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# 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 (Text with EEA relevance)

## 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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC[(1)], and in particular Article 94(2) thereof,

Whereas:

(1) Directive 2013/36/EU, and in particular Article 74 thereof, requires institutions to have robust governance arrangements and effective processes to identify, manage, monitor and report the risks that they are or might be exposed to. These arrangements and processes are to be comprehensive and proportionate to the nature, scale and complexity of the risks inherent in the business model and the institution's activities. They must take into account, amongst others, the specific risks identified in Articles 79 to 87 of that Directive. The arrangements and processes are evaluated by competent authorities as part of the supervisory review and evaluation process pursuant to Article 97 of that Directive. The risks identified are considered by institutions within the internal capital adequacy assessment process pursuant to Article 73 of that Directive.

(2) The framework for prudential supervision established by Directive 2013/36/EU requires that all institutions identify all members of staff whose professional activities have a material impact on the institution's risk profile. The criteria that are used to assess the materiality of the influence of the professional activities of staff on the risk profile should take into account the potential impact of staff on the institution's risk profile based on their authority and responsibilities and the institution's risk and performance indicators. The institution's internal organisation and the nature, scope and complexity of its activities should be taken into account in the assessment. The criteria should fully

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reflect all risks to which the institution or group is or may be exposed. This should also enable institutions to set proper incentives within the remuneration policy to ensure the prudent behaviour of staff and should ensure that the identification of those members of staff whose professional activities have a material impact on the institution's risk profile reflects the level of risk of different activities within the institution.

(3) In 2012, the European Banking Authority (EBA) published the results of a survey on national implementation and the practical application of the guidelines issued by the Committee of European Banking Supervisors on remuneration policies and practices (the CEBS Guidelines), which contained general criteria for the assessment of the materiality of the influence of staff on the institution's risk profile. The survey showed that the implementation by institutions and competent authorities of the remuneration provisions laid down in Directive 2006/48/EC of the European Parliament and of the Council[(2)] did not result in a sufficient degree of harmonisation. The range of remuneration practices remained inappropriately broad and, in particular, the criteria used to identify staff did not always sufficiently consider the impact of staff's professional activities on the institution's risk profile. Significant discrepancies remained in the approaches taken by different institutions and Member States to identify those staff. These regulatory technical standards should therefore build on the experience gathered in applying Directive 2006/48/EC and the CEBS Guidelines and aim to achieve a higher level of harmonisation. EBA will issue new guidelines on sound remuneration policies which comply with the principles set out in Directive 2013/36/EU, pursuant to Article 75(2) of that Directive.

(4) A set of clear qualitative and appropriate quantitative criteria should be established in order to identify the core categories of staff whose professional activities have a material impact on an institution's risk profile, ensuring a harmonised approach across the Union and covering a common set of the most relevant risks. In accordance with Article 94(2) of Directive 2013/36/EU, all the categories of staff identified by those criteria must be of staff whose professional activities have a material impact on an institution's risk profile. Institutions should also take into account the results of their own risk assessments within their internal procedures. Competent authorities should ensure a complete identification of all staff whose professional activities have a material impact on an institution's risk profile.

(5) Members of the management body have the ultimate responsibility for the institution, its strategy and activities and therefore are always able to have a material impact on the institution's risk profile. This applies both to the members of the management body in its management function who take decisions and to members of the supervisory function who oversee the decision making process and challenge decisions made.

(6) The senior management and senior staff responsible for material business units, for management of specific risk categories such as liquidity, operational or interest rate risk, and for control functions within an institution are responsible for the day-to-day management of the business, its risks, or its control functions. This includes the responsibility for making strategic or other fundamental decisions on the business's

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activities or the control framework applied. The risks taken by the business and the way they are managed are the most important factors for the institution's risk profile.

(7) In addition to those responsible for creating additional business, functions responsible for providing internal support which are crucial to the operation of the business and have authority to take decisions in those areas expose the institution to material operational and other risks. Therefore the professional activities of staff members in such functions also have a material impact on the institution's risk profile.

(8) Credit risk and market risk are typically entered into in order to generate business, therefore the impact of the activities generating those risks on the risk profile can be assessed using criteria based on limits of authority which are calculated at least annually on the basis of capital figures and approaches used for regulatory purposes, while applying a *de minimis* threshold for credit risks to ensure the proportionate application of the criteria within small institutions.

(9) The criteria to identify staff whose professional activities have a material impact on the institution's risk profile should take account of the facts that the requirements relating to the trading book can be waived for some institutions under Regulation (EU) No 575/2013 of the European Parliament and of the Council[(3)] and that limits are set in different ways between institutions using different approaches for the calculation of the capital requirements.

(10) Considering that the outcome of decisions is often influenced by the staff initiating the decision while the formal decision making power rests with more senior staff or committees, the criteria should take into account the material elements in such decision-making processes.

(11) Staff in a managerial position are responsible for the business activities in the area under their management. Therefore, appropriate criteria should ensure that members of staff are identified as having a material impact on the institution's risk profile where they are responsible for groups of staff whose activities could have a material impact on the institution's risk profile. This includes situations where the activities of individual staff members under their management do not individually have a material impact on the institution's risk profile but the overall scale of their activities could have such an impact.

(12) In addition to the qualitative criteria, appropriate quantitative criteria should be established to identify categories of staff whose professional activities have a material impact on the institution's risk profile. Total remuneration awarded depends principally on the contribution that staff make to the successful achievement of the institution's business objectives and therefore on the responsibilities, duties, abilities and skills of staff and the performance of staff and the institution. Where a member of staff is awarded total remuneration which exceeds an appropriate threshold, it is reasonable to presume that this is linked to the staff member's contribution to the institution's business objectives and to the impact of the staff member's professional activities on the risk profile of the institution. Accordingly, it is appropriate to base those quantitative criteria on the total remuneration a member of staff receives, both in absolute terms and relative to other members of staff within the same institution. In applying those quantitative

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criteria, account should, where appropriate, be taken of the fact that payment levels differ across jurisdictions. Clear and appropriate thresholds should be established to identify staff whose professional activities have a material impact on the institution's risk profile, taking into account the data collected by EBA and by competent authorities. These quantitative criteria form a strong presumption that staff have a material impact on the institution's risk profile. However, such presumptions based on quantitative criteria should not apply where institutions establish on the basis of additional objective conditions that staff do not in fact have a material impact on the institution's risk profile, taking into account all risks to which the institution is or may be exposed. The exclusion of the highest earning staff identified under these criteria should be subject to the approval of the competent authority to ensure effective and consistent application of those criteria. For staff awarded more than EUR 1 000 000 (high earners) competent authorities should inform EBA before exclusions are approved to ensure the coherent application of those criteria, in particular in such exceptional circumstances. The identification process, including the application of exclusions, should nevertheless always be subject to supervisory review in accordance with Article 92(2) of Directive 2013/36/EU.

(13) The fact that staff members are in the same remuneration bracket as senior management or risk takers may also be an indicator that the staff member's professional activities have a material impact on the institution's risk profile. When establishing the bracket, the remuneration paid to staff in control functions, support functions and members of the management body in the supervisory function should not be taken into account. In the application of this criterion, account should also be taken of the fact that payment levels differ across jurisdictions. Institutions should be allowed to demonstrate that staff who fall within that remuneration bracket, but do not meet any of the qualitative or other quantitative criteria, do not have a material impact on the institution's risk profile, taking into account all risks to which the institution is or may be exposed. The exclusion of staff with a high level of total remuneration from this criterion should be subject to a notification procedure to allow for a timely supervisory review, in order to ensure consistent application of this criterion.

(14) Competent authorities should ensure that institutions maintain a record of the assessment made and of the staff whose professional activities have been identified as having a material impact on their risk profile to enable the competent authority and auditors to review the assessment. The documentation should also include staff who have been identified under criteria based on their remuneration but for whom the professional activities are assessed as not having a material impact on the institution's risk profile.

(15) This Regulation is based on the draft regulatory technical standards submitted by EBA to the Commission.

(16) EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established

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in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council[(4)],

HAS ADOPTED THIS REGULATION:

*Article 1*

**Subject matter and scope**

This Regulation establishes 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, as referred to in Article 92(2) of Directive 2013/36/EU, at group, parent company and subsidiary levels, including institutions established in offshore financial centres.

*Article 2*

**Application of the criteria**

Without prejudice to the obligation imposed on the competent authority to ensure that institutions comply with the principles set out in Articles 92, 93 and 94 of Directive 2013/36/EU for all categories of staff whose professional activities have a material impact on an institution's risk profile pursuant to Article 92(2) of that Directive, staff who meet any of the qualitative criteria set out in Article 3 of this Regulation or any of the quantitative criteria in Article 4 of this Regulation shall be identified as having a material impact on an institution's risk profile.

*Article 3*

**Qualitative criteria**

Staff shall be deemed to have a material impact on an institution's risk profile where any of the following qualitative criteria are met:

(1) the staff member is a member of the management body in its management function;

(2) the staff member is a member of the management body in its supervisory function;

(3) the staff member is a member of the senior management;

(4) the staff member is responsible and accountable to the management body for the activities of the independent risk management function, compliance function or internal audit function;

(5) the staff member has overall responsibility for risk management within a business unit as defined in Article 142(1)(3) of Regulation (EU) No 575/2013 which has had internal capital distributed to it in accordance with Article 73 of Directive 2013/36/EU that represents at least 2 % of the internal capital of the institution (a 'material business unit');

(6) the staff member heads a material business unit;