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COMMISSION STAFF WORKING DOCUMENT

Evaluation of the deferral and pay-out in instruments rules under Directive 2013/36/EU

Accompanying the document

Report from the Commission to the European Parliament and the Council

Assessment of the remuneration rules under Directive 2013/36/EU and Regulation (EU) No 575/2013

{COM(2016) 510 final}
{SWD(2016) 265 final}

1. EXECUTIVE SUMMARY

This Staff Working Document, annexed to the Commission Report COM(2016)510, provides a detailed assessment of the Capital Requirements Directive provisions on deferral and pay-out in instruments in function of their relevance, effectiveness, efficiency, coherence, acceptability and EU added value. The focus of the assessment in this Staff Working Document on the deferral and pay-out in instruments requirements is due to the findings in the Commission Report COM(2016)510, which revealed certain shortcomings with regard to the proportional implementation of these rules.

The Commission has engaged in several work streams in order to carry out its assessment of the Capital Requirements Directive remuneration rules. The evaluation strategy consisted of a mix of stakeholders' engagement, own research, input from the European Banking Authority and a study commissioned to an external contractor. The output of these work streams was consistent in supporting the main findings with respect to deferral and pay-out in instruments: the requirements are in general positively assessed, on condition that they be applied in a more flexible and proportionate manner.

The evaluation criteria yielded positive results with regard to the relevance, effectiveness, efficiency and acceptability of these provisions overall, but revealed shortcomings in the particular cases of small and non-complex institutions and of staff with low levels of variable remuneration. A negative assessment was also made with respect to the efficiency and acceptability of the provision requiring listed institutions to the use shares, without the possibility to use share-linked instruments, for the mandatory pay-out of part of the variable remuneration in instruments under the Capital Requirements Directive. The coherence of the analysed provisions in the absence of implementation flexibilities for the above-mentioned types of institutions and staff is considered as rather low, whereas the overall EU added value of the rules is assessed positively.

2. INTRODUCTION

The Capital Requirements Directive[1] (CRD) and Regulation[2] (CRR) prescribe rules for the remuneration of staff working for credit institutions and investment firms (the CRD remuneration rules), and in particular for staff who can materially influence the risk profile of the institution (the so-called "Identified Staff").

In line with the mandate in Article 161(2) CRD, the Commission, in close cooperation with the European Banking Authority (EBA), has assessed the implementation, enforcement and efficiency of the remuneration provisions in CRD and CRR. The outcome of this assessment is reflected in the Commission report COM(2016)510. The main findings in this report are that the remuneration requirements which existed prior to CRD IV[3] can be overall positively

[1] Directive 3013/36/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, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013L0036

[2] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013R0575

[3] i.e. already existing in a very similar form in the Directive 2010/76/EU amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies (CRD III)

assessed. As for the assessment of the effectiveness and impacts of the maximum ratio between variable and fixed remuneration, introduced by CRD IV, the evidence to date is scarce and the issue may need to be revisited when more practical experience is gained.

The review also revealed certain shortcomings with regard to the proportional implementation of the rules: in the case of small and non-complex institutions and of staff with low levels of variable remuneration, the rules on deferral and pay-out in instruments applicable to the variable remuneration of Identified Staff appear costly and burdensome to implement, compared with their prudential benefits. The present Staff Working Document aims to evaluate these two provisions and their proportional application more in detail.

This introductory section explains the general calls for a more proportionate financial framework, looks at how proportionality is being dealt with in the context of the CRD remuneration rules and explains the objective and scope of this Staff Working Document.

General calls for a more proportionate financial framework

Policy-makers, the industry and supervisors share the view that the *principle of proportionality* enshrined in financial regulation is important and needs to be fostered.

In a recent Report[4], the European Parliament notes that efficient and effective financial services regulation should take due account of the proportionality principle, and calls on the Commission and the European Supervisory Authorities (ESAs) to conduct regular proportionality and effectiveness checks, particularly with regard to the requirements applicable to small and medium-sized market participants. The Banking Stakeholder Group of EBA has recently released a report[5] calling on EU supervisors and policymakers to better apply the principle of proportionality in order to find a balance between the costs and benefits of EU financial regulation.

Moreover, the Commission's recent Call for Evidence[6] on the EU regulatory framework for financial services aimed to investigate the impacts of legislation (including CRD and CRR) put in place to restore financial stability and public confidence in the financial system, including potential unintended regulatory burdens of that legislation. The objective was also to gather information on the application of the principle of proportionality. Numerous responses suggested that a more proportionate approach (i.e. allowing some exemptions) should be reflected in the application of remuneration rules, especially deferral and pay-out in instruments.

Proportionality in remuneration

The CRD remuneration rules are largely inspired by the *Principles for Sound Compensation Practices* and their *Implementation Standards*[7] adopted by the Financial Stability Board.

[4] Report on stocktaking and challenges of the EU Financial Services Regulation: impact and the way forward towards a more efficient and effective EU framework for Financial Regulation and a Capital Markets Union (2015/2106(INI)) (9.12.2015) http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2015-0360+0+DOC+XML+V0//EN

[5] Proportionality in bank regulation, a report by the EBA Banking Stakeholder Group, available at http://www.eba.europa.eu/documents/10180/807776/European+Banking+Authority+Banking+Stakeholder+Group-+Position+paper+on+proportionality.pdf

[6] Call for Evidence on EU regulatory framework for financial services (30.9.2015), available at http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/docs/consultation-document_en.pdf

[7] The Principles for Sound Compensation Practices and their Implementation Standards, available at http://www.fsb.org/what-we-do/policy-development/building-resilience-of-financial-institutions/compensation/

While those internationally agreed principles apply only to “significant” institutions, most of the CRD remuneration rules apply to all credit institutions and investment firms established in the European Economic Area (EEA), regardless of their size or significance[8]. However, CRD requires that institutions comply with the principles regarding remuneration "*in a manner and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities*" (the *principle of proportionality* as reflected in Article 92(2) CRD). An analogous provision was already included in Annex V, Section 11 of CRD III[9].

Many financial entities and supervisors plead for the disapplication of some remuneration rules with respect to certain entities, staff or awards on the basis of the principle of proportionality. This concerns in particular Article 94(1) CRD points (l) on pay-out in instruments and (m) on deferral, which were carried over from CRD III and had been applicable since 2011. Arguments have been advanced that these requirements entail compliance costs that tend to outweigh their prudential benefits in case of smaller and non-complex firms or relatively low levels of variable remuneration.

After the adoption of CRD III, Member States applied an interpretation according to which the provisions on deferral and pay-out in instruments could in certain circumstances be “waived” on the basis of the principle of proportionality. The main beneficiaries of such waivers were institutions considered small and non-complex and individuals with low levels of variable remuneration. The gross majority of Member States allowed waivers from some (but not always the same) remuneration requirements, and for all or some of these beneficiaries. The CRD remuneration provisions most often waived were deferral and pay-out in instruments. Waiver practices were nevertheless highly diverse across the Member States, and it could be argued that in some cases exemptions were allowed too easily.

The waiver practices continued after the adoption of CRD IV in 2013. However, at the occasion of EBA revising the Guidelines on remuneration, it was clarified that waivers are not in line with the legal reading of the principle of proportionality enshrined in Article 92(2) CRD IV[10]. This standpoint has met with strong opposition from the industry and by supervisors, who argued that disallowing waivers would lead to excessive costs without bringing sufficient added value in terms of prudential results.

Following an investigation of the practical application of the CRD remuneration requirements, EBA issued on 21 December 2015 an Opinion[11] addressed to the European Commission, European Parliament and the Council. In it, EBA calls for a more harmonised approach to the application of the remuneration requirements in CRD, and for legal clarification concerning the application of deferral and pay-out in instruments in accordance

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[8] Very few rules are applicable to “significant” institutions only, for example the requirement to establish a remuneration committee set out in Article 95 CRD.

[9] Directive 2010/76/EU amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010L0076

[10] Article 92(2) CRD enables and compels competent authorities to distinguish between different institutions, adjusting the concrete manner in which the remuneration principles are applied in practice. However, the application of the proportionality principle does not allow to "neutralize", that is to disregard remuneration criteria the co-legislators (the European Parliament and the Council) have themselves specified in CRD. This is in particular the case for points (l) and (m) of Article 94(1) regulating deferral and pay-out in instruments of variable remuneration, which lay down clear rules and leave no room for exemptions.

[11] Opinion of the European Banking Authority on the application of the principle of proportionality to the remuneration provisions in Directive 2013/36/EU, available at https://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-25+Opinion+on+the+Application+of+Proportionality.pdf

with the principle of proportionality. EBA considered that it would be justified to exclude certain small, non-complex institutions, as well as staff who receive low amounts of variable remuneration from the requirements to apply deferral and pay-out in instruments[12]. It considered, however, that the tools available to it are not sufficient to achieve this objective and recommended amending CRD.

Objective and scope of this Staff Working Document

This Staff Working Document, annexed to the Commission Report COM(2016)510, provides a detailed assessment of the CRD provisions on deferral and pay-out in instruments in function of their relevance, effectiveness, efficiency, coherence, acceptability and EU added value, taking into account differences in the size and type of institutions, as well as the level of the individual variable remuneration. This analysis provides a contribution to the Commission's considerations about the need for putting forward a CRD legislative amendment.

3. BACKGROUND

This section explains the objectives behind the introduction of the remuneration rules and describes what the regulatory situation was before the introduction of the rules (i.e. the baseline scenario).

The CRD remuneration rules and their objectives

The CRD remuneration rules were introduced by Directive 2010/76/EU (CRD III) and slightly amended and complemented by CRD IV and CRR. The overarching goal of CRD III was formulated as "*to ensure that the effectiveness of bank capital regulation in the EU, represented by the Capital Requirements Directive, is strengthened and any of its excessive pro-cyclical impacts on the real economy are contained while maintaining the competitive position of the EU banking industry.*"[13]

The remuneration rules, including those set out in points (l) and (m) of Article 94(1) CRD, must be seen against the background of the financial crisis that emerged in 2008. Measures to restore financial stability involved unprecedented levels of public support.

Prior to the 2008 financial crisis there was typically a high reliance on variable remuneration; variable remuneration usually made up a substantial portion of staff's pay, sometimes more than 75% of total remuneration[14]. Staff had grown to see variable remuneration (intended by the institutions to motivate and retain employees) as a normal and expected part of their remuneration package. There was an insufficient link with the institution's profitability, in the sense that while staff would share in profits, losses were predominantly borne by shareholders and, in bail-out situations, by taxpayers. The fact that the bonus systems were typically short-term focused and that variable remuneration constituted an important part of variable pay was seen to incentivize excessive risk-taking geared at maximizing short-term profits to the detriment of the long-term performance of the institution. Shortcomings in remuneration

[12]By waiving the requirement on pay-out in instruments set out in Article 94(1) point (l) CRD, Article 94(1) point (o) second paragraph CRD, requiring institutions to hold staff's discretionary pension benefits for a period of five years in the form of instruments referred to in point (l), will also be implicitly waived.
[13] CRD III Impact Assessment, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009SC0974
[14] CRD III Impact Assessment

policies and practices were thus seen as a contributing factor to the impairment of the soundness of institutions and to the disruption of financial stability[15].

The remuneration rules, including those set out in points (l) and (m) of Article 94(1) CRD, were expected to strengthen the link between pay and long-term performance and to prevent incentives for excessive risk-taking in remuneration policies[16].

Baseline

As explained above, before the crisis little attention was paid to the short-term focus and lack of risk adjustment of variable remuneration in the financial services industry.

In April 2009 the European Commission issued a Recommendation on remuneration policies in the financial services sector[17]. The Recommendation introduced a number of important principles with regard to institutions' remuneration policies, including the structure of remuneration packages, governance and performance measurement, as well as their supervision by competent authorities. The principles were however not binding on firms or competent authorities.

A Commission report of June 2010[18] revealed that a relatively high number of Member States had not initiated any measures or had taken unsatisfactory measures to implement the Recommendation. On the other hand, some Member States had implemented the more stringent rules contained in the FSB Implementation Standards. Consequently, there were wide differences in the national rules on remuneration.

Before the introduction of the CRD III remuneration rules in 2010, at EU level there were no binding rules on the structure of remuneration packages of credit institutions and investment firms, no binding governance rules ensuring that risk management is embedded in remuneration policies and no rules ensuring adequate oversight of remuneration practices by supervisors.

4. EVALUATIONS QUESTIONS

This Staff Working Document seeks to answer the following questions regarding the relevance, effectiveness, efficiency, coherence, acceptability and EU added value of the requirements on deferral and pay-out in instruments:

Relevance

- To what extent are the CRD rules on deferral and pay-out in instruments still relevant for meeting their underlying policy objectives, and do these objectives still correspond to policy needs?

[15] In addition to a problem with the structure of remuneration policies, there were shortcomings in the corporate governance systems of institutions and a lack of adequate oversight of remuneration policies by supervisors.
[16] CRD III Impact Assessment
[17] Commission Recommendation 2009/384/EC of 30 April 2009 on remuneration policies in the financial services sector, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32009H0384
[18] COM(2010) 286 final - Report on the application by Member States of the EU of the Commission 2009/384/EC Recommendation on remuneration policies in the financial services sector (02.06.2010), available at http://ec.europa.eu/internal_market/company/docs/directors-remun/com-2010-286-2_en.pdf

Effectiveness

- To what extent have the rules on deferral and pay-out in instruments met the prudential objectives of the CRD remuneration rules?

Efficiency

- To what extent do the benefits achieved through deferral and pay-out in instruments outweigh the costs and difficulties resulting from their implementation?

Coherence

- To what extent are the CRD rules on deferral and pay-out in instruments coherent internally?
- To what extent are the CRD rules on deferral and pay-out in instruments coherent with requirements on deferral and pay-out in instruments in other EU legislation in the financial sector?
- To what extent are the CRD rules on deferral and pay-out in instruments coherent with relevant international principles?

Acceptability

- To what extent can we observe changes in the perception of the CRD rules on deferral and pay-out in instruments by the targeted stakeholders?

EU added value

- To what extent do the CRD rules on deferral and pay-out in instruments continue to require action at EU level?

5. METHOD

The Commission has engaged in several work streams in order to carry out its assessment of the CRD and CRR remuneration rules. The assessment strategy consisted of a mix of stakeholders' engagement, own research, input from the European Banking Authority and a study commissioned to an external contractor.

Between May 2015 and March 2016 the Commission sought industry feedback through numerous ***bilateral meetings*** with stakeholders. These were dedicated to understanding their business specificities as well as their practical experience and concerns with regard to the application of the CRD remuneration rules. These exchanges revealed a number of concerns related to the implementation of deferral and pay-out in instruments in a proportional manner, which constituted valuable input for the Commission's assessment of the efficiency and effectiveness of these provisions. The acceptability of the rules with regard to certain types of entities and levels of remuneration could also be assessed on the basis of these stakeholders' input.

The efficiency and effectiveness of deferral and pay-out in instruments were specifically targeted through dedicated questions in the Commission ***Public Consultation*** on the CRD/CRR remuneration rules. The consultation ran between October 2015 and January 2016 and yielded 40 responses covering the industry (credit institutions, investment firms, asset managers and their associations), the legal profession, employee representatives and five Member States authorities[19].

The Consultation was complemented by a fact-finding ***stakeholder event*** hosted by the Commission in December 2015, which featured a segment dedicated to the participants' assessment of the efficiency and effectiveness of deferral and pay-out in instruments. A recurrent theme throughout the exchanges was an argument about the alleged excessively wide application of the CRD remuneration rules, and a plea from participants to allow the disapplication of some of those rules on the basis of the principle of proportionality with respect to certain entities, staff or awards[20].

Moreover, the Commission invited Member States' participation in the Public Consultation on the occasion of the ***Commission's Expert Group on Banking, Payments and Insurance***, and engaged with Member States' representatives and supervisory authorities in the framework of ***EBA's Standing Group on Governance and Remuneration***.

The contributions received in the context of these work streams provided substantive input regarding the requirements on deferral and pay-out in instruments, in terms of both the compliance difficulties faced by certain types of institutions and the perceived low prudential benefits of those requirements when applied to small and non-complex firms and to staff with low levels of variable remuneration.

As part of the assessment exercise the Commission also awarded a service contract for a ***study***[21] on a number of aspects relevant for evaluating the CRD remuneration rules. As reflected in the Terms of Reference of this study, one of the main work streams was to assess the efficiency and effectiveness of the remuneration provisions of the Directive, including deferral and pay-out in instruments. This included collecting factual data -through a survey, interviews and desk research- on how the institutions apply these rules in practice depending on their size, internal organization and activities. In particular with regard to deferral and pay-out in instruments, the Commission requested factual information about the cost and potential difficulties that compliance with these requirements induced for certain institutions. The relevance dimension was addressed through the requirement for the contractor to assess the suitability of the CRD/CRR rules in addressing the identified pre-crisis shortcomings in remuneration policies, and coherence with other jurisdictions' practices was addressed in the tender section dealing with relevant international developments.

Last but not least, in accordance with the terms of the Directive and commonly agreed cooperation modalities, ***EBA was closely associated*** to the process of evaluating the CRD remuneration rules. The EBA reports on High earners and Benchmarking remuneration practices at EU level[22] offered significant data for the assessment of the implementation and effectiveness of CRD remuneration rules. The EBA Public Consultation on its draft Guidelines on sound remuneration policies also contained a number of questions directly relevant for the assessment of the efficiency, effectiveness and acceptability of deferral and

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[19] A summary of consultation responses [as well as the non-confidential contributions] is available at http://ec.europa.eu/justice/newsroom/civil/opinion/151015_en.htm

[20] The summary of the discussions and the list of participants is available at http://ec.europa.eu/justice/newsroom/civil/events/151116_en.htm

[21] institut für finanzdienstleistungen e.V. (IFF, 2016), report available at http://ec.europa.eu/justice/civil/company-law/corporate-governance/index_en.htm.

[22] All publications available at https://www.eba.europa.eu/regulation-and-policy/remuneration/-/topic-documents/ckV8kFRsjau9/more

pay-out in instruments and their proportional application[23]. The consultation ran from March to June 2015 and received 127 responses, most of which raised concerns about the perceived limited application of the proportionality principle. Moreover, of particular relevance for the Commission's assessment is the report EBA issued in December 2015 on the Member States' implementation of the rules under the principle of proportionality. As explained more in detail in the following section, the report sheds light on Member States' diversity of approaches with regard to deferral and pay-out in instruments and is accompanied by an Opinion to the Commission setting out EBA's assessment of these provisions and outlining the main elements of a possible proposal for a legislative change aiming at ensuring their proportional application.

The data gathering exercise has been hampered to some extent by the relatively recent nature of some remuneration rules and by the waiver practices applied in a non-uniform manner by a significant number of Member States. The analysis of remuneration trends was further affected by a number of factors: (i) the harmonised criteria for the identification of the staff concerned entered into force only in 2014; (ii) the EBA Benchmarking of Remuneration practices covers only a part of the banking system[24], captures mainly large credit institutions and is not broken down per Member State; (iii) participation in the survey carried out by the external contractor was low in the case of investment firms and asset managers. The extent of the waiver practices applicable to deferral and pay-out in instruments in terms of market share of the beneficiary institutions and number of exempted Identified Staff is also difficult to quantify, given the relatively scarce information available at the moment.

Despite these limitations affecting mainly the numerical data, the information at Commission's disposal on the basis of the broad outreach described above was sufficient in order to enable a conclusive assessment of the relevance, effectiveness, efficiency, coherence, acceptability and EU added value of deferral and pay-out in instruments.

6. IMPLEMENTATION STATE OF PLAY

The deadline for transposing CRD IV into national law was 31 December 2013, with the new rules applying as of 1 January 2014.

Different practices and approaches have been observed regarding the way in which Member States interpreted and applied in national law and/or supervisory practices the principle of proportionality associated with the remuneration provisions. The notable trend was to allow waivers in particular for the deferral and pay-out in instruments requirements.

EBA has recently performed a stock-taking exercise on the way in which Member States implement the principle of proportionality with respect to the CRD remuneration provisions. Its findings are presented in a report annexed to EBA's Opinion of 21 December 2015 on the

[23] Consultation on Guidelines on sound remuneration policies (EBA/CP/2015/03), available at http://www.eba.europa.eu/news-press/calendar;jsessionid=92FD1BDDBB8AF7D0F0F1ECA3CEACD1AB?p_p_auth=BlMpQNY7&p_p_id=8&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&_8_struts_action=%2Fcalendar%2Fview_event&_8_eventId=1002371

[24] Member States are required to ensure that at least 60% of their banking system based on total assets is covered by the data.

application of the principle of proportionality addressed to the European Commission, European Parliament and the Council[25].

As per EBA's conclusions based on the information provided by national competent authorities, 18 Member States allow the non-application of deferral and 20 Member States that of pay-out in instruments. A smaller number of Member States allow for the "neutralisation" of other remuneration requirements as well (i.e. the identification of staff having a material impact on the risk profile of the institution[26], clawback[27] and the maximum ratio between variable and fixed remuneration[28]).

It also has to be noted that when Member States waive the deferral requirement, the *malus* requirement is also implicitly waived, and when they waive the pay-out in instruments requirement, the requirement for institutions to hold staff's discretionary pension benefits for a period of five years in the form of instruments[29] is also implicitly waived.

A wide variety of practices are noted with regard to the criteria and thresholds used to determine the possibility of applying waivers. Two main categories of exemption criteria can be differentiated depending on whether they are defined at the level of the institution or at the level of Identified Staff.

The criteria used in order to waive remuneration requirements at ***institution level*** concern the size, the activities or the type of the institution:

- Twelve Member States use the *size* criterion, with most of them defining size by reference to institutions' balance sheet (ranging from EUR 1 billion over a three-year period, to GBP 15 billion per year or EUR 30 billion for the partial application of waivers); six competent authorities apply a case-by-case assessment; three exempt institutions considered "non-significant" and one uses as possible exemption criteria, in addition to the balance sheet, the percentage of activities falling under CRD and the level of required own funds; four Member States supplement the numerical criteria with a risk assessment.
- Eleven Member States take into account the *activities* of the institution when deciding on granting waivers, with the majority of them using case-by-case assessments; two Member States allow the application of certain waivers to investment firms, while two others apply waivers only to the extent that the entity's activity does not pose a risk to the overall group.
- Nine Member States use criteria linked to the *nature* of the institution for grating waivers, most of them on a case-by-case basis; one Member State applies this criterion only to asset management companies, while another applies it only to non-listed banks.

With regard to exemptions granted at the ***level of Identified Staff***, two options exist:

- Entire *categories of Identified Staff* are exempted when it is judged that they do not have a material impact of their institutions' risk profile; three Member States adopted this approach.

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

[26] Three Member States

[27] Nine Member States

[28] Five Member States

[29] Article 94(1) point (o) second paragraph CRD

- Identified Staff are exempted on the basis of their *remuneration level* by nineteen Member States; eight of them use a monetary threshold for the level of variable remuneration (ranging from approx. EUR 8.000 to EUR 100.000, with a median of EUR 50.000); others use either a variable remuneration threshold or a percentage of variable remuneration in fixed remuneration (e.g. less than EUR 30.000 or less than 25%); other Member States introduced a combination of variable remuneration threshold and other criteria (e.g. less than 33% of total remuneration and less than GBP 500.000 variable); five Member States decide on a case-by-case basis.

As illustrated above, at present there is a very wide array of practices in place and considerable variations exist at the level of the numerical thresholds applied.

The fact that Member States apply proportionality on the basis of mere guidelines which leave the concrete exemption thresholds and criteria to the discretion of each competent authority risks undermining the EU level playing field and the conditions for internal market competition.

7. ANSWERS TO THE EVALUATIONS QUESTIONS

Relevance

To what extent are the CRD rules on deferral and pay-out in instruments still relevant for meeting their underlying policy objectives, and do these objectives still correspond to policy needs?

As explained in the “Background” section, inappropriate remuneration policies were considered contributing factors to the financial crisis by being conducive of short-termism and excessive risk-taking without adequate regard to long-term performance. Variable remuneration in particular was considered to have incentivised staff to take in their business decisions risks above prudent levels, because in the case of a favourable outcome staff’s potential for gain was limitless, whereas losses would be predominantly borne by other stakeholders. The matter became all the more debated in the case of systemically important institutions which, being considered “too-big-to-fail”, were expected to be bailed out using taxpayers’ money.

The objective of the CRD remuneration rules was to introduce the much needed consideration of risk management in the design of remuneration policies and to promote responsible risk-taking through the way in which remuneration packages are conceived. This was intended through a variety of measures ranging from the involvement of the risk management function in remuneration decisions, to regulating the structure of pay and the way in which variable remuneration is paid out.

Deferral, and also pay-out in instruments, are key to the objective of aligning variable remuneration with the risk profile and the long-term interests of the institution. Paying a part of the variable remuneration in instruments was aimed to bring the interests of Identified Staff in line with those of the institutions’ shareholders and/or creditors, therefore deterring Identified Staff from taking risks which would be considered excessive by these categories of stakeholders. Deferring part of the variable remuneration over three to five years aimed to ensure that Identified Staff take into account in their business decisions the long-term interests of the institution (thereby mitigating the risk of short termism), and to make it possible to apply ex-post adjustments if required by the institution’s performance and/or by the staff member’s conduct.

The need to dis-incentivise staff from taking excessive, short-term risks still exists today, as it is an important contribution, amongst other prudential regulations, to fostering financial stability and to limiting the chances of a new financial crisis. It is thus still appropriate to design remuneration packages in a way that would avoid creating undesired incentives and it remains important to align variable remuneration with the risk profile and the long-term interests of the institution. Deferral and pay-out in instruments continue to represent adequate tools to reach these policy objectives. Therefore the relevance of these CRD remuneration rules is unchanged compared to the moment they were put forward[30].

Various stakeholders, including industry representatives, supervisors, Member States and the European Banking Authority have nevertheless questioned the relevance of the deferral and pay-out in instruments requirements for small and non-complex institutions and for staff with low levels of variable remuneration.

With the ultimate goal of the CRD remuneration provisions being to contribute to an increased overall stability of the financial services sector and the economy as a whole, deferral and pay-out in instruments indeed appear particularly relevant for institutions above a certain size and of a specific nature and complexity, given their weight and interconnected position in the financial system.

The provisions are also very relevant for Identified Staff earning high levels of variable remuneration, as these high levels have the capacity to create material incentives for that staff's risk-taking behaviour. With regard to staff with non-material levels of variable remuneration, they are typically not incentivised by their remuneration scheme to take excessive short-term risks and the prudential benefits of these mechanisms are thus reduced, therefore deferral and pay-out in instruments are not fully relevant in their case.

<u>Effectiveness</u>

To what extent have the rules on deferral and pay-out in instruments met the prudential objectives of the CRD remuneration rules?

The rules on deferral and pay-out in instruments were introduced in order to align variable remuneration with the long-term risk profile and performance of institutions.

The review of the CRD remuneration provisions as reflected in Commission report COM(2016)510 assessed positively the effectiveness of deferral and pay-out in instruments rules in reaching these objectives. Deferral ensures the adjustment of remuneration in function of performance by enabling the application of *malus*. Moreover, by deferring the part of remuneration awarded in instruments, remuneration reflects the changes that occur in the prices of the instruments over a longer period, thereby ensuring a further link with long-term performance. Pay-out in equity instruments strengthens the alignment of Identified Staff's remuneration with the interests of shareholders, whereas pay-out in bail-in-able debt instruments helps to achieve alignment with creditors' interests.

[30] This conclusion is also supported from a consumers' angle: the latest Consumers Market Scoreboard (10th edition, June 2014, available at http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/10_edition/index_en.htm) reveals that the consumers' trust in banking services is still at a very low level.

Commission report COM(2016)510 thus concluded that the rules on deferral and pay-out in instruments allow aligning remuneration with the long-term risk profile and performance of institutions, thereby contributing to the ultimate goal of fostering financial stability. They are therefore considered overall effective.

Various stakeholders have nevertheless questioned the effectiveness of the deferral and pay-out in instruments requirements for small and non-complex institutions and for staff with low levels of variable remuneration. As described in Section 6 “Implementation state of play”, the rules on deferral and pay-out in instruments are to date largely not applied to this type of institutions and staff. Because of this, a proper assessment of the effectiveness of these rules in their respect is very difficult. Such assessment will therefore necessarily consist in a hypothetical exercise, looking at the likely effects *if* the rules were to be applied in practice.

Provided that a staff member receives only a non-material level of variable remuneration, then such variable remuneration would likely be insufficient to create incentives to act against the principles of sound and effective risk management. In the absence of such adverse incentives, the prudential effects of applying deferral and pay-out in instruments mechanisms would be low.

The above elements make it likely that –*if* the rules were to be applied in practice to staff receiving non-material variable remuneration – the institutions concerned would change their remuneration policies and pay out only fixed remuneration to the staff concerned, thereby breaking the link between pay and performance. The extensive feedback received from the industry, supervisors and the European Banking Authority supports this expectation.

Conclusion can therefore be drawn that the objective of the rules on deferral and pay-out in instruments of (aligning variable remuneration with the long-term risk profile and performance of institutions) would not be achieved in the case of non-material levels of variable remuneration. The rules are therefore considered ineffective for these levels of variable remuneration.

This assessment is applicable to staff earning non-material levels of variable remuneration in both small and non-complex institutions, and in larger ones. However, given that small and non-complex institutions are typically not among the institutions paying the larger portions of variable remuneration, this type of institutions would be particularly impacted.

Efficiency

To what extent do the benefits achieved through deferral and pay-out in instruments outweigh the costs and difficulties resulting from their implementation?

The benefits associated to the deferral and pay-out in instruments rules are linked to more prudent risk-taking from the part of Identified Staff as a result of their remuneration structure, which, along with other regulatory framework elements, contributes to increased financial stability.

While agreement on these benefits is widespread, quantifying them is a difficult task for a number of reasons. First of all, the positive impact of the CRD remuneration rules is at the level of staff’s incentives to engage in behaviour which does not exceed the institution’s pre-defined risk appetite and a prudent level of risk-taking. Such behavioural benefits are inherently very difficult to capture. Secondly, given that the remuneration rules are just one element of the regulatory framework put in place in the aftermath of the financial crisis, it has not been possible to observe their effects on financial stability in isolation.

The deferral and pay-out in instruments rules are nevertheless considered to have positive spill-overs in terms of enhanced stability of institutions and of the economy as a whole. Their social benefits consist in a contribution to a reduced probability or severity of future financial crisis.

Applying the CRD deferral and pay-out in instruments requirements undoubtedly generates one-off implementation costs and on-going compliance costs[31]. These can relate to the setting up of the necessary IT infrastructure, necessary human resources or to possible legal/advisory costs. In some cases there might also be indirect costs resulting from possible difficulties to attract talent or higher capital requirements (for certain investment firms), although these are very difficult to quantify.

The assessment revealed that in the case of larger and more complex institutions and in the case of staff earning a material amount of variable remuneration, the benefits of applying deferral and pay-out in instruments outweigh these costs. Larger and more complex institutions can typically benefit from economies of scale in implementing these requirements, and usually already have the necessary legal and IT resources to implement the requirements without having to resort to external consultancy services. A significant number of these institutions were already applying these mechanisms before they became compulsory, which points towards an early acknowledgement of the potential of deferral and pay-out in instruments to align remuneration with the long-term performance of the institution.

The efficiency of the deferral and pay-out in instruments requirements is therefore positively assessed in the case of larger, more complex institutions and of higher levels of variable remuneration.

However, in the case of small and non-complex institutions and of staff with low variable remuneration (regardless of the size/nature of their institution), it is widely argued that the compliance and implementation costs of deferral and pay-out in instruments exceed their prudential benefits. The efficiency of the rules is challenged also in the case of listed institutions which are limited to using shares (as opposed to share-linked instruments) for the purposes of meeting the CRD pay-out in instruments requirement. These particular cases are consecutively dealt with below.

a) The case of small institutions and low variable remuneration

In the context of its public consultation on the draft Guidelines on sound remuneration policies, the European Banking Authority made an attempt to estimate the costs institutions would incur if they were to comply fully with the rules (i.e. if large institutions were to apply the rules also to their Identified Staff earning lower variable remuneration, and if small institutions were to no longer benefit from exemptions). The results are summarised in the table below.

Table 1 – Estimates collected by EBA on the costs that would arise if institutions were to implement the rules on deferral and pay-out in instruments for all Identified Staff

[31] For an estimate of such costs, please see Table 1 below

Analysis of the major costs related to these Guidelines based on quantitative information provided during the consultation process			
	direct costs		indirect costs
type of institution	one-off	on-going	on-going
large credit institutions	1 - 5 Mio EUR	500 000 -1.5 Mio EUR	increase in fixed remuneration
	mainly related to HR and IT	mainly related to HR and IT	increase in capital requirements
small credit institutions	100 000 - 500 000 EUR	50 000 - 200 000 EUR	increase in fixed remuneration
	mainly related to HR, IT and advisory	mainly related to HR, IT and advisory	increase in capital requirements
large investment firms	1 - 2 Mio EUR	400 000 - 500 000 EUR	3 - 5 times higher fixed remuneration
	mainly related to HR and IT	mainly related to HR and IT	higher risk to business continuity
small investment firms	100 000 - 500 000 EUR	50 000 - 200 000 EUR	3 - 5 times higher fixed remuneration
	mainly related to HR, IT and advisory	mainly related to HR, IT and advisory	higher risk to business continuity

Source: EBA Final Report on Guidelines on sound remuneration policies, 21.12.2015

While the cost estimates in the case of large institutions are in absolute terms higher than those of smaller firms, it has to be noted that these costs would affect disproportionately the small institutions, for a number of reasons:

- compared to larger firms, they have a higher proportion of Identified Staff in their total staff; therefore the remuneration mechanisms would have to be maintained for a relatively higher number of Identified Staff than in the case of their larger counterparts; this led a number of small institutions to estimate that they would need one more staff member for administrative purposes if they were to apply deferral and pay-out in instruments;
- because of their lower total cost base and the relatively higher number of Identified Staff to process, the cost of complying with the deferral and pay-out in instruments requirements would be higher relative to their total administrative costs than in the case of larger institutions;
- since in absolute terms they have fewer Identified Staff than larger institutions, the per capita costs of setting-up the necessary systems and processes for administering deferral and pay-out in instruments would be higher than in the case of bigger firms.

These cumulated effects are likely to place smaller institutions at a competitive disadvantage compared to larger companies.

In addition, small and non-complex institutions usually face important costs and difficulties in setting up instruments that are appropriate for paying out variable remuneration. As opposed to bigger, listed companies[32], they most often do not have readily available instruments to pay out variable remuneration. In the case of staff with only low amounts of variable remuneration, creating such instruments would be unnecessarily costly, especially taking into account the relatively minor contribution to risk alignment of applying pay-out in instruments to such levels of remuneration.

In certain cases, difficulties with pay-out in instruments arise from the very legal form of the institution. This is particularly the case of cooperative and savings banks. Cooperative banks are very much restricted in their use of equity rights and, if at all possible, would face a complex procedure. The same goes for the use of convertible bonds; cooperative banks could only use bail-in-able bonds that can be written down. With regard to savings banks, they are unable to use equity for the purpose of paying out variable remuneration as they are state owned.

While it would be possible for these types of institutions to create a type of equity-linked instrument, this would be a difficult and costly procedure, potentially also generating important legal costs. In addition, cost would arise from having to carry out periodical valuations for the purpose of determining the value of instruments, which is not foreseen in the ordinary course of business of this type of institutions.

These important compliance costs and difficulties outweigh the lower prudential benefits that deferral and instruments have in the case of small and non-complex institutions, in particular those that typically pay out low levels of variable remuneration, compared to their larger counterparts (as explained in the Section on “Effectiveness” above).

Taking into consideration on the one hand the particular burdens triggered by the rules and on the other hand the relatively low beneficial effects, it can on balance be concluded that the application of the rules on deferral and pay-out in instruments to small and non-complex institutions is not efficient.

With regard to larger institutions, many of them are presently allowed by national regulation and/or practices to only apply the deferral and pay-put in instruments rules to staff members who receive variable remuneration above a certain threshold. If this *de minimis* threshold were no longer applied, this would lead to a substantial increase in the number of Identified Staff subject to deferral and pay-out in instruments[33], and some staff receiving a non-material level of variable remuneration would have to start complying with the rules. As per Table 1, the full application of the rules by larger institutions would imply, in addition to other indirect costs, one-off costs estimated between EUR 1 and 5 million and on-going costs estimated between EUR 400 000 and EUR 1.5 million.

These important costs would need to be balanced against the low prudential benefits that would be achieved by applying deferral and pay-out in instruments to staff with non-material levels of variable remuneration (as explained in the Section on “Effectiveness” above).

[32] Larger institutions have usually experience with creating financial instruments and therefore costs for creating instruments – where additional ones are needed – are relatively lower.

[33] It is important to note in this respect that the recent entry into force of the Delegation Regulation on Identified Staff has already led to a significant increase of the number of identified staff to whom the rules on deferral and pay-out in instruments need to be applied. This increase particularly concerned mid-management of staff often receiving relatively low variable remuneration.

It can therefore be concluded on balance that it is not efficient to apply the rules on deferral and pay-out in instruments to staff in large institutions with non-material levels of variable remuneration.

b) The specific case of listed institutions

Under Article 94(1)(l)(i) CRD, listed institutions can only use shares (and not share-linked instruments) in order to meet the CRD requirement related to the pay-out of variable remuneration in instruments.

Nevertheless, the repeated use of shares for the purpose of granting variable remuneration generates important costs and has certain drawbacks for listed institutions. It requires a rather complex procedure: institutions would need to either create new shares or buy them in the market. The use of shares generally requires shareholders' approval, which might not be granted.

Creating new shares would mean that rights of shareholders get diluted. Indeed, shares provide the staff member not only with economic interests, but also with voting rights. The requirement to each time award shares as part of the variable remuneration can result over the years in the staff member holding a considerable number of shares. The dilution of existing shareholdings could be particularly detrimental for institutions with a specific shareholding structure. Buying shares could trigger speculation and thus result in the institution needing to pay a premium for acquiring the shares. Moreover, staff may be put in a situation where, after receiving the shares, they may not be able to sell them (problems of insider dealing).

Payment in shares can be additionally complex and costly because it cannot be put in place in a uniform way in all countries given the different legal, regulatory, accounting and tax constrains and formalities. In some international jurisdictions there are even restrictions on the possibility to pay remuneration in shares.

At the same time, the exclusive use of shares does not bring a notable prudential benefit compared to a situation in which the use of share-linked instruments would also be allowed: Article 94(1)(l) reflects the legislator's wish that variable remuneration should not consist only of a cash payment. To the contrary, it must for a substantial part consist of non-cash instruments. Those non-cash instruments are meant to align the interest of the staff member with that of various stakeholders, such as shareholders and creditors, and their use is expected to contribute to the alignment of variable remuneration with the risk profile and long-term interest of the institution.

In terms of achieving these objectives, share-linked instruments whose value closely tracks the value of the underlying shares are as effective as shares. This, provided that the value of the share-linked instruments is equal to the price of the shares and its evolution does not create an incentive for risk-taking by having a leverage effect. It is also important that the share-linked instruments are not opaque, so that staff members fully understand their link with the value of the shares.

Under the above-mentioned conditions, the use of shares would not create a noteworthy prudential benefit compared to share-linked instruments. A significant majority of competent authorities and institutions concerned support this view. At the same time, share-linked instruments have the advantage that they can be applied more easily, in a less costly way and in a uniform manner worldwide to all material risk takers.

Under these terms, it would seem acceptable to allow listed institutions to use share-linked instruments whose value track the value of the underlying shares instead of or in addition to shares.

On the basis of these considerations it can be concluded that the requirement under Article 94(1)(l)(i) CRD for listed institutions to use only shares is not efficient.

Coherence

To what extent are the CRD rules on deferral and pay-out in instruments coherent internally?

As explained in Introduction, the requirements on deferral and pay-out in instruments existed already in CRD III and were nearly identical to those in CRD IV. Under both CRD III[34] and CRD IV[35], deferral and pay-out in instruments are subject to the application of the principle of proportionality, according to which institutions shall comply with the remuneration principles *"in a manner[36] and to the extent that is appropriate to their size, internal organisation and the nature, the scope and the complexity of their activities"[37]*.

In addition, Recital 9 CRD III focused specifically on deferral and pay-out in instruments. It stated that regarding those requirements, *"the principle of proportionality is of great importance since it may not always be appropriate to apply those requirements in the context of small credit institutions and investment firms"*.

The Guidelines on sound remuneration practices issued by CEBS under CRD III indicated that the application of the proportionality principle may lead to the "neutralization" of deferral and pay-out in instruments if this is reconcilable with the risk profile, risk appetite and the strategy of the institution. As explained in Section 6 "Implementation state of play", this led Member States and national supervisors to introduce *de minims* thresholds to define the institutions and staff that could avail of such neutralisation.

However, when the Commission service and the EBA confirmed that waivers (neutralisation) are legally inadmissible, this prompted strong opposition from the industry and supervisors. .

The elements set out above show that there is a certain discrepancy between on the one hand the rationale and intended application of the rules on pay-out in instruments and deferral as explained in the Recitals to the Directive, and how this rationale has been expressed and operationalised in the corresponding Article on the other hand. Internal coherence seems therefore affected.

To what extent are the CRD rules on deferral and pay-out in instruments coherent with other EU financial legislation regulating deferral and pay-out in instruments?

[34] Point 23 of Annex V of CRD III
[35] Article 92(2) of CRD IV
[36] Instead of the phrase "*in a manner*", CRD III used the term "*in a way*"
[37] The principle of proportionality is also reflected in the very similar Recital 4 CRD III and Recital 66 CRD IV; the latter states that "*the provisions of this Directive on remuneration should reflect differences between different types of institutions in a proportionate manner, taking into account their size, internal organisation and the nature, scope and complexity of their activities. In particular, it would not be proportionate to require certain types of investment firms to comply with all of those provisions*".

The Directive on Alternative Investment Fund Managers - AIFMD[38] (in its Annex II) and the Directive on Undertakings for Collective Investment in Transferable Securities[39] - UCITS V (in its Article 14b) both formulate requirements on deferral and pay-out in instruments in a wording nearly identical to that of CRD. Moreover, both those directives echo the CRD requirement that institutions subject to those directives shall comply with those requirements *"in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities"*[40].

The CRD rules on deferral and pay-out in instruments, including the wording on the proportionality principle, is therefore coherent with the AIFMD and UCITS V.

To what extent are the CRD rules on deferral and pay-out in instruments coherent with relevant international principles?

CRD remuneration rules, including deferral and pay-out in instruments, are to a large extent based on the FSB Principles for Sound Compensation Practices. Those internationally agreed principles were intended to apply to significant financial institutions only.

CRD requires the application of those requirements to all credit institutions and investment firms, regardless of their size or significance. They should be applied *"in a manner and to the extent"* appropriate to the size and type of the institution and its activities. When, however, the Directive does not provide a possibility of neutralising the requirements for some “non-significant” institutions, the Directive goes beyond the internationally agreed principles in terms of scope of application.

Acceptability

To what extent can we observe changes in the perception of the rules on deferral and pay-out in instruments by the targeted stakeholders?

Several years after the first introduction of the binding rules on deferral and pay-out in instruments in CRD III, the stakeholder feedback gathered in the context of the Commission's review of remuneration provisions indicates that these rules are in general assessed positively. Deferral is seen by the majority of stakeholders as a key mechanism to align variable remuneration with the performance of an institution and to prevent short-termism in business decisions. Pay-out in shares, equity instruments or bail-in-able debt instruments is also accepted by stakeholders as a useful tool to align the interests of Identified Staff with those of the institution’s owners and creditors, and with its long term performance.

Member States, supervisors and the industry, however, strongly reject the idea that the rules on deferral and pay-out in instruments should be applied to small and non-complex institutions and to staff with a non-material level of variable remuneration. As explained in the previous sections, after the introduction of the rules in CRD III, it was understood by practically all Member States, supervisors and industry that the principle of proportionality

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[38] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers, available at
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:174:0001:0073:EN:PDF

[39] Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0091

[40] Annex II AIFMD and Article 14b UCITS V

enshrined in the Directive allows waivers from deferral and pay-out in instruments for these institutions and staff. This led to a strong opposition when it was clarified that the text of the Directive does not in fact allow for these exemptions. Stakeholders emphasize that compliance costs affect disproportionately smaller firms and staff earning low levels of variable remuneration, compared to what is considered to be low prudential benefits.

Moreover, listed institutions, supported by the supervisors, strongly oppose the requirement to use shares (and not share-linked instruments) for the purpose of paying out variable remuneration in instruments under Article 94(1)(l)(i). They point to the difficulties of repeatedly paying out variable remuneration in shares and to the very similar prudential benefits that could be achieved for lesser cost through share-linked instruments.

These standpoints have been repeatedly expressed in response to the public consultations carried out by the European Commission and by EBA on its Remuneration guidelines, as well as in the frame of the Commission's stakeholder event and numerous bilateral meetings with stakeholders. Some key stakeholders also expressed their strong support for the EBA Opinion on the application of the principle of proportionality of 21 December 2015, which recommends the Commission to amend the CRD so as to allow waivers for deferral and pay-out in instruments, and the use of share-linked instruments by listed institutions.

In light of the above, it can unequivocally be concluded that the acceptability of the deferral and pay-out in instruments requirements is extremely low in the case of small and non-complex institutions and of staff receiving non-material levels of variable remuneration. The same applies to the requirement for listed companies to use shares for the purpose of paying out variable remuneration in instruments under Article 94(1)(l)(i).

<u>EU added value</u>

To what extent do the CRD rules on deferral and pay-out in instruments continue to require action at EU level?

A unique set of binding remuneration rules at the level of the EU is still needed in order to ensure the level-playing field, avoid fragmentation of the internal market and eliminate the risk of similar institutions being treated differently depending on the jurisdiction in which they are located. A common binding framework is also needed in order to set the basis for supervisory practices by competent authorities consistent across the EU, which is all the more relevant given that some institutions are active in more than one EU Member State.

While the CRD remuneration rules and associated delegated acts[41] brought about a necessary set of common requirements with regard to deferral and pay-out in instruments, an area which would yield further EU added value is providing harmonised rules for the interpretation and application of the principle of proportionality as regards these requirements. Such harmonised rules would allow moving from the current variety of national practices to a more uniform application of the requirements.

[41] Commission Delegated Regulation (EU) No 527/2014 (available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0527) introduced a harmonised definition of classes of instruments that adequately reflect the credit quality of an institution as a going concern and are appropriate to be used for the purposes of variable remuneration, whereas Commission Delegated Regulation (EU) No 604/2014 (available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0604) laid down qualitative and quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile.

While a degree of flexibility is needed in the application of deferral and pay-out in instruments, such easement should be properly framed and made subject to strictly defined conditions at EU level. This would prevent an excessive use of waivers and ensure coherence and a level-playing field within the EU.

8. CONCLUSIONS

The information gathered through the different work streams underpinning this evaluation is consistent in supporting the main findings with respect to deferral and pay-out in instruments: the requirements are in general positively assessed, on condition that they be applied in a more flexible and proportionate manner.

The evaluation criteria yielded positive results with regard to the relevance, effectiveness, efficiency and acceptability of these provisions overall, but revealed significant reservations in the particular cases of small and non-complex institutions and of staff with low levels of variable remuneration. A negative assessment was also made with respect to the efficiency and acceptability of the provision requiring listed institutions to use shares (and not share-linked instruments) for meeting the requirement under Article 94(1)(l)(i) CRD.

The coherence of the analysed provisions in the absence of implementation flexibilities for the above-mentioned types of institutions and staff is assessed as rather low, whereas the overall EU added value is assessed positively and will also be particularly relevant in the context of harmonising the way in which the principle of proportionality is interpreted and applied in practice.