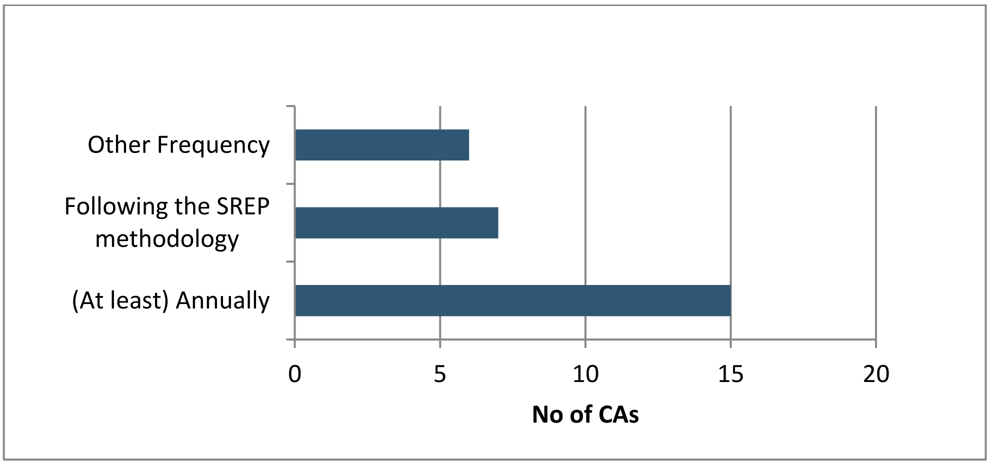
168. In the majority of CAs, on-site examinations are usually less frequent, as they mostly rely on a risk-based approach and/or on demand assessed by line supervisors. However, two CAs undertake regular on-site examinations in accordance with their workplan, which requires on-site examinations every two to three years.[146] Furthermore, one CA has an on-site inspection plan that requires five institutions of various sizes to be visited each year for assessments in the field of remuneration.[147]

169. One CA does not assess the identification process as such on a regular basis. Instead, it assesses remuneration policies and practices in general on an annual basis[148] or in accordance with the SREP frequency.

Table 10: Frequency of CAs' assessment (names of the CAs)

Frequency[149]	Competent authority
(At least) annually	AT, CY, CZ, DE, DK, ES, FR, HR, HU, IT, MT, NO, PT, RO, SK, UK, ECB/SSM
Following the SREP methodology	AT, BE, EL, FI, IE, SE, SI
Other frequency	EE, LI, LT, LU, LV

Figure 6: Frequency of CAs' assessments (numbers of CAs)



170. In the vast majority of CAs, supervisory assessment relies on both off-site and on-site examinations. Off-site analysis is more typical and more frequent than on-site inspections.

[146] HU, LV.

[147] CZ.

[148] EE.

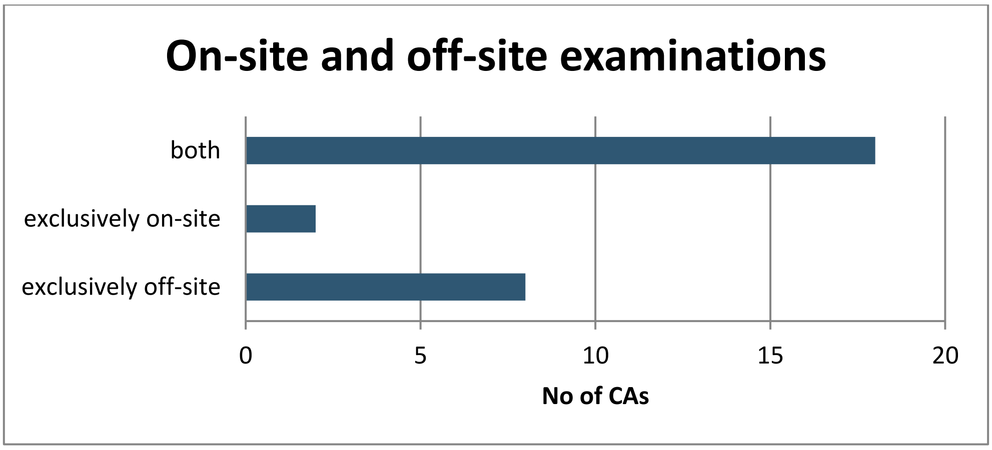
[149] For regular assessments. Some CAs also do ad hoc assessments, for example in the context of any notification or application for prior approval of an exclusion in accordance with Article 4(5) of the RTS, or where policies change.

However, eight CAs base their assessments on off-site examinations only, while two CAs perform mainly or only on-site inspections.

Table 11: CAs' methods of performing supervisory assessment (names of the CAs)

Method of assessment	Competent authority
On site	EE
Off site	HR, IE, MT, PT, SE, UK
Both	AT, BE, CY, CZ, DE, DK, EL, ES, FR, HU, IT, LI, LU, LV, NL, NO, PL, RO, SK, SI, ECB/SSM

Figure 7: CAs' methods of performing supervisory assessment (numbers of CAs)



171. Regarding Question 43 on the use of the correct remuneration figures for the proper application of the RTS,[150] CAs follow different approaches in assessing institutions' compliance. Some rely on descriptions of policies/processes, without testing the specific figures used by institutions for the purpose of the RTS.

172. Furthermore, some CAs report using information from high earner and/or EBA benchmarking reporting as well as disclosed data. It is important to mention that these datasets cannot be used to fully verify the data used for the purpose of the RTS, as the high earner figures are based on the remuneration awarded for the preceding year, while the quantitative thresholds under the RTS are based on the fixed remuneration awarded for the preceding year (e.g. 2018) and the variable remuneration paid in the preceding period (e.g. bonus paid in 2018) for the last performance year (e.g. the performance period 2017).

[150] For the application of the quantitative criteria under the RTS, the total remuneration awarded to staff in the preceding financial year needs to be taken into account.

Table 12: Methods of validating the remuneration figures for the correct application of the quantitative criteria under Article 4 of the RTS

Method	Competent authority
Check of policies	IT, LV, ECB/SSM
Check of institutions' records on the assessment	IT, LV, ECB/SSM
Check of disclosed data	CY, EE
Check of data on high earners and/or benchmarking data	EE, IE, LV, MT
Assessing other reported data	BE, CY, EL, ES, FR, HU, PL, UK
On-site examinations	AT, CZ, DE, LV, RO
Checks performed by external auditors	AT, DE, LI
No specific checks in this regard	DK, FI, LT, LU, NL, NO, SK

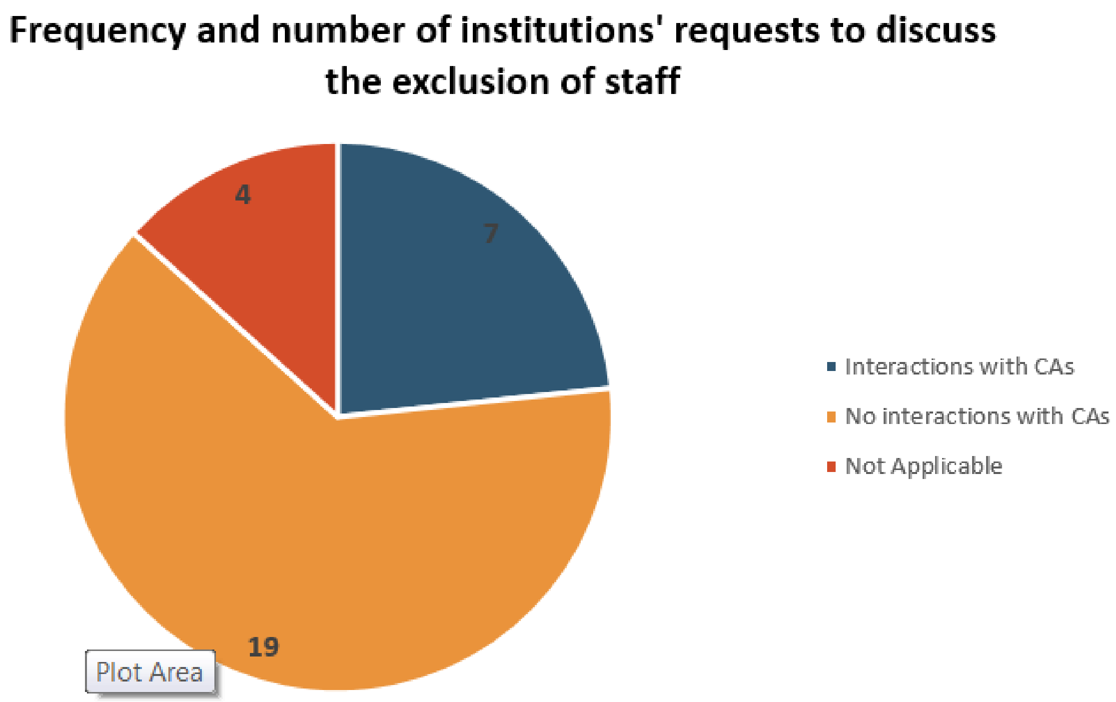
173. Regarding other relevant aspects or specificities in the context of CAs' assessments (Question 44), the ECB/SSM reports maintaining continual interaction with other authorities and international bodies (e.g. the Financial Stability Board) in order to exchange views on remuneration matters, including on aspects related to the identification process.

174. Question 45 looks at how institutions engage with their CAs to discuss the exclusion of staff from the scope of identified staff. Most CAs stated that institutions rarely asked supervisors to discuss the exclusion of staff. Only seven CAs mentioned that they had had some discussions with institutions.[151] In those cases, a very small number of institutions initiated a face-to-face meeting with the CA. When they did so, it was usually to get some guidance on specific issues. For instance, one CA indicated that one institution had identified some employees as material risk-takers, although they did not have a significant impact on the risk profile of the institution.[152] The meeting with the CA was an opportunity to clarify how the RTS should be applied.

[151] CZ, DK, IT, LU, LV, NL, UK.

[152] PT.

Figure 8: Frequency and number of institutions' requests to discuss the exclusion of staff



175. In its general assessment, the review panel also considered possible weaknesses identified in the application of the RTS with a view to drawing lessons on the current implementation of the RTS and possibly raising the quality of their application in accordance with the review panel's mandate under Article 30(2b) of the EBA founding regulation.

176. The review panel did not detect any widespread deficiencies or major issues in recent years. However, CAs mentioned some issues, especially with regard to the qualitative criteria specified in the RTS, which they saw as 'vague' or 'complicated'. In one jurisdiction, several institutions identified an excessive number of staff compared with the reported values of other institutions because of an incorrect interpretation of the qualitative criteria of the RTS.[153] With regard to significant institutions, one CA mentioned the problematic application of the qualitative criterion specified in Article 3(8) of the RTS as follows: 'the staff member has managerial responsibility in a material business unit and reports directly to the staff member who heads that unit'.[154] This CA considered that the definition of 'material business unit' might leave too much room for interpretation to institutions and should be clarified in future.

[153] PT.

[154] ECB/SSM.

177. CAs observed that institutions often omitted to include members of the management body on lists of identified staff,[155] as well as chief executive officers,[156] heads of compliance units, heads of human resources units[157,158] and non-executive board members,[159] on the ground that they were not awarded any variable remuneration. In some cases, asset managers or staff members with a relevant impact on the entity's profitability were not considered material risk-takers on the basis of quantitative criteria.[160] In one case, it was observed that some entities restricted the identification of material risk-takers to management board members, as they were considered to have the real responsibilities in the institution.[161]

178. Some CAs observed more structural deficiencies in institutions' processes. For instance, some institutions do not establish an explicit list of material risk-takers, or the self-assessment is not performed on an annual basis as part of the required periodic review.[162] Some institutions were reported to have insufficient processes in terms of the design of the remuneration policy – which in some cases does is not appropriate to the bank's risk management framework – or the independent review of this policy.[163]

179. All in all, institutions where deficiencies were found did not represent a high proportion of the local market, except in the case of one CA, for which all institutions' deficiencies amounted to 50% of the total balance sheet of all institutions in 2017.[164] Some CAs mentioned that the LSIs located in their jurisdictions made up a small proportion of the market, and they therefore applied the proportionality principle.

180. The responses to this question may incentivise the regulator to simplify the rules and align its goals with the European Commission's regulatory fitness and performance programme, intended to ensure that EU laws become simpler and easier to understand.

181. As a caveat, it is important to note that the review panel did not get consistent and robust results. On the one hand, some CAs did not have granular data on the deficiencies identified, sometimes due to the large amount of LSIs,[165] which made the collection of this information

[155] According to recital 5 of the RTS, members of the management body have the ultimate responsibility for the institution, its strategy and activities and therefore are always able to have a material impact on the institution's risk profile. Consequently, Article 3 specifies that the list should include material risk-takers including members of the management body in its management or supervisory function.

[156] ES, HU.

[157] According to Article 3(4) of the RTS, the qualitative criteria include staff members responsible and accountable to the management body for the activities of the independent risk management function, compliance function or internal audit function. In accordance with Article 3(9), the qualitative criteria include staff members who head the functions responsible for legal affairs, finance, human resources, remuneration policy, etc.

[158] HU.

[159] IE.

[160] IE.

[161] SK.

[162] LU.

[163] IE.

[164] LI.

[165] AT, DE, LU.

difficult, or due to lack of materiality of the remuneration area locally.[166] On the other hand, some CAs gathered data through a thematic review of remuneration policies.[167] This approach may be considered a best practice and could be followed in other jurisdictions. The responses to this question also show that the remuneration issue is not equally sensitive in all EU Member States.

182. With a view to avoiding misalignment with the RTS and the other EU rules related to remuneration, one CA provided additional guidance on some aspects of identifying material risk-takers through a supervisory statement on remuneration.[168] For example, this CA clarified its expectations on the scope of Article 3, focusing on the identification of material risk-takers with respect to credit and trading risk, asset management roles, and the definition of material business units. The provision of such additional guidance might be seen as a good practice.

Potential best practice observed

- ⇨ Gathering data through thematic reviews of remuneration policies.

183. Question 47 relates to the supervisory actions taken by CAs when the identification requirements have not been met.

184. The survey shows that CAs adopt different methods of addressing possible breaches of identification requirements. The actions include simple emails stating the deviation from the rules and asking institutions to take remedial action, informal meetings or phone calls, and formal letters. One CA asked clear and targeted questions regarding the entity's approach, requiring, where necessary, engagement with senior supervisors.[169] In some cases, weaknesses observed in the identification process are assessed through on-site inspection reports, with targeted follow-up carried out by the CA, or are fed into the SREP report.[170] One CA mandated external regulatory auditors to undertake a detailed assessment to ensure compliance with EU and national law.[171] Another CA sent a report to the board of the relevant institution asking for remedial action to be taken.[172] One CA also carried out a remuneration benchmarking exercise at national level to address the issues.[173]

185. A few CAs took effective administrative or financial sanctions.[174] Most of them relied on a spectrum of possible actions such as administrative penalties and measures, fines, and targeted

[166] MT.
[167] BE, LU, LV.
[168] UK.
[169] UK.
[170] DE.
[171] LI.
[172] NO.
[173] PT.
[174] BE, CZ, HU.

administrative penalties applied to members of the management board. Where CAs had taken supervisory actions, they reported that the deficiencies had been addressed by the institutions.

5. Annexes

5.1 Annex 1 – Self-assessment questionnaire

Questions regarding the legal framework

Question 1: Has your CA issued and made available to supervised institutions any other documentation, instrument, or tools, beyond the RTS (e.g. soft law, codes, circulars, letters, handbooks, etc.) to further specify the identification of staff that has a material impact on institutions' risk profile?

Question 2: If yes, please provide a link/a copy to this as well as a short description, including whether this instrument, tool or documentation is legally binding or mandatory.

Question 3: Are there any quantitative thresholds or waivers under the national framework that would allow institutions not to identify staff?

If your answer is 'yes', please specify the thresholds or waivers regarding the identification of staff separately for solo and group levels.

Question 4: Please provide details of any issues identified by institutions or the CA regarding the application of the RTS that would require or have required further clarification of the applicable legal requirements.

Questions regarding the supervision of the application of the RTS at solo and group levels and the application of the proportionality principle

Question 5: Please provide a short description of how the CA ensures that institutions correctly apply the RTS at solo and group levels in line with Articles 92 and 109 of the CRD, including subsidiaries that are not themselves subject to the CRD (UCITS[175], AIFM[176], EMI[177], PI[178]) and subsidiaries located in third countries (outside the EU).

Question 6: When supervising the group application in line with national regulatory provisions, does your Authority include:

[175] 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)

[176] 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

[177] Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC

[178] Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC

(a) all institutions within the EU including ancillary services undertakings;
(b) all non-CRD institutions within the EU including ancillary services undertakings;
(c) all institutions outside the EU including ancillary services undertakings;
(d) all financial institutions outside the EU including ancillary services undertakings.

[*Benchmarking criteria: Please note that fully comprehensive process = 4 criteria, largely comprehensive process = 3 criteria, partially comprehensive process = 2 criteria, weak process = 1-0 criteria.*]

Question 7: Has the CA powers to exclude (waive) institutions or their subsidiaries from the requirements on a case-by-case basis and for how many institutions have these been exercised?

Questions regarding the supervisory process to ensure the application of the qualitative and quantitative criteria under Articles 3 and 4 of the RTS within the institutions' processes

Question 8: Please provide the total number of identified staff per year since 2015 for all institutions (best effort basis). Where available, please also specify the numbers of identified staff for each of the criteria within the RTS (split by qualitative sub-criteria and quantitative sub-criteria).

Question 9: Does your Authority ensure that the following information is contained in the documentation of the assessment done by institutions:

a) the assessment by the institution (rationale) 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, 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.

[*Benchmarking criteria: Please note that fully comprehensive process = 4 criteria, largely comprehensive process = 3 criteria, partially comprehensive process = 2 criteria, weak process = 1-0 criteria.*]

Question 10: Please specify how the additional internal criteria, if any, used by institutions beyond the criteria defined in Articles 3 and 4 are taken into account within your CA's review to ensure that all staff that have a material impact on the risk profile are being identified.

Question 11: Please explain the most common additional criteria used by institutions.

Questions regarding exemptions under Article 4(2) of the RTS

Question 12: Did your Authority have any case of notification or prior approval from 2015 until now?

Question 13: Has your CA received all the notifications or applications for prior approval at the latest within six months after the end of the preceding financial year as set out under paragraph 94(b) and (c) of the EBA Guidelines on sound remuneration policies?

Question 14: How many institutions have submitted the notification or application after the six-month period? What are the reasons for such delays?

Question 15: Please describe your CA's process, including relevant steps and timelines, starting from receipt by your CA of an institution's notification regarding exemptions of identified staff under Article 4(4) of the RTS.

Question 16: Where the institution determines according to Article 4(2) of the RTS that the professional activities of the staff member do not have a material impact on the institution's risk profile, how does your CA ensure that in the notifications/applications submitted, the following criteria are met:

(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;
(b) any notification should be made without delay, but at the latest within six months after the end of the preceding financial year;
(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;
(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.

[*Benchmarking criteria: Please note that fully comprehensive process = 4 criteria, largely comprehensive process = 3 criteria, partially comprehensive process = 2 criteria, weak process = 1-0 criteria.*]

Question 17: How does your CA assess, for the purpose of the exemption under Article 4(2) of the RTS, if staff are carrying out their professional activities or have authority in a non material business unit? Please provide a brief explanation.

Question 18: How does your CA assess, for the purpose of the exemption under Article 4(2) of the RTS, if staff's professional activities have no material impact on the risk profile of a material business unit? Please provide a brief explanation.

Question 19: How does your CA ensure and assess that the specific conditions specified under Article 4(3) of the RTS are met?

Questions regarding exemptions for staff under Article 4(4) of the RTS – notifications

Question 20: Please provide, on a best effort basis, the number of institutions that submitted notifications and numbers of staff concerned (per year since 2015).

Question 21: Has your CA defined a notification template with the information to be provided under Article 4(4) of the RTS?

Question 22: Please provide the number of institutions where your CA has taken measures, if any, as specified in Article 104 CRD as it disagreed with the institution's assessment.

Question 23: What are the three main activities/business units for which the exemptions are requested?
[*Please differentiate between corporate banking, retail banking, investment banking, asset management, control functions, other activities – please refer to the Guidelines on the remuneration benchmarking exercise regarding the definition of business units.*]

Questions regarding exemptions for staff under Article 4(5) of the RTS – EUR 750 000 prior approval

Question 24: Please provide the number of institutions that submitted requests for prior approval and numbers of staff concerned (per year since 2015)

Question 25: Please provide the number of prior approvals granted (per year since 2015, including the number of staff concerned).

Question 26: Please provide the number of refusals (per year since 2015, including the number of staff concerned).

Question 27: Has your CA defined an application template with the information to be provided under Article 4(5) of the RTS?

Question 28: What are the three main activities/business units for which the exemptions are requested?

Question 29: Does your Authority ensure that any notifications and requests for prior approval include:

(a) all names or another unique identifier for identified staff for whom an exclusion should apply;
(b) 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;
(c) the analysis of the impact of staff on the institution's risk profile for each identified staff member in accordance with Article 4(3) of the RTS;
(d) an assessment that the staff is not captured under the qualitative criteria.

[*Benchmarking criteria: Please note that fully comprehensive process = 4 criteria, largely comprehensive process = 3 criteria, partially comprehensive process = 2 criteria, weak process = 1-0 criteria.*]

Questions regarding exemptions under Article 4(5) of the RTS – prior approval requiring an EBA opinion

Question 30: Please describe your CA's process, including relevant steps and timelines, starting from receipt by the CA of an application for prior approval of exemptions of identified staff under Article 4(5) of the RTS.

Question 31: Where a staff member was awarded total remuneration of EUR 1 000 000 or more in the preceding financial year, does your Authority ensure that:

(a) application for prior approval to the EBA has been done without delay;
(b) the analysis of the impact of staff on the institution's risk profile for each identified staff member has been provided by the institution;
(c) the exceptional circumstances related to this category of staff are met;
(d) the outcome (positive or negative) has been provided to the EBA.

[*Benchmarking criteria: Please note that fully comprehensive process = 4 criteria, largely comprehensive process = 3 criteria, partially comprehensive process = 2 criteria, weak process = 1-0 criterion.*]

Question 32: Has your CA notified all the exemptions where a staff member was awarded total remuneration of EUR 1 000 000 or more in the preceding financial year without delay to the EBA, i.e. immediately after the initial assessment of the application received by your CA?

Question 33: Please provide the number of institutions asking for such an exclusion (per year since 2015, including the number of staff concerned).

Question 34: Please provide the number of approvals granted and number of rejections (per year since 2015).
[*Please specify per institution the decision taken, including the number of staff concerned and the business area in which they are active.*]

Question 35: Please provide a summary of the institutions' assessments made and reasoning provided by institutions regarding the exceptional situation of identified staff (i.e. what were the exceptional cases brought forward).

Question 36: Please provide a summary of the assessments of the exceptional circumstances made by your CA (i.e. what are the exceptional circumstances accepted or not accepted and why).

Question 37: Please provide your CA's criteria against which the notion of exceptional circumstances is assessed.

Questions regarding ongoing supervision

Question 38: Which units within your CA are responsible for the supervision of the application of the RTS by institutions (e.g. within supervisory units or in a dedicated function)?

Question 39: Which units within your CA are responsible for the supervision and the processing of exemptions under the RTS (e.g. within supervisory units or in a dedicated function)?

Question 40: Please describe how and to what extent your CA's supervisory processes cover the identification of identified staff by institutions, the correct application of the criteria set out in Articles 3 and 4 of the RTS and the exclusion of identified staff under Article 4(2) of the RTS, specifying the aspects in the 6 following rows. In particular please describe in detail your CA's supervisory processes and policies (SREP), including relevant steps and timelines to ensure that the identification processes by institutions are effective.

Question 41: Please describe how often your CA assesses (or the frequency of your CA's assessment).

Question 42: Please explain whether your assessment is made as part of your (a) off-site inspections; (b) on-site inspections or (c) both.

Question 43: How does your CA review that the total remuneration awarded to staff in the preceding financial year is correctly taken into account in order to ensure that the identification can be performed at the beginning of the following financial year?

Question 44: Please describe other relevant aspects or specificities if applicable (e.g. use of external parties in the supervisory review).

Question 45: Please provide indications of the frequency and number of institutions' requests to discuss the exclusion of staff from the scope of identified staff.

Question 46: Please provide the most frequent weaknesses and deficiencies identified in the application of the RTS that have been assessed during on-site inspections and/or off-site reviews (e.g. during the SREP or other on-site or off-site supervision). Please provide figures per year for 2015, 2016 and 2017 and the aggregated balance sheet (BST) total of these institutions. Please provide also the coverage of such assessments made by providing percentages of institutions assessed and BST covered by assessments compared to the total number of institutions and BST of institutions that are subject to the requirement to identify staff. For ECB/SSM CAs, please provide this number for LSIs and investment firms only, as ECB/SSM will provide the numbers for SIs.

Question 47: Please provide a list of the supervisory actions, including administrative penalties and other administrative measures, taken to intervene in cases when the identification requirements have not been met, a brief description of common weaknesses (e.g. weaknesses in the application of the criteria or weaknesses when excluding staff based on Article 4(2) of the RTS) and a brief account of which actions have been deemed to be the most effective. Please also provide the numbers of such actions taken by year.

5.2 Annex 2 – Findings of the data collection

1. Review panel members agreed to perform a data collection as mentioned in Section 1.1. Data have been collected from institutions on the numbers of staff identified under the criteria set out in the RTS. The method was designed to avoid the double counting of staff under multiple qualitative criteria. All CAs have been asked to provide information for two institutions, including one (in the case of non-SSM Member States) or two (in the case of SSM Member States) non-significant institutions. In addition, the SSM has been asked to provide data for one institution of each SSM Member State.

2. Seventy-three institutions provided information, covering all Member States and two EEA countries.[179] However, two CAs did not provide templates for non-significant institutions[180] and one other SSM Member State provided information only for one non-significant institution.[181] The ECB/SSM provided data for all Member States they are competent for. One significant institution in one jurisdiction could not provide information on the number of identified staff due to its specific remuneration regime.[182] The quality of data has been reviewed and some corrections have been requested or have been made directly by the EBA facilitate comparisons with other data collected, for example during the remuneration benchmarking exercise or in the annual reports published by institutions. The corrections concerned mainly balance sheet totals and numbers of staff.

3. While all institutions provided data for 2017, only a very few institutions provided data also for 2015 and 2016. Due to the limited number of institutions, it was not possible to reliably identify trends in the application of the RTS over time.

4. Not all institutions have followed the approach for submitting data intended to avoid double counting. In some cases, the sum of staff identified under the single qualitative criteria exceeded the number of identified staff, even without accounting for staff identified under the quantitative criteria. While those institutions are included in the analysis of the effect of the extension of the scope of remuneration provisions to all firms in the scope of prudential consolidation, including firms located in third countries, they have not been taken into account in the calculations of percentiles for the identification outcome under the single quantitative criteria, to avoid distortion of the figures.

5. In addition, some data on the quantitative criteria have been corrected, in particular if the number of exclusions from the RTS exceeded the number of staff identified under those criteria. The analysts have assumed in such cases that the institution did not include the excluded staff in the figures provided and have made the required corrections when there were significant differences.

[179] LI, NO.
[180] LT, SK.
[181] FR.
[182] LU.

6. Paragraphs (11) to (14) of Article 3 of the RTS set out ways in which institutions might define decision-making powers regarding risk-taking. Some banks commented that their internal procedures did not differentiate between the subcriteria and therefore figures had been provided only under one of the subcategories.

7. Only 10 institutions use specific internal criteria for identification of identified staff beyond what is defined in the RTS. However, for some of those institutions these criteria lead to a significant number of identified staff. For five institutions, their own internal criteria contribute to more than 15% of their staff being identified staff, up to a maximum of 34.62%.

8. The internal criteria used are based on the inclusion of the following:

   a) all staff who create market risk that could be material for the institution's risk profile;

   b) all staff at or above an internally defined hierarchical level;

   c) staff responsible for the management of a risk that has been identified as a strategic risk;

   d) employees with the corporate title managing director, director or vice-president occupying sales functions in the corporate and investment banking division with a revenue credit threshold greater than EUR 5 million where more than 50% of the individual's revenue credits are made in certain exposed books;

   e) employees whose significant role could expose the bank to additional credit, market and other risks in the foreign exchange and emerging market debt businesses or corporate finance;

   f) employees in the risk, legal and communications areas whose significant role could expose the bank to reputational risks;

   g) heads of certain business units that are not considered 'material' according to the regulatory definition;

   h) regional management committee voting members (not falling under Article 3(10) of the RTS);

   i) employees responsible for key projects that impact business and the strategic risk profile of certain significant institutions;

   j) staff receiving remuneration greater than EUR 150 000;

   k) heads of regions, heads of leasing and factoring;

   l) risk owners;

   m) staff having a major impact on private and corporate customers;

n) staff who could have a major impact on the bank's reputation due to fact that the role involves activities related to offering strategic advice and a wide range of financing solutions to selected corporate and organisational clients (money-laundering risks);

o) anyone who is classified as a senior manager within the Senior Managers and Certification Regime (UK) ;

p) chief risk officers, chief financial officers and chief operating officers;

q) high earners based on their compensation for the current year;

r) any other staff whose activities are deemed to expose the firm to a material level of harm.

9. Similarly, only a small number of institutions provided information on internal criteria used for the exclusion of staff. Measures included:

a) limiting exclusions to the remuneration bracket criterion;

b) identifying that the tasks and competences of the staff member do not have an influence on the risk profile of a material business unit, with indicators including the type of work and its content, risk competence, contribution to the risk profile, competences, membership of a committee, reporting line;

c) risk and performance indicators: (a) individual impact on the net banking income, (b) individual risk score assessed by the internal control function and (c) operating losses attributable to any individual.

10. Only very few comments on the clarity of the RTS provisions were received (relating to Article 4(1)(b) and Article 3(7) and (10)). The most material concern raised related to the application of the RTS at consolidated level, with clarification requested regarding the consideration of newly employed staff when applying the remuneration bracket criterion. During identification at consolidated level, the criteria are applied to staff located in different Member States that have different remuneration levels. Other clarifications were suggested regarding the treatment of new joiners who are identified under the qualitative criteria but have low remuneration because they have not yet received a bonus. In the context of the data collection, institutions also raised questions regarding the consideration of severance pay, part-time staff and staff leaving or joining during the year and how they are to be considered in the calculation of amounts under the quantitative criteria. However, many of the issues raised have already been clarified to a good extent within the EBA Guidelines on sound remuneration policies and practices.

11. For each of the qualitative criteria, the contribution to the overall identification outcome has been calculated as a percentage of the total number of staff identified. For this purpose, three different size categories based on total assets have been defined (< EUR 5 billion; EUR 5 billion-EUR 30 billion; > EUR 30 billion). For each of the categories and for all institutions the average contribution and the quartiles of contribution to the identification outcome have been calculated.

In addition, the same calculation has been performed for the total sample. When analysing the figures, it must be remembered that staff should be recorded only under the first applicable qualitative criterion.

12. For smaller institutions, the identification outcome is strongly driven by the criteria based on the hierarchical aspects of the organisation (members of the management body, senior management, heads of control functions). Those staff also have the power to take risks. For a few institutions, the figures show significant numbers of staff identified under the criteria of Article 3(5) of the RTS – risk management in material business units – while for most institutions this is a relatively low number. This may be a result of the specific internal organisation of the risk management function or the incorrect application of the RTS.

13. For larger institutions, the criteria based on the hierarchical structure are also important, but the impact of the identification is driven more by the senior management and other staff with managerial responsibilities. In addition, more identified staff who are not part of the management body or senior management fall under the criteria based on risk impact and in particular on credit risk-taking competencies.

14. An overview of the identification of staff is provided in Table 13. The identification of staff is mainly driven by the quantitative criteria. Overall, the data can be interpreted as indicating that most staff who have competencies for risk-taking are already identified in most institutions based on their hierarchical position. While the criterion based on credit risk (Article 3(11) of the RTS) is also very relevant, the criteria based on other risk types or decision-making powers or managerial responsibility for risk-takers (paragraphs 12 to 15 of Article 3) usually have little impact on the identification outcome. The detailed results can be found in Table 14. The established benchmarks should be used to inform supervisory reviews and help in particular to identify institutions with identification results that deviate significantly from other institutions (outliers).

15. Under the quantitative criteria (Table 15) many institutions, in particular large institutions, identify a large number of staff, with a large proportion not identified under the qualitative criteria. Such staff can potentially be excluded from the scope of identified staff, in line with the RTS, if they do not have a material impact on the institution's risk profile, for example because they work in a non-material business unit or otherwise have no material impact on the institution's risk profile.

16. Most institutions have excluded all or nearly all staff who have been identified only under the remuneration bracket criterion from the category of identified staff. In some larger institutions, the related exclusion process concerns a material number of staff, leading to an additional burden arising from the application of the identification process. Only three institutions in the sample made use of the possibility of excluding other staff (i.e. staff who have received more than EUR 500 000 remuneration) under the notification procedure. No institutions within the sample applied for prior approval to exclude staff who earned over EUR 750 000 or staff who were among the 0.3% of staff with the highest remuneration.

17. The data reported on the quantitative criteria sometimes showed a lack of consistency. For example, in some cases the reported number of exclusions exceeded the number or reported staff

identified under the quantitative criteria. While the data have been corrected for the analysis, such differences when observed during supervisory reviews should be followed up, partly to ensure that institutions do not apply exclusions to staff who have been identified under one of the qualitative criteria and cannot therefore be excluded.

18. The extent to which the application of Article 109 of the CRD increases the number of identified staff was analysed, by applying the identification to firms in the prudential scope of consolidation and in third countries (Table 16). As only a limited number of firms provided the required additional information, the table is based on all firms that contributed such data, without a breakdown by size or analysis of individual criteria. While there are some differences regarding the contribution of single criteria to the identification outcome, the figures for CRD firms and other firms regarding the percentages of staff identified under the relevant criteria are quite similar. It is not surprising that the criteria based on credit risk are less important for non-CRD firms that fall within the prudential scope.

19. For many firms, in particular large firms, the application of the requirements to subsidiaries that are not themselves subject to the CRD increases significantly the number of identified staff. Quartiles for the increase in identified staff are shown in Table 16. However, the average ratio of identified staff to all staff is lower in those firms (prudential scope firms, 1.6% (EU-27/EEA, excluding UK data), 0.67% (EU-28/EEA), 1.29% (third countries)) than in CRD institutions (average ratio, 1.97% (EU-27/EEA), 2.01% (EU-28/EEA).

Table 13: Overview of identification outcomes

Overview of the identification of staff within the sample of institutions	
Total number of staff included in the sample	788 650
Total number of identified staff	13 004
Staff identified by qualitative criteria (Article 3 of the RTS)	11 655
Additional staff identified by internal criteria	683
Additional staff (without double counting of staff already identified under qualitative or internal criteria) identified by quantitative criteria	666
Staff meeting quantitative criteria (Article 4 of the RTS)	25 491
thereof staff receiving > EUR 500 000	2 181
thereof 0.3% of staff with the highest remuneration	1 905
thereof identified falling under the remuneration bracket	21 405
Staff excluded from the scope of identified staff under Article 4 of the RTS	16 010
thereof without notification (staff receiving less than EUR 500 000)	15 934
thereof with notification (staff receiving EUR 500 000 – 750 000 or staff within the 0.3% of staff with the highest remuneration)	76
thereof with prior approval	0

Table 14: Identification contribution of qualitative criteria (staff identified under the criterion as a percentage of total identified staff; EU-28)

Art. 3 RTS	1	2	3	4	5	6	7	8	9	10	11 a	11 b	11 c	12 a (i)	12 a (ii)	12 b	13 a	13 b	14 a	14 b	15
Average BST < 5bn	10.73%	12.75%	9.29%	7.94%	21.79%	10.30%	5.15%	8.11%	6.59%	3.55%	3.80%	2.03%	3.72%	2.96%	0.17%	0.42%	0.68%	0.00%	0.84%	2.87%	1.27%
p25	5.88%	6.63%	0.00%	5.88%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
p50	11.28%	22.22%	10.18%	8.93%	0.00%	0.00%	0.00%	0.00%	8.82%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
p75	16.67%	28.57%	20.00%	15.56%	1.47%	7.69%	9.64%	8.33%	14.81%	5.13%	5.56%	0.00%	3.70%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Average BST 5-30bn	8.02%	11.96%	24.31%	5.26%	6.70%	5.52%	7.36%	1.97%	4.20%	10.12%	4.86%	1.05%	1.97%	1.05%	0.13%	0.00%	1.18%	0.26%	0.39%	0.66%	0.13%
p25	3.32%	1.20%	4.62%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
p50	9.43%	11.32%	13.48%	3.84%	0.00%	0.78%	0.59%	0.00%	1.09%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
p75	11.90%	25.76%	37.31%	7.14%	0.40%	6.88%	10.60%	8.93%	7.41%	3.56%	4.85%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Average BST > 30bn	4.90%	3.83%	17.35%	2.19%	1.65%	2.44%	9.50%	9.93%	3.88%	4.34%	12.22%	0.92%	0.99%	1.77%	2.54%	0.78%	0.67%	0.09%	2.41%	1.26%	2.74%
p25	3.14%	0.98%	4.40%	0.23%	0.00%	0.00%	3.62%	0.00%	0.00%	0.00%	0.39%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
p50	4.86%	4.30%	7.99%	1.30%	1.31%	0.23%	6.59%	3.33%	1.02%	1.79%	5.33%	0.00%	0.00%	0.00%	0.00%	0.00%	0.15%	0.00%	0.00%	0.00%	0.00%
p75	7.69%	10.44%	29.20%	3.77%	1.94%	1.40%	12.12%	7.64%	3.86%	9.51%	10.60%	0.27%	1.12%	2.09%	2.41%	0.00%	1.36%	0.00%	1.20%	0.84%	1.20%
Average total	5.61%	5.12%	17.03%	2.89%	3.78%	3.34%	8.98%	9.30%	4.14%	4.61%	11.02%	1.03%	1.29%	1.84%	2.18%	0.70%	0.70%	0.09%	2.15%	1.37%	2.45%
p25	3.69%	1.69%	3.46%	1.02%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
p50	8.10%	10.65%	11.11%	4.84%	0.00%	0.09%	4.08%	0.00%	2.21%	0.15%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
p75	13.02%	23.30%	33.03%	9.45%	1.69%	4.92%	10.94%	7.99%	9.88%	5.34%	7.00%	0.00%	0.61%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

Note: the numbers in the top row refer to the relevant paragraphs in Article 3 of the RTS (please refer to Annex 3 for a list of the qualitative criteria)

Table 15: Identification under quantitative criteria and exclusion of staff identified under quantitative criteria (Article 4 of the RTS; EU-28)

	Staff identified under quantitative criteria as a percentage of all identified staff			Percentage of identified staff identified under quantitative criteria who do not fall under qualitative criteria			Percentage of staff identified under quantitative criteria that has subsequently been excluded		
	500 000	**0.30%**	**Remuneration bracket**	**500 000**	**0.30%**	**Remuneration bracket**	**without notification**	**notification**	**prior approval**
Avergage BST<5bn	0.25%	3.46%	31.08%	0.00%	4.88%	81.52%	65.78%	0.00%	0.00%
p25	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
p50	0.00%	2.75%	0.00%	0.00%	0.00%	52.11%	0.00%	0.00%	0.00%
p75	0.00%	8.33%	37.04%	0.00%	0.00%	66.67%	50.00%	0.00%	0.00%
Average BST 5-30bn	15.37%	7.36%	183.57%	79.49%	19.64%	85.47%	41.21%	4.20%	0.00%
p25	0.00%	2.72%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
p50	0.00%	7.68%	2.37%	0.00%	0.00%	88.66%	0.00%	0.00%	0.00%
p75	4.27%	13.23%	25.64%	85.71%	7.69%	100.00%	57.14%	0.00%	0.00%
Average BST>30bn	18.64%	16.35%	177.59%	45.51%	27.32%	85.30%	63.87%	0.04%	0.00%
p25	1.52%	5.71%	1.17%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
p50	8.56%	15.90%	41.06%	14.81%	27.78%	33.78%	0.00%	0.00%	0.00%
p75	22.64%	31.59%	149.44%	42.75%	39.57%	80.42%	52.38%	0.00%	0.00%
Average total	16.77%	14.65%	164.60%	47.27%	26.61%	85.25%	62.51%	0.30%	0.00%
p25	0.00%	0.97%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
p50	0.00%	7.07%	3.22%	6.76%	0.00%	52.11%	0.00%	0.00%	0.00%
p75	5.34%	14.98%	64.45%	34.27%	27.05%	91.75%	52.38%	0.00%	0.00%

Table 16: Additional identified staff on application of the RTS to firms in the prudential scope and in third countries (EU-28)

	Additional identified staff compared with CRD scope due to inclusion in prudential scope	**Additional identified staff compared with CRD scope in third countries**
Average	29.33%	36.92%
p25	4.0%	1.5%
p50	8.8%	17.9%
p75	26.8%	58.4%

5.3 Annex 3 – Qualitative criteria under Article 3 of the RTS on identified staff

Qualitative criteria

1	The staff member is a member of the management body in its management function.
2	The staff member is a member of the management body in its supervisory function.
3	The staff member is a member of the senior management.
4	The staff member is responsible and accountable to the management body for the activities of the independent risk management function, compliance function or internal audit function.
5	The staff member has overall responsibility for risk management within a business unit as defined in Article 142(1)(3) of Regulation (EU) No 575/2013 which has had internal capital distributed to it in accordance with Article 73 of Directive 2013/36/EU that represents at least 2% of the internal capital of the institution.
6	The staff member heads a material business unit.
7	The staff member has managerial responsibility in one of the functions referred to in point (4) or in a material business unit and reports directly to a staff member identified under either point (4) or point (5).
8	The staff member has managerial responsibility in a material business unit and reports directly to the staff member who heads that unit.
9	The staff member heads a function responsible for legal affairs, finance including taxation and budgeting, human resources, remuneration policy, information technology, or economic analysis.
10	The staff member is responsible for, or is a member of, a committee responsible for the management of a risk category provided for in Articles 79 to 87 of Directive 2013/36/EU other than credit risk and market risk.
11(a)	With regard to credit risk exposures of a nominal amount per transaction which represents 0.5% of the institution's Common Equity Tier 1 capital and is at least EUR 5 million, the staff member is responsible for initiating credit proposals, or structuring credit products, which can result in such credit risk exposures.
11(b)	With regard to credit risk exposures of a nominal amount per transaction which represents 0.5% of the institution's Common Equity Tier 1 capital and is at least EUR 5 million, the staff member has authority to take, approve or veto a decision on such credit risk exposures.
11(c)	With regard to credit risk exposures of a nominal amount per transaction which represents 0.5% of the institution's Common Equity Tier 1 capital and is at least EUR 5 million, the staff member is a member of a committee which has authority to take the decisions referred to in point (a) or (b).
12(a)(i)	In relation to an institution to which the derogation for small trading book business provided for in Article 94 of Regulation (EU) No 575/2013 does not apply, the staff member has authority to take, approve or veto a decision on transactions on the trading book which in aggregate meet the following threshold: where the standardised approach is used, an own funds requirement for market risks which represents 0.5% or more of the institution's Common Equity Tier 1 capital.
12(a)(ii)	In relation to an institution to which the derogation for small trading book business provided for in Article 94 of Regulation (EU) No 575/2013 does not apply, the staff member has authority to take, approve or veto a decision on transactions on the trading book which in aggregate meet the following threshold: where an internal model-based approach is

	approved for regulatory purposes, 5% or more of the institution's internal value-at-risk limit for trading book exposures at a 99th percentile (one-tailed confidence interval).
12(b)	In relation to an institution to which the derogation for small trading book business provided for in Article 94 of Regulation (EU) No 575/2013 does not apply, the staff member is a member of a committee which has authority to take decisions set out in point (a).
13(a)	The staff member has managerial responsibility for a group of staff members who have individual authorities to commit the institution to transactions and the sum of those authorities equals or exceeds a threshold set out in point (11)(a), point (11)(b) or point (12)(a)(i).
13(b)	The staff member has managerial responsibility for a group of staff members who have individual authorities to commit the institution to transactions and where an internal model-based approach is approved for regulatory purposes those authorities amount to 5% or more of the institution's internal value-at-risk limit for trading book exposures at a 99th percentile (one-tailed confidence interval). Where the institution does not calculate a value-at-risk at the level of that staff member the value-at-risk limits of staff under the management of this staff member shall be added up.
14(a)	With regard to decisions to approve or veto the introduction of new products, the staff member has the authority to take such decisions.
14(b)	With regard to decisions to approve or veto the introduction of new products, the staff member is a member of a committee which has authority to take such decisions.
15	The staff member has managerial responsibility for a staff member who meets one of the criteria set out in points (1) to (14).