



Public Hearing 30 June 2020

RTS on identified staff /RTS on instruments and alternative arrangements

Bernd Rummel/ Djamel Bouzemarene

RTS on identified staff and RTS on instruments

IFD requires to issue RTS on identified staff and RTS on instruments and alternative arrangements for the pay out of variable remuneration

- IFD requires the EBA to submit both draft RTS to the Commission. **Deadline 21 June 2021; the submission is planned for December 2020.**
- CP published 4 June 2020
- Consultation period ends **4 September 2020**

RTS on identified staff - The IFD mandate (Article 30 (4) IFD)

- For the purpose of identifying staff whose professional activities have a material impact on the firm's risk profile or of the assets that it manages including senior management, risk takers, staff engaged in control functions and for any employee receiving overall remuneration equal to at least the lowest remuneration received by senior management or risk takers, as referred to in Article 30 (3) IFD, EBA shall develop RTS in line with Article 30 (4) IFD.
- **Objectives**: harmonise the criteria for the identification to ensure a consistent approach to the identification of such staff across the EU
- The identification criteria are a **combination of qualitative and appropriate quantitative criteria**
- Where appropriate, the same approach foreseen under the draft RTS for identified staff under CRD has been retained in terms of definition and criteria to be used for the identification process and possible exclusions.

Qualitative criteria (1)

- **Qualitative criteria should identify staff in key areas and functions whose impact on the risk profile will always be considered as material.** In particular, members of the management body have the ultimate responsibility for the investment firm, its strategy and activities and therefore should always be considered to have a material impact on the investment firm's risk profile.
- Introduction of a **definition of managerial responsibility** (same as in CRD) based on the hierarchical position of the staff member, taking into account responsibilities and reporting lines.
- **“control function”** has been defined in line with the EBA's Guidelines on internal governance already in place and the definition used by the Basel Committee on Banking Supervision, ensuring the consistent application of governance frameworks.
- definition of **“business unit”** refers to the definition provided under the CRD to ensure cross sectoral consistency

Qualitative criteria (2)

- **A staff member that has managerial responsibility for:** the execution or the approval of processes or systems, performing economic analysis, management of outsourcing arrangements of critical or important functions or providing information technology or security that are relevant for the investment firm's business activities
- **A staff member that is responsible for managing, monitoring and mitigating a material risk** as referred to in Article 28 of Directive (EU) 2019/2034 to which the investment firm is exposed or is a voting member of a committee responsible for managing, monitoring and mitigating a material risk to which the investment firm is exposed

Quantitative criteria

- Presumption that the staff with a high level of total remuneration has also a more material impact on the risk profile compared to staff with significantly lower remuneration levels.
- **EUR 500 000** combined with the average of the remuneration of members of the management body and senior management for the identification of staff that has a material impact on the firm risk profile or asset it manages to ensure consistency with CRD.
- 2 others criteria based on total remuneration aiming at identifying staff earning more than total remuneration of **EUR 750 000 and the 0.3 % of staff** with the highest remuneration, respectively. The latter ensures that also the top earners are identified in jurisdictions with lower remuneration levels and will apply to firms that have over 1 000 members of staff.
- Staff that receives equal or higher remuneration than any member of senior management or risk taker should be considered if the staff member has a material impact on the risk profile or assets that it manages (Criteria included in IFD)

Quantitative criteria

- For a particularly high level of total remuneration (equal or above EUR 750 000), exemption is possible with an approval from the CA for such exclusions. The same applies for exclusions concerning the 0.3% criterion.
- For, 1 000 000 EUR, exclusions possible with prior approval from CA and involvement of EBA and under exceptional circumstances (now defined) .
- The criteria of the draft RTS shall be applied on a consolidated and individual basis. The quantitative criterion (staff is in 0.3% of the highest remuneration within the investment firm) shall only be applied on an individual basis as to limit the burden to investment firms and considering that pay levels differ between Member States. When applying the criteria on consolidated level, the consolidating institution shall base the criteria on the impact on the consolidated risk profile.

Group application

- The criteria of the draft RTS shall be applied on a consolidated and individual basis.
- The quantitative criterion (staff is in 0.3% of the highest remuneration within the investment firm) shall only be applied on an individual basis as to limit the burden to investment firms and considering that pay levels differ between Member States.
- When applying the criteria on consolidated level, the consolidating institution shall base the criteria on the impact on the consolidated risk profile.

RTS on pay out in instruments - Mandate

- Article 32(1)(j) of the IFD provides that at least 50% of the variable remuneration consists of certain **instruments**, including (iii) Additional Tier 1 instruments or Tier 2 instruments or Other Instruments which can be fully converted to Common Equity Tier 1 instruments or written down and that adequately reflect the credit quality of the firm as a going concern
- Article 32(1)(k) of the IFD provides that by way of derogation from point (j), where a firm does not issue any of the instruments referred to in that point, competent authorities may approve the use of **alternative arrangements** fulfilling the same objectives.
- Article 32 (8) of IFD mandates the EBA, in consultation with ESMA, to develop draft RTS to specify the instruments under point (j)(ii) of this Article and possible alternative arrangements

RTS on pay out in instruments- Classes of instruments

Additional Tier 1 instruments and Tier 2 instruments

- Need to fulfil all the existing CRR provisions regarding AT1/Tier 2 instruments
- Instruments can be issued in a group context
- Additional conditions apply only if instrument is used for variable remuneration

Other instruments

- Interpretation in a broad sense – financial instruments, including synthetic instruments
- Instruments can be issued in a group context if there is a reasonable link between the credit quality of the issuer and the user of the instrument

draft RTS are closely aligned with RTS under CRD

Main change is the calculation of the percentage of the trigger event:

- necessary to reflect the different approach to the calculation of own funds requirements under IFD that is based on k-factors and not on a percentage of risk weighted assets.
- the trigger event level is the same as under the RTS in place. Having an identical trigger event level is necessary to ensure that investment firms can continue to use instruments that are issued by their parent undertaking.

Alternative arrangements are possible (high level of flexibility under the RTS):

- necessary to create conditions that ensure that the value of the variable remuneration received under alternative arrangements is reduced when risks cause an adverse effect on the firm or the managed assets performance or that such arrangements could be converted into CET1 capital.
- Such arrangements should allow deferral and retention
- Such arrangements may include other contractual arrangements, e.g. deferred cash held on frozen accounts



EUROPEAN BANKING AUTHORITY

20 avenue André Prothin CS 30154

92927 Paris La Défense CEDEX, France

Tel: +33 1 86 52 70 00

E-mail: info@eba.europa.eu

<https://eba.europa.eu/>