



## **BANKING SUPERVISION**

### **BANKING RULES**

#### *REMUNERATION POLICIES AND PRACTICES*

Ref: BR/21/2019

# REMUNERATION POLICIES AND PRACTICES

## INTRODUCTION

1. In terms of article 4 of the Banking Act 1994 (Cap. 371) (hereinafter referred to as ‘the Act’) the Malta Financial Services Authority (‘the Authority’ or ‘competent authority’ where applicable) as defined in article 2 of the Malta Financial Services Act (Cap. 330) is empowered to make Banking Rules as may be required for carrying into effect any of the provisions of the Act. The Authority may also amend or revoke such Banking Rules and any amendment or revocation thereof shall be officially communicated to credit institutions and the Authority shall make copies thereof available to the public.
2. In accordance with article 4(7) of the Act, the Authority may make, amend or revoke Banking Rules as may be required for the purpose of implementing any guidelines, recommendations and individual decisions issued by the European Banking Authority (hereinafter referred to as the ‘EBA’) under Articles 16, 17(3) and 18(3) of Regulation (EU) No. 1093/2010 establishing a European Supervisory Authority (European Banking Authority).

## SCOPE, APPLICATION & DEFINITIONS

3. Part I of this Rule governs sound remuneration policies for all the institutions’ staff and for staff whose professional activities have a material impact on a credit institution’s risk profile which comply with the requirements set out in Articles 92 to 95 of Directive 2013/36/EU as transposed in this Rule further below.
4. The other Parts of this Rule adopt and implement the requirements specified in the EBA Guidelines on *Sound Remuneration Policies under Articles 74(3) and 75(2) of Directive 2013/36/EU and disclosures under Article 450 of the Regulation (EU) No 575/2013 (EBA/GL/2015/22)* in Part II and therefore provide guidance on disclosures under Article 96 of Directive 2013/36/EU as transposed into paragraph 32 of BR/07 and Article 450 of Regulation (EU) 575/2013, and the EBA Guidelines on *Remuneration Policies and Practices related to the Sale and Provision of Retail Banking Products and Services (EBA/GL/2016/06)* in Part III.
5. This Rule shall not substitute any other law, unless otherwise specified, by which credit institutions subject to this Rule shall abide, more specifically, the applicable provisions in the Act.

6. For the purposes of this Rule, the terms “credit institutions” and “institutions” shall be understood as referring to the credit institutions falling within the scope of this Rule and as defined in the Act.
7. Unless otherwise specified in this Rule, the terms and expressions used in this Rule, which are used in the Act and any regulations issued thereunder and which are not defined herein, shall have the same meaning as that assigned to them in the Act and regulations.
8. As part of the internal governance framework, a credit institution shall have in place a Board approved structure regarding its policies for the remuneration and compensation of its management and staff members. The absence of a coherent and adequate remuneration policy generates potential risks for a credit institution that need to be adequately analysed and contained.
9. Credit institutions shall refer to the requirements set out in Articles 92 to 95 of the CRD, which are being transposed in this Rule and to the requirements set out in Article 450 of the CRR on the “Remuneration Policy”. Credit institutions shall disclose detailed information on their remuneration policies, practices and, for reasons of confidentiality, aggregated amounts for those members of staff whose professional activities have a material impact on the risk profile of the institution.
10. Credit institutions’ remuneration policies for staff members whose professional activities have material impact on the credit institutions' risk profile shall ensure that remuneration is consistent with sound and effective risk management and provides an incentive for prudent and sustainable risk taking. Credit institutions are to refer to Part II of this Rule, which complement the provisions of this Part. Credit institutions shall also be guided by the *Guidelines on the Data Collection Exercise Regarding High Earners (EBA/GL/2014/07)* and the *Guidelines on the Remuneration Benchmarking Exercise (EBA/GL/2014/08)*, which were both published by the EBA.
11. In addition, credit institutions shall refer to the *Regulatory Technical Standards (RTS) on Classes of Instruments that are Appropriate to be used for the Purposes of Variable Remuneration* In particular, these RTS introduce requirements for Additional Tier 1, Tier 2 and other instruments and define the write-down and conversion mechanisms for Tier 2 and other instruments. Credit institutions shall also refer to the *Guidelines on the Applicable Notional Discount Rate for Variable Remuneration, (EBA/GL/2014/01)*. These latter Guidelines support EU Member States in the calculation of the ratio between the variable and fixed component of total remuneration and refer to services or performances provided from 2014 onwards.
12. The principles set out in this Rule shall be applied by credit institutions at group, parent company and subsidiary levels as applicable, including those established in offshore financial centres.

## **PART I:**

### **GENERAL REMUNERATION POLICIES**

13. When establishing and applying the total remuneration policies, inclusive of salaries and discretionary pension benefits, for categories of staff including senior management, risk takers, staff engaged in control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on their risk profile, credit institutions shall comply with the following principles in a manner and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities<sup>1</sup>:

- (i) the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking that exceeds the level of tolerated risk of the credit institution;
- (ii) the remuneration policy is in line with the business strategy, objectives, values and long-term interests of the credit institution, and incorporates measures to avoid conflicts of interest;
- (iii) the Board of Directors of the credit institution in its supervisory function adopts and periodically reviews the general principles of the remuneration policy and is responsible for overseeing its implementation;
- (iv) the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the Board of Directors in its supervisory function;
- (v) staff engaged in control functions are independent from the business units they oversee, have appropriate authority, and are remunerated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control;
- (vi) the remuneration of the senior officers in the risk management and compliance functions is directly overseen by the remuneration committee referred to in paragraphs 16-17 or, if such a committee has not been established, by the Board of Directors in its supervisory function;

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<sup>1</sup> Credit institution shall also refer to the *Commission Delegated Regulation (EU) No 604/2014 of 4 March 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile.*

- (vii) the remuneration policy, taking into account national criteria on wage setting, makes a clear distinction between criteria for setting:
  - (aa) basic fixed remuneration, which should primarily reflect relevant professional experience and organisational responsibility as set out in an employee's job description as part of the terms of employment; and
  - (bb) variable remuneration which should reflect a sustainable and risk adjusted performance as well as performance in excess of that required to fulfil the employee's job description as part of the terms of employment.

### **Credit Institutions that Benefit from Government Intervention**

14. In the case of credit institutions that benefit from exceptional government intervention, the following principles shall apply in addition to those set out in paragraph 13:

- (i) variable remuneration is strictly limited as a percentage of net revenue where it is inconsistent with the maintenance of a sound capital base and timely exit from government support;
- (ii) credit institutions are to restructure remuneration in a manner aligned with sound risk management and long-term growth, including, where appropriate, establishing limits to the remuneration of the directors of the credit institution;
- (iii) no variable remuneration is paid to directors of the credit institution unless justified.

### **Variable Elements of Remuneration**

15. For variable elements of remuneration, the following principles shall apply in addition to, and under the same conditions as, those set out in paragraph 13:

- (i) where remuneration is performance related, the total amount of remuneration is based on a combination of the assessment of the performance of the individual and of the business unit concerned and of the overall results of the credit institution and when assessing individual performance, financial and non-financial criteria are taken into account;
- (ii) the assessment of the performance is set in a multi-year framework in order to ensure that the assessment process is based on longer-term performance and that the actual payment of performance-based components of remuneration is spread over a period which takes account of the underlying business cycle of the credit institution and its business risks;

- (iii) the total variable remuneration does not limit the ability of the credit institution to strengthen its capital base;
- (iv) guaranteed variable remuneration is not consistent with sound risk management or the pay-for-performance principle and shall not be a part of prospective remuneration plans;
- (v) guaranteed variable remuneration is exceptional, occurs only when hiring new staff and where the credit institution has a sound and strong capital base and is limited to the first year of employment;
- (vi) fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy, on variable remuneration components, including the possibility to pay no variable remuneration component;
- (vii) institutions shall set the appropriate ratios between the fixed and the variable component of the total remuneration, whereby the following principles shall apply:
  - (aa) the variable component shall not exceed 100% of the fixed component of the total remuneration for each individual;
  - (bb) shareholders of the credit institution may approve a higher maximum level of the ratio between the fixed and variable components of remuneration provided the overall level of the variable component shall not exceed 200% of the fixed component of the total remuneration for each individual.

Any approval of a higher ratio in accordance with the first subparagraph of this point shall be carried out in accordance with the following procedure:

- the shareholders of the credit institution shall act upon a detailed recommendation by the credit institution giving the reasons for, and the scope of, an approval sought, including the number of staff affected, their functions and the expected impact on the requirement to maintain a sound capital base;
- shareholders of the credit institution shall act by a majority of at least 66% provided that at least 50% of the shares or equivalent ownership rights are represented or, failing that, shall act by a majority of 75% of the ownership rights represented;

- the institution shall notify all shareholders of the credit institution, providing a reasonable notice period in advance, that an approval under the first subparagraph of this point will be sought;
  - the institution shall, without delay, inform the Authority of the recommendation to its shareholders, including the proposed higher maximum ratio and the reasons therefore and shall be able to demonstrate to the Authority that the proposed higher ratio does not conflict with the credit institution's obligations under the Act and any regulations and Banking Rules issued thereunder transposing the CRD and under the CRR, having regard in particular to the credit institution's own funds obligations;
  - the institution shall, without delay, inform the Authority of the decisions taken by its shareholders, including any approved higher maximum ratio pursuant to the first subparagraph of this point, and the Authority shall use the information received to benchmark the practices of credit institutions in that regard. The Authority shall provide the EBA with that information. Credit institutions are to refer to any guidelines which may be issued by the EBA to facilitate the implementation of this indent and to ensure the consistency of the information collected;
  - staff who are directly concerned by the higher maximum levels of variable remuneration referred to in this point shall not, where applicable, be allowed to exercise, directly or indirectly, any voting rights they may have as shareholders or owners or members of the credit institution;
- (cc) Credit institutions may apply the discount rate referred to in the second subparagraph of this point to a maximum of 25% of total variable remuneration provided it is paid in instruments that are deferred for a period of not less than five years<sup>2</sup>.
- (viii) payments related to the early termination of a contract reflect performance achieved over time and do not reward failure or misconduct;
- (ix) remuneration packages relating to compensation or buy out from contracts in previous employment shall align with the long-term interests of the credit institution including retention, deferral, performance and clawback arrangements;

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<sup>2</sup> Credit institutions are to refer to the *EBA Guidelines on the Applicable Notional Discount Rate for Variable Remuneration (EBA/GL/2014/01)* implemented in Annex 1 to this Rule.

- (x) the measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes an adjustment for all types of current and future risks and takes into account the cost of the capital and the liquidity required;
- (xi) the allocation of the variable remuneration components within the credit institution shall also take into account all types of current and future risks;
- (xii) a substantial portion, and in any event at least 50%, of any variable remuneration shall consist of an appropriate balance of the following:
  - (aa) shares or equivalent ownership interests, subject to the legal structure of the credit institution concerned or share-linked instruments or equivalent non-cash instruments, in case of a non-listed credit institution, and;
  - (bb) where possible, other instruments within the meaning of Article 52 or 63 of the CRR or other instruments which can be fully converted to Common Equity Tier 1 instruments or written down, that in each case adequately reflect the credit quality of the credit institution as a going concern and are appropriate to be used for the purposes of variable remuneration.<sup>3</sup>

The instruments referred to in this point shall be subject to an appropriate retention policy designed to align incentives with the longer-term interests of the credit institution. The Authority may place restrictions on the types and designs of those instruments or prohibit certain instruments as appropriate. This point shall be applied to both the portion of the variable remuneration component deferred in accordance with point (xiii) and the portion of the variable remuneration component not deferred;

- (xiii) a substantial portion, and in any event at least 40%, of the variable remuneration component is deferred over a period which is not less than three to five years and is correctly aligned with the nature of the business, its risks and the activities of the member of staff in question. Remuneration payable under deferral arrangements shall vest no faster than on a pro-rata basis. In the case of a variable remuneration component of a particularly high amount, at least 60% of the amount shall be deferred. The length of the deferral period shall be established in accordance with the business cycle, the nature of the business, its risks and the activities of the member of staff in question;

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<sup>3</sup> In this regard, credit institutions are to refer to the Regulatory Technical Standards (RTS) on Classes of Instruments that are Appropriate to be used for the Purposes of Variable Remuneration.



- (xiv) the variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the credit institution as a whole, and justified on the basis of the performance of the credit institution, the business unit and the individual concerned.

Without prejudice to the general principles of national contract and labour law, the total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of the credit institution occurs, taking into account both current remuneration and reductions in pay-outs of amounts previously earned, including through malus or clawback arrangements;

Up to 100% of the total variable remuneration shall be subject to malus or clawback arrangements. Credit institutions shall set specific criteria for the application of malus and clawback. Such criteria shall in particular cover situations where the staff member:

- (aa) participated in or was responsible for conduct which resulted in significant losses to the credit institution;
  - (bb) failed to meet appropriate standards of fitness and propriety;
- (xv) the pension policy is in line with the business strategy, objectives, values and long-term interests of the credit institution.

If the employee leaves the credit institution before retirement, discretionary pension benefits shall be held by the credit institution for a period of five years in the form of instruments referred to in point (xii). Where an employee reaches retirement, discretionary pension benefits shall be paid to the employee in the form of instruments referred to in point (xii) subject to a five-year retention period;

- (xvi) staff members are required to undertake not to use personal hedging strategies or remuneration and liability related insurance to undermine the risk alignment effects embedded in their remuneration arrangements;
- (xvii) variable remuneration is not paid through vehicles or methods that facilitate the non-compliance with the Act and any regulations and Banking Rules issued thereunder transposing the CRD, or with the CRR.

## **Remuneration Committee**

16. Credit institutions that are significant in terms of their size, internal organisation and the nature, the scope and the complexity of their activities shall establish a remuneration committee. The remuneration committee shall be constituted in such a way as to enable it to exercise competent and independent judgement on remuneration policies and practices and the incentives created for managing risk, capital and liquidity.
17. The remuneration committee shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the credit institution concerned and which are to be taken by the Board of Directors. The Chair and the members of the remuneration committee shall be directors who do not have an executive role in the credit institution concerned. When preparing such decisions, the remuneration committee shall take into account the long-term interests of shareholders, investors and other stakeholders in the credit institution and the public interest.

## **PART II:**

### **SOUND REMUNERATION POLICIES FOR ALL STAFF AND FOR STAFF WHOSE PROFESSIONAL ACTIVITIES HAVE A MATERIAL IMPACT ON A CREDIT INSTITUTION'S RISK PROFILE**

18. This Part of the Rule sets out requirements regarding remuneration policies applicable to all staff of credit institutions and specific requirements that institutions have to apply to the remuneration policies and variable elements of remuneration of identified staff. Institutions may also apply these specific requirements to additional categories of staff or to all staff. Appendix 1 of this Rule indicates the requirements for which an institution-wide application to all staff in line with the provisions in this Part provided is required or recommended.
19. Credit institutions shall comply with this Part on an individual, sub-consolidated and consolidated basis, including their subsidiaries not subject to Directive 2013/36/EU, in accordance with the level of application set out in Articles 92(1) and 109 of that Directive as transposed into paragraph 12 and BR/12 respectively.
20. The provisions set out in paragraphs 280-308 of this Part apply to those institutions which are required to comply, in accordance with the level of application set out in Articles 6 and 13 of Regulation (EU) 575/2013, with the obligations laid down in Part Eight of that Regulation.
21. This Part is addressed to institutions as defined in point 3 of Article 4(1)(3) of Regulation (EU) 575/2013, including branches of credit institutions having their head office in a third country.

## **Definitions**

22. For the purposes of this Part the following definitions shall apply:

Remuneration	means all forms of fixed and variable remuneration and includes payments and benefits, monetary or non-monetary, awarded directly to staff by or on behalf of institutions in exchange for professional services rendered by staff, carried interest payments within the meaning of Article 4(1)(d) of Directive 2011/61/EU, and other payments made via methods and vehicles which, if they were not considered as remuneration, would lead to a circumvention of the remuneration requirements of Directive 2013/36/EU.
Fixed remuneration	means payments or benefits for staff which comply with the conditions for its award set out in paragraphs 115-119.
Variable remuneration	means all remuneration which is not fixed.
Routine employment packages	means ancillary components of remuneration that are obtainable for a wide population of staff or staff in specified functions based on predetermined selection criteria, including, for example, healthcare, child care facilities or proportionate regular pension contributions on top of the mandatory regime and travel allowance.
Retention bonus	means variable remuneration awarded on the condition that staff stay in the institution for a predefined period of time.
Staff	means all employees of an institution and its subsidiaries, including subsidiaries not subject to the Directive 2013/36/EU and all members of their respective management bodies.
Identified staff	means staff whose professional activities have a material impact on the institution's risk profile in accordance with the criteria set out in the Commission Delegated Regulation (EU) 604/2014 and where appropriate in addition based on institutions' criteria.
Prudential consolidation	means the application of the banking prudential rules set out in Directive 2013/36/EU and Regulation (EU) 575/2013 on a consolidated or sub-consolidated basis, in accordance with Part 1, Title 2, Chapter 2 of Regulation (EU) 575/2013. The prudential consolidation includes all subsidiaries that are institutions or financial institutions and may include also ancillary services undertakings in and outside the EU.
Consolidating institution	means the institution which is required to abide by the prudential requirements on the basis of the consolidated situation of the banking group, in accordance with Part 1, Title 2, Chapter 2 of Regulation (EU) 575/2013.
Bonus pool	means the maximum amount of variable remuneration which can be awarded in the award process set at the level of the institution or an institution's business unit.

Accrual period	means the period of time for which the performance is assessed and measured for the purposes of determining an award of variable remuneration.
Non-revolving multi-year accrual period	means a multi-year accrual period that does not overlap with other multi-year accrual periods.
Award	means the granting of variable remuneration for a specific accrual period, independently of the actual point in time where the awarded amount is paid.
Vesting	means the effect by which the staff member becomes the legal owner of the variable remuneration awarded, independent of the instrument which is used for the payment or if the payment is subject to additional retention periods or clawback arrangements.
Upfront payments	means payments which are made immediately after the accrual period and which are not deferred.
Deferral period	means the period of time between the award and the vesting of the variable remuneration during which staff is not the legal owner of the remuneration awarded.
Instruments	means those financial instruments or other contracts that fall within one of the two categories referred to in Article 94(1)(l) of Directive 2013/36/EU.
Retention period	means a period of time after the vesting of instruments which have been awarded as variable remuneration during which they cannot be sold or accessed.
Malus	means an arrangement that permits the institution to reduce the value of all or part of deferred variable remuneration based on ex post risk adjustments before it has vested.
Clawback	means an arrangement under which the staff member has to return ownership of an amount of variable remuneration paid in the past or which has already vested to the institution under certain conditions.
Significant institutions	means institutions referred to in Article 131 of Directive 2013/36/EU (global systemically important institutions or 'G-SIIs', and other systemically important institutions or 'OSIIs'), and, as appropriate, other institutions determined by the competent authority or national law, based on an assessment of the institutions' size, internal organisation and the nature, the scope and the complexity of their activities.
Share-linked instruments	means those instruments whose value is based on the value of the stock and that have the share value as a reference point, e.g. stock appreciation rights, types of synthetic shares.
Shareholders	means a person who owns shares in an institution or, depending on the legal form of an institution, other owners or members of the institution.

## **Requirements regarding Remuneration policies**

### **Remuneration policies for all staff**

23. In accordance with Article 17B (1) of the Act, credit institutions are required to have in place a remuneration policy for all staff. The remuneration policy for all staff shall comply with the principles set out in Articles 92 and 93 of Directive 2013/36/EU as transposed into paragraphs 12, 13 and 14, taking into account the mapping of the requirements within Appendix I to this Rule.
24. The remuneration policy shall specify all components of remuneration and include also the pension policy, including, where relevant, the framework for early retirements. The remuneration policy shall also set a framework for other persons acting on behalf of the institution (e.g. tied agents), ensuring that the payments made are not providing any incentive for excessive risk-taking or the mis-selling of products. All institutions shall consider which elements of the remuneration policy on the variable remuneration of identified staff under Article 94 of Directive 2013/36/EU as transposed in paragraph 15 shall be included in the remuneration policy for all staff.
25. The institution's remuneration policy for all staff shall be consistent with the objectives of the credit institution's business and risk strategy, corporate culture and values, long-term interests of the institution, and the measures used to avoid conflicts of interest, and shall not encourage excessive risk taking. Changes of such objectives and measures shall be taken into account when updating the remuneration policy. Institutions shall ensure that remuneration practices are aligned with their overall risk appetite, taking into account all risks, including reputational risks and risks resulting from the mis-selling of products. Institutions shall also take into account the long-term interests of shareholders. Indeed, institutions shall demonstrate to the Authority that the remuneration policy and practices are consistent with and promote sound and effective risk management.
26. Where variable remuneration is awarded, such awards shall be based on the institutions', business units' and staff's performance and shall take into account the risks taken. The remuneration policy shall make a clear distinction between the operating business units, corporate and control functions with regard to the variable remuneration and the performance assessment.
27. The remuneration policy shall support the institution in achieving and maintaining a sound capital base in line with paragraphs 110-114. The remuneration policy shall also take into account, where applicable, the restrictions on distributions under Article 141 of Directive 2013/36/EU as transposed in BR/15, paragraphs 40-49.
28. The remuneration policy shall contain:

- a. the performance objectives for the institution, business areas and staff;
  - b. the methods for the measurement of performance, including the performance criteria;
  - c. the structure of variable remuneration, including where applicable the instruments in which parts of the variable remuneration are awarded and;
  - d. the ex-ante and ex-post risk-adjustment measures of the variable remuneration.
29. Institutions shall ensure that potential conflicts of interest caused by the pay out of instruments as part of the variable or fixed remuneration are identified and managed. This includes that the compliance with insider trading rules is ensured and that no measures are taken that can have a short-term impact on the share or instruments price.
30. Where the staff of the institution are also the majority owners of the institution or of the subsidiary, the remuneration policy shall be adjusted to the specific situation of these institutions or subsidiaries. For identified staff, the institution shall ensure that the remuneration policy complies with the relevant CRD requirements within Articles 92 and 94 as transposed in paragraphs 13 and 15 respectively.

## **Governance of remuneration**

### **Responsibilities, design, approval and oversight of the remuneration policy**

31. The management body in its supervisory function (hereafter ‘supervisory function’) shall be responsible for adopting and maintaining the remuneration policy of the institution, and overseeing its implementation to ensure it is fully operating as intended. The supervisory function shall also approve any subsequent material exemptions made for individual staff member and changes to the remuneration policy and carefully consider and monitor their effects.
32. The supervisory function shall collectively have adequate knowledge, skills and experience with regard to remuneration policies and practices as well as of incentives and risks that can arise therefrom. This shall include knowledge, skills and experience with regard to the mechanisms for aligning the remuneration structure to institutions’ risk profiles and capital structure.
33. The supervisory function shall ensure that the institution’s remuneration policies and practices are appropriately implemented and aligned with the institution’s overall corporate governance framework, corporate culture, risk appetite and the related governance processes.
34. Conflicts of interests with regard to the remuneration policy and remuneration awarded shall be identified and appropriately mitigated, including by establishing objective award criteria based on the internal reporting system, appropriate controls and the four eyes

principle. The remuneration policy shall ensure that no material conflicts of interest arise for staff in control functions.

35. The remuneration policy and practices and the procedures to determine them shall be clear, well documented and transparent. Proper documentation on the decision-making process (e.g. minutes of relevant meetings, relevant reports, and other relevant documents) and the reasoning behind the remuneration policy shall be maintained.
36. The supervisory and management functions and, where established, the remuneration and the risk committees shall work closely together and ensure that the remuneration policy is consistent with and promotes sound and effective risk management.
37. The remuneration policy shall provide for an effective framework for performance measurement, risk adjustment and the linkages of performance to reward.
38. Risk and compliance functions shall provide effective input in accordance with their roles into the setting of bonus pools, performance criteria and remuneration awards where those functions have concerns regarding the impact on staff behaviour and the riskiness of the business undertaken.
39. The supervisory function shall determine and oversee the remuneration of the members of the management function and, if the remuneration committee referred to in paragraphs 54-64 has not been established, oversee directly the remuneration of the senior officers in the independent control functions, including the risk management and compliance functions.
40. The supervisory function shall take into account the input provided by all competent corporate functions and bodies (e.g. committees, control functions, human resources, legal, strategic planning, budget function, etc.) and business units about the design, implementation and oversight of the institution's remuneration policies.
41. The human resources function shall participate in and inform on the drawing up and the evaluation of the remuneration policy for the institution, including the remuneration structure, remuneration levels and incentive schemes, in a way that would not only attract and retain the staff the institution needs but also assure that the remuneration policy is aligned with the institution's risk profile.
42. The risk management function shall assist in and inform on the definition of suitable risk adjusted performance measures (including ex-post adjustments), as well as in assessing how the variable remuneration structure affects the risk profile and culture of the institution. The risk management function shall validate and assess risk adjustment data as well as be invited to attend the meetings of the remuneration committee on this matter.
43. The compliance function shall analyse how the remuneration policy affects the institution's compliance with legislation, regulations, internal policies and risk culture and shall report all identified compliance risks and issues of non-compliance to the management body, both in its management and supervisory functions. The findings of

the compliance function shall be taken into account by the supervisory function during the approval, review procedures and oversight of the remuneration policy.

44. The internal audit function shall carry out an independent review of the design, implementation and effects of the institution's remuneration policies on its risk profile and the way these effects are managed in line with the provisions provided in paragraphs 65-72.
45. Within a group context the competent functions within the consolidating institution and subsidiaries shall interact and exchange information as appropriate.

### **Shareholders' involvement**

46. The approval of an institution's remuneration policy and, where appropriate, decisions relating to the remuneration of members of the management body and other identified staff may also be assigned to the shareholders' meeting in accordance with national company law. The shareholders' vote may be either consultative or binding.
47. Where the approval of the remuneration of individual members of the management body and other identified staff is assigned to shareholders, shareholders shall also explicitly approve the payments that can be awarded to those persons at the termination of their contracts. Where the approval of the remuneration policy is subject to approval by the shareholders they shall also either approve ex ante the maximum amount of the payments that can be awarded to the management body and other identified staff in the event of early termination of a contract or criteria for the determination of such amounts.
48. In order for the shareholders to make informed decisions, the supervisory function shall ensure that the institution provides them with adequate information regarding the remuneration policy designed to help them to assess the incentive structure and the extent to which risk-taking is being incentivised and controlled as well as the overall cost of the remuneration structure. Such information shall be provided well in advance of the relevant shareholders' meeting. Detailed information on remuneration policies and on their modifications, on procedures and decision-making processes to set a remuneration package shall be provided and include the following:
  - a. the remuneration components;
  - b. main characteristics and objectives of the remuneration packages and their alignment with the business and risk strategy, including the risk appetite and corporate values of the institution and;
  - c. how the points under (b) are taken into account in ex ante/ex post adjustments, in particular for identified staff.



49. The supervisory function remains responsible for the proposals submitted to the shareholders' meeting, as well as for the actual implementation and oversight of any changes to the remuneration policies and practices.
50. Where shareholders are requested to approve a higher maximum level of the ratio between the variable and fixed component of remuneration of up to 200%, the following shall apply:
- a. Shareholders who have the right to vote on a proposed higher maximum level of the ratio between the variable and the fixed components of remuneration are those of the institution where the identified staff concerned by the higher maximum levels of variable remuneration, operates. For subsidiaries, the subsidiary's general assembly of shareholders is competent to decide and not the general assembly of the consolidating institution;
  - b. Where an institution exercises its voting rights as a shareholder of its subsidiary with regard to the approval of a higher maximum level of the ratio between variable and fixed remuneration within a subsidiary, one of the following conditions shall be met:
    - i) the supervisory function of the institution holding the shares has beforehand called for a vote of its shareholders' meeting on how to exercise the voting rights regarding the increase of such level in its subsidiaries;
    - ii) the shareholders' meeting of the consolidating institution has decided, as part of the group remuneration policy, that subsidiaries may introduce a higher maximum level of such ratio.
  - c. In accordance paragraph 15(vii)(bb), when approving a higher maximum level of the ratio between the fixed and variable components of remuneration, the shareholders' meeting shall act upon a detailed recommendation which provides in particular the reasons, the number of identified staff concerned and their functions within the institution as well as the explanation of how such a higher maximum level of the ratio may affect the requirement to maintain a sound capital base. This information shall be provided to shareholders well in advance of the shareholder's meeting.
  - d. Any approval of a higher maximum level of the ratio shall be carried out in accordance with paragraph 15(vii)(bb), the 50% threshold for the quorum, and the 66% and 75% majority thresholds required for the vote, as mentioned therein, shall all be calculated taking into account the voting rights attached to the shares or other equivalent ownership rights in the institution.
  - e. The 75% threshold, which applies when fewer than 50% of ownership rights are represented in the shareholders' meeting and the 66% threshold, which applies when at least 50% of ownership rights are represented, shall be calculated in relation to the shareholders' voting rights that are represented, and not the number of natural or legal persons who are shareholders.
  - f. In accordance with paragraph 15(vii)(bb), staff who are directly concerned by the higher maximum levels of variable remuneration must not be allowed to exercise,

directly or indirectly, any voting rights they may have. Accordingly, their voting rights shall be disregarded when calculating the percentages, both in the nominator and in the denominator.

- g. Shares are ‘represented’ where the shareholder is legally able to vote on the proposed higher maximum level of the ratio, regardless of how such a vote is taken. In line with this principle and taking into account national company law, institutions shall set their internal policies regarding ‘representation’ for the purpose of this vote.

- 51. Shareholders shall be able to vote on a reduction of a higher maximum ratio that has been approved in the past. Such a vote shall require a majority of shareholder votes in line with the applicable rules for regular decisions foreseen by national law. Where the approved higher maximum was reduced the institution shall inform the Authority of the decision and the approved ratio within five working days.

### **Information to the Authority**

- 52. When informing the Authority about the recommendation addressed to the shareholders’ meeting, in accordance with paragraph 15(vii)(bb), the credit institution shall report to the Authority all the information submitted to the shareholders, including the proposed higher maximum ratio and the reasons therefor, at the latest five working days after having notified to the shareholders that an approval of the higher ratio will be sought.

- 53. When informing the Authority about the decision taken by its shareholders, in accordance with paragraph 15(vii)(bb), the institution shall provide the following information:

- a. the result of the decision and the approved higher maximum ratio, including, where the ratios differ between business areas and functions, the ratio for each business area or function mapped to the business areas and functions set out in the *EBA guidelines on the data collection exercise regarding high earners* and the *EBA guidelines on the remuneration benchmarking exercise*, both published on 16 July 2014;
- b. the number of identified staff affected by the higher maximum ratios and, where the ratios differ between business areas and functions, the corresponding level of the ratio for each business area and function;
- c. an analysis that the proposed higher ratio does not conflict with the obligations under Directive 2013/36/EU as transposed into national law and Regulation (EU) 575/2013, having regard in particular to the institution’s own funds obligations;
- d. the information included in Appendix 2 to this Rule, using the template provided and;
- e. other information that may be requested by the Authority.

## **Setting up a Remuneration Committee**

54. In accordance with paragraphs 12 and 16, all institutions which are themselves significant, considering the individual, parent company and group level, shall establish a remuneration committee. Subsidiaries which are regulated by specific sectoral legislation (e.g. AIFMs or UCITS managers) shall follow the rules set out in the specific sectoral legislation applying to them in order to determine whether or not they are required to establish a remuneration committee. The consolidating institution shall ensure that a remuneration committee is established when legally required.
55. Where a remuneration committee is established in a non-significant institution, the institution shall comply with the requirements of this Part concerning the remuneration committee, but may combine the tasks of the remuneration committee with other tasks as long as they do not create conflicts of interest.
56. Where no remuneration committee is established, the requirements of the paragraphs concerning the remuneration committee shall be construed as applying to the supervisory function.

### Composition of the remuneration committee

57. The remuneration committee shall be composed of members of the supervisory function who do not perform executive functions. The chair and the majority of members of the remuneration committee shall qualify as independent. If employee representation on the management body is provided for it shall include one or more employee representatives. Where there are not a sufficient number of qualified independent members, institutions shall implement other measures within the remuneration policy to limit conflicts of interest in decisions on remuneration issues.
58. Members of the remuneration committee shall have collectively appropriate knowledge, expertise and professional experience concerning remuneration policies and practices, risk management and control activities, namely with regard to the mechanism for aligning the remuneration structure to institutions' risk and capital profiles.

### Role of the remuneration committee

59. The remuneration committee shall:
- a. be responsible for the preparation of decisions on remuneration to be taken by the supervisory function, in particular regarding the remuneration of the members of the management body in its management function as well as of other identified staff;
  - b. provide its support and advice to the supervisory function on the design of the institution's remuneration policy;

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

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

#### Process and reporting lines

61. The remuneration committee shall:

- a. have access to all data and information concerning the decision-making process of the supervisory function on the remuneration policies and practices design and implementation, oversight and review;
- b. have adequate financial resources and unfettered access to all information and data from independent control functions, including risk management and;

- c. ensure the proper involvement of the independent control and other relevant functions (e.g. human resources, legal and strategic planning) within the respective areas of expertise and where necessary seek external advice.
62. The remuneration committee shall collaborate with other committees of the supervisory function whose activities may have an impact on the design and proper functioning of remuneration policies and practices (e.g. risk, audit and nomination committees) and provide adequate information to the supervisory function, and, where appropriate, to the shareholders' meeting about the activities performed.
63. When established, the risk committee shall, without prejudice to the tasks of the remuneration committee, examine whether incentives provided by the remuneration policies and practices take into consideration the institution's risk, capital, liquidity and the likelihood and timing of earnings.
64. A member of the risk committee shall participate in the meetings of the remuneration committee, where both committees are established, and vice versa.

### **Review of the remuneration policy**

65. The supervisory function or, where established, the remuneration committee shall ensure that the remuneration policy and practices of the institution are subject to a central and independent internal review at least annually.
66. A central review of the compliance with the regulation, group policies, procedures and internal rules shall be performed by the internal audit function of the consolidating institution.
67. Institutions shall perform the central and independent review on an individual basis. In a group, non-significant institutions which are subsidiaries may rely on the review performed by the consolidating institution, where the review performed on the consolidated or sub-consolidated basis included the institution and where the results are made available to the supervisory function of that institution.
68. The periodic independent review of remuneration policies may be, partially or totally, externally outsourced by small and less complex institutions. Larger and more complex institutions shall have sufficient resources to conduct the review internally. Qualified and independent external consultants may complement and support the institution in carrying out such tasks. The supervisory function is responsible for the review.
69. As part of the central and independent internal review, institutions shall assess whether the overall remuneration policies, practices and processes:
- a. operate as intended in particular, that approved policies, procedures and internal rules are being complied with and that the remuneration pay outs are appropriate

in line with the business strategy and the risk profile, long-term objectives and other goals of the institution are adequately reflected;

- b. are compliant with national and international regulations, principles and standards; and
- c. are consistently implemented across the group, are compliant with Article 141 of Directive 2013/36/EU as transposed in BR/15 and do not limit the institution's ability to maintain or restore a sound capital base in line with paragraphs 110-114.

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

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

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

## **Remuneration policies and group context**

73. In accordance with Articles 92(1) as transposed in paragraph 12 and BR/12 paragraph 6e institutions shall comply with all requirements of Part 1 above and BR/07 including the applicable *Regulatory Technical Standards regarding remuneration, at the consolidated, sub-consolidated (including subsidiaries and branches in third countries) and individual level*. With regard to the individual level, the Authority may make use of the derogation provided for in Article 7 of the CRR in accordance with BR/12, paragraph 6e. It is the institutions' responsibility to ensure that the internal remuneration policies comply with any specific requirements provided for under Maltese legislation.

74. At the consolidated or sub-consolidated level, the Authority of the consolidating institution shall ensure that a group-wide remuneration policy is implemented and complied with for:
- a. all staff in all institutions and other entities within the scope of prudential consolidation, including all branches; and
  - b. all identified staff in all institutions and other entities within the scope of prudential consolidation, including all branches.
75. Regarding institutions and entities within a group located in more than one Member State, the group-wide remuneration policy shall specify how its implementation shall deal with differences between national implementations of the remuneration requirements of Directive 2013/36/EU as transposed into national law, in particular regarding the application of the limitation of the maximum ratio between the variable components of remuneration and the fixed remuneration to 100% (if applicable, up to 200% with shareholders' approval), the possibility to apply the notional discount rate and any restrictions regarding the use of instruments.
76. In accordance with paragraph 12 and BR/12 paragraph 6e, the consolidating institution shall ensure that subsidiaries that fall into the scope of prudential consolidation, but which are not themselves subject to Directive 2013/36/EU, have remuneration policies that are consistent with the group-wide remuneration policy for all staff and comply with the requirements of Articles 92(2), 93 and 94 of Directive 2013/36/EU as transposed into paragraphs 13, 14 and 15 at least for those identified staff whose professional activities have a material impact on the group's risk profile. This also applies to specific requirements of Directive 2013/36/EU which have not been included in other sectoral legislation<sup>4</sup> shall. Where specific requirements of Directive 2013/36/EU conflict with the sectoral requirements (e.g. under Directive 2011/61/EU or Directive 2009/65/EC), the specific sectoral legislation shall prevail<sup>5</sup>.
77. Staff seconded from a parent undertaking in a third country to an EU subsidiary that is an institution or a branch who, were they employed directly by the EU institution or branch would fall within the scope of identified staff of that EU institution or branch, are

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<sup>4</sup> For example, for staff whose professional activities have a material impact on the group's risk profile, but who are staff of entities that fall within the scope of Directive 2011/61/EU and Directive 2009/65/EC, the consolidation institution must ensure that the limitation of the variable components of remuneration to 100% (if applicable, up to 200% with shareholders' approval) of the fixed components of remuneration is complied with.

<sup>5</sup> For example, entities subject to Directive 2011/61/EU or Directive 2009/65/EC shall pay the variable remuneration of identified staff whose professional activities have a material impact on the group's risk profile in units or shares of the alternative investment fund concerned or units of the UCITS concerned (Annex II (1)(m) of Directive 2011/61/EU and Article 14(b)(m) of Directive 2009/65/EC, respectively).

identified staff. Such seconded staff shall be subject to the provisions of Articles 92, 93 and 94 of Directive 2013/36/EU as they are implemented in the Member State where the EU institution or branch is established and the applicable Regulatory Technical Standards. For the purposes of short-term secondments, for example where a person is only residing in a Member State for a few weeks to carry out project work, that person shall be subject to such provisions only if the person would be identifiable under the Commission Delegated Regulation 604/2014, taking into account the remuneration awarded for the relevant time period and the role and responsibilities during the secondment.

78. Short-term contracts or secondments shall not be used as a means of circumventing the remuneration requirements of Directive 2013/36/EU and the provisions of this Rule.
79. Regarding subsidiaries established in third countries that are included in the scope of prudential consolidation of a consolidating institution in a Member State, the group-wide remuneration policy shall set the maximum level of the ratio between the variable component of remuneration and the fixed component not higher than 100% (if applicable, up to 200% with shareholders' approval at the group level), specify whether the notional discount rate is applied and ensure that for the pay out of variable remuneration instruments are used in line with these guidelines and Commission Delegated Regulation (EU) No 527/2014.
80. A subsidiary established in a third country that is included in the scope of prudential consolidation of a consolidating institution in a Member State shall have remuneration policies that are consistent with the group-wide remuneration policy and comply with the requirements of Articles 92(2), 93 and 94 of Directive 2013/36/EU as transposed into paragraphs 13, 14 and 15 at least for those staff whose professional activities have a material impact on the group's risk profile.
81. Branches in a Member State of a credit institution where the credit institution is authorised in a third country that would be implementing a ratio between the variable and fixed components of remuneration higher than 100%, shall demonstrate to the Authority that the shareholders of the institution in the third country have approved the higher ratio.
82. The remuneration requirements of Directive 2013/36/EU and the provisions of this Part shall apply to institutions independent of the fact that they may be subsidiaries of a parent institution in a third country. Where an EU subsidiary of a parent institution in a third country is a consolidating institution, the scope of prudential consolidation does not include the level of the parent institution located in a third country and other direct subsidiaries of that parent institution. The consolidating institution shall ensure that the group-wide remuneration policy of the parent institution in a third country is taken into



consideration within its own remuneration policies as far as this is not contrary to the requirements set out under relevant EU or national law, including the provisions of this Part.

## **Proportionality**

83. The proportionality principle encoded in Article 92(2) of Directive 2013/36/EU as transposed into paragraph 13 aims to match remuneration policies and practices consistently with the individual risk profile, risk appetite and strategy of an institution, so that the objectives of the obligations are effectively achieved.

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

85. For these purposes, institutions shall take into account at least the following criteria:

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

- k. the structure of profits and losses of the institution;
- l. the type of clients (e.g. retail, corporate, small businesses, public entity) and;
- m. the complexity of the products or contracts.

86. When applying requirements in a proportionate way, institutions are responsible to consider their risk profile, risk appetite and other characteristics and to develop and implement remuneration policies and practices which are appropriately aligned to the business strategy, objectives, values and long-term interest of the institution. However, the obligation to have sound and effective remuneration policies and practices applies to all institutions and with respect to all staff, regardless of the institutions' different characteristics.
87. Before remuneration requirements are applied in a proportionate way, the identification of staff, based on the criteria provided in Commission Delegated Regulation (EU) No 604/2014 and additional internal criteria, shall be performed. The limitation of the maximum ratio between the variable components of remuneration and the fixed components to 100% (200% with shareholders' approval) shall be applied to all identified staff in the institution and, regarding its subsidiaries that are in the scope of prudential consolidation, to the identified staff that has an impact on the group risk profile, even if they are not themselves subject to Directive 2013/36/EU, in line with paragraphs 73-82.
88. When implementing specific remuneration policies for different categories of identified staff in line with paragraphs 73-89, the application of proportionality shall take into account the impact on the institution's risk profile of that category of identified staff.
89. According to the above, large (including significant) and more complex institutions and groups shall have more sophisticated remuneration policies and risk measurement approaches, while small and less complex institutions and groups may implement simpler remuneration policies and approaches.

### **The identification process**

90. It is the responsibility of institutions to identify the members of staff whose professional activities have a material impact on the institution's risk profile. All institutions shall conduct annually a self-assessment in order to identify all staff whose professional activities have or may have a material impact on the institution's risk profile. The identification process shall be part of the overall remuneration policy of the institution.

91. The self-assessment shall be based on the qualitative and quantitative criteria set out in Commission Delegated Regulation (EU) No 604/2014 and shall include, where needed to ensure the complete identification of all staff whose professional activities have a material impact on the institution's risk profile, additional criteria set forth by the institution that reflect the levels of risk of different activities within the institution and the impact of staff members on the risk profile.
92. In accordance with Article 4 of Commission Delegated Regulation (EU) No 604/2014 regarding the quantitative criteria, the total remuneration awarded to staff in the preceding financial year shall be taken into account to ensure that the identification can be performed at the beginning of the following financial year.
93. When applying the quantitative criteria of Commission Delegated Regulation (EU) No 604/2014, institutions shall take into account all monetary and non-monetary fixed and variable remuneration components awarded for professional services in the preceding financial year. For the fixed component these are the amounts that have been awarded and usually paid out in the preceding financial year. For the variable component these are the amounts that have been awarded in the preceding financial year for the complete previous accrual period, independent of the fact that only parts of the variable remuneration were paid out in the preceding financial year and other parts were deferred. Routine remuneration packages that are not accounted for on an individual level shall be taken into account based on the overall sum broken down by objective criteria to the individual staff member.
94. Institutions which award remuneration in a currency other than the euro shall convert the thresholds set out in Article 4 of Commission Delegated Regulation 604/2014 as set out in Article 5 of that Regulation using either the internal exchange rate used for the consolidation of the accounts or the exchange rate used by the Commission for financial programming and the budget for the month where the remuneration was awarded.
95. Where institutions apply Article 5(2) of Commission Delegated Regulation (EU) No 604/2014, they shall assign all staff active in entities in the scope of prudential consolidation to the country where the individual exercises his or her predominant activity and apply the criteria in Article 4(1)(b) and (c) on a country by country basis to the staff assigned to a specific country.
96. Where the quantitative criteria are met, staff are considered as identified staff, unless the institution applies Article 4(2) of Commission Delegated Regulation (EU) No 604/2014. In relation to criterion (a), in respect of staff who were awarded total remuneration of EUR 750 000 or more in the preceding financial year, or (b) of Article (4)(1) of Commission Delegated Regulation (EU) No 604/2014, the application of paragraph (2) of Article 4 of that Regulation is subject to the prior approval of the Authority.

97. The self-assessment shall be clear, consistent, properly documented and periodically updated during the year at least with regard to the criteria under Article 3 of Commission Delegated Regulation (EU) No 604/2014. Institutions shall ensure that staff that fall or are likely to fall under the criteria in Article 3 for a period of at least three months in a financial year are treated as identified staff.
98. The following information shall at least be included in the documentation of the self-assessment done regarding the identification of staff:
- a. the rationale underlying the self-assessment and the scope of its application;
  - b. the approach used to assess the risks emerging from the institution's business strategy and activities, including in different geographical locations;
  - c. how persons working in institutions and other entities within the scope of consolidation, subsidiaries and branches, including such located in third countries, are assessed;
  - d. the role and responsibilities of the different corporate bodies and internal functions involved in the design, oversight, review and application of the self-assessment process and;
  - e. the identification outcome.
99. Institutions shall keep records of the identification process and its results and shall be able to demonstrate to the Authority how staff have been identified according to both the qualitative and quantitative criteria provided for in Commission Delegated Regulation (EU) No 604/2014 and any additional criteria used by the institutions.
100. The documentation of the self-assessment shall at least include the number of identified staff including the number of staff identified for the first time, the job responsibilities and activities, the names or another unique identifier and the allocation within the institution of the identified staff to business areas and a comparison with the results of the previous year's self-assessment.
101. The documentation shall also include staff members who have been identified under quantitative criteria, but whose professional activities are assessed as not having a material impact on the institution's risk profile, in accordance with Article 4 of Commission Delegated Regulation (EU) No 604/2014. Those assessments shall be properly documented, including the rationale underpinning the applied exclusions.

Institutions shall maintain the documentation for an appropriate time period to enable the review by the relevant authorities.

## **Notification and prior approval of exclusions**

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

- a. the management body shall decide based on the performed analysis within the annual identification process if staff have in fact no material impact on the institution's risk profile and inform the supervisory function of the decision taken. The supervisory function or the remuneration committee when it is established shall review the criteria and process under which the decisions are taken and approve the exemptions made;
- b. any notification shall be made without delay, but at the latest within six months after the end of the preceding financial year as to ensure that the Authority has sufficient time for analysing the exclusions made and that the institution can take into account any objections raised by the Authority and adjust the identification outcome accordingly;
- c. any application for prior approval shall be made without delay, but at the latest within six months after the end of the preceding financial year. The Authority shall assess the application and approve or reject the application, to the extent possible, within a three-month period after receiving the complete documentation;
- d. where the staff member was awarded total remuneration of EUR 1 000 000 or more in the preceding financial year the competent authority shall immediately inform the EBA about the application received and provide its initial assessment. On request the competent authority shall immediately submit all information received by the institution to the EBA. The EBA will liaise with the competent authority to ensure that the criteria of Commission Delegated Regulation (EU) No 604/2014 are applied in a consistent way before the decision regarding the approval or rejection of the application is taken by the competent authority.

103. The prior approval under Article 4(5) of Commission Delegated Regulation (EU) No 604/2014 regarding exclusions of staff identified in relation to the criterion in point (b) of Article 4(1) of that Regulation shall be granted only for a limited time period. The request for prior approval under Article 4(5) of Commission Delegated Regulation (EU) No 604/2014 shall be made each year. With respect to staff for whom a decision

on the application is taken for the first time, the prior approval shall only concern the financial year in which the prior approval was requested and the following financial year. For staff for whom the application of Article 4(2) of Commission Delegated Regulation (EU) No 604/2014 has already been approved for the ongoing financial year, the prior approval shall only concern the following financial year.

104. The notification of the application of exclusions under Article 4(4) of Commission Delegated Regulation (EU) No 604/2014, for staff identified in relation to the criterion in point (a) of Article 4(1) of that Regulation, shall be made annually, differentiating between exclusions in relation to the criteria in points (a) and (b) of Article 4(2) of that Regulation, but limited to staff who were not notified as being excluded in the previous accrual period in relation to the same criterion (e.g. where a staff member was excluded as the business unit is not material no notification is needed when the same staff member would still be active in the same business unit and the business unit is still not material).
105. Where identified staff would be excluded in subsidiaries which are not themselves subject to Directive 2013/36/EU, the authority is the authority of the parent institution. For branches of credit institutions where the head office is located in a third country the authority is the authority responsible for the supervision of institutions in the Member State where the branch is located.
106. Notifications and requests for prior approval shall include all names or another unique identifier for identified staff for whom an exclusion shall apply, the percentage of internal capital allocated in accordance with Article 73 of Directive 2013/36/EU, as transposed into Article 17C of the Act, to the business unit in which the staff member is active in and where required under Commission Delegated Regulation (EU) No 604/2014 the analysis of the impact of staff on the institution's risk profile for each identified staff member. Where identified staff are active in the same business unit and have the same function a joint assessment shall be made.

### **Governance of the identification process**

107. The management body has the ultimate responsibility for the identification process and the respective policy. The management body in its supervisory function shall:
  - a. approve the identification process policy as part of the remuneration policy;
  - b. be involved in the design of the self-assessment;

- c. ensure that the assessment for the identification of staff is properly made in accordance with Directive 2013/36/EU, Commission Delegated Regulation (EU) No 604/2014 and this Rule;
  - d. oversee the identification process on an ongoing basis;
  - e. approve any material exemptions from or changes to the adopted policy and carefully consider and monitor their effect;
  - f. approve or oversee any exclusion of staff in accordance with Article 4(2) of Commission Delegated Regulation (EU) No 604/2014 where the institutions deem that the qualitative criteria defined in Commission Delegated Regulation (EU) No 604/2014 are not met by the staff, as they in fact do not have a material impact on the institutions' risk profile and;
  - g. periodically review the approved policy and, if needed, amend it.
100. Where a remuneration committee is established, it shall be actively involved in the identification process in line with its responsibilities for the preparation of decisions regarding remuneration. Where no remuneration committee is established, the non-executive and where possible the independent members of the management body in its supervisory function shall execute the respective tasks.
101. The independent risk management and independent compliance functions, the business support functions (e.g. legal, human resources) and the relevant committees of the management body (i.e. risk, nomination and audit committees) shall be involved in the identification process in accordance with their respective role and also on an ongoing basis. In particular, where a risk committee is established, it shall be involved in the identification process without prejudice to the tasks of the remuneration committee. Institutions shall ensure a proper exchange of information among all internal bodies and functions involved in the identification process. The identification process and its result shall be subject to an independent internal or external review.

### **Identification process on solo and consolidated level**

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

consolidated situation and the impact on the institutions' risk profile on a consolidated basis. The same applies for the sub-consolidated level.

103. When applying the qualitative criteria in Article 3 of Commission Delegated Regulation (EU) No 604/2014 at consolidated or sub-consolidated level, staff members in a subsidiary are only captured if they are responsible for the functions referred to in these criteria on a consolidated or sub-consolidated basis. E.g. a staff member in a subsidiary who is a member of the management body of such subsidiary shall be captured by the criterion set out in Article 3(1) of Commission Delegated Regulation (EU) No 604/2014 ('the staff member is a member of the management body in its management function') only if he or she is also a member of the management body of the EU parent institution.
104. The quantitative criteria within Article 4 of Commission Delegated Regulation (EU) No 604/2014 apply to all staff on a consolidated and sub-consolidated basis, including all subsidiaries in the scope of the prudential consolidation. E.g. staff in a subsidiary earning EUR 500 000 or more are therefore considered identified staff, unless they would be excluded under Article 4 (paragraphs 2 to 5) of these RTS.
105. When applying the qualitative criteria in Article 3 of Commission Delegated Regulation (EU) No 604/2014 on the solo level, institutions shall identify the staff responsible for the function named in the qualitative criteria; the main criterion for the identification is not the name of the function but the Authority and responsibility conferred on the function.

### **Role of the consolidating institution**

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

### **Role of subsidiaries**

107. Institutions that are subsidiaries of a consolidating institution shall implement within their remuneration policy the policy issued by the consolidating parent institution and the process for the identification of staff. All subsidiaries shall actively participate in the identification process carried out by the consolidating parent institution. In particular, each subsidiary in the scope of prudential consolidation, including those not themselves subject to Directive 2013/36/EU,



shall provide the consolidating institution with all information necessary to properly identify all staff who have a material impact on the institutions' risk profile on a consolidated or sub-consolidated basis.

108. Subsidiaries that are not themselves subject to Directive 2013/36/EU are not required to perform an identification process on the solo level. For those subsidiaries the assessment shall be performed by the consolidating institution, based on information provided by the subsidiary. Institutions falling within the scope of Directive 2013/36/EU (credit institutions and investment firms) shall conduct their own self-assessment for the identification of staff on the solo level. Small and less complex institutions which are included in an identification process on a consolidated basis may delegate the practical application of the identification process on a solo level to the consolidating institution.
109. Branches in a Member State of credit institutions having their head office in a third country and institutions in a Member State which are subsidiaries of parent institutions in third countries shall conduct the identification process and inform their parent institution of its results. Institutions in a Member State shall also include their subsidiaries that fall in the scope of prudential consolidation and branches located in third countries in their assessment. For branches, the criteria for the identification shall be applied in the same way to the functions, business activities and staff located in a Member State as they would be for an institution on an individual level.

## **Capital base**

110. Institutions shall ensure that the award, pay out and vesting of variable remuneration, including the application of malus and clawback arrangements, under the institutions' remuneration policy is not detrimental to maintaining a sound capital base.
111. When assessing if the capital basis is sound, the institution shall take into account its overall own funds and in particular the Common Equity Tier 1 capital, the combined capital buffer requirement as defined in Article 128(6) of Directive 2013/36/EU and the restrictions on distributions set out in Article 141 of Directive 2013/36/EU as transposed into BR/15 which applies to the variable remuneration of all staff as well as the result of the internal capital adequacy assessment process. The requirements to maintain the combined capital buffer set out in Article 129 of Directive 2013/36/EU, including the restrictions on distributions set out in Article 141(2) and (3) of that Directive, as transposed into BR/15 apply also on a consolidated and sub-consolidated basis.

112. Institutions shall include the impact of variable remuneration - both upfront and deferred amounts - in their capital and liquidity planning and in their overall internal capital adequacy assessment process.
113. The total variable remuneration awarded by an institution shall not limit the ability of the institution to maintain or restore a sound capital base in the long term and shall consider the interests of shareholders and owners, depositors, investors and other stakeholders. Variable remuneration shall not be awarded or paid out when the effect would be that the capital base of the institution would no longer be sound. In addition to the restrictions on distributions set out in Article 141 of Directive 2013/36/EU as transposed into BR/15 the institution shall consider these requirements when determining:
- a. the overall pool of variable remuneration that can be awarded for that year; and
  - b. the amount of variable remuneration that will be paid out or will be vesting in that year.
114. Institutions which do not have a sound capital basis or where the soundness of the capital base is at risk shall take the following measures with regard to variable remuneration:
- a. reducing the variable bonus pool in line with Article 141 of Directive 2013/36/EU as transposed into BR/15, including the possibility to reduce it down to zero;
  - b. apply the necessary performance adjustment measures, in particular malus;
  - c. use the net profit of the institution for that year and potentially for subsequent years to strengthen the capital base. The institution shall not compensate for any reduction of the variable compensation made in order to ensure a sound capital basis in later years or by other payments, vehicles or methods which lead to a circumvention of this provision.

The competent authority shall intervene where the awarding of variable remuneration is detrimental to the maintenance of a sound capital base by requiring the institution to reduce or apply a cap to the overall pool of variable remuneration determined until the capital adequacy situation improves; and if necessary to apply performance adjustment measures, in particular malus and require institutions to use net profits to strengthen own funds.

## **Requirements regarding the structure of remuneration**

## Categories of Remuneration

115. Under Directive 2013/36/EU, remuneration is either fixed or variable remuneration; there is no third category of remuneration. Where remuneration is variable and is paid to identified staff, all requirements of Article 94 of CRD as transposed into paragraph 15 have also to be met in addition to the general requirements contained in Article 92 thereof as transposed in paragraphs 12 and 13. For that purpose, institutions shall allocate in line with this Rule the components of remuneration to either fixed or variable remuneration and their remuneration policies shall set out clear, objective, predetermined and transparent criteria to assign all remuneration components to either the fixed or variable categories in accordance with the criteria provided in Article 92(2)(g) of Directive 2013/36/EU as transposed in paragraph 13 (vii) and this Rule.
116. Where the clear allocation of a component to the fixed remuneration is not possible based on the criteria provided in this Rule, it shall be considered as variable remuneration.
117. Remuneration is fixed where the conditions for its award and its amount:
- a. are based on predetermined criteria;
  - b. are non-discretionary reflecting the level of professional experience and seniority of staff;
  - c. are transparent with respect to the individual amount awarded to the individual staff member;
  - d. are permanent, i.e. maintained over a period tied to the specific role and organisational responsibilities;
  - e. are non-revocable; the permanent amount is only changed via collective bargaining or following renegotiation in line with national criteria on wage setting;
  - f. cannot be reduced, suspended or cancelled by the institution;
  - g. do not provide incentives for risk assumption; and
  - h. do not depend on performance.
118. Remuneration components that are either part of a general institution-wide policy where they meet the conditions listed in paragraph 117 or payments mandatory

under national law, are considered as fixed remuneration. This includes payments which form part of routine employment packages as defined in this Rule.

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

## **Particular cases of remuneration components**

### **Allowances**

120. The variable and fixed remuneration of institutions may consist of different elements, including additional or ancillary payments or benefits. Institutions shall analyse allowances and allocate them to the variable or fixed component of remuneration. The allocation shall be based on the criteria in paragraphs 114-118.
121. In particular, where allowances are considered as fixed remuneration, but show any of the following features, the institution shall duly document the results of the assessments made under paragraphs 115-119:
- a. they are paid only to identified staff members;

- b. they are limited to cases where the ratio between the variable and the fixed components of remuneration would otherwise exceed 100% (if applicable, up to 200% where approved by shareholders);
  - c. the allowances are linked to indicators that could possibly be understood as proxies for performance. In that case the institution shall be able to demonstrate that these indicators are not linked to the performance of the institution, e.g. by analysing the correlation with the performance indicators used.
122. Where allowances are based on the role, function or organisational responsibility of staff, in order to be correctly mapped to the fixed component of remuneration they shall meet the criteria set out in paragraph 117 taking into account all of the following particulars:
- a. the allowance is tied to a role or organisational responsibility and awarded as long as no material changes happen regarding the responsibilities and authorities of the role so that in fact the staff would have a different role or organisational responsibility;
  - b. the amount does not depend on any factors other than fulfilling a certain role or having a certain organisational responsibility and the criteria in paragraph 180;
  - c. any other staff member fulfilling the same role or having the same organisational responsibility and who is in a comparable situation would be entitled to a comparable allowance, without prejudice to paragraph 180.

### **Variable remuneration based on future performance**

123. When the award of variable remuneration, including LTIPs, is based on past performance of at least one year, but also depends on future performance conditions, the following shall apply:
- a. institutions shall clearly set out to staff the additional performance conditions that have to be met after the award for the variable remuneration to vest;
  - b. institutions shall assess before the vesting of variable remuneration that the conditions for its vesting have been met;
  - c. the additional forward-looking performance conditions shall be set for a predefined performance period of at least one year;

- d. when the additional forward looking performance conditions have not been met, up to 100% of the variable remuneration awarded under those conditions shall be subject to malus arrangements;
  - e. the deferral period shall end at the earliest one year after the last performance condition has been assessed and all other requirements regarding the deferral of variable remuneration for identified staff set out in paragraphs 230-272 apply in the same way as to variable remuneration that is exclusively based on performance previous to its award;
  - f. for the calculation of the ratio between the variable and the fixed component of the total remuneration, the total amount of the variable remuneration awarded shall be taken into account in the financial year for which the variable remuneration, including LTIPs, was awarded. This shall also apply when the past performance was assessed in a multi-year accrual period.
124. Where a prospective remuneration plan for variable remuneration, including LTIPs, is exclusively based on future performance conditions (e.g. where new staff receive an LTIP at the beginning of the first year of employment), the amount shall be considered as awarded after the performance conditions have been met, otherwise no award shall be made. Awarded amounts shall be taken into account for the calculation of the ratio between the variable and the fixed component of the total remuneration in the financial year prior to their award. Where a specific number of instruments are awarded, they shall exceptionally be valued for the purpose of the calculation of the ratio between the variable and the fixed component of the total remuneration with the market price or fair value determined at the time the prospective remuneration plan for variable remuneration was granted. Points (a) to (c) of paragraph 123 shall apply. All other requirements apply in the same way as to variable remuneration, e.g. the deferral period starts after the award of the variable remuneration.

### **Carried interest payments**

125. ‘Carried interest’ payments within the meaning of Article 4(1)(d) of the AIFMD are subject to the remuneration provisions of the AIFMD. Indeed, paragraph 2 of Annex I of the AIFMD specifically includes carried interest in the definition of remuneration. The *ESMA guidelines on sound remuneration policies under the AIFMD* apply. For the purposes of this Rule and in particular of calculating the ratio between the variable and fixed components of remuneration for staff identified under paragraphs 175-189, the following shall apply:

- a. all payments made by the alternative investment funds to these staff members through carried interest vehicles which are not representing a pro-rata return on the investment made by these staff members shall be considered as variable remuneration and be valued at the time of their award;
  - b. all payments made by the alternative investment funds to these staff members through carried interest vehicles which represent a pro-rata return on any investment by these staff members (through the carried interest vehicle) to the alternative investment fund shall not be included in the calculation.
126. Dividends paid on vested shares or equivalent ownership interests that staff receive as shareholders or owners of an institution, are not part of remuneration for the purpose of this Part. However, such payments shall not be used as a payment method for variable remuneration which would lead to a circumvention of the remuneration requirements established by the CRD.

## **Retention bonuses**

127. Institutions shall be able to substantiate their legitimate interest in awarding retention bonuses to retain an identified staff member.
128. A retention bonus shall comply with the requirements on variable remuneration, including the ex post risk alignment, payment in instruments, deferral, retention, malus and clawback. Retention bonuses are based not on performance, but on other conditions (i.e. the circumstance that the staff member stays in the institutions for a predetermined period of time or until a certain event), hence ex ante risk adjustments are not necessary.
129. Retention bonuses shall not be awarded to merely compensate for performance related remuneration not paid due to insufficient performance or the institution's financial situation.
130. Institutions shall set the retention period as a specific period of time or by defining an event when the retention condition shall be met. The retention bonuses shall be awarded after the retention period ends or the retention condition is met.
131. A retention bonus shall be taken into account within the calculation of the ratio between the variable and the fixed remuneration as variable remuneration. The retention bonus shall be taken into account either with an annual amount in each year of the retention period which is calculated on a linear pro rata basis independent of the fact that the full amount is awarded after the end of the retention period, or with the full amount when the retention condition is met. Where the exact length of

the retention period is not known upfront, the institution shall set and duly document a period considering the situation and measures taken that justify the payment of a retention bonus. The calculation of the ratio shall be based on the period set.

## **Discretionary pension benefits**

132. Discretionary pension benefits are a form of variable remuneration. Where the terms of the company's pension scheme include pension benefits that are not based on performance and which are consistently granted to a category of staff, such pension benefits shall not be considered discretionary, but shall be considered as part of routine employment packages in line with the provisions of this Part on definitions.
133. The institution shall ensure that where a staff member leaves the institution or retires discretionary pension benefits are not paid without the consideration of the economic situation of the institution or risks that have been taken by the staff member which can affect the institution in the long term.
134. The full amount of discretionary pension benefits shall be awarded, in accordance with Article 94(1)(o) of the CRD as transposed into paragraph 15 (xv), in instruments referred to in point (xii) of the said paragraph and:
  - a. Where an identified staff member leaves the institution before retirement, the institution shall hold the full amount of discretionary pension benefits in instruments at least for a period of five years without the application of pro rata vesting;
  - b. where identified staff member reaches retirement, a five-year retention period shall be applied to the full amount paid in instruments.
135. Institutions shall ensure that malus and clawback arrangements are applied in the same way to discretionary pension benefits as to other elements of variable remuneration.

## **Exceptional remuneration components**

### **Guaranteed variable remuneration**

136. Guaranteed variable remuneration can take several forms such as a 'guaranteed bonus', 'welcome bonus', 'sign-on bonuses', 'minimum bonuses, etc., and can be awarded either in cash or in instruments.



137. When awarding guaranteed variable remuneration in accordance with Article 94(1)(d) and (e) of Directive 2013/36/EU as transposed into paragraph 15 (iv) and (v) when hiring new staff, institutions are not permitted to guarantee variable remuneration for longer than the first year of employment. Guaranteed variable remuneration is exceptional and can only occur where the institution has a sound and strong capital base, in accordance with paragraph 15 (v) and paragraphs 110-114.
138. Institutions shall only award once to the same single staff member guaranteed variable remuneration. This requirement shall also apply at a consolidated and sub-consolidated level and includes situations where staff receive a new contract from the same institution or another institution within the scope of consolidation.
139. Institutions may not include the amount of guaranteed variable remuneration in the calculation of the ratio between the fixed and variable components of the total remuneration for the first performance period, where the guaranteed variable remuneration is awarded when hiring new staff before the first performance period starts.
140. As part of the arrangements guaranteeing this part of variable remuneration, institutions may not apply the requirements on malus and clawback arrangements to guaranteed variable remuneration. Institutions may pay out the full amount in non-deferred cash.

### **Compensation or buyout from previous employment contract**

141. The compensation for the buyout of a previous contract shall be awarded under the conditions defined in paragraph 137 of this Part.
142. Remuneration shall be considered as being granted as compensation or for the buyout of a previous contract where the deferred variable remuneration of the staff member was reduced or revoked by the previous employer because of the termination of the contract. For remuneration packages relating to compensation or buyout from contracts in previous employment, all requirements for variable remuneration apply, including deferral, retention, pay out in instruments and clawback arrangements.

### **Severance pay**

143. Institutions' remuneration policies shall specify the possible use of severance payments, including the maximum amount or criteria for the determination of such amounts that can be awarded as severance pay to identified staff. Regular remuneration payments related to the duration of a notice period shall not be considered as severance payments.
144. Institutions shall have a framework in which severance pay is determined and approved, including a clear allocation of the responsibilities and decision-making powers and the procedural involvement of the control functions.
145. Severance payments shall not provide for a disproportionate reward, but for an appropriate compensation of the staff member in cases of early termination of the contract. In accordance with paragraph 15 (viii) severance payments shall reflect performance achieved over time and shall not reward failure or misconduct.
146. Severance pay shall not be awarded where there is an obvious failure which allows for the immediate cancellation of the contract or the dismissal of staff.
147. Severance pay shall not be awarded where a staff member resigns voluntarily in order to take up a position in a different legal entity, unless a severance payment is required by national employment law.
148. Severance payments may include redundancy remuneration for loss of office, and may be subject to a non-competition clause in the contract. In particular, in the following situations, additional payments made, because of the early termination of a contract, shall be considered as severance payment:
  - a. the institution terminates the contracts of staff because of a failure of the institution;
  - b. the institution wants to terminate the contract following a material reduction of the institution's activities in which the staff member was active in or where business areas are acquired by other institutions without the option for staff to stay employed in the acquiring institution;
  - c. the institution and a staff member agree on a settlement in case of a potential or actual employment dispute, to avoid a decision on a settlement by the courts.
149. Where institutions award severance pay, the institutions shall be able to demonstrate to the Authority the reasons for the severance payment, the appropriateness of the amount awarded and the criteria used to determine the amount, including that it is linked to the performance achieved over time and that it does not reward failure or misconduct.

150. When determining the amount of severance payments to be made, the institution shall take into account the performance achieved over time and assess where relevant the severity of any failure. Identified failures shall be distinguished between failures of the institution and failures of the identified staff as follows:
- a. failures of the institution shall be considered when the total amount of the severance payments for staff is determined, taking into account the capital base of the institution and such severance payments shall not be higher than the reduction of costs achieved by the early termination of contracts;
  - b. failures of identified staff shall lead to a downward adjustment of the amount of severance pay which would otherwise be awarded when only the performance over time would be considered in the estimation of the severance pay, including the possibility for a reduction of the amount down to zero.
151. Failures of institutions include the following situations:
- a. where the institution benefits from government intervention or is subject to early intervention or resolution measures in accordance with Directive 2014/59/EU as transposed into national law;
  - b. where the opening of normal insolvency proceedings of the institution, as defined in Article 2 of Recovery and Resolution Regulations, 2015 has been filed;
  - c. where significant losses lead to the situation that the institution no longer has a sound capital basis and, following this, the business area is sold or the business activity is reduced.
152. Failures of identified staff shall be assessed on a case-by-case basis, and includes the following situations:
- a. where a member of the management body is no longer considered as meeting appropriate standards of fitness and propriety;
  - b. where the identified staff member participated in or is responsible for conduct which resulted in significant losses for the institution, as defined in the institutions' remuneration policy;
  - c. where an identified staff member acts contrary to internal rules, values or procedures based on intent or gross negligence.

153. Severance payments shall be considered as variable remuneration. The following amounts of severance payments shall not be taken into account for the purpose of the calculation of that ratio and for the application of deferral and the pay out in instruments:
- a. severance payments mandatory under national employment law, mandatory following a decision of a court or calculated through a predefined generic formula set within the remuneration policy in the cases referred to in paragraph 148;
  - b. settlements made for the loss of office where they are subject to a non-competition clause ('gardening leave') in the contract and paid out in future periods up to the amount of the fixed remuneration which would have been paid for the non-competition period, if staff were still employed;
  - c. severance payments under paragraph 148, not fulfilling the condition in point (a) of this paragraph, where the institution has demonstrated to the Authority the reasons and the appropriateness of the amount of the severance payment.
154. When calculating the ratio between the variable and the fixed components of the total remuneration the following amounts of severance pay shall be taken into account as variable remuneration for the purpose of the calculation of that ratio for the last performance period:
- a. the sum of any higher amounts than the fixed remuneration for the future periods under point (b) of paragraph 153;
  - b. any other severance pay not listed in paragraph 153.

## **Prohibitions**

### **Personal hedging**

155. Where an appropriate remuneration policy is aligned with risks it shall be sufficiently effective and able to result in practice in a downward adjustment to the amount of variable remuneration awarded to staff and the application of malus and clawback arrangements.
156. Institutions shall ensure to the extent possible that identified staff members are not able to transfer the downside risks of variable remuneration to another party through hedging or certain types of insurance, e.g. by implementing policies for dealing in financial instruments and disclosure requirements.

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

## **Circumvention**

161. Institutions shall ensure that variable remuneration is not paid through vehicles or methods which aim at or effectively lead to non-compliance with remuneration requirements for identified staff or, where such requirements are applied to all staff, with remuneration requirements for all staff. This includes arrangements between the institution and third parties where the staff member has a financial or personal interest in.

162. 'Circumvention' is the non-compliance with remuneration requirements and takes place if an institution is actually not meeting the objective and purpose of requirements when considered together, while formally the institution complies with the wording of the single remuneration requirements.
163. Circumvention takes place in the following circumstances, among others:
- a. where variable remuneration is considered as fixed remuneration in line with the wording of this Rule, but not with its objectives;
  - b. where variable remuneration other than guaranteed variable remuneration is awarded or vests although, effectively:
    - i. there has been no positive performance measured in line with paragraphs 175-272 by the staff member, business unit or institution;
    - ii. there is no effective risk alignment (i.e. ex ante or ex post risk adjustment);  
or
    - iii. the variable remuneration is not sustainable according to the institution's financial situation;
  - c. where staff receive payments from the institution or an entity within the scope of consolidation which do not fall under the definition of remuneration, but are vehicles or methods of pay that contain an incentive for risk assumption or provide disproportionate returns on investments on instruments of the firm that are significantly different from conditions for other investors who would invest in such a vehicle;
  - d. where staff receive payments from the institution or an entity within the scope of consolidation which do not fall under the definition of remuneration, but are vehicles or methods to circumvent the remuneration requirements (e.g. non-redeemable loan);
  - e. where fixed remuneration components are awarded as a fixed number of instruments and not as a fixed amount;
  - f. where staff are awarded remuneration in instruments or are able to buy instruments which are not priced at the market value or the fair value in the case of non-listed instruments and the additional value received is not taken into account in the variable remuneration;

- g. where adjustments to fixed remuneration components are frequently negotiated and adjustments are in fact made to align the remuneration with the performance of staff;
  - h. where allowances are awarded at an excessive amount that is not justified for the underlying circumstances;
  - i. where remuneration is labelled as payment for early retirement and not taken into account as variable remuneration, where in fact the payment has the character of a severance pay, as it is made in the context of the early termination of the contract, or where in fact the staff member does not retire after such award is made or where the payments are not granted on a monthly basis.
164. Institutions shall ensure that the method for measuring the performance has appropriate controls to ensure that the award criteria cannot be manipulated. Where such controls are not in place the variable remuneration is not appropriately linked to performance and the remuneration policy is not appropriately implemented and any payment of variable remuneration can lead to a violation of regulatory requirements. Possible manipulations include, for instance, courtesy decisions in the bilateral performance measurement process, e.g. where no objective standards exist for the decision-making process regarding staff members' goal attainment.
165. Institutions shall not provide compensation for any reduction or restructuring of variable remuneration, e.g. made in the context of recovery and resolution measures or other exceptional government intervention, in later years or by other payments, vehicles or methods.
166. Institutions shall not create group structures or offshore entities or contracts with persons that act on behalf of the institution in order to manipulate the outcome of the identification process and to circumvent the application of the remuneration requirements to staff to which these requirements shall otherwise apply.
167. Where remuneration is fixed remuneration according to this Rule in paragraphs 115-119 but is paid out in instruments, institutions shall consider if the instruments used turn the fixed component of remuneration to a variable component of remuneration as a link to the performance of the institution is established. Institutions shall not use financial instruments as part of the fixed remuneration to circumvent variable remuneration requirements and the instruments used shall not provide incentives for excessive risk taking.

## **Remuneration of specific functions**

## **Remuneration of members of the management and supervisory function of the management body**

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

## **Remuneration of control functions**

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



## **Remuneration policy, award and pay out of variable remuneration for identified staff**

### **Remuneration policy for identified staff**

175. Institutions shall ensure that the remuneration policy for identified staff complies with all principles set out in Articles 92 and 94 and, where applicable, Article 93 of Directive 2013/36/EU as transposed into paragraphs 12, 13 and 15 and where applicable paragraph 14.
176. Institutions shall implement, for different categories of identified staff, specific remuneration policies and risk alignment mechanisms as appropriate to ensure that the impact of the category of identified staff on the institution's risk profile is appropriately aligned with their remuneration.
177. Where institutions consider paying out less than 100% of the fixed component of remuneration in cash, this decision shall be well reasoned and approved as part of the remuneration policy.
178. Where an institution in the legal form of a stock corporation and in particular a listed institution applies a shareholding requirement to some categories of identified staff, in order to achieve a better alignment of the incentives provided to staff with the risk profile of the institution in the long term, the amount shall be clearly documented in the institution's policies. When a shareholding requirement is applied, staff shall hold a certain number of shares or nominal amount of shares as long as they are employed in the same position or a position of equal or higher seniority.

### **Fully flexible policy on variable remuneration**

179. Institutions shall have a fully flexible policy on variable remuneration for identified staff, in accordance with Article 94(1)(f) of Directive 2013/36/EU as transposed into paragraph 15(vi). The amount of variable remuneration awarded shall appropriately react to changes of the performance of the staff member, the business unit and the institution. The institution shall specify how the variable remuneration reacts to performance changes and the performance levels. This shall include performance levels where variable remuneration decreases down to zero. Unethical or noncompliant behaviour shall lead to a significant reduction of the staff member's variable remuneration.
180. The fixed remuneration of identified staff shall reflect their professional experience and organisational responsibility taking into account the level of education, the

degree of seniority, the level of expertise and skills, the constraints (e.g. social, economic, cultural or other relevant factors) and job experience, the relevant business activity and remuneration level of the geographical location.

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

### **Ratio between fixed and variable remuneration**

183. Institution shall set in advance in their remuneration policy the appropriate level of the maximum ratio between the variable and fixed components of total remuneration for identified staff, in accordance with the limits and procedures provided in Article 94(1)(g) of Directive 2013/36/EU as transposed in paragraph 15(vii), taking into account the business activities, the risks and the impact that different categories of staff have on the risk profile. Institutions may set different ratios for different jurisdictions, different business units, corporate and internal control functions and different categories of identified staff. The ratio set is the ratio between the variable component of remuneration that could be awarded as a maximum for the following performance period and the fixed component of remuneration of the following performance period.
184. The maximum ratio shall be calculated as the sum of all variable components of remuneration that could be awarded as a maximum in a given performance year, including the amount to be taken into account for the retention bonus, divided by the sum of all fixed components of remuneration to be awarded in relation to the same performance year. In any case, all remuneration components shall be correctly allocated to either variable or fixed remuneration in line with this Rule. Institutions may omit some of the fixed remuneration components, where they are not material, e.g. where proportionate nonmonetary benefits are awarded.
185. In exceptional and duly justified cases, the remuneration policy may provide for a different ratio for individual identified staff members belonging to a certain category of staff compared with other staff members included in the same category of staff.
186. The ratios set between the variable and fixed remuneration components for categories of staff or single staff members shall be approved by the management

body in its supervisory function or, where required, by the shareholders' meeting. The ratio between the variable and fixed remuneration components shall be set independent of any potential future ex post risk adjustments or fluctuation in the price of instruments.

187. The effective ratio shall be calculated as the sum of all variable components of remuneration that have been awarded for the last performance year as set out in these Rules, including amounts awarded for multi-year accrual periods, divided by the sum of fixed elements of remuneration awarded for the same performance year. For multiyear accrual periods that do not revolve annually, institutions may alternatively take into account in each year of the performance period the maximum amount of variable remuneration that can be awarded at the end of the performance period divided by the number of years of the performance period.
188. The effective ratio between variable remuneration awarded and fixed remuneration shall increase with the performance achieved and include levels of awards that would only be achieved for performance which is 'above target' or 'exceptional'. The effective ratio shall not exceed the maximum ratio set in accordance with Article 94(1)(g) of Directive 2013/36/EU as transposed in paragraph 15 (vii), national law and the institution's remuneration policy.
189. When calculating the maximum or effective ratio, institutions shall apply the *EBA Guidelines on the applicable notional discount rate for variable remuneration* under Article 94(1)(g)(iii) of Directive 2013/36/EU as transposed in paragraph 15 (vii)(cc).

### **Risk alignment process**

190. The risk alignment process includes the performance and risk measurement process (paragraphs 196-211); the award process (paragraphs 212-229); and the pay-out process (paragraphs 230-272). At each stage of the risk alignment process the variable remuneration shall be adjusted for all current and future risks taken. An institution shall ensure that incentives to take risks are balanced by incentives to manage risk.
191. Institution shall align the time horizon of the risk and performance measurement with the business cycle of the institution in a multi-year framework. Institutions shall set the accrual period and the pay-out periods for remuneration at an appropriate length, differentiating between remuneration which shall be paid upfront and remuneration that shall be paid after deferral and retention periods. The accrual and pay out periods shall take into account the business activity and position of the category of identified staff or in exceptional cases of a single identified staff member.

192. Within the risk alignment process an appropriate combination of quantitative and qualitative criteria in the form of absolute and relative criteria shall be used at all stages to ensure that all risks, performance and necessary risk adjustments are reflected. Absolute performance measures shall be set by the institution on the basis of its own strategy, including its risk profile and risk appetite. Relative performance measures shall be set to compare performance with peers, either ‘internal’ (i.e. within the organisation) or ‘external’ (i.e. similar institutions). Quantitative and qualitative criteria and the applied processes shall be transparent and as much as possible predefined. Both quantitative and qualitative criteria may partly rely on judgement.
193. Where judgemental approaches are used, institutions shall ensure a sufficient level of transparency and objectivity when judgements are made by:
- a. setting a clear written policy outlining parameters and key considerations on which the judgement will be based;
  - b. providing clear and complete documentation of the final decision regarding the risk and performance measurement or applied risk adjustments;
  - c. involving relevant control functions;
  - d. considering the personal incentives of the staff making the judgement and any conflicts of interest;
  - e. implementing appropriate checks and balances, including e.g. making such adjustments within a panel involving staff from business units, corporate and control functions, etc.;
  - f. approving the assessment made by a control function or at an appropriate hierarchical level above the function making the assessment, e.g. at the management body in its management or supervisory function or at the remuneration committee.
194. Institutions shall make the risk alignment process transparent to identified staff, including any judgemental elements.
195. Institutions shall provide detailed information to the remuneration committee or to the supervisory function if the final outcome after applying judgemental measures is significantly different from the initial outcome using predefined measures.

## **Performance and risk measurement process**

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

### Risk assessments

197. The institution shall define the objectives of the institution, business units and staff. These objectives shall be derived from its business and risk strategy, corporate values, risk appetite and long-term interests and consider also the cost of capital and the liquidity of the institution. The institutions shall assess the institution's business units' and identified staff members' achievements during the accrual period against their objectives.
198. Institutions shall take into account all current and future risks, whether on or off balance sheet, differentiating amongst risks relevant for institution, business units and individuals. Though institutions usually bear all types of risk at institution-wide level, at the level of individual identified staff members or business units only some types of risk may be relevant.
199. Institutions shall also use measures for risk alignment of remuneration where an exact quantification of the risk exposure is difficult, such as reputational and operational risk. In such cases the risk assessment shall be based on suitable proxies, including risk indicators, capital requirements or scenario analysis.
200. In order to conservatively take into account all material risks at the institution and business unit levels, institutions shall use the same risk measurement methods as used for internal risk measurement purposes, e.g. within the Internal Capital Adequacy Assessment Process (ICAAP) and in the institution's individual liquidity adequacy assessment. Institutions shall take into account expected and unexpected losses and stressed conditions.
201. The institutions shall be able to demonstrate to the Authority how the risk calculations are broken down by business units and different types of risks. The extent and quality of methods and models used within the ICAAP shall be reflected by the institution in a proportionate way in the remuneration policy. More sophisticated ICAAP methods shall lead to a more sophisticated variable remuneration policy, including risk-sensitive adjustment techniques.

#### Risk sensitive performance criteria

202. Institutions shall set and document both quantitative and qualitative, including financial and non-financial, performance criteria for individuals, business units and the institution. The performance criteria shall not incentivise excessive risk taking or mis-selling of products.
203. Institutions shall use an appropriate balance between quantitative and qualitative as well as absolute and relative criteria.
204. The criteria used to measure risk and performance shall be linked as closely as possible to the decisions made by the identified staff member and the category of staff members that is subject to the performance measurement and shall ensure that the award process has an appropriate impact on staff's behaviour.
205. Performance criteria shall include achievable objectives and measures on which the identified staff member has some direct influence.
206. Quantitative criteria shall cover a period which is long enough to properly capture the risk taken by identified staff members, business units and the institution and shall be risk adjusted and include economic efficiency measures.
207. Operating efficiency indicators (e.g. profits, revenues, productivity, costs and volume metrics) or some market criteria (e.g. share price and total shareholder's return) do not incorporate explicit risk adjustment and are very short-term and therefore not sufficient to capture all risks of the identified staff member's activities. Such performance criteria require additional risk adjustments.
208. Qualitative criteria (such as the achievement of results, compliance with strategy within the risk appetite and compliance track record) shall be relevant at an institution, business unit or individual level.

#### Specific criteria for control functions

209. Where control functions' staff receive variable remuneration, it shall be appraised and the variable part of remuneration determined separately from the business units they control, including the performance which results from business decisions (e.g. new product approval) where the control function is involved.
210. The criteria used for assessing the performance and risks shall predominantly be based on the internal control functions' objectives. Variable remuneration for control functions shall predominantly follow from control objectives, e.g. the Tier 1 ratio, the non-performing loan ratio, the non-performing loan recovery rate or

audit findings. Their variable remuneration may be based also to some extent on the performance of the institution as a whole. The institution shall consider setting a significant lower ratio between the variable and the fixed components of remuneration for control functions compared to the business units they control.

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

### **Award process**

212. Institutions shall set a bonus pool. When determining bonus pools or individual awards, institutions shall consider all current risks, expected losses, estimated unexpected losses and stressed conditions associated with the institution's activities.
213. Variable remuneration shall be awarded after the end of the accrual period. The accrual period shall be at least one year. Where longer periods are used different accrual periods may overlap, for example if a year a new multi-year period starts each year.
214. After the accrual period, the institution shall determine the individual identified staff members' variable remuneration by translating the performance criteria and risk adjustments into actual remuneration awards. During this award process the institution shall adjust remuneration for potential adverse developments in the future ('ex ante risk adjustment').

### Setting of bonus pools

215. Institutions shall define one or more bonus pools for the period for which variable remuneration is awarded and calculate the overall institution-wide bonus pool as a sum of these bonus pools.
216. When setting the bonus pools, institutions shall take into account the ratio between the variable and the fixed components of total remuneration applicable to categories of identified staff, performance and risk criteria defined for the overall institution, control objectives and the financial situation of the institution, including its capital base and liquidity. The performance indicators used to calculate the bonus pool shall include long-term performance indicators and take into account the realised financial results. A prudent use of accounting and valuation methods shall be in place which ensures a true and fair evaluation of the financial results, capital base and liquidity.
217. The bonus pools shall not be set at a certain level to meet remuneration demands.

218. Institutions shall have appropriate processes and controls in place when determining the overall bonus pool.
219. Where institutions use a top-down approach, they shall set the amount of the bonus pool at the level of the institution, which is then fully or partially distributed among the business units and control functions after the evaluation of their performance. The individual awards shall subsequently be based on the assessment of the individual's performance.
220. Where institutions set the bonus pool in a bottom-up approach the process shall start at the level of the individual staff member. Depending on the performance criteria by which the staff are assessed, a bonus pool allocation shall be made for the staff member, the bonus pool of the business unit and the institution equals the sums of potential awards allocated to the respective subordinated levels. The institution shall ensure that the institution's overall performance is appropriately taken into account. When distributing the bonus pool to the level of the business unit or individual staff member, the allocation shall be based as appropriate on predefined formulae and judgemental approaches. Institutions may use scorecards or other appropriate methods to combine different approaches.
221. When choosing the approach, institutions shall take into account the following: formulae are more transparent and, therefore, lead to clear incentives, as the staff member knows all factors determining his or her variable remuneration.
222. Factors such as budget constraints, retention of staff and recruiting considerations, subsidisation among business units etc. shall not dominate the distribution of the bonus pool as they can weaken the relationship between performance, risk and remuneration.
223. Institutions shall maintain records on how the bonus pool and the staff's remuneration were determined, including how estimates based on different approaches were combined.

#### The ex-ante risk adjustment in the award process

224. Institutions shall determine the bonus pool and variable remuneration to be awarded based on an assessment of performance and risks taken. The adjustment for risks before the award is made ('ex ante risk adjustment') shall be based on risk indicators and ensure that the variable remuneration awarded is fully aligned with the risks taken. The criteria used for the ex-ante risk adjustment shall be sufficiently granular to reflect all relevant risks.



225. Depending on the availability of risk adjustment criteria, institutions shall determine at what level they apply ex ante risk adjustments to the calculation of the bonus pool. This shall be at the level of the business unit or at the level of organisational substructures thereof, e.g. the trading desk or the individual staff member.
226. Risk alignment shall be achieved by using risk-adjusted performance criteria, including performance criteria that are adjusted for risk based on separate risk indicators. Quantitative and qualitative criteria shall be used.
227. The ex-ante risk adjustments made by institutions, where based on quantitative criteria, shall largely rely on existing measures within the institutions, used for other risk management purposes. Where adjustments to such measures are made within risk management processes, institutions shall also make consistent changes in the remuneration framework. Quantitative criteria include:
- a. economic capital, economic profit, return on risk-weighted assets and return on allocated equity;
  - b. the cost and quantity of the capital required for the risks of its activities, whereas the distribution of capital costs shall reflect the risk profile of the institution and the whole of the institution's equity shall be fully allocated and charged;
  - c. the cost and quantity of liquidity risk assumed in the course of business;
  - d. indirect liquidity costs (i.e. mismatch liquidity costs, cost of contingent liquidity risk and other liquidity risk exposures that an institution may have).
228. When measuring the profitability of the institution and its business units, the measurement shall be based on the net revenue where all direct and indirect costs related to the activity are included. Institutions shall not exclude costs of corporate functions, e.g. IT costs, group overheads or discontinued businesses.
229. Institutions shall make qualitative ex ante risk adjustments when determining the bonus pool and identified staff's remuneration through, for example, the use of balanced scorecards that explicitly include risk and control considerations such as compliance breaches, risk limit breaches and internal control indicators (e.g. based on internal audit results) or other similar methods.

### **Pay out process for variable remuneration**

230. Institutions shall pay the variable remuneration partly upfront and partly deferred and in an appropriate balance between equity, equity-linked and other eligible

instruments and cash in accordance with Article 94(1) of Directive 2013/36/EU as transposed into paragraph 15. Before paying out the deferred part of cash or the vesting of deferred instruments, a reassessment of the performance and, if necessary, an ex post risk adjustment shall be applied to align variable remuneration to additional risks that have been identified or materialised after the award. This applies also where multi-year accrual periods are used.

### **Non-deferred and deferred remuneration**

231. Institutions shall implement a deferral schedule that appropriately aligns the remuneration of staff with the institution's activities, business cycle and risk profile and the activities of the identified staff members, so that a sufficient part of the variable remuneration can be adjusted for risk outcomes over time through ex post risk adjustments.
232. A deferral schedule is defined by different components:
- a. the proportion of the variable remuneration that is being deferred (paragraphs 234-241);
  - b. the length of the deferral period (paragraphs 234 - 241);
  - c. the speed at which the deferred remuneration vests, including the time span from the end of the accrual period until the vesting of the first deferred amount (paragraphs 242-244);
233. Institutions shall take into account within the deferral schedule the form in which the deferred variable remuneration is awarded and shall, where appropriate, differentiate their deferral schedules by varying these components for different categories of identified staff. The combination of these components shall lead to an effective deferral schedule, in which clear incentives for long-term-oriented risk taking are provided by transparent risk alignment procedures.

### **Deferral period and proportion of deferred remuneration**

234. The deferral period starts after the award is made (e.g. at the moment the upfront part of the variable remuneration is paid out). Deferral can be applied to both types of variable remuneration, cash and instruments.
235. When setting the actual deferral period and proportion to be deferred in accordance with the minimum requirements under Article 94(1)(m) of Directive 2013/36/EU as transposed into paragraph 15(xiii) institutions shall consider:

- a. the responsibilities and authorities by identified staff and the tasks they performed;
  - b. the business cycle and nature of the institution's activities;
  - c. expected fluctuations in the economic activity and performance and risks of the institution and business unit and the impact of identified staff on these fluctuations;
  - d. the approved ratio between the variable and fixed components of the total remuneration and the absolute amount of variable remuneration.
236. Institutions shall determine for which categories of identified staff deferral periods longer than the required minimum period of at least three to five years shall be applied to ensure that the variable remuneration is aligned with the risk profile in the long term. Where longer multi-year accrual periods are used and where the longer accrual period provides more certainty about the risks that have materialised since the beginning of the accrual period, institutions shall consider this fact when setting deferral and retention periods and may, where appropriate, introduce deferral periods that are shorter than the deferral periods which would be appropriate when a one-year accrual period would be used. The minimum requirement of a three-year deferral period applies in any case.
237. Significant institutions shall in any case apply, at least for members of the management body in its management function and senior management, deferral periods of at least five years and defer a significant higher portion of the variable remuneration paid in instruments.
238. Institutions shall set an appropriate portion of remuneration that shall be deferred for a category of identified staff or a single identified staff member at or above the minimum proportion of 40% or respectively 60% for particularly high amounts.
239. Institutions shall define what level of variable remuneration constitutes a particularly high amount, taking into account the average remuneration paid within the institution, the European Banking Authority's remuneration benchmarking report and, where available, national and other remuneration benchmarking results and the thresholds set by the Authority.
240. Where institutions determine the proportion that is deferred by a cascade of absolute amounts (e.g. part between 0 and 100: 100% upfront; part between 100 and 200: 50% upfront and the rest is deferred; and part above 200: 25% upfront and the rest is deferred), institutions shall be able to demonstrate to the Authority that on an average weighted basis for each identified staff member the institution respects the 40% to 60% minimum deferral threshold and that the deferred portion is appropriate

and correctly aligned with the nature of the business, its risks and the activities of the member of identified staff in question.

241. Where the general principles of national contract and employment law prevent the substantial reduction of variable remuneration where subdued or negative financial performance of the institution occurs, institutions shall apply a deferral scheme and use instruments for the award of variable remuneration that ensure that ex post risk adjustments are as far as possible applied. This may include any of the following:
- a. the setting of longer deferral periods;
  - b. avoiding the use of pro rata vesting in situations where malus can be applied, but the application of clawback would be subject to legal impediments;
  - c. awarding a higher portion of variable remuneration in instruments that are aligned to the performance of the institution and subject to sufficiently long deferral and retention periods.

### **Vesting of deferred remuneration**

242. The first deferred portion shall not vest sooner than 12 months after the start of the deferral period. The deferral period ends when the awarded variable remuneration has vested or where the amount was reduced to zero as malus was applied.
243. Deferred remuneration shall either vest fully at the end of the deferral period or be spread out over several payments in the course of the deferral period in accordance with Article 94(1)(m) of Directive 2013/36/EU as transposed into paragraph 15(xiii).
244. Vesting shall not take place more frequently than on a yearly basis to ensure a proper assessment of risks before the application of ex post adjustments.

### **Award of variable remuneration in instruments**

245. The instruments used for the award of variable remuneration shall contribute to the alignment of variable remuneration with the performance and risks of the institution.

246. Where instruments issued by an institution in the scope of consolidation under points (i) and (ii) of Article 94(1)(l) of the CRD as transposed into paragraph 15 (xii) points (aa) and (bb) are available, the variable remuneration shall consist of a balance of different types of instruments. Institutions shall, where such instruments are available, prioritise the use of instruments subject to bail-in, in line with the instruments set out in the RTS on instruments, and shares, rather than the use of value-based items like share linked instruments.
247. The availability of instruments under Article 94(1)(i) of the CRD as transposed into paragraph 15 (xii)(aa) depends on the legal form of an institution:
- a. Shares, for institutions in the legal form of a stock corporation and also share-linked instruments for non-listed stock corporations, are available and listed stock corporations shall not use share linked instruments in line with the above mentioned Article.
  - b. For institutions which are non-stock corporations, ownership interests which are equivalent to shares, depending on the legal form of the institution, or non-cash instruments that are equivalent to share-linked instruments are available for the award of variable remuneration in instruments.
248. Share-linked or other equivalent non-cash instruments (e.g. stock appreciation rights, types of synthetic shares) are those instruments or contractual obligations, including instruments based on cash, whose value is based on the market price or, where a market price is not available, the fair value of the stock or equivalent ownership right and track the market price or fair value. All such instruments shall have the same effect in terms of loss absorbency as shares or equivalent ownership interests.
249. The availability of ‘other instruments’ under Article 94(1)(ii) of Directive 2013/36/EU as transposed into paragraph 15 (xii)(bb) depends on whether an institution or an institution in the scope of consolidation has already issued such instruments and sufficient amounts of such instruments are available. Where institutions are primarily wholesale funded, or rely to a large extent on additional Tier 1, Tier 2 or bail-in-able debt to meet their capital requirements, such instruments shall be available for the purposes of variable remuneration, provided that these ‘other instruments’ comply with Commission Delegated Regulation (EU) No 527/2014.
250. Where there are no specific factors or national laws that prevent the use of ‘other instruments’ under Article 94(1)(ii) of Directive 2013/36/EU transposed into paragraph 15 (xii)(bb), or factors that prevent institutions from issuing instruments

in compliance with Commission Delegated Regulation (EU) No 527/2014, then such instruments shall be used for the award of variable remuneration, where they are available.

251. Where both equity and equity-linked and other eligible instruments defined under Commission Delegated Regulation (EU) No 527/2014 are available, it is possible to pay variable remuneration as a balance of different instruments. In that case institutions shall ensure that the portion of variable remuneration that is paid in instruments comprises an appropriate balance of instruments under point (i) and point (ii) of Article 94(1)(l) of Directive 2013/36/EU as transposed in paragraph 15 (xii)(aa) and (bb). Institutions shall be able to demonstrate that they have taken into account the interests of shareholders, creditors, bondholders and other stakeholders when setting the balance between different instruments.
252. Instruments shall be priced at the market price or their fair value on the date of the award of these instruments. This price is the basis for the determination of the initial number of instruments and for later ex post adjustments to the number of instruments or their value. Such valuations shall also be done before the vesting to ensure that ex post risk adjustments are applied correctly and before the retention period ends. Small and non-complex institutions that are not listed may establish the value of the ownership interests and ownership interest linked instruments based on the last annual financial results.
253. Institutions may award a fixed number or nominal amount of deferred instruments using different techniques, including trustee depot facilities and contracts, provided that in every case the number or nominal amount of the instruments awarded is provided to identified staff at vesting, unless the number or nominal amount is reduced by the application of malus.
254. Institutions shall not pay any interest or dividend on instruments which have been awarded as variable remuneration under deferral arrangements to identified staff; this means also that interest and dividends payable during the deferral period shall not be paid to staff after the deferral period ends. Such payments shall be treated as received and owned by the institution.

### **Minimum portion of instruments and their distribution over time**

255. The requirement to pay, in accordance with Article 94(1)(l) of Directive 2013/36/EU as transposed into paragraph 15(xii), at a minimum 50% of any variable remuneration in instruments, shall be applied equally to the non-deferred and the deferred part and both parts shall consist of a balance of instruments.

256. Institutions shall prioritise the use of instruments rather than award variable remuneration in cash. Institutions shall set the percentage which shall be awarded in a balance of instruments in accordance with Article 94(1)(l) of Directive 2013/36/EU as transposed into paragraph 15(xii) at or above 50% separately for the deferred and non-deferred parts of variable remuneration. Where institutions award a higher portion than 50% of the variable remuneration in instruments, they shall prioritise a higher share of instruments within the deferred portion of the variable remuneration component.
257. The ratio of variable remuneration that is paid out in instruments shall be calculated as the quotient between the amount of variable remuneration awarded in instruments and the sum of the variable remuneration awarded in cash and in other benefits. All amounts shall be valued at the point of award unless stated otherwise in this Rule.

### **Retention policy**

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

### **Risk adjustment**

## Malus and clawback

263. Malus or clawback arrangements are explicit ex post risk adjustment mechanisms where the institution itself adjusts remuneration of the identified staff member based on such mechanisms (e.g. by lowering awarded cash remuneration or by reducing the number or value of instruments awarded).
264. Without prejudice to the general principles of national contract or employment law, institutions shall be able to apply malus or clawback arrangements up to 100% of the total variable remuneration in accordance with Article 94(1)(n) of Directive 2013/36/EU as transposed into paragraph 15(xiv) regardless of the method used for the payment, including deferral or retention arrangements.
265. Ex post risk adjustments shall always be performance or risk related. They shall respond to the actual risk outcomes or changes to persisting risks of the institutions, business line or staff's activities. They shall not be based on the amount of dividends paid or the evolution of the share price.
266. Institutions shall analyse whether their initial ex ante risk adjustments were sufficient, e.g. whether risks have been omitted or underestimated or new risks were identified or unexpected losses occurred. The extent to which an ex post risk adjustment is needed depends on the accuracy of the ex-ante risk adjustment and shall be established by the institution based on back-testing.
267. When setting criteria for the application of malus and clawback in accordance with Article 94(1)(n) of Directive 2013/36/EU as transposed in paragraph 15(xiv), institutions shall also set a period during which malus or clawback will be applied. This period shall at least cover deferral and retention periods. Institutions may differentiate between criteria for the application of malus and clawback. Clawback shall in particular be applied when the identified staff member contributed significantly to the subdued or negative financial performance and in cases of fraud or other conduct with intent or severe negligence which led to significant losses.
268. Institutions shall use at least the initially used performance and risk criteria to ensure a link between the initial performance measurement and its back-testing. Institutions shall, in addition to the criteria set out in Article 94(1)(n)(i) and (ii) of Directive 2013/36/EU as transposed into paragraph 15(xiv) points (aa) and (bb) use specific criteria including:
- a. evidence of misconduct or serious error by the staff member (e.g. breach of code of conduct and other internal rules, especially concerning risks);



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

#### Implicit adjustments

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

## **Institutions that benefit from government intervention**

### **State support and remuneration**

273. In line with paragraphs 110-114, where institutions benefit from exceptional government intervention, the Authority and institutions shall establish regular contacts with regard to the setting of the pool of possible variable remuneration and the award of variable remuneration to ensure compliance with Articles 93 and 141

of Directive 2013/36/EU as transposed into paragraph 14 and BR/15 paragraphs 40 to 49. Any payment of variable remuneration shall not endanger compliance with the established recovery and exit plan from exceptional government intervention.

274. The Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis (2013/C 216/01) shall be applied within the remuneration policies. Any condition with regard to remuneration imposed on institutions when state aid has been approved by the Commission and granted and within any related acts shall be reflected appropriately in the institutions' remuneration policy.
275. The variable remuneration of an institution's staff, including members of the management body, shall not prevent an orderly and timely payback of the exceptional government intervention or the achievement of objectives set in the restructuring plan.
276. The institution shall ensure that a bonus pool or the vesting and paying out of variable remuneration does not pose a detriment to the timely building up of its capital base and a decrease in its dependence on exceptional government intervention. Without prejudice to any existing conditions imposed by the Member State or the Union with regard to remuneration, the relevant competent authority shall set, for institutions that have been given exceptional government support, the percentage of the net revenue under point (a) of Article 93 of Directive 2013/36/EU as transposed into paragraph 14 (i) that can be used for variable remuneration and assess if the variable remuneration is aligned with sound risk management and long-term growth and take measure to restructure the remuneration where necessary.
277. Strict limits to the variable remuneration of members of the management body shall be applied in the context of restructuring remuneration within the meaning of point (b) of Article 93 of Directive 2013/36/EU as transposed into paragraph 14 (ii) when:
  - a. the Authority requires the institution not to pay out variable remuneration for members of the management body from the date on which the exceptional government intervention was received or to apply malus and clawback to variable remuneration taking into account potential failures of the management body;
  - b. the Authority may require the institution not to award any variable remuneration to members of the management body as long as the exceptional government support is not yet paid back, or until a restructuring plan for the institution is implemented or accomplished. Such measures shall be limited in time. The period during which the limits apply or the criteria for the application of such limits shall be clearly recorded and communicated to the institution when government support is given.

278. In order to restructure remuneration in accordance with Article 93(b) of Directive 2013/36/EU as transposed in paragraph 14 (ii) in a manner aligned with sound risk management and long-term growth, the Authority shall require:
- a. where appropriate, limiting variable remuneration for members of the management body to amounts up to zero so that the variable remuneration has no considerable impact on the recovery of the institution;
  - b. to align performance measures used for determining variable remuneration with the recovery progress of the institution and the contribution of identified staff, including the management body in this regard;
  - c. to apply clawback and malus for earlier award periods as appropriate, in particular to staff who significantly contributed to the situation under which that institution required state aid;
  - d. to increase the percentage of variable remuneration which is deferred up to 100%;
  - e. to align the accrual and deferral periods with the recovery or restructuring phase and plans.
279. Institutions shall take into account that there may be the need to provide for the possible award of variable remuneration to newly appointed members of the management body who are hired during the recovery or restructuring phase of the institution to ensure that suitable members of the management body can be appointed during that phase.

## **Disclosures by institutions and internal transparency**

### **Requirements on disclosure**

280. When disclosing information required by Article 450 of Regulation (EU) 575/2013, institutions shall comply with the general principles included in Title I of Part Eight of that Regulation and the related ‘EBA guidelines on materiality, proprietary and confidentiality and on disclosure frequency under Articles 432(1), 432(2) and 433 of Regulation (EU) 575/2013’.
281. Article 432(1) and (2) of Regulation (EU) 575/2013 do not provide for the possibility of omitting an item of information from Article 450 of Regulation (EU) 575/2013 for materiality, proprietary or confidentiality reasons. The disclosure requirements in Article 450 shall be complied with without prejudice to the requirements of Regulation (EU) 2016/679 of the European Parliament and of the

Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

282. Without prejudice to BR/07, paragraph 32 institutions shall make available the information on how they comply with the requirements of Articles 92 to 95 of Directive 2013/36/EU, as transposed into paragraphs 12-17 together with the disclosures required by Article 450 of Regulation (EU) 575/2013, and shall ensure that the disclosures are easily accessible.
283. Institutions shall ensure that the disclosures on remuneration provide appropriate cross-references to other information and disclosures which may be of relevance, to provide a complete view on all disclosures on remuneration policy and practices.
284. In accordance with Article 6(3) and Article 13(1) of Regulation (EU) 575/2013, disclosures are to be made on an individual basis by institutions unless they are a parent undertaking, or a subsidiary or included in the consolidation pursuant to Article 18 of Regulation (EU) 575/2013, on a consolidated basis by the consolidating institution and on an individual or sub consolidated basis by significant subsidiaries of EU parent institutions. Subject to the condition in Article 13(3) being met, EU parent entities consolidated by a parent undertaking established in a third country may not have to provide disclosures required by Article 450 of Regulation (EU) 575/2013.
285. Disclosures shall take into account the size of the institution and the nature, scope and complexity of its activities in line with paragraphs 83-89. Small and non-complex institutions shall comply with the disclosure requirements by providing information commensurate with their internal organisation and applied remuneration policy.
286. Information to be disclosed in accordance with Article 450 of Regulation (EU) 575/2013 and specified in this Rule shall be provided on an annual basis in a qualitative and quantitative section, illustrated by tables and charts where relevant to ease the understanding of users.

## **Policy and practices**

### **Remuneration Policy in terms of Article 450(1) of the CRR.**

287. Institutions shall disclose and make available to all members of the management body detailed information regarding their remuneration policies and practices for identified staff. Institutions shall adequately disclose externally and make

transparent internally the approach, principles and objectives of compensation incentives. Institutions shall also provide sufficient general information about the basic characteristics of their institution-wide remuneration policies and practices.

288. Where relevant, institutions shall disclose significant differences of the remuneration policy for different categories of identified staff and a description of the regional scope of the institution's remuneration policies and relevant differences between regions or between different institutions within the scope of consolidation.
289. Where applicable, institutions shall disclose an explanation of the link between the remuneration policy at group level and the remuneration policies applied at the parent institution level and at the (EU and foreign) subsidiary and branch level, stating, where applicable, the differences between the remuneration policies applicable at group, parent and subsidiary level. These disclosures shall include for instance differences related to the ratio between the variable and fixed components of remuneration, the notional discount rate, remuneration plans and vehicles available or the remuneration instruments that can be awarded, and the reasons for those differences, as well as their impact on the determination of bonus pools for different business areas.
290. Institutions shall outline any material changes made in the remuneration policy, including when they came into effect, the impact on the composition of variable and fixed remuneration components, and the governance process used to determine the remuneration policy.

### **The Identification of Staff in terms of Article 450(1) of the CRR**

291. Institutions shall disclose how they have applied the requirements on remuneration policies and variable remuneration, including the requirements set out in Commission Delegated Regulation (EU) No 604/2014.
292. Institutions shall disclose the number of identified staff broken down by business area, senior management and other identified staff and an explanation of significant changes of these numbers.

### **The information about the decision-making process used for determining the remuneration policy in terms of Article 450(1) point (a) of the CRR**

293. Institutions shall clearly set out the governance procedure relating to the development of the remuneration policy considering the specifications in paragraphs 23-109 and information about the bodies that played a significant role in the development of the remuneration policy, including their composition and

mandate, such as the remuneration committee, risk committee and independent control functions.

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

**The information on the link between pay and performance in terms of Article 450(1) point (b) of the CRR.**

295. The information that institutions shall disclose on how pay and performance are linked shall include:
- a. main performance objectives;
  - b. the scope of staff for whom variable remuneration is foreseen in the remuneration policy;
  - c. how variable remuneration reacts to changes in the institution's performance.

**The most important design characteristics of the remuneration system in terms of Article 450(1) point (c) of the CRR.**

296. The information that institutions shall disclose on the design and structure of their remuneration system shall include:
- a. the key features and objectives of the remuneration policy and processes and how it promotes sound and effective risk management;
  - b. a description of the main quantitative and qualitative performance and risk metrics used for the assessment of performance of the institution, the business unit and individuals, how different metrics were combined and how current and future risks are taken into account;
  - c. information on the criteria used to apply ex ante and ex post risk adjustment;
  - d. a description of the different forms in which variable and fixed remuneration are paid, the respective forms (i.e. cash, equity, other capital instruments, short-term and long term incentive plans) and amounts, and the rationale for using these different forms and for allocating them to different categories of identified staff,

in particular for members of the management body in its management function and for staff in control functions;

- e. how the institution ensures that staff in control functions are remunerated independently of the business units they control;
- f. the categorisation of different remuneration components as variable or fixed remuneration, as well as the rationale for this classification in the case of fixed remuneration elements;
- g. the mechanisms used to adjust remuneration to take into account the long-term performance, including:
  - i. the parameters used to decide on the length of the deferral period and the ratio of deferred and non-deferred remuneration, and the vesting schedule and retention periods for different categories of identified staff, including the applied ratios and periods of deferral and retention, separate for different instruments awarded;
  - ii. the framework for applying ex ante and ex post performance adjustments, including the application of malus and clawback;
  - iii. shareholding requirements that may be imposed on identified staff;
- h. how proportionality is taken into account within the remuneration system and a reasoning outlining how remuneration policies are consistent with and promote sound and effective risk management;
- i. policies and criteria applied for the award of guaranteed variable remuneration and severance payments.

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

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

298. Where the decision has been made to apply a higher ratio than 100% between the variable and fixed components of total remuneration of up to 200%, institutions shall disclose:
- a. the percentage of voting rights represented and of shareholders' voting rights in favour of increasing the ratio or, depending on the applicable company law, the number and percentage of persons who are in favour of increasing the ratio instead of the voting rights where each person has one vote;
  - b. the approved ratios, including, where the ratios differ between business areas, the respective ratio for each business area and;
  - c. the date of the decision.
299. In addition to information on ratios, institutions shall disclose, if applicable, the following information on the application of the discount rate on a country-by-country basis:
- a. the extent to which the discount rate is used (the maximum being its application to 25% of the total variable remuneration or a lower percentage prescribed by the Member State); and
  - b. the number of identified staff for whom the discount rate has been applied to their variable remuneration.

**The information on the performance criteria on which the entitlement to shares, options or variable components of remuneration is based in terms of Article 450(1) point (e) of the CRR.**

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

**The main parameters and rationale for any variable component scheme and any other non-cash benefits in terms of Article 450(1) point (f) of the CRR.**

301. The information that institutions shall disclose on the main parameters and rationale for any variable component scheme and any other non-cash benefits shall include



long-term incentive plans and the details of any remuneration element which is considered to be a non-routine remuneration practice, including for instance the use of role- or position-based allowances and discretionary fringe benefits, as well as the conditions under which such allowances or benefits can be withdrawn or changed in value.

## **Aggregate quantitative information**

302. When providing quantitative information on remuneration as required by points (g) to (h) of Article 450(1) of Regulation (EU) 575/2013 and paragraph 2 of that Article by business area, institutions shall report the information separately for each of their major business areas, including investment banking, retail banking and asset management, and aggregated for (i) all other business areas, (ii) the management body in its management and supervisory function, (iii) internal control functions and (iv) corporate functions.
303. The above information shall be broken down by senior management and other identified staff.
304. Institutions shall also disclose the aggregate figures on the total number of staff and their total remuneration broken down into the fixed and variable remuneration components.
305. Significant institutions shall disclose the quantitative information required in Article 450(1)(h) of Regulation (EU) 575/2013 at the level of members of the management body as separate aggregated figures for the members of the management body in its management function and for the members of the management body in its supervisory function.
306. When publishing quantitative information as required by points (g), (h) and (i) of Article 450(1) of Regulation (EU) 575/2013, institutions shall take into account the information to be collected by the Authority under the *EBA Guidelines on the Remuneration Benchmarking Exercise*. Under point (h)(iii) of Article 450(1) of Regulation (EU) 575/2013, institutions shall disclose the unvested amount of outstanding deferred remuneration and separately the amount that has vested in the previous financial year. When disclosing the amount of severance payments awarded under point (h)(vi) of Article 450(1) of Regulation (EU) 575/2013, institutions shall disclose separately the amount awarded and already paid during the financial year and the amount deferred and how severance payments were taken into account in the calculation of the ratio between the variable and the fixed remuneration.

## **Internal transparency**

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

## **PART III:**

### **REMUNERATION POLICIES AND PRACTICES RELATED TO THE SALE AND PROVISION OF RETAIL BANKING PRODUCTS AND SERVICES**

309. This Part of the Rule specifies the requirements for the design and implementation of remuneration policies and practices, in relation to the offering or provision of banking products and services to consumers by institutions as defined in paragraph 314, with a view to protecting consumers from undesirable detriment arising from the remuneration of sales staff.
310. This Part does not cover remuneration paid by credit institutions to credit intermediaries (often also referred to as 'commissions') and is without prejudice to the remuneration rules laid down under the Directive 2014/17/EU as transposed into national law and in particular under Article 7(2) of that Directive, which requires that, where creditors remunerate credit intermediaries, they shall do so in a way that does not impede the creditor, credit intermediary or appointed representative from acting honestly, fairly, transparently and professionally, taking account of the rights and interests of the consumers.
311. Relevant banking products and services are those which fall within the scope of any applicable law under which institutions are authorised or admitted to carry out their activities as defined in paragraph 314.

312. This Part is without prejudice to the application of stricter requirements specified under Article 7(4) of Directive 2014/17/EU as transposed into national law, in relation to the provision of advisory services on credit agreements as defined in Article 4(21) of that Directive.

313. This Part is without prejudice to the credit institutions' requirement to comply with the EBA Guidelines on sound remuneration policies under Articles 74(3) and 75(2) of Directive 2013/36/EU as provided in this Rule and disclosures under Article 450 of Regulation (EU) No 575/2013.

314. For the purposes of this Part, the following definitions apply:

Consumer	A natural person, who is acting for purposes which are outside his trade, business or profession.
Institutions	'Credit institutions' as defined in Article 4(1) of Regulation (EU) No 575/2013.
Banking products and/or services	<ul style="list-style-type: none"> <li>a) 'credit agreements' as defined in Article 4(3) of Directive 2014/17/EU as transposed into national law;</li> <li>b) 'deposits' as defined in Article 2(3) of Directive 2014/49/EU as transposed into national law;</li> <li>c) 'payment accounts' as defined in Article 4(12) of Directive (EU) 2015/2366 as transposed into national law;</li> <li>d) 'payment services' as defined in Article 4(3) of Directive (EU) 2015/2366 as transposed into national law;</li> <li>e) 'payment instruments' as defined in Article 4(14) of Directive (EU) 2015/2366 as transposed into national law;</li> <li>f) other means of payment, as referred to in Annex 1(5) Directive 2013/36/EU as transposed into national law ;</li> <li>g) 'electronic money' as defined in Article 2(2) of Directive 2009/110/EC as transposed into national law; and</li> <li>h) other forms of credit, in addition to that in point (a) above, as referred to in Annex 1(2) of Directive 2013/36/EU as transposed into national law and in line with Article 1(5)(e) of Regulation (EU) No 1093/2010.</li> </ul>

Management body	An institution's body or bodies, which are empowered to set the institution's strategy, objectives and overall direction, and which oversee and monitor management decision-making, and include the persons who effectively direct the business of the institution.
Relevant persons	Any natural person who is: a) working for an institution and directly offering or providing banking products or services to consumers; or b) working for an institution and directly or indirectly managing a person referred to in point (a).
Remuneration	All forms of fixed and variable remuneration, including payments made or benefits, monetary or non-monetary, awarded directly by or on behalf of institutions to relevant persons. Non-monetary benefits may include, but are not limited to, career progression, health insurance, discounts or provision of car or mobile phone, generous expense accounts or seminars.

## Outsourcing

315. In the event that the activity of the institution is in whole or in part outsourced to third parties, or carried out by another entity in other ways, institutions shall ensure that, in doing so, they comply with the requirements established in the BR/14 on Outsourcing by Credit Institutions Authorised under the Banking Act 1994 and the Guidelines on Outsourcing Arrangements (EBA/GL/2019/02). This includes, in particular, the principle, which provides that ‘the ultimate responsibility for the proper management of the risks associated with outsourcing or the outsourced activities lies with an outsourcing institution’s senior management’.

## Design for the Protection of Consumers

316. Institutions shall design and implement remuneration policies and practices that take into account the rights and interests of consumers. In particular, institutions shall ensure that monetary and/or non-monetary forms of remuneration do not

introduce incentives whereby relevant persons favour their own interests, or the institution's interests, to the detriment of consumers.

317. When designing the remuneration policies and practices, institutions shall consider whether these policies and practices introduce any risks of detriment to consumers and shall mitigate such risks from arising.
318. The human resources function of institutions shall participate in and inform the design of the remuneration policies and practices. In addition, where established, the risk management and compliance functions shall provide effective input for the design of the remuneration policies and practices.
319. For the purpose of evaluating the performance of a relevant person, institutions shall define in the remuneration policy and practices the appropriate criteria to be used to assess performance, taking into account the rights and interests of consumers.
320. When designing the remuneration policies and practices, institutions shall consider both qualitative and quantitative criteria for determining the level of variable remuneration to ensure that the rights and interests of consumers are adequately considered.
321. Institutions shall not design remuneration policies and practices that:
  - a. solely link remuneration to a quantitative target for the offer or provision of banking products and services; or
  - b. promote the offer or provision of a specific product or category of products over other products, such as products which are more profitable for the institutions or for a relevant person, to the detriment of the consumer.
322. Where the remuneration policies and practices allow for variable remuneration, institutions shall ensure that the ratio between the fixed and variable components of the remuneration is appropriately balanced and takes into account the rights and interests of consumers. Furthermore, the remuneration policies and practices in place shall allow the operation of a flexible policy on variable remuneration, including the possibility to pay no variable remuneration where appropriate.
323. Institutions shall avoid unnecessarily complex policies and practices and unclear combinations of different policies and practices.

## **Documentation, notification and accessibility**

324. Institutions shall document remuneration policies and practices, keep them for audit purposes for at least five years from the last date that they applied, and make them available to the Authority upon request. This documentation shall include, but is not limited to:
- a. the objectives of the institutions' remuneration policies and practices;
  - b. the relevant persons falling within the scope of these policies and practices;
  - c. how remuneration policies have been implemented in practice, including in particular the criteria for variable remuneration where variable remuneration is granted.
325. Before being allowed to offer banking products or services to consumers, relevant persons should be clearly informed in a simple and transparent manner of the remuneration policies and practices that are applicable to them.
326. The remuneration policies and practices should be easily accessible to all relevant persons of the institution.

## **Approval**

327. The management body approves and retains ultimate responsibility for the institution's remuneration policies and practices.
328. The management body shall seek advice from the remuneration committee where established on the institution's remuneration policies and practices in relation to the fulfilment of this Rule.
329. Where established, the compliance function shall confirm that the remuneration policies and practices comply with this Rule.
330. Changes to the remuneration policies and practices shall only be made with the approval of the management body.

## **Monitoring**

331. Institutions shall review, at least annually, their remuneration policies and practices to ensure compliance with this Rule. In particular, where an institution identifies that a residual risk of consumers' detriment might arise as a result of the design of remuneration policies and practices as referred to above, the institution shall assess under the review whether any of these residual risks are crystallising and causing detriment to consumers.

332. Where the review reveals that an institution's remuneration policies and practices do not operate as intended or prescribed, the institution shall amend its remuneration policies and practices in accordance with this Rule.

333. Institutions shall establish effective controls to check that their remuneration policies and practices are being adhered to, and to identify and address incidents of non-compliance with this Rule.

## APPENDIX 1

### MAPPING OF THE REMUNERATION REQUIREMENTS INCLUDED IN DIRECTIVE 2013/36/EU AS TRANSPOSED INTO NATIONAL LAW AND REGULATION (EU) 575/2013 AND THEIR SCOPE OF APPLICATION

<b>Remuneration requirements: Articles 74 and 92 to 96 of DIRECTIVE 2013/36 /EU and Article 450 of REGULATION (EU) 575/2013</b>	<b>All staff (institution-wide including identified staff)</b>	<b>Mandatory for identified staff; institutions shall consider applying the requirements to all staff</b>	<b>Comments</b>
<b>Art. 74</b>	x		
<b>Art. 92</b>	x		
<b>Art. 93</b>	x		
<b>Art. 94(1)(a)</b>		x	
<b>Art. 94(1)(b)</b>		x	
<b>Art. 94(1)(c)</b>	x		
<b>Art. 94(1)(d)</b>	x		
<b>Art. 94(1)(e)</b>	x		
<b>Art. 94(1)(f)</b>		x	
<b>Art. 94(1)(g)</b>		x	
<b>Art. 94(1)(g)</b>		x	

<b>Art. 94(1)(g)</b>		x	Application of the discount rate is not mandatory
<b>Art. 94(1)(h)</b>		x	
<b>Art. 94(1)(i)</b>		x	
<b>Art. 94(1)(j)</b>	x		
<b>Art. 94(1)(k)</b>	x		
<b>Art. 94(1)(l)</b>		x	
<b>Art. 94(1)(m)</b>		x	
<b>Art. 94(1)(n)</b>		x	
<b>Art. 94(1)(o)</b>		x	
<b>Art. 94(1)(p)</b>		x	
<b>Art. 94(1)(q)</b>		x	The circumvention provisions shall be applied to all staff regarding elements which are applied to all staff
<b>Art. 95</b>	Obligatory for significant institutions, other institutions shall consider establishing such a committee		
<b>Art. 96</b>	x		
<b>Art. 450 CRR</b>	Identified staff and all staff as set out in these guidelines		



## APPENDIX 2

Information with regard to the approval of higher ratios

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