

21 August 2013

Sent by email to EBA-CP-2013-11@eba.europa.eu

European Banking Authority
Tower 42
25 Old Broad Street
London EC2N 1HQ
United Kingdom

Draft RTS on criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile under Article 90(2) of the proposed Capital Requirements Directive

Dear Sir / Madam

Please find enclosed AFME's response to the Draft RTS on criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile under Article 90(2) of the proposed Capital Requirements Directive (EBA/CP/2013/11).

We would welcome a dialogue with the EBA about these important issues.

Yours sincerely,

Andrew Trapnell
Managing Director - Human Resources, Morgan Stanley
Chair, AFME Remuneration Working Group

Stefano Mazzocchi
Director, Advocacy - Deputy Head AFME Brussels

Michael Percival
Director, Prudential Regulation, AFME

Association for Financial Markets in Europe

www.afme.eu

London Office: St. Michael's House, 1 George Yard, London, EC3V 9DH T: +44 (0)20 7743 9300 F: +44 (0)20 7743 9301
Brussels Office: Square de Meeus 38 - 40, 1000 Brussels, Belgium T: +32 (0)2 401 8724 F: +32(2) 401 6868
Company Registration No: 6996678 Registered Office: St. Michael's House, 1 George Yard London EC3V 9DH

Consultation response

Draft RTS on criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile under Article 90(2) of the proposed Capital Requirements Directive

The Association for Financial Markets in Europe (AFME) represents a broad array of European and global participants in the wholesale financial markets. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

I. Overview: remuneration levels are not a proxy for risk and cannot replace an appropriate interaction between qualitative and quantitative criteria

AFME welcomes the opportunity to comment on the above captioned consultation and supports the objective of developing consistent standards for identifying staff whose professional activities could have a material impact on an institution's risk profile as defined in the Capital Requirements Directive (CRD). AFME welcomes the opportunity to engage in a constructive dialogue with the EBA, to design a framework that correctly captures material risk takers in accordance with the definition set out in the Level 1 Directive.

We strongly believe that the principal means of identifying material risk takers must remain an approach based largely on qualitative criteria. The advantage of qualitative criteria is that they are designed specifically to determine which individuals have a material impact on the risk profile of the firm, which is the overarching prudential aim of the relevant CRD Level 1 provisions. Since levels of remuneration are, at best, only weakly correlated with the degree of material risk taking, quantitative criteria are inherently prone to inaccurate identification. Nevertheless, quantitative criteria can provide a useful secondary means of ensuring comprehensive identification. In this response we make the following main points:

- The interaction between qualitative and quantitative criteria should be simplified using the quantitative criteria as a check on the output of assessments under Article 2 and Article 3(1);
- Article 4 should apply to staff identified under any of the quantitative criteria under Article 3(2);
- Article 3(2)(a) (75% and € 75k) should be removed and the threshold in Article 3(2)(c) (€500k) should be significantly increased;
- Steps should be taken to reduce the anticipated administrative burden for firms or their Supervisors; and
- Given the final RTS will not be published until mid-way through a remuneration cycle for the majority of firms, a realistic implementation date and sufficient time should be allowed, for institutions to change their processes and go through the detailed exercise to identify staff.

Association for Financial Markets in Europe

www.afme.eu

London Office: St. Michael's House, 1 George Yard, London, EC3V 9DH T: +44 (0)20 7743 9300 F: +44 (0)20 7743 9301
Brussels Office: Square de Meeus 38 – 40, 1000 Brussels, Belgium T: +32 (0)2 401 8724 F: +32(2) 401 6868
Company Registration No: 6996678 Registered Office: St. Michael's House, 1 George Yard London EC3V 9DH

II. Correct identification of material risk takers

AFME agrees that identifying material risk takers requires robust qualitative criteria, and believes that such criteria should be the mainstay of the framework. We also recognise that quantitative criteria have a role to play in the process but only insofar as they help to clarify whether an individual has a material impact on the risk profile of the firm, which is the over-arching requirement in the Level 1 Directive. Ensuring the appropriate interaction between qualitative and quantitative criteria is key to correctly identifying material risk takers. To this end, we believe the following framework should apply:

- Material risk takers are identified according to the *qualitative* criteria set out in Articles 2 and 3(1);
- A 'backstop' review is performed to assess if any individuals captured by the *quantitative* criteria set out in Article 3(2) should be added to the list of identified material risk takers;
- An institution must satisfy its competent authority that it has identified material risk takers based on the qualitative and quantitative criteria in Articles 2 and 3.

III. Drawbacks of using prescriptive quantitative remuneration criteria in isolation

The risk of using prescriptive quantitative criteria, in isolation, is that individuals who are not material risk takers will be captured. An argument could be made for any staff member at an institution having the potential to cause risk to that institution. However, the risk must be *material* for the provisions of the Level 1 Directive to apply. Where a staff member does not take credit or market risk, or is not in a position of widespread influence over operations (or other key functions e.g., Legal, Tax, HR), it is difficult to conclude that the individual has a material impact on an institution's risk profile.

An employee's level of remuneration or bonus ratio is not necessarily linked to whether the individual can have a material impact on the risk profile of the institution. There are many roles within firms where the level of pay is linked to factors that do not create material risk for an institution. Examples of roles where individuals may be paid over the proposed quantitative threshold, but may not have a material impact on the risk profile of the firm, include:

- Advisory roles, including those related to mergers and acquisitions. Where financing is provided as part of an advisory mandate, the decision to commit that financing is taken by those responsible for credit risk, who will be within scope of this RTS under other criteria;
- Relationship management roles;
- Financial advisers (providing fee based advice and services);
- Research Analysts or Economists;
- Infrastructure, control and technology functions, accounting and other back office roles - individuals having a broadly identical role to those in professional services firms such as 'Magic Circle' law firms or the major accountancy firms;
- Junior employees who cannot have a material impact on an institution's risk profile given hierarchy and governance structures in place.

As explained in more detail in our responses to questions 4 to 7, we believe the structure and calibration currently proposed in the draft RTS would result in the inappropriate identification as material risk takers of significant numbers of staff who actually should not be characterised as such. In addition, remuneration-based thresholds will result in the identified population varying year to year without any changes in the individuals' risk impact on the firm; for example staff will come in and out of scope based on absolute changes in their pay, or even as a consequence of simple movements in exchange rates. By way of illustration, total remuneration of \$650k would have been a Euro denominated amount of between €480k and €520k over the last year based solely on movements in the EUR/USD exchange rate, moving an employee paid this amount above and below the threshold without any change in their role.

To ensure compliance with the materiality and proportionality principles and to avoid the risk that quantitative criteria, applied in isolation, will lead to arbitrary outcomes, capturing a significant number of individuals who are not material risk takers, we recommend the adoption of the approach

outlined in Sections 'I. Overview' and 'II. Correct identification of material risk takers' above. Moreover, our answers to the specific questions include a number of recommended drafting changes.

IV. AFME impact analysis

AFME has gathered data from a number of member firms on the impact of various aspects of the proposals. This data indicates that the impact of the proposals will be more extensive than indicated in the EBA's analysis. In particular, 13 member institutions have contributed to this exercise. They currently have, collectively, over 3,100 identified staff.

Impact of Article 3(2)(c) - In particular, the number of staff identified under Article 3(2)(c) as earning over €500k appears to be significantly higher than that in EBA's impact assessment. Article 3(2)(c) alone increases the number of identified staff by 160%, accounting for 66% of all incremental identified staff under the proposed RTS. In its impact analysis EBA sampled data from 23 institutions and found that only 11 would identify additional staff as a result of Article 3(2)(c). In contrast, all of the 13 institutions from which AFME collected data would identify additional staff as a result of Article 3(2)(c). Furthermore, the 13 institutions in AFME's sample would have 5,523 incremental code staff based on Article 3(2)(c), compared to EBA's analysis that has only 3,004 additional staff would be identified under Article 3(2)(c), but from 23 institutions. Numbers from AFME's sample are 84% higher than EBA's sample (similarly at a level of €750k, AFME's results are 140% higher than the EBA's, and 217% higher at €1m).

As to the criterion in Article 3(2) point (a), our analysis suggests that it is likely to capture a very large number of non material risk takers, which would then be eligible for application of Article 4. For the 13 firms from which AFME collected data nearly 13,000 staff would be identified under this criterion, at least 79% of which would then need to be un-identified through Article 4. The fact that such a large percentage of those identified are then un-identified by the qualitative assessment shows that the quantitative criterion is inappropriate.

Overall, as a consequence of inappropriate quantitative criteria, our data indicate that the proposals will result in over 45,000 staff from the members from which data was received being initially identified. However, at least 75% of those staff would be eligible for un-identification under Article 4. This is an inefficient and very burdensome process for both institutions and supervisors illustrating that any quantitative criteria needs to be appropriate to ensure the robust qualitative process is not overloaded. Overall, in our sample, the criteria in the draft RTS result in an increase in the number of identified staff of almost 340%.

V. Applying criteria at group level

In a group context, when risks are managed in an integrated way, the criteria should not be assessed at the level of each institution / entity within the group covered by CRDIV. For example, in relation to the identification criteria set out at Article 3(1)(a) – (e), a materiality threshold should apply to determine whether staff of a particular group entity should be identified. A materiality threshold could be implemented by qualifying the roles performed, or by carving out those roles from the identified staff population where they are performed at a subsidiary or branch level which is not a material part of the institution's business. So, for example, the head of HR in a small branch would not be classified as identified staff.

An approach of this nature would be proportionate, and would avoid the incorrect identification of a large number of staff. It would also avoid a perverse effect on the thresholds resulting from Article 3(2)(b), which requires institutions to identify further staff as identified staff by reference to the remuneration paid to staff identified in the first instance pursuant to Article 3(1). If the class of staff captured by Article 3(1)(a)-(e) – i.e. the functional roles - is unduly large, it will capture staff who do not have significantly high rates of pay, thereby further expanding the pool of potential identified staff on the same or better terms of remuneration under Article 3(2)(b). As the Regulation is currently drafted, the Article 4 "disapplication procedure" could therefore become a large scale, burdensome and time consuming process.

If this possibility of an integrated group approach is not adopted, we believe the EBA should consider extending the application of Article 4 to also include Article 3(1), while at the same time ensuring appropriate mitigants to the foreseeable administrative burden.

VI. Proportionality

As a general concept, proportionality should be achieved through regulations being framed to achieve, but not exceed a regulatory objective. Where there are alternative ways to achieve an objective, the approach that has the lesser impact should be chosen. We are not convinced that the draft RTS meets this hurdle, because absolute quantitative thresholds are an inadequate instrument for identifying risk. In particular, we note that in order to achieve proportionate outcomes, the rules should be able to reflect the different circumstances between Member States (e.g. the very different levels of costs of labour, which will mean that the level of employee identified by an absolute compensation threshold in one Member State will be extremely different to the level of employee identified in another).

Furthermore, given the extensive impact of the proposals, it is not clear that they are consistent with the requirement in EBA Regulation (1093/2010) that regulatory standards “shall be technical, shall not imply strategic decisions or policy choices and their content shall be delimited by the legislative acts on which they are based”.

VII. Level playing field considerations

As proposed, the draft RTS would further undermine the ability of the European financial services sector to compete globally. A likely consequence of capturing large numbers of employees, who are not necessarily material risk takers, will be a substantial impairment of the hiring and retention policies of EU financial services firms, when competing for highly mobile professionals with non-EU firms. EU headquartered firms would have to apply the approach globally, leaving them at a significant competitive disadvantage when seeking to employ and retain staff outside the EU.

A similar situation ensues in relation to other businesses within Europe, which are not subject to these regulations. Highly mobile employees can move to these organisations to be remunerated without the impact of significant regulation.

VIII. Responses to the specific questions

Article 3(1), points (a) to (e)

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

In Section V (*Applying criteria at group level*) above, we have suggested the concept of a materiality threshold, without which we believe the extension of application of Article 4 to Article 3(1) would be necessary.

Additionally, we note that the terms ‘budgeting’ and ‘economic analysis’ are very broad. Typically these functions would be included under Finance, a function/role already noted as identified staff. Moreover, it is not clear why ‘business continuity planning’ – which would typically fit within other operational risk functions - needs to be specifically mentioned here; we suggest the reference to this specific role is deleted.

Article 3 – Qualitative and quantitative criteria

(...)

“e. the staff member heads a function responsible for legal affairs, taxation, human resources, information technology, budgeting, or economic analysis, ~~or business continuity planning;~~”

Article 3(1), point (f)

Q2: Can the above criteria be easily applied and are the levels of staff identified and the

provided threshold appropriate?

Article 3(1), point (g)

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

AFME agrees that individuals who have the authority to commit the firm to significant risk exposures should be identified as material risk takers. However, we do not believe that 0.25% of CET1 is an appropriate level. At that level, an institution would have to lose the entire exposure 400 times over to destroy its capital. It is not a material level, particularly if applied at subsidiary level – 0.25% of a subsidiary's CET1 could be a relatively small number.

To mitigate this, we suggest that the level be specified not in the RTS but rather that competent authorities are empowered to set a limit that is appropriate for each institution. Alternatively the level should be increased to an aggregate exposure of 5% of an institution's CET1. These proposed levels are supported by the Basel Committee proposals that define a large exposure as being above 5% of an institution's CET1. We make further observations, on which we have made some suggested drafting changes:

- The criteria in Article 3(1)(f) as framed could inadvertently catch employees in the credit function approving the credit transaction. We believe that the criteria should capture only those individuals authorizing the taking of the risk, not those who approve the transaction from a counterparty credit risk perspective.
- The phrase 'individually or collectively' is very broad and as framed could capture some junior staff on trading desks involved in committing to transactions. If this phrase refers to a decision making committee, a 'collective' responsibility could be appropriate.
- We question whether it is appropriate to specify that the measurement must apply "per transaction". There will be practical difficulties applying this approach in institutions where authority levels are based on an aggregate exposure. However, some institutions equally base authorities on a transaction level, making it difficult to prescriptively specify a level based on aggregate exposure. This difference highlights how institutions manage risk differently and calls into question the appropriateness of a prescriptive approach.
- With respect to Article 3(1)(g)(ii), though this is similar to current practice in some institutions, others may use a different percentile for their VaR calculations (e.g., 99%) or instead reference stress measures (e.g. stressed VaR) to base on potential P&L outcomes. These institutions should be able to use alternative legitimate approaches rather than create a parallel calculation. This reinforces the need to empower competent authorities to set an approach and level appropriate for each institution.
- As to Article 3(1)(h), we have also made a drafting suggestion to simplify the approach and to avoid identifying managers only because they have responsibility for a group of staff members whose sum of authorities equals or exceeds the thresholds defined in points (f) or (g). In addition, we suggest below an approach that would catch those overseeing staff identified in (f) and (g) while avoiding capturing very junior staff. If the text in (f) and (g) is left unchanged we suggest that they are made subordinate to (h), such that those identified in (f) and (g) are not themselves caught as risk takers, but those to whom they are accountable under (h) are. This would be more reflective of the actual allocation of authority and decision-making powers within firms.

Below, the suggested changes to Article 3(1), points (f) to (h), outlined in the previous paragraphs:

"f. the staff member ~~has~~, individually or collectively with other staff members, ~~authority to commit to~~ can authorise the taking of credit risk exposures of a nominal amount per transaction which represents 0.25% 5% of the institution's Common Equity Tier 1 capital;

g. in relation to an institution to which the derogation for small trading book business under Article 89(1) of Regulation (EU) No xxxx/2013 [CRR] does not apply, the staff member ~~has~~, individually or collectively with other staff members, ~~authority to commit to~~ can authorise the taking of transactions on the trading book which in aggregate represent one of the following:

i. where the standardised approach is used, an own funds requirement for market risks of ~~0.25%~~ 5% or more of the institution's Common Equity Tier 1 capital;

- ii. where an internal model based approach is used, 5% or more of the institution's internal value-at-risk limit for trading book exposures at a 95th percentile, one-tailed confidence interval level;
- h. ~~the staff member has managerial responsibility for another staff member whose professional activities have or may have a material impact on the institution's risk profile according to the internal risk identification process in Article 2 and the criteria set out in points (a) to (g) of this paragraph a group of staff members who have individual authorities to commit the institution to transactions, and the sum of those authorities equals or exceeds a threshold set out in point (f) or in point (g);~~
- i. ~~the staff member has managerial responsibility for a staff member whose professional activities have or may have a material impact on the institution's risk profile according to the internal risk identification process in Article 2;~~
- j. the staff member has, individually or collectively with other staff members, the authority to take, approve or veto decisions on the introduction of new products, material processes, or material systems. "

Article 3(2) point (a)

Q4 a) Is this criterion appropriate to identify risk takers?

Q4 b) Are the thresholds set in the criterion appropriate?

In our view, there is no reason to suggest that an individual whose variable remuneration exceeds €75k and 75% of fixed pay is a material risk taker. For example, an employee with fixed pay of €100k and variable pay of €80K would be caught, whereas an employee earning fixed pay of €300k and variable pay of €150k would not, and yet by measures of pay the second individual is more senior.

We would therefore strongly recommend the deletion of this criterion. AFME data in Section IV ('AFME impact analysis') indicates that this criterion would capture a very large number of staff who would not otherwise be identified under other criteria and that this would result in the subsequent extensive application of Article 4, and in a burdensome process both for firms and supervisors.

It would not be appropriate to use potentially awarded remuneration as that would capture many staff for whom a certain level of remuneration is theoretically possible under an institution's policies, but who would neither expect nor receive such a level of remuneration in practice.

~~Article 3(2) - "a. the staff member could, in accordance with the institution's remuneration policy, be awarded variable remuneration has been awarded variable remuneration that exceeds both of the following amounts: (...)"~~

Q4 c) What would be the number of staff members identified in addition to all other criteria within the RTS?

Q4 d) What would be the additional costs of implementation for the above criterion if an institution applies Article 4 in order to exclude staff from the group of identified staff?

As explained in Section IV above ('AFME impact analysis') the criterion in Article 3(2) point (a), is likely to capture a very large number of non material risk takers. For the 13 firms from which AFME collected data, nearly 13,000 staff would be identified under this criterion, at least 79% of whom would then need to be un-identified through Article 4.

The process of un-identification following an inappropriate quantitative identification would be inefficient and very burdensome for both institutions and supervisors. Furthermore, we suggest that institutions should be allowed to dis-apply the entire criteria where that institution can satisfy its competent authority that those identified under this criteria are as a class unlikely to have a material impact on an institution's risk profile, and that any staff who do indeed have a material impact would be identified under other criteria.

Article 3(2) point (b).

Q5 a) Can the above criterion be easily applied?

Q5 b) Would it be more appropriate to use remuneration which potentially could be awarded as a basis for this criterion?

Q5 c) What would be the difference in implementation costs if the potentially awarded remuneration would be used as a basis?

By having a threshold which is relative to the remuneration of a category of identified staff, this limit would change year on year, further accentuating the changes in the identified staff population, and the implementation challenges. Moreover, a broader comparison may inadvertently capture individuals who are not material risk takers. The comparison should only be to those in a similar function. For example, the market rate of pay for a Head of Tax who is specifically listed in Article 3(1), may be below that of a senior Research Analyst, and the pay levels between the two would not usually be compared. The appropriate comparison for a Research Analyst would be to Senior Management or to identified staff within the Research department and not to all identified staff. These comments are reflected in the suggestion below:

Article 3(2) – “b. the staff member has been awarded total gross remuneration in one of the two preceding financial years which is equal to or greater than the lowest total remuneration that was awarded in that year to a member of staff who has been identified under this RTS and who performs similar professional activities for the same entity. ~~and who either is a member of senior management or meets one of the criteria in paragraph (1) or one of the internal criteria referred to in Article 2;~~”

As to question 5 b) and c), it would not be appropriate to use ‘potentially’ awarded remuneration as that would capture many staff for whom a certain level of remuneration is theoretically possible under an institution’s policies, but who practically would neither expect nor receive such a level of remuneration. While Article 4 could be applied to un-identify those staff, the implementation inefficiencies created would be very significant (for institutions that do not have formulaic bonus structures this could in theory capture all bonus eligible employees).

Article 3(2) point (c).

Q6: Can the above criterion be easily applied and are the threshold and the levels of staff identified appropriate?

AFME recommends that the €500k threshold be significantly increased, to truly act as a backstop measure. Most importantly, to ensure the precedence of qualitative measures over quantitative, we have proposed in our Section II above that the quantitative measure is only used as a way to review the qualitative assessment. This can be achieved by making this Article 3(2)(c) subject to Article 4.

AFME’s data (see Section IV ‘AFME impact analysis’ above) indicates that the €500k criteria alone increases the number of identified staff by 160% - a measure significantly higher than that emerging from EBA’s assessment - accounting for 55% of all incremental identified staff under the proposed RTS. This demonstrates that the threshold is too low and that individuals may be captured only by quantitative thresholds, where they are not captured by any other measure that corresponds to having a material impact on risk.

We also note that we find unclear why the two preceding years are considered here (as well as in points (b) and (d)).

Article 3(2) point (d).

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

This criterion is seen by AFME members as a more proportionate approach than a flat remuneration amount. As with other thresholds, its calibration needs to result from accurate impact analysis to ensure proportionate outcomes. We refer to our comments in Section V above, on the need to apply the criteria at group level.

Interaction between Article 3 and Article 4

In relation to questions 4 to 7, we would like to comment on the scope of application of Article 4. While, as articulated in our Section II on the ‘Correct identification of material risk takers’ above,

we believe that a different approach should be adopted where qualitative criteria have a more central role, we also would like to note that under the current draft RTS structure, Article 4 should apply to staff identified under any of the criteria under Article 3(2). The existence of the article is recognition that the quantitative criteria applied in isolation may incorrectly identify staff. We believe therefore that it should apply to all the quantitative criteria in Article 3(2).

Moreover, it should be made clear that Article 4 can be applied to classes of staff, and not only to individual staff members. This approach would be appropriate where the criteria capture significant number of staff that do not in fact have a material impact on the risk profile of an institution.

These suggestions are reflected in the drafting changes below:

“Article 4 - Staff with no material impact on the risk profile

Where a member of staff or a class of staff is identified as having a material impact on an institution’s risk profile only as result of ~~either or both~~ one or more of the criteria in ~~points (a) and (b)~~ of Article 3(2) the institution may treat the professional activities of that staff member or class of staff as not having a material impact on the institution’s risk profile if each of the following conditions is met:

a. the professional activities of the staff member or class of staff are not considered to have a material impact on the institution’s risk profile pursuant to the institution’s internal identification process carried out in accordance with Article 2 (other than as a result of the application of the criteria in ~~points (a) and (b)~~ of Article 3(2));

b. the staff member or class of staff in fact does not have a material impact on the institution’s risk profile, taking into account in particular the absolute amount of variable remuneration awarded, the ~~staff member’s~~ authorities and duties of the staff member or class of staff and differences between the levels of remuneration which can be awarded in different jurisdictions where the institution undertakes business.”

Q8: Are there additional criteria which should be used to identify staff having a material impact on the institutions risk profile?

We refer to our comments in Sections I and II (‘Overview’ and ‘Correct identification of material risk takers’) which emphasize the need to correctly identify material risk takers through an appropriate interaction between qualitative and quantitative criteria and suggest an alternative approach.

Q9. Could you indicate whether all the main drivers of direct costs from the RTS have been identified in the table above? Are there any other costs or benefits missing? If yes, could you specify which ones?

We believe that all of the main drivers of direct costs from the RTS have been identified.

Q10: For institutions, could you indicate which type of costs (a, b, c, d) are you more likely to incur? Could you explain what exactly drives these costs and give us an indication of their expected scale?

For most AFME members, the ongoing costs identified in point (d) would represent the greatest burden. Particularly, for many institutions discussing and documenting the decisions to un-identify individuals incorrectly captured by the broad criteria appears to be a burdensome process that cannot be automated.

Q11: Do you agree with our analysis of the impact of the proposals in this CP? If not, can you provide any evidence or data that would explain why you disagree or might further inform our analysis of the likely impacts of the proposals?

As explained in Section IV above, our analysis indicates that the impact of the proposals will be significantly more extensive than indicated in the EBA’s analysis.

IX. Additional comments

As to Article 3(3), we suggest deleting subparagraph (a) to avoid making the definition disproportionately broad (many staff could provide advice but not be either a decision-maker or considered to have a material impact on risk; similarly, someone initiating a commitment is not making a decision).

(3) In paragraph (1), a reference to staff members having, individually or collectively with other staff members, authority to commit to transactions or exposures or to take, approve or veto a decision includes both of the following categories of staff:

a. ~~staff who are responsible for advising on or initiating such commitments or decisions;~~

b. staff who are members of a committee which has authority to make such commitments or to take such decisions.

In relation to Article 3(4), we also take the opportunity to note that the requirement to calculate amounts on a full-time equivalent basis would be problematic from an implementation perspective, as it would be difficult to overlay information from a flexible working time system to determine full-time equivalent amounts. The requirement to calculate as at the end of a financial year will also be problematic. Institutions award variable remuneration after the performance year against which it is earned. Therefore it is not possible for it to be calculated at the end of the financial year and valued at the date of award, as these dates may be some time apart.

In relation to Article 5, entry into force, institutions will need adequate time after publication to assimilate the criteria in the draft RTS into internal rules and processes and to identify staff, particularly if the final RTS is published mid-way through a remuneration cycles for many firms.

X. Conclusion

We understand that the EBA is seeking consistent application of remuneration regulation and that the prescriptive approach has been proposed to achieve that objective. While we fully endorse the need for consistency we believe that flexibility is required to allow approaches to be calibrated to take account of different circumstances between Member States and financial institutions. We believe that there should be a focus on consistent criteria to guide judgment.

To re-iterate, we have suggested the following main points:

- Identification of material risk takers must primarily rely on qualitative criteria. The interaction between qualitative and quantitative criteria should be simplified using the quantitative criteria as a check on the output of assessments under Article 2 and Article 3(1);
- Importantly, Article 4 should apply to all of the quantitative criteria under Article 3(2);
- Article 3(2)(a) (75% and € 75k) would inappropriately capture a very large number of staff and therefore should be removed. The threshold in Article 3(2)(c) (€500k) should be significantly increased;
- The RTS should not create a large and disproportionate administrative burden for firms or their Supervisors; and
- The timeframe for the finalisation of the rules and the implementation date should allow sufficient time for institutions to change their processes and go through the detailed exercise to identify staff.

Finally, we believe that there should be a greater emphasis on supervision across Member States. Regulation such as this RTS would continue to play an important role in setting clear criteria and creating a framework to guide supervisory approaches, where that is necessary. However, supervisory co-operation and collaboration, under the umbrella of the EBA, would play a greater role in ensuring that a consistent outcome is achieved.