EBA/GL/2021/13

22 November 2021

Final Report

on Guidelines on sound remuneration policies under Directive (EU) 2019/2034

Contents

Executive Summary

Investment firms have to apply sound remuneration policies to all staff and some specific requirements for the variable remuneration of staff whose professional activities have a material impact on the risk profile of the investment firms or the assets they manage (identified staff) under Directive (EU) 2019/2034 (IFD)). The IFD mandates the EBA to develop guidelines on remuneration policies for all staff as part of investment firm's internal governance arrangements, remuneration policies for identified staff that take into account the criteria in Articles 30 and 32 of the IFD and guidelines that facilitate the implementation of waivers by Member States.

The EBA published guidelines on remuneration policies under Directive 2013/36/EU (CRD) in 2015 that were applicable to credit institutions and investment firms. Those guidelines form the basis for the present guidelines, as the underlying provisions in CRD and IFD follow the same regulatory approach. In addition, the requirements for investment firms, introduced by the IFD, are further specified in these guidelines. The alignment of the frameworks for credit institutions and investment firms ensures a level playing field and cross-sectoral consistency, while the application of the principle of proportionality is taken into account.

The guidelines are addressed to investment firms as defined in Article 4(1)(1) of Directive 2014/65/EU that do not meet all of the conditions for qualifying as small and non-interconnected investment firms under Article 12(1) of Regulation (EU) 2019/2033 and competent authorities. The guidelines apply on an individual basis in accordance with Article 25 IFD and Article 7 of Regulation 2019/2033/EU (IFR) and unless Article 8 of the IFR is applied by competent authorities, on a consolidated basis. All investment firms must also comply with the national implementation of requirements under Directive 2014/65/EU (MiFID).

The guidelines specify further the requirements on remuneration policies in Directive (EU) 2019/2034 with regard to the respective governance arrangements and processes which should be applied when remuneration policies for all staff and for identified staff are implemented. Remuneration policies must be gender neutral in accordance with Directive 2019/34/EU and respect the principle of equal pay for male and female workers for equal work or work of equal value. The guidelines specify the elements that investment firms should implement in this regard.

While parts of the guidelines concern sound and gender neutral remuneration policies for all staff, the main part of the guidelines focuses on the specific provisions that apply to investment firms' remuneration policies for identified staff. In particular for identified staff, the alignment of the variable remuneration with the risk profile of the investment firms or the assets they manage is crucial.

The guidelines will be applicable as of 30 April 2022.

Background and rationale

1. Inappropriate remuneration structures have been a contributing factor to excessive and imprudent risk taking. Poorly designed remuneration policies have potentially detrimental effects on the sound management of risks, control of risk and the risk taking behaviour of individuals. Most investment firms were subject to the remuneration framework under Directive 2013/36/EU (CRD) until 26 June 2021. Since then a specific prudential framework for investment firms set by Directive (EU) 2019/2034 (IFD) has applied. A few investment firms will continue to be subject to the CRD and will have to apply for authorisation as a credit institution. Some investment firms, that have not been subject to the CRD, are subject to specific requirements on remuneration policies for the first time. The guidelines foster a consistent application of the remuneration framework set out under Articles 30 to 33 IFD.

2. To a large extent, both frameworks (CRD and IFD) are equivalent, regarding the prudential remuneration requirements that will apply to investment firms (class 2 investment firms), unless they are small and not interconnected. The main differences are that for investment firms, no specific limitation of the ratio between variable and fixed remuneration is foreseen in the directive and that they have more flexibility regarding the instruments they can use for the award of variable remuneration to identified staff. All investment firms are also subject to remuneration requirements under Directive 2014/65/EU (MiFID) that aim to ensure responsible business conduct, fair treatment of clients and the appropriate management of conflicts of interest when conducting business.

3. The remuneration requirements aim to ensure that remuneration policies are consistent with and promote sound and effective risk management, do not provide for incentives for excessive risk taking, and are aligned with the long-term interests of the investment firms across the EU.

4. To ensure a more proportionate approach, the co-legislator introduced in Article 32(4) IFD the possibility to waive the requirement that a part of the variable remuneration of identified staff is paid out in instruments and is deferred. When applied to smaller investment firms, those requirements would be too burdensome and the cost would not be commensurate with the prudential benefits. This would also be the case for staff with low levels of variable remuneration, even if they are employed by larger investment firms. While those waivers are based on thresholds provided by the IFD, Member States have some discretion regarding their implementation. The EBA has a mandate to issue guidelines under Article 32(9) IFD to facilitate the implementation of waivers.

5. The IFD reinforces the principle of equal pay for male and female workers for equal work or work of equal value which is laid down in Article 157 of the Treaty on the Functioning of the European Union (TFEU). Investment firms should operate a gender neutral remuneration policy. In

accordance with Art 26 (4) IFD, the EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, on gender neutral remuneration policies for investment firms.

Legal basis

6. The guidelines are based on Article 16 of EBA founding Regulation 1093/2010, Articles 26, 32 and 34 of the IFD. These guidelines further specify the IFD remuneration requirements. Investment firms are subject to those requirements and the guidelines, unless the investment firm determines on the basis of Article 12(1) of Regulation (EU) 2019/2033 (IFR) that it meets all conditions for qualifying as small and non–interconnected investment firms. Investment firms that are subject to Title VII of Directive 2013/36/EU in application of Article 1(2) and (5) of the IFR are not subject to these guidelines but are subject to the EBA guidelines on sound remuneration policies under CRD. The guidelines apply on the individual and consolidated basis.

7. Article 26 of the IFD requires that investment firms have robust governance arrangements, including remuneration policies and practices that are gender neutral and that are consistent with and promote sound and effective risk management. The EBA has been mandated to issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, on those arrangements, processes and mechanisms and to issue guidelines on gender neutral remuneration policies.

8. Furthermore, the EBA has been mandated to issue a report on the application of gender neutral remuneration policies by investment firms within two years of the date of publication of the guidelines on gender neutral remuneration policies.

9. Article 32(9) mandates the EBA to adopt guidelines that facilitate the implementation of the waivers encoded in paragraphs 4, 5 and 6 of this Article. Article 34(3) of the IFD mandates the EBA to develop guidelines with respect to remuneration requirements contained in Articles 30 to 33 of the IFD. All those guidelines have been developed in close cooperation with ESMA.

10. These guidelines take due account of existing remuneration guidelines pursuant to Directives 2009/65/EC, 2011/61/EU and 2014/65/EU. Investment firms also need to comply with the requirements under Directive 2014/65/EU (MiFID) and the respective ESMA Guidelines. The guidelines should also be read in conjunction with other relevant EBA guidelines, in particular guidelines concerning the internal governance for investment firms and Delegated Regulatory Regulations mandated under Articles 30 (4) and 32(8) of the IFD on the identification of staff and on other instruments and alternative arrangements for the pay-out of variable remuneration.

Rationale and objective of the guidelines

11. In line with Article 16 of the EBA founding regulation 1093/2010, as amended, the guidelines aim to ensure that a level playing field is preserved amongst investment firms within Member States, taking into account the nature, scale and complexity of their activities. The guidelines complete the relevant provisions of the IFD and IFR in order to ensure that investment firms

implement sound remuneration policies which are based on sound governance processes, take into account the investment firms' risk strategy and profile, and align the incentives of staff with the interest of owners and other stakeholders.

12. To this end, guidance is given for both investment firms and competent authorities to ensure that a risk-aligned remuneration culture and framework in the financial sector is implemented, maintained and further developed in line with the regulatory requirements. In line with the above-mentioned objectives, the guidelines specify the requirements included in the IFD on remuneration policies for all staff and the specific provisions on remuneration policies for staff whose professional activities have a material impact on the investment firms' risk profile or of the assets that it manages (identified staff) and their implementation.

13. The guidelines differentiate between the provisions applicable to all staff and provisions applicable to identified staff. As identified staff have a higher impact on the risk profile, it is appropriate that more stringent remuneration policies, including specific provisions on their variable remuneration, are applied.

14. The gender neutral remuneration policy for all staff, including identified staff, must be consistent with and promote sound and effective risk management. The remuneration policy should be consistent with the long-term strategy of the investment firm, including the overall business strategy, the corresponding risk strategy and appetite.

15. To set the appropriate incentives for long-term oriented and prudent risk taking, the remuneration policy and practices need to be transparent to staff regarding the fixed remuneration, the variable remuneration and the award criteria used. Fixed remuneration should be permanent, predetermined, non-discretionary and non-revocable. Variable remuneration should be based on performance and in exceptional cases other conditions. Opaque remuneration policies, e.g. where the conditions for payments are not transparent, are discretionary or where adjustments of the remuneration depend unilaterally on the sole discretion of the investment firm, could have unforeseen effects on staff's behaviour in terms of risk-related decisions and are therefore not consistent with the above principles.

16. Implementing a sound remuneration policy is the responsibility of the management body and, where applicable, the remuneration committee. In practice, the development of a remuneration policy needs to be supported by internal control functions and relevant corporate functions to ensure that appropriate performance and risk measurement tools are used and that contracts between investment firms and staff ensure that the remuneration policies are applied. Moreover, business units need to be involved in the development of the remuneration policy to ensure that appropriate incentives, in particular for identified staff within the business units, are set.

17. The corporate bodies which have the competencies to approve the remuneration policy may differ among countries due to national corporate law. Additionally, in some countries the corporate body that approves the remuneration policy of the management body may differ from

the one that approves the remuneration policy for identified staff in business areas and identified staff in control functions. In addition, some investment firms might be directed by only one person. For these reasons, these guidelines should be read together with the relevant national legal provisions.

18. In accordance with the IFD, investment firms have to apply the remuneration requirements at an individual and at a consolidated basis. This includes all subsidiaries of an investment firm within the prudential scope of consolidation, including in third countries, unless the application of the requirement would be unlawful in a subsidiary located in a third country.

Gender neutral remuneration policies

19. The principle of equal pay for male and female workers for equal work or work of equal value is laid down in Article 157 of the Treaty on the Functioning of the European Union (TFEU). The IFD requires investment firms to ensure that they apply a gender neutral remuneration policy for all staff, including their risk takers, i.e. a remuneration policy based on equal pay for male and female workers for equal work or work of equal value. The same principle applies to workers of all diverse genders when implemented into national law.

20. According to Article 157 TFEU, equal pay for equal work or work of equal value includes the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of their employment, from their employer. The TFEU calls for further measures to ensure equal opportunities and equal treatment of men and women in matters of employment and occupation. However, the principle of equal treatment shall not prevent Member States from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex [1] to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

21. Where the remuneration of most of the staff is subject to collective bargaining, it is easier to monitor remuneration policies are applied in a gender neutral way so that contracts are applicable independent of the gender of staff. Ensuring gender neutrality with regard to individually agreed contracts is more complex and requires a more sophisticated approach.

22. Member States and employers, in line with the Charter of Fundamental Rights of the European Union, European Convention for the Protection of Human Rights and Fundamental Freedoms and the Universal Declaration of Human Rights, should strive to avoid any discrimination within the conditions of employment, including discrimination based on gender.

23. Consequently, in addition to ensuring equal pay for the same position or positions of equal value, it is also necessary to ensure equal opportunities for all genders. Equal career perspectives help to improve the representation of the underrepresented gender in the

[1] While Article 157 TFEU uses the term 'underrepresented sex', these guidelines, in line with the terminology of the CRD, uses also the term 'underrepresented gender', both terms have the same meaning for the purpose of these guidelines.

management body of investment firms in the longer run by facilitating the existence of a diverse pool of candidates for such positions, e.g. within investment firms' senior management.

Proportionality

24. When complying with the remuneration provisions, investment firms should apply them in a manner that is appropriate to the investment firms' activities, nature, scale and complexity. This proportionality principle aims to match remuneration policies and practices consistently with the investment firms' risk profile, risk appetite and strategy, so that the objectives of the obligations are more efficiently achieved.

25. With regard to the requirement under Article 32(1)(j) of IFD that investment firms pay out at least 50% of the variable remuneration of identified staff in instruments and that they defer the pay-out for a part of the variable remuneration, the co-legislator has introduced the possibility that Member States waive the application of those provisions for investment firms that have total assets under a certain threshold set within national law and for staff with a variable remuneration of EUR 50,000 or below, when it does not represent more than one quarter of the staff member's total annual remuneration. For this purpose, the amounts of variable and fixed remuneration have to be calculated in each financial year using the amounts paid for the previous financial year. For example, to determine if the waiver can be applied to the variable remuneration of the financial year ending 31.12.2022, the investment firm should calculate the fixed remuneration awarded for 2022 and the variable remuneration awarded in 2023 for 2022, including all amounts for performance periods that ended in 2022, which may include performance periods that are longer than one year. When implementing the quantitative thresholds, Member States have some flexibility regarding the amounts, as specified further in the IFD. While the implementation of waivers and thresholds is at the discretion of Member States, the guidelines contain some procedural requirements on their application.

Identification of staff

26. All investment firms subject to remuneration requirements under IFD have to identify all staff whose professional activities have a material impact on the risk profile of the individual investment firms or the assets they manage. The guidelines aim at ensuring that the identification process of staff whose professional activities have a material impact on the risk profile of the investment firms or the assets they manage is consistently applied by all investment firms. The IFD requires investment firms to identify such staff in any case before the requirements are applied in a proportionate way to the different categories of identified staff. This also holds true if identified staff benefit from the application of waivers under Article 32(4) IFD.

27. In line with Article 25(4) IFD, the identification has also to be performed at a consolidated level. The primary responsibility for the identification process for the consolidated level lies with the Union parent undertaking. To ensure that the identification can be performed at the consolidated level, it is appropriate to require that subsidiaries should actively participate in the identification process by providing the necessary information to assess the impact of staff on

the risk profile of the investment firm or the assets it manages at a consolidated level. Staff identified at the consolidated level are subject to the remuneration requirements under IFD at the consolidated level, even if they are employed by a subsidiary that is not subject to the specific remuneration requirements under IFD on an individual level.

28. Notwithstanding the definition of criteria within the IFD and respective Commission Delegated Regulation, investment firms are obliged under the IFD to identify all staff whose professional activities have a material impact on the risk profile of the investment firm or the assets it manages and therefore investment firms should consider the need to apply additional internal criteria which ensure that the specific risk profile and internal organisation of the investment firm are taken into account.

Capital base

29. Investment firms must have a sound capital base. Remuneration represents an important cost factor for investment firms and remuneration payments influence directly the investment firm's capital base and liquidity. There is also an indirect influence on the capital base (i.e. the impact of the remuneration policy on the risks taken for which capital is required). If an investment firm falls short of its capital targets, priority is to be given to building up the necessary capital or solvency buffer and a conservative remuneration policy needs to be pursued, particularly regarding the variable remuneration. To ensure that remuneration does not endanger the financial stability of the investment firm, remuneration must also be taken into account for capital and liquidity planning purposes.

30. Article 39(2)(g) of IFD empowers competent authorities to require investment firms to limit variable remuneration as a percentage of net revenues where that remuneration is inconsistent with the maintenance of a sound capital base.

Categories of remuneration

31. In accordance with Article 30 of IFD, it must be ensured that the fixed and variable components of total remuneration are set in a way that allows a fully flexible policy on variable remuneration and reflects the business strategy of the investment firm and associated risks. Remuneration is either fixed or variable; there is no third category of remuneration. A clear distinction between those two types of remuneration is necessary to ensure that compliance with requirements on the variable remuneration of identified staff can be monitored and supervised.

32. Variable remuneration of identified staff should provide incentives for prudent risk taking in the long term and for sound risk management. Fixed remuneration should primarily reflect the relevant professional experience and organisational responsibility of staff and provide for a stable source of income.

Requirements for variable remuneration

33. Variable remuneration provides an incentive for staff members to pursue the goals and interests of the investment firm and enables them to share in its success. It is also an element of cost flexibility for investment firms. Provided that there is no incentive to assume inappropriate or excessive risks, an appropriate level of variable remuneration can benefit all stakeholders of an investment firm. A variable component linked to performance, the deferral of variable remuneration and pay-out in financial instruments can have a positive effect on 'risk-sharing' in the longer run, incentivising prudent behaviour and ensuring a safe and sound performance of the investment firm.

Risk alignment

34. It is necessary to counterbalance the incentives of variable remuneration for risk taking with measures to incentivise sound risk management. Variable remuneration needs to be aligned with the risk-related performance over time, in particular for identified staff. Otherwise such arrangements can create a 'heads I win, tails I still win' approach to risk, which encourages more risk taking than would likely be preferred by the investment firm's shareholders or creditors. To ensure a sound risk alignment of variable remuneration, staff should also not be able to transfer the downside risks to another party, e.g. through hedging or insurance.

35. Any form of variable remuneration should always be consistent with and promote sound and effective risk management. The effectiveness of risk alignment would be significantly weakened if investment firms made excessive use of retention bonuses or guaranteed variable remuneration. Therefore, investment firms need to be able to justify the use of any variable remuneration element, including retention bonuses, guaranteed variable remuneration and severance payments.

36. Remuneration has a direct or indirect influence on staff's behaviour. Variable remuneration may encourage staff to take undesirable, irresponsible and excessive risks or to sell unsuitable products in the hope of generating more turnover or making more profit in the short run, if such action would lead to an increase of staff's variable remuneration. Furthermore, staff members may be tempted to game with or manipulate information with a view to making their (measured) performance look better. For example, if the variable part of the remuneration consists predominantly of remuneration instruments that are paid out immediately, without any deferral or ex post risk adjustment mechanisms (e.g. malus or clawback), or are based on a formula that links variable remuneration only to current year revenues rather than risk-adjusted profit, there are strong incentives for staff to shy away from conservative valuation policies, to ignore concentration risks, to rig the internal transfer pricing system in their favour and to ignore risk factors, such as liquidity risk and concentration risk, that could place the investment firm under stress in the future. By connecting risk management provisions to the remuneration policy, the aforementioned risks can be counterbalanced.

37. The guidelines on risk alignment contain the general provisions that should apply to investment firms and their staff and the specific requirements that investment firms have to apply at least to the individual remuneration packages of identified staff under Articles 30 and 32 of the IFD.

Investment firms can also apply these more specific requirements and their specification within these guidelines to additional categories of staff.

38. The risk alignment process and the award process should be transparent to ensure that they have an impact on staff's behaviour as intended.

39. So-called ex ante risk adjustments are applied when the remuneration is awarded in a way that considers current and future risks and has an immediate effect on the variable remuneration awarded and on staff's risk taking behaviour.

40. Ex-post risk adjustments ensure that staff are rewarded in line with the sustainability of the performance in the long term, which is the result of decisions taken in the past. A framework for ex post risk adjustments is always necessary, also in case of multi-year accrual periods, because at the time remuneration is awarded, the ultimate performance cannot be assessed without uncertainty. Ex post risk adjustments are achieved by different means, in particular the application of deferral, malus and clawback and the pay-out in suitable instruments.

41. In order to ensure that the risk-adjusted performance is appropriately reflected in the variable remuneration, investment firms need to measure risks and performance and use a mix of different qualitative and quantitative criteria for their measurement to ensure that overall the assessment outcome is appropriate and weaknesses of single criteria are counterbalanced. This applies at all stages, the setting of the bonus pool, the actual award of remuneration and the application of ex-post risk adjustments. There are different categories of performance criteria: relative, absolute, internal and external.

42. Absolute performance measures are measures set by the investment firm on the basis of its own strategy, including its risk profile and risk appetite. Relative performance measures are measures that compare performance with peers, either 'internal' peers (i.e. within the organisation) or 'external' (i.e. similar investment firms). The advantage of absolute measures is that they are easier to set and monitor. Relative measures could encourage excessive risk taking and therefore need always to be supplemented by other metrics and controls, including the use of prudent judgmental analysis during the award process.

43. In a period of sector wide positive financial performances, external relative measures could lead to increased risk taking and a herd mentality, with a potential negative impact on the financial stability of the financial sector. In a downturn economic cycle where most investment firms perform poorly, relative external measures may lead to positive measurements of a per se negative outcome and thus to an insufficient contraction of the investment firm's total variable remuneration.

44. Similarly, internal (e.g. profits) and external (e.g. share price) variables come with both advantages and disadvantages that should be balanced carefully. Internal performance measures are able to generate more involvement of the staff members if they can influence the outcome with their own behaviour. On the other hand, such measures can be manipulated and can create distorted outcomes on a short-term basis. External performance measures are less

subject to the risk of manipulation, although, for example, attempts to artificially increase the stock price can still occur.

45. Every criterion used has its risks, limitation and advantage. Investment firms need to take these into account and weight them carefully when determining the performance and risk criteria at every level (i.e. the investment firm, the business area and the individual) and use an appropriate mix to minimise the risks and assess the performance as objectively as possible.

Pay-out process

46. The IFD requires that class 2 investment firms pay at least 50% of variable remuneration in shares, equivalent ownership rights, share-linked or equivalent non-cash instruments, certain eligible AT1 and AT2 instruments or other instruments defined within the RTS on instruments and non-cash instruments which reflect the instruments of the portfolios managed. Some investment firms and staff benefit from waivers of those requirements. When an investment firm does not issue any of those instruments, the competent authority may approve that it uses alternative arrangements which fulfil the same objectives. The awarded instruments are subject to retention periods.

47. At least 40% of variable remuneration of identified staff is subject to deferral arrangements unless the investment firm or staff member benefits from waivers under Article 32(4) IFD.

48. The above requirements regarding the pay-out of variable remuneration should ensure that the variable remuneration is aligned with the risks of the investment firm in the long term and that ex post risk adjustments can be applied as appropriate.

49. A deferral schedule is key to ensuring risk alignment effects in a remuneration package, since it allows for parts of the remuneration to be adjusted for risk outcomes over time through ex post risk adjustments. The ratio of deferred remuneration to variable remuneration and the deferral period needs to be tailored to the long-term impact of the category of identified staff throughout the business cycle and therefore arrangements may differ between different categories of identified staff and will also depend on the investment firm's business model.

50. Although variable remuneration should already be aligned with risk through ex ante risk adjustments, due to the uncertainty about the assessment and future development of risks, ex post risk adjustments are needed to keep incentives fully aligned over an appropriate time period. This can only be achieved where an appropriate part of the variable remuneration is deferred. In particular in Member States where the application of malus or clawback may not be in line with the general principles of national contract and labour law, investment firms should carefully design the instruments used for the award, the deferral and retention scheme in order to ensure that the requisite ex post risk adjustments are reflected, e.g. in price changes of the instruments.

51. In the absence of deferral arrangements, longer retention periods can help to establish some risk alignment. However, it is important to highlight that the upfront payment of instruments as

variable remuneration, even if the retention period equals the applied deferral period, is not equivalent to the deferral of instruments.

52. Retention periods affect the risk taking incentives of staff members only by extending the period during which implicit adjustments can take place. Instruments paid upfront belong to the staff member (they are vested rights) which imply that no malus clauses (i.e. no reduction of the number of instruments that will be received) can be applied to them. Even though clawback may be applicable, the ability to apply ex post risk adjustment will be weakened and is without prejudice to the national labour and contract laws.

53. Unlike retained instruments, deferred instruments allow for the application of explicit ex post risk adjustments via malus arrangements, e.g. determined by the back-testing of the underlying performance, possibly leading to a reduction of the number of instruments that will eventually vest and be paid out.

54. Explicit ex post risk adjustments should not lead to an increase of the variable remuneration as this could provide for incentives to take more risk than that which can be considered prudent from a supervisory point of view.

55. When the variable remuneration takes the form of instruments, the final monetary value received by staff depends also on the market prices or the fair value of these instruments. This implicit adjustment of remuneration due to changes of the market price of listed instruments or the fair value of non-listed instruments is not related to any explicit decision of the investment firm, but inherent to the instruments used for the award. Market prices respond to many factors and are without additional ex post risk adjustments not sufficient to align the variable remuneration with the risks taken in the long term. The same is true for the fair value, which in addition is less objective than an observed market price.

State aid and government support

56. Investment firms receiving extraordinary public financial support are often obliged to return the funds received and also to increase their capital base in line with recovery plans. Remuneration policies must be aligned with these circumstances and in such cases, in accordance with the IFD, the members of the management board should not receive any variable remuneration and under certain conditions, the variable remuneration of other staff is limited to a portion of net revenue. If in such situations variable remuneration is awarded, an even stronger risk alignment seems to be appropriate in order to contribute to the protection of the capital base and aid the recovery of the investment firm.

Supervisory review by competent authorities

57. The IFD requires competent authorities to ensure that investment firms comply with the requirements under the IFD. As part of this, competent authorities need to review the investment firms' remuneration policies and practices and their compliance with the IFD provisions and these guidelines.

58. Competent authorities should apply risk-based supervision; resources should be directed primarily to those investment firms and areas that pose most risks, taking into account their size and the nature, scope and complexity of their activities. These guidelines provide for specific areas which should be reviewed as part of the supervisory activities of competent authorities. The EBA guidelines on the supervisory review and evaluation process[2] specify further the supervisory review.

59. The assessment methodologies of competent authorities may include both on-site and off-site controls, including the examination of information and data and dedicated meetings as appropriate with the investment firms' management body, senior management and other relevant staff, in order to collect additional information and data on remuneration policies, remuneration structures and governance arrangements. The review should identify the potential implementation gaps and non-compliant practices. All findings need to be appropriately addressed to ensure that investment firms' remuneration policies and practices comply with the respective requirements in the IFD and IFR as further specified in these guidelines.

[2] https://www.eba.europa.eu/regulation-and-policy/supervisory-review-and-evaluation-process-srep-and-pillar-2

EBA/GL/2021/13

22 November 2021

Guidelines

on sound remuneration policies under Directive (EU) 2019/2034

1. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010[3]. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial investment firms must make every effort to comply with the guidelines.

2. Guidelines set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at investment firms.

Reporting requirements

3. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by 16.05.2022. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website with the reference 'EBA/GL/2021/13'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.

4. Notifications will be published on the EBA website in line with Article 16(3).

[3] Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p.12).

2. Subject matter, scope and definitions

Subject matter

5. These guidelines specify further, in accordance with Article 26(4) and Article 34(3) of Directive 2019/2034, the sound and gender neutral remuneration policies that investment firms should have in place for all staff and for staff whose professional activities have a material impact on the risk profile of investment firms or the assets they manage and facilitate the implementation of the derogations under paragraphs 4, 5, 6 of Article 32 of Directive (EU) 2019/2034.

6. While investment firms are required to have remuneration policies for all staff, additional requirements apply to remuneration policies and the variable remuneration of identified staff. Investment firms may apply on their own initiative the provisions of these guidelines concerning identified staff to all their staff.

Addressees

7. These guidelines are addressed to competent authorities as referred to in Article 4 (2), point (viii) of Regulation No 1093/2010 and as defined in Article 3 (1), point 5 of Directive (EU) 2019/2034, and to financial institutions as referred to in Article 4 (1) of Regulation (EU) 1093/2010 that are investment firms as defined in Article 4(1)(1) of Directive 2014/65/EU, that do not fall under Article 2 (2) of Directive (EU) 2019/2034 and do not meet all of the conditions to qualify as small and non-interconnected investment firms under Article 12(1) of Regulation (EU) 2019/2033.

Scope of application

8. These guidelines apply on an individual and consolidated basis within the scope set out in Article 25 of Directive 2019/2034/EU and Article 7 of Regulation 2019/2033/EU.

Definitions

9. The terms used and defined in Directive 2019/34/EU, Directive 2014/65/EU and Regulation (EU) No 2033/2019 have the same meaning in the guidelines. In addition, for the purposes of these guidelines, the following definitions apply:

Remuneration	means all forms of fixed and variable remuneration and includes payments and benefits, monetary or non-monetary, awarded directly to staff by or on behalf of investment firms in exchange for professional services rendered by staff, carried interest payments

	within the meaning of Article 4(1)(d) of Directive 2011/61/EU[4], and other payments made via methods and vehicles which, if they were not considered as remuneration, would lead to a circumvention[5] of the remuneration requirements of Directive (EU) 2019/2034.
Fixed remuneration	means payments or benefits for staff which comply with the conditions for its award set out in section 7.
Variable remuneration	means all remuneration that is not fixed.
Routine employment packages	means ancillary components of remuneration that are obtainable for a wide population of staff or staff in specified functions based on predetermined selection criteria, including, for example, healthcare, child care facilities or proportionate regular pension contributions on top of the mandatory regime and travel allowance.
Retention bonus	means variable remuneration awarded on the condition that staff stay in the investment firm for a predefined period of time.
Staff	means all employees of an investment firm and its subsidiaries on a consolidated basis and all members of their respective management bodies in its management function and in its supervisory function.
Identified staff	means staff whose professional activities have a material impact on the investment firm's individual or the group's risk profile or of the assets that it manages in accordance with the criteria set out in Article 30(1) of Directive (EU) 2019/2034, the Commission Delegated Regulation adopted under the empowerment within the last subparagraph of Article 30(4) of this Directive (RTS on identified staff) and, where appropriate to ensure a complete identification of staff whose professional activities have a material impact on the risk profile, additional criteria defined by the investment firm.
Prudential consolidation	means the application of the prudential rules set out in Article 25(4) of Directive (EU) 2019/2034 and Article 7 of Regulation (EU) 2019/2033.
Underrepresented gender	means the less represented male or female gender.
Gender pay gap	means the difference between the average gross hourly earnings of men and women expressed as a percentage of the average gross hourly earnings of men.
Union parent undertaking	means a Union parent investment firm, Union parent investment holding company or Union parent mixed financial holding company that is required to abide by the prudential requirements on the basis of the consolidated situation in accordance with Article 7 of Regulation (EU) 2019/2033.

[4] Directive 2011/61/EU …. of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulation (EC) No 1060/2009 and (EU) No 1095/2010 (AIFMD).

[5] Regarding circumvention please refer to section 10.2 of these guidelines.

Consolidating institution	means the institution or investment firm which is required to abide by the prudential requirements on the basis of the consolidated situation in accordance with Part One, Title II, Chapter 2 of Regulation (EU) No 575/2013 and Article 109 of Directive 2013/36/EU or Article 7 of Regulation (EU) 2019/2033. Any reference to the term 'consolidating institution' includes the Union parent undertaking.
Bonus pool	means the maximum amount of variable remuneration which can be awarded in the award process set at the level of the investment firm or an investment firm's business unit.
Accrual period	means the period of time for which the performance is assessed and measured for the purposes of determining an award of variable remuneration.
Non-revolving multi-year accrual period	means a multi-year accrual period that does not overlap with other multi-year accrual periods.
Award	means the granting of variable remuneration for a specific accrual period, independently of the actual point in time where the awarded amount is paid.
Vesting	means the effect by which the staff member becomes the legal owner of the variable remuneration awarded, independent of the instrument which is used for the payment or if the payment is subject to additional retention periods or clawback arrangements.
Upfront payments	means payments which are made immediately after the accrual period and which are not deferred.
Deferral period	means the period of time between the award and the vesting of the variable remuneration during which staff are not the legal owner of the remuneration awarded.
Instruments	means those financial instruments, other contracts or vehicles that fall within one of the categories referred to in Article 32(1)(j) of Directive (EU) 2019/2034.
Retention period	means a period of time after the vesting of instruments which have been awarded as variable remuneration during which they cannot be sold or accessed.
Malus	means an arrangement that permits the investment firm to reduce the value of all or part of deferred variable remuneration based on ex post risk adjustments before it has vested.
Clawback	means an arrangement under which the staff member has to return ownership of an amount of variable remuneration paid in the past or which has already vested to the investment firm under certain conditions.
Share-linked instruments	means those instruments whose value is based on the value of the stock and that have the share value as a reference point, e.g. stock appreciation rights, types of synthetic shares.
Shareholders	means a person who owns shares in an investment firm or, depending on the legal form of an investment firm, other owners or members of the investment firm.

Severance payments	means payments relating to the early termination of a contract, i.e. in the case of temporary contracts a termination before the end date of the contract and in the case of indefinite contracts before the contractual or legal retirement, by an investment firm or its subsidiaries.

3. Implementation

Date of application

10. These guidelines apply from 30 April 2022.

Transitional provisions

11. Investment firms should implement any adjustments of their remuneration policies by 30 April 2022 and update the required documentation accordingly. Where shareholder approvals are required for such revisions, approvals should be requested before 30 June 2022. Without prejudice to the implementation of Directive (EU) 2019/2014 into national law, the remuneration policy should be applied in line with these guidelines for the performance year starting after 31 December 2021.

4. Guidelines

Title I - Remuneration policies

1. Remuneration policies for all staff

12. In accordance with Article 26 of Directive (EU) 2019/2034, investment firms are required to have in place a remuneration policy for all staff, taking into account the criteria within Articles 28 to 33 of this Directive and these guidelines. The remuneration policy for all staff should be gender neutral, i.e. staff, independent of their gender, should be equally remunerated for equal work or work of equal value in line with point 12 of Article 3(1) of Directive (EU) 2019/2034 and Article 157 TFEU. There should also be a gender neutral approach to pay increases and career progression.

13. The remuneration policy should specify all components of remuneration and include also the pension policy, including, where relevant, the framework for early retirements. The remuneration policy should also set a framework for other persons acting on behalf of the investment firm (e.g. tied agents), ensuring that the payments made are providing incentives for prudent risk taking and do not provide for any incentive for excessive risk taking or the mis-selling of products.

14. The fixed remuneration of staff should reflect their professional experience and organisational responsibility taking into account the level of education, the degree of seniority, the level of expertise and skills, the constraints (e.g. social, economic, cultural or other relevant factors) and job experience, the relevant business activity and remuneration level of the geographical location. The fixed remuneration should be gender neutral in the same way as the variable remuneration.

15. Where an investment firm benefits from extraordinary public financial support, the investment firm should ensure that the remuneration policy for all staff is consistent with the requirements under Article 31 of Directive (EU) 2019/2034.

16. The investment firm's remuneration policy for all staff should be consistent with the objectives of the investment firm's business and risk strategy, including environmental, social and governance (ESG[6]) risk-related objectives, corporate culture and values, risk culture, including with regard to environmental, social and governance (ESG) risk factors, long-term interests of the investment firm, and the measures used to avoid conflicts of interest, encourage prudent risk taking and responsible business conduct. Changes of such objectives and measures should be taken into account when updating the remuneration policy. Investment firms should ensure that remuneration practices are aligned with their overall risk appetite, taking into account all

[6] See also Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector

risks, including reputational risks and operational risks resulting from the mis-selling of products. Investment firms should also take into account the long-term interests of shareholders or owners, depending on the legal form of the investment firm.

17. Investment firms should be able to demonstrate to the competent authorities that the remuneration policy and practices are consistent with and promote sound and effective risk management.

18. Where variable remuneration is awarded, such awards should be based on the investment firms', staff's and, where applicable, business units' performance and take into account the risks taken. The remuneration policy should make a clear distinction with regard to the variable remuneration and the performance assessment between the operating business, corporate and control functions. Investment firms should consider which elements of the remuneration policy on the variable remuneration of identified staff under Article 32 of IFD should be included in the remuneration policy for all staff.

19. The remuneration policy should be consistent with the requirement for an investment firm to have a sound capital base. The remuneration policy should also take into account possible restrictions on distributions under Article 39 of Directive (EU) 2019/2034.

20. The remuneration policy should contain:

    a. the performance objectives for the investment firm, business areas and staff;

    b. the methods for the measurement of performance, including the performance criteria;

    c. the structure of variable remuneration, including where applicable the instruments in which parts of the variable remuneration are awarded;

    d. the ex ante and ex post risk adjustment measures of the variable remuneration[7].

21. Investment firms should ensure that potential conflicts of interest caused by the pay-out of instruments as part of the variable or fixed remuneration are identified and managed. This includes ensuring that insider trading rules are complied with and that no measures are taken that can have a short-term impact on the share or instruments price.

22. Where remuneration policies or group remuneration policies are implemented in investment firms, including in their subsidiaries, and the staff of the investment firm are also the majority owners of the investment firm or the subsidiary, the remuneration policy should be adjusted to the specific situation of these investment firms or subsidiaries. For identified staff, the investment firm should ensure that the remuneration policy complies with the relevant requirements within Articles 30 and 32 of Directive (EU) 2019/2034 and these guidelines on an individual and where applicable consolidated level.

[7] Specific requirements for the remuneration of identified staff and its risk alignment are contained in Titles III and IV of these guidelines.

23. Without prejudice to any measures adopted by Member States[8] to prevent or compensate for disadvantages in professional careers of the underrepresented sex[9], the remuneration policy and all related employment conditions that have an impact on the pay per unit of measurement or time rate should be gender neutral, i.e. there should be no differentiation between staff of the male, female or diverse genders.

24. A gender neutral remuneration policy should ensure that all aspects of the remuneration policy are gender neutral, including the award and pay-out conditions for remuneration. Investment firms should be able to demonstrate that the remuneration policy is gender neutral.

25. When determining the pay per unit of measurement or time, investment firms should duly consider the remuneration awarded, working time arrangements, annual leave periods and other financial and non-financial benefits. Investment firms may use as a unit of measurement the annual gross remuneration of staff calculated on a full-time equivalent basis.

26. In order to monitor the application of gender neutral remuneration policies, investment firms should document appropriately the value of the position, e.g. by documenting job descriptions or defining wage categories, for all staff members or categories of staff and determine which positions are considered as having an equal value, e.g. by implementing a job classification system, taking into account at least the type of activities, tasks and duties assigned to the position or staff member. Where a job classification system is used for determining pay, it should be based on the same criteria for men, women and staff of diverse genders and so drawn up as to exclude any discrimination, including on grounds of gender.

27. Investment firms may consider in a gender neutral manner additional aspects when determining the remuneration of staff. Such aspects may include:

    a. educational, professional and training requirements, skills, effort and responsibility, work undertaken and the nature of tasks involved[10];

    b. the place of employment and its costs of living;

    c. the hierarchical level of the staff and if staff has managerial responsibilities;

    d. the level of formal education of staff;

    e. the scarcity of staff available in the labour market for specialised positions;

    f. the nature of the employment contract, including if it is temporary or a contract with an indefinite period;

[8] E.g. when implementing Directive 2006/54/EC

[9] While Article 157 TFEU uses the term 'underrepresented sex', these guidelines, in line with the terminology of the CRD, use also the term 'underrepresented gender', both terms have the same meaning for the purpose of this guideline.

[10] See also Commission recommendation of 7.3.2014 on strengthening the principle of equal pay between men and women through transparency

g. the length of professional experience of staff;

h. professional certifications of staff;

i. appropriate benefits, including the payment of additional household and child allowances to staff with spouses and dependent family members.

2. Governance of remuneration

2.1 Responsibilities, design, approval and oversight of the remuneration policy

28. The management body[11] in its supervisory function (hereafter 'supervisory function') should be responsible for adopting and maintaining the remuneration policy of the investment firm, and overseeing its implementation to ensure it is fully operating as intended. The supervisory function should also approve any subsequent material exemptions made for individual staff members and changes to the remuneration policy and carefully consider and monitor their effects. Any exemptions should not be based on gender considerations or other aspects that would be discriminating, should be well reasoned and should be in line with the remuneration requirements under national law.

29. The supervisory function should collectively have adequate knowledge, skills and experience with regard to remuneration policies and practices as well as of incentives and risks that can arise therefrom. This should include knowledge, skills and experience with regard to the mechanisms for aligning the remuneration structure to investment firms' risk profiles and capital structure.

30. The supervisory function should ensure that the investment firm's remuneration policies and practices are appropriately implemented and aligned with the investment firm's overall corporate governance framework, corporate and risk culture, risk appetite and the related governance processes.

31. Conflicts of interests with regard to the remuneration policy and remuneration awarded should be identified and appropriately mitigated, including by establishing objective award criteria based on the internal reporting system, appropriate controls and the four eyes principle. The remuneration policy should ensure that no material conflicts of interest arise, including for staff in control functions.

32. The remuneration policy and practices and the procedures to determine them should be clear, well documented and transparent. Proper documentation on the decision-making process (e.g.

[11] Different management body structures can be observed in European countries. In some countries a unitary structure is common, i.e. supervisory and management functions of the board are exercised by only one body. In other countries a dual structure is common, with two independent bodies being established, one for the management function and the other for the supervision of the management function.

minutes of relevant meetings, relevant reports, and other relevant documents) and the reasoning behind the remuneration policy should be maintained.

33. The supervisory and management functions and, where established, the remuneration and the risk committees should work closely together and ensure that the remuneration policy is consistent with and promotes sound and effective risk management.

34. The remuneration policy should provide for an effective framework for performance measurement, risk adjustment and the linkages of performance to reward.

35. The compliance function and the risk management function, where established,[12] or staff entrusted with the performance of risk management procedures (hereinafter it should be understood that a reference to the risk management function applies in the same way to staff entrusted with risk management procedures, where such a function is not established), should provide effective input in accordance with their roles into the setting of bonus pools, performance criteria and remuneration awards where those functions have concerns regarding the impact on staff behaviour and the riskiness of the business undertaken.

36. The supervisory function should determine and oversee the remuneration of the members of the management function and, if the remuneration committee referred to in section 2.4 has not been established, oversee directly the remuneration of the senior officers in the independent control functions, including the compliance function and the risk management function, where established.

37. The supervisory function should take into account the input provided by all competent corporate functions and bodies (e.g. committees, control functions[13], human resources, legal, strategic planning, budget function, etc.) and business units about the design, implementation and oversight of the investment firm's remuneration policies.

38. The human resources function should participate in and inform on the drawing up and the evaluation of the remuneration policy for the investment firm, including the remuneration structure, the aspect of gender neutrality, remuneration levels and incentive schemes, in a way that would not only attract and retain the staff the investment firm needs, but also ensure that the remuneration policy is aligned with the investment firm's risk profile.

39. The risk management function should assist in and inform on the definition of suitable risk-adjusted performance measures (including ex post adjustments), as well as with assess how the variable remuneration structure affects the risk profile and culture of the investment firm. The risk management function should validate and assess risk adjustment data as well as be invited to attend the meetings of the remuneration committee on this matter.

40. The compliance function should analyse how the remuneration policy affects the investment firm's compliance with legislation, regulations, internal policies and risk culture and should

[12] See EBA guidelines on internal governance for investment firms

[13] See EBA guidelines on internal governance for investment firms

report all identified compliance risks and issues of non-compliance to the management body, both in its management and supervisory functions. The findings of the compliance function should be taken into account by the supervisory function during the approval, review procedures and oversight of the remuneration policy.

41. The internal audit function, where established, should carry out an independent review of the design, implementation and effects of the investment firm's remuneration policies on its risk profile and the way these effects are managed in line with the guidelines provided in section 2.5. The review may be performed by another group entity or outsourced to an external party.

42. Within a group context, the competent functions within the Union parent undertaking and subsidiaries should interact and exchange information as appropriate. Investment firms should also exchange information as appropriate with their consolidating institution, in situations where the consolidating institution is subject to Directive 2013/36/EU.

2.2 Shareholders' involvement

43. Depending on the investment firm's legal form and on the applicable national law, the approval of an investment firm's remuneration policy and, where appropriate, decisions relating to the remuneration of members of the management body and other identified staff may also be assigned to the shareholders' meeting in accordance with national company law[14]. The shareholders' vote may be either consultative or binding.

44. Where the approval of the remuneration of individual members of the management body and other identified staff is assigned to shareholders, shareholders should approve all components of remuneration, including severance payments. Where the approval of the remuneration policy is subject to approval by the shareholders, they should also either approve ex ante the maximum amount of the payments that can be awarded to the management body and other identified staff in the event of early termination of a contract or criteria for the determination of such amounts.

45. In order that shareholders can make informed decisions in line with paragraphs 43 and 44, the supervisory function should ensure that the investment firm provides them with adequate information regarding the remuneration policy designed to help them to assess the incentive structure and the extent to which risk taking is being incentivised and controlled as well as the overall cost of the remuneration structure. Such information should be provided well in advance of the relevant shareholders' meeting. Detailed information on remuneration policies and on their modifications, on procedures and decision-making processes to set a remuneration package should be provided and include the following:

    a. the remuneration components;

[14] See also Shareholders Rights Directive 2007/36, as amended by Directive 2017/828, Articles 9a and 9b.

b. main characteristics and objectives of the remuneration packages and their alignment with the business and risk strategy, including the risk appetite and corporate values of the investment firm;

c. how it is ensured that the remuneration policy is gender neutral;

d. how the points under (b) are taken into account in ex ante/ex post adjustments, in particular for identified staff.

46. The supervisory function remains responsible for the proposals submitted to the shareholders' meeting, as well as for the actual implementation and oversight of any changes to the remuneration policies and practices.

2.3 Setting up a remuneration committee

47. Unless otherwise specified by national law, an investment firm with on and off-balance-sheet assets valued on average at more than EUR 100 million over the four-year period immediately preceding the given financial year must establish a remuneration committee to advise the management body in its supervisory function and to prepare the decisions to be taken by this body.

48. The remuneration committee might be established at group level, including in situations where the consolidating institution is subject to Directive 2013/36/EU. The provisions regarding the composition of the remuneration committee specified in section 2.4.1. apply also if the committee is established at group level.

49. Where no remuneration committee has to be established, the provisions of these guidelines concerning the remuneration committee should be construed as applying to the supervisory function.

2.3.1 Composition of the remuneration committee

50. In line with Article 33(1) of Directive (EU) 2019/2034, the remuneration committee consists of members of the management body that do not have any executive function and, where applicable, employee representatives. Only those staff members are considered as members of the remuneration committee, even if other staff were to participate at their meetings. The remuneration committee must be gender balanced.

51. The chair and the majority of members of the remuneration committee should qualify as independent [15]. If employee representation on the management body is provided for by national law, it must include one or more employee representatives. Where there is an insufficient number of independent members, investment firms should take particular care

[15] Independence as set out in the EBA guidelines on internal governance point 5.6 and see also the joint EBA-ESMA guidelines on the assessment of the suitability of members of the management body and key function holders

when implementing other measures to limit conflicts of interest in decisions on remuneration issues.

52. Members of the remuneration committee should have collectively appropriate knowledge, expertise and professional experience concerning remuneration policies and practices, risk management and control activities, namely with regard to the mechanism for aligning the remuneration structure to investment firms' risk and capital profiles.

2.3.2 Role of the remuneration committee

53. The remuneration committee should:

a. be responsible for the preparation of decisions on remuneration to be taken by the supervisory function, in particular regarding the remuneration of the members of the management body in its management function as well as of other identified staff;

b. provide its support and advice to the supervisory function on the design of the investment firm's remuneration policy, including that such remuneration policy is gender neutral and supports the equal treatment of staff of different genders;

c. support the supervisory function in overseeing the remuneration policies, practices and processes and the compliance with the remuneration policy and the requirement for the remuneration policy to be gender neutral;

d. check whether the existing remuneration policy is still up to date and, if necessary, make proposals for changes;

e. review the appointment of external remuneration consultants that the supervisory function may decide to engage for advice or support;

f. ensure the adequacy of the information provided to shareholders on remuneration policies and practices;

g. assess the mechanisms and systems adopted to ensure that the remuneration system properly takes into account all types of risks, liquidity and capital levels and that the overall remuneration policy is gender neutral, is consistent with and promotes sound and effective risk management and is in line with the business strategy, objectives, corporate culture and values, risk culture and the long-term interest of the investment firm;

h. assess the achievement of performance targets and the need for ex post risk adjustment, including the application of malus and clawback arrangements;

i. review a number of possible scenarios to test how the remuneration policies and practices react to external and internal events, and back-test the criteria used for determining the award and the ex ante risk adjustment based on the actual risk outcomes.

54. Where the investment firm has established a remuneration committee, the remuneration of the senior officers in the compliance functions, and the risk management, audit functions where established, should be directly overseen by the remuneration committee. The same applies to staff who are entrusted with the performance of risk management procedures, where no risk management function has been established. The remuneration committee should make recommendations to the supervisory function on the design of the remuneration package and amounts of remuneration to be paid to the senior staff members in the control functions.

2.3.3 Process and reporting lines

55. The remuneration committee should:

    a. have access to all data and information concerning the decision-making process of the supervisory function on the remuneration policies and practices design and implementation, oversight and review;

    b. have adequate financial resources and unfettered access to all information and data from independent control functions, including risk management;

    c. ensure the proper involvement of the independent control and other relevant functions (e.g. human resources, legal and strategic planning) within the respective areas of expertise and where necessary seek external advice.

56. The remuneration committee should collaborate with other committees of the supervisory function whose activities may have an impact on the design and proper functioning of remuneration policies and practices (e.g. risk, audit and nomination committees); and provide adequate information to the supervisory function, and, where appropriate, to the shareholders' meeting about the activities performed.

57. When established, the risk committee should, without prejudice to the tasks of the remuneration committee, examine whether incentives provided by the remuneration policies and practices take into consideration the investment firm's risk, capital, liquidity and the likelihood and timing of earnings.

58. A member of the risk committee should, where relevant, participate in the meetings of the remuneration committee, where both committees are established, and vice versa.

2.4 Review of the remuneration policy

59. The supervisory function and, where established, the remuneration committee should ensure that the remuneration policy and practices of the investment firm are subject to a central and independent internal review at least annually. The review should include an analysis if the remuneration policy is gender neutral.

60. Investment firms should monitor the development of the gender pay gap; in case of investment firms with 50 staff or more, the calculation should be done separately on a country-by-country basis for:

    a. identified staff, excluding members of the management body;

    b. members of the management body in its management function;

    c. members of the management body in the supervisory function; and

    d. other staff.

61. Where material differences between the average pay between male and female staff or male and female members of the management body exist, investment firms should document the main reasons, take appropriate actions where relevant or should be able to demonstrate that the difference does not result from a remuneration policy that is not gender neutral.

62. In groups of investment firms, a central review of compliance with the regulation, group policies, procedures and internal rules should also be performed by the Union parent undertaking.

63. Investment firms should perform the central and independent review on an individual basis. In a group, subsidiaries may rely on the review performed by the Union parent undertaking or institution, where the review performed on the consolidated basis included the investment firm and where the results are made available to the supervisory function of that investment firm.

64. Notwithstanding the responsibility of the management body in its supervisory function, the tasks of the periodic independent review of remuneration policies may be, partially or totally, externally outsourced by investment firms.[16]

65. As part of the central and independent internal review, investment firms should assess whether the overall remuneration policies, practices and processes:

    a. operate as intended (in particular, that approved policies, procedures and internal rules are being complied with; that the remuneration pay-outs are appropriate, in line with the business strategy; and that the risk profile, long-term objectives and other goals of the investment firm are adequately reflected);

    b. are compliant with national and international regulations, principles and standards; and

    c. are consistently implemented across the group and do not limit the investment firm's ability to ensure a sound capital base in line with section 6 of these guidelines.

[16] See EBA guidelines on outsourcing arrangements and Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive

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

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

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

2.5 Internal transparency

69. The remuneration policy of an investment firm should be internally disclosed to all staff and accessible for all staff at all times. Confidential aspects of the remuneration of single staff members are not subject to internal transparency.

70. Staff should be informed about the characteristics of their variable remuneration, as well as the process and criteria that will be used to assess the impact of their professional activities on the risk profile of the investment firm and their variable remuneration. In particular, the appraisal process with regard to the individual's performance should be properly documented and should be transparent to the staff concerned.

3. Remuneration policies and group context

71. In accordance with Article 25 of Directive (EU) 2019/2034, investment firms must, without prejudice to the derogations foreseen under Article 32(4) of Directive (EU) 2019/2034, comply with all requirements of Articles 26, 30, 31, 32 and 33 of that Directive. This includes the applicable Regulatory Technical Standards regarding remuneration. The requirements and their specifications within these guidelines apply on an individual basis and, where applicable, on a consolidated basis as referred to in Article 7 of Regulation (EU) 2019/2033.

72. At the consolidated level, the Union parent undertaking and competent authorities should ensure that a remuneration policy is implemented and complied with for all staff, including all identified staff, in all investment firms and other entities within the scope of prudential consolidation and all branches. The remuneration policy should be gender neutral. Specific remuneration requirements of subsidiaries should be taken into account.

73. Regarding investment firms and entities within a group located in more than one Member State, the group-wide remuneration policy should specify how its implementation should deal

with differences between national implementations of the remuneration requirements of Directive (EU) 2019/2034.

74. When applying the requirements on a consolidated basis, the remuneration requirements applicable in the Member State where the Union parent undertaking is located apply, including to identified staff who have a material impact on the group's risk profile, even if implementation of the requirements within Articles 30 and 32 of Directive (EU) 2019/2034 by the Member State where the Union parent undertaking is located is stricter.

75. Staff seconded from a parent undertaking in a third country to an EU subsidiary that is an investment firm or a branch who, were they employed directly by the EU investment firm or branch, would fall into the scope of identified staff of that EU investment firm or branch, are identified staff. Such seconded staff should be subject to the remuneration provisions within Directive (EU) 2019/2034 as they are implemented in the Member State where the EU investment firm or branch is established and to applicable Regulatory Technical Standards. For the purposes of short-term secondments, for example where a person is only residing in a Member State for a few weeks to carry out project work, that person should be subject to such provisions only if the person would be identifiable under the RTS on identified staff, taking into account the remuneration awarded for the relevant time period and the role and responsibilities during the secondment.

76. Short-term contracts or secondments must not be used as a means of circumventing the remuneration requirements of Directive (EU) 2019/2034 and any related standards or guidelines.

77. The remuneration requirements of Directive (EU) 2019/2034 and the provisions of these guidelines apply to investment firms in Member States independent of the fact that they may be subsidiaries of a parent investment firm or an institution in a third country. Where an EU subsidiary of an parent investment firm in a third country is a Union parent undertaking, the scope of prudential consolidation does not include the level of the parent investment firm located in a third country and other direct subsidiaries of that parent investment firm. The Union parent undertaking should ensure that the group-wide remuneration policy of the parent investment firm in a third country is taken into consideration within its own remuneration policies as far as this is not contrary to the requirements set out under relevant EU or national law, including these guidelines.

4 Proportionality

78. The proportionality principle as set out under Article 26(3) of Directive (EU) 2019/2034 aims to match remuneration policies and practices consistently with the individual risk profile, risk appetite and strategy of an investment firm, so that the objectives of the remuneration requirements are effectively achieved.

79. When applying the remuneration requirements and the provisions of these guidelines in a proportionate manner, investment firms and competent authorities should consider the nature, scale and complexity and the risks inherent in the business model and the activities of the investment firm.

80. The obligation to have sound and effective remuneration policies and practices applies to all investment firms with respect to all staff, regardless of the investment firms' different characteristics.

81. When assessing what is proportionate and in determining the required level of sophistication of the remuneration policies and risk measurement approaches, investment firms and competent authorities should take into consideration the combination of qualitative and quantitative aspects of all the criteria above. For instance, a business activity may well have a small scale but could still include complex activities and risk profiles because of the nature of its activities or the complexity of its products.

82. Where investment firms are authorised to provide the services and activities listed in point (2), (3), (4), (6) and (7) of Section A of Annex 1 to Directive 2014/65/EC, as a general principle a higher level of sophistication should be expected, in particular, if the investment firm is authorised to hold clients' money or assets.

83. For the above purposes, investment firms and competent authorities should take into account at least the following criteria:

    a. the on and off-balance-sheet assets of the investment firm and whether the investment firm meets the criteria and the thresholds set out in paragraphs 4 of Article 32 of Directive (EU) 2019/2034;

    b. if the investment firm is authorised to hold clients' money or assets;

    c. the type of authorised activities and services (e.g. Sections A and B of Annex I to Directive 2014/65/EU) and other services (e.g. clearing services) performed by the investment firm;

    d. the amount of assets under management;

    e. the assets safeguarded and administered;

    f. the volume of client orders handled;

    g. the volume of daily trading flow;

    h. the geographical presence of the investment firm and the size of the operations in each jurisdiction, including in third countries;

    i. the legal form and the available equity and debt instruments;

j. the methods used to determine the capital requirements;

k. whether the investment firm is part of a group and, if so, the proportionality assessment done for the group and the characteristics of the group to which the investment firm belongs;

l. the underlying business strategy;

m. the structure of the business activities and the time horizon, measurability and predictability of the risks of the business activities;

n. the funding structure of the investment firm;

o. the internal organisation of the investment firm, including the level of variable remuneration that can be paid to identified staff;

p. the main sources and structure of profits and losses of the investment firm;

q. the type of clients (e.g. retail, corporate, small businesses, public entity);

r. the complexity of financial instruments or contracts;

s. the outsourced functions and distribution channels;

t. the existing information technology (IT) systems, including continuity systems and outsourcing functions in this area.

84. Before remuneration requirements and the provisions set out in these guidelines are applied in a proportionate way, the identification of staff, based on the criteria provided in Article 30(1) of Directive (EU) 2019/2034 and the Commission Delegated Regulation mandated under Article 30(4) of that Directive (RTS on identified staff) and additional internal criteria, should be performed[17].

85. When implementing specific remuneration policies for different categories of identified staff in line with sections 3 and 4 of these guidelines, the application of proportionality should take into account the impact on the risk profile of the investment firm or the assets it manages of that category of identified staff.

86. Competent authorities should ensure that investment firms comply with the remuneration requirements and the provisions set out in these guidelines in a manner that provides for a level playing field among different investment firms.

[17] Please refer to guidelines for the identification process outlined in section 5 of these guidelines.

Waivers of the variable remuneration pay-out process

87. Without prejudice to the implementation of Article 32(4) of Directive 2019/2034/EU by Member States, an investment firm with total assets under the threshold defined in national law may not apply the requirements to defer variable remuneration and to pay it out in instruments as set out in points (j), (l) of Article 32(1) and the third subparagraph of Article 32(3) of Directive (EU)2019/2034.

88. When establishing the amount of the annual variable remuneration paid to a staff member and the effective ratio between the variable and fixed annual remuneration for the purposes of point (b) of Article 32(4) of Directive (EU) 2019/2034, i.e. the application of waivers to the requirement to defer and pay out in instruments the variable remuneration to individual staff members, investment firms should take into account the amounts specified in point (a) and (b) and apply the further conditions in points (c) to (h):

    a. the annual variable remuneration awarded for the performance period that equals the financial year for which it is determined if the waiver can be applied and all performance periods that ended in this financial year, independent of the length of the underlying performance periods that have ended in this financial year, e.g. it should include the full amount of variable remuneration based on revolving and non-revolving multi-year accrual periods and retention bonuses for periods longer than one year where the underlying period ended in the given financial year;

    b. the annual fixed remuneration awarded for the preceding performance year; investment firms may not take into account other awards that are considered fixed remuneration under paragraphs 127 and 128;

    c. the variable remuneration awarded for the preceding performance year, independent on how the remuneration is paid, i.e. cash, instruments or other forms of variable remuneration;

    d. the variable remuneration should consist of all forms of variable remuneration awarded, including performance-based variable remuneration, amounts paid as guaranteed variable remuneration, retention bonuses, severance payments or discretionary pension benefits;

    e. the amount of variable remuneration awarded for performance periods that are longer than one year, e.g. based on long-term incentive plans or multi-year accrual periods, taking into account the full amount for the performance year in which the performance periods end;

    f. the full amount of variable remuneration awarded within the performance year as guaranteed variable remuneration, retention bonuses, severance payments and discretionary pension benefits;

g. the amounts should be based on the definition for fixed and variable remuneration within these guidelines and should be calculated based on the gross remuneration awarded;

h. where the amount is determined on an individual basis, the remuneration awarded by the investment firm should be taken into account; where the amount is determined on a consolidated basis, all remuneration awarded within the scope of prudential consolidation should be taken into account; and

i. where the remuneration is paid in a currency other than EUR, the amounts should be converted into EUR using the exchange rate published by the Commission for financial programming and the budget for the last month of the investment firm's financial year.[18]

89. When calculating the average of the value of the assets for the four-year period immediately preceding the current financial year for the purpose of point (a) of Article 32 (4) of Directive (EU) 2019/2034, investment firms should use the simple average of this value at the end of the four preceding financial years. Where the accounts are kept in a currency other than EUR, the amounts should be converted into EUR using the exchange rate published by the Commission for financial programming and the budget for the last month of each financial year.

90. Where national law empowers competent authorities to set the thresholds under point (a) of Article 32(4) of Directive (EU) 2019/2034 for individual investment firms, competent authorities should, when lowering or increasing the thresholds, take into account the investment firms' nature, scope and complexity of its activities, its internal organisation or, if applicable, the characteristics of the group to which it belongs, and also take into account the proportionality criteria set out within these guidelines. The same applies with regard to reductions of the thresholds set in points (c), (d) and (e) Article 32(5) and Article 32(6).

91. Where national law empowers competent authorities to set the thresholds under Article 32(7) of Directive (EU) 2019/2034 for individual staff members, competent authorities should, when lowering the threshold, take into account the criteria within this Article and the impact of the staff members' professional activities on the risk profile of the investment firm and the assets it manages compared to other identified staff. For example, where a more material impact on the risk profile exists, it might be appropriate to require deferral and pay-out in instruments to be applied.

5. The identification process

92. It is the responsibility of investment firms to identify the members of staff whose professional activities have a material impact on the risk profile of the investment firm or the assets it manages (identified staff). All investment firms should conduct annually a self-assessment in order to identify all staff whose professional activities have or may have a material impact on

[18] The exchange rates can be found on the website of the European Commission under: http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm

the risk profile of the investment firm or the assets it manages. The identification process should be part of the overall remuneration policy of the investment firm.

93. The self-assessment should be based on the qualitative and quantitative criteria set out in the RTS on identified staff and, where needed, to ensure the complete identification of all staff whose professional activities have a material impact on the risk profile of the investment firm or the assets it manages, additional criteria set forth by the investment firm that reflect the levels of risk of different activities within the investment firm and the impact of staff members on the risk profile.

94. When applying quantitative criteria based on staff members' remuneration, the fixed remuneration awarded for the preceding financial year and the variable remuneration awarded to staff in or for the preceding financial year should be taken into account. The variable remuneration awarded in the preceding financial year is the variable remuneration awarded in the preceding financial year with reference to previous performance. Investment firms should define the applicable method in their remuneration policy. When applying quantitative criteria based on staff's remuneration, investment firms should take into account all monetary and non-monetary fixed and variable remuneration components awarded for professional services. Routine remuneration packages that are not accounted for on an individual level should be taken into account based on the overall sum broken down by objective criteria to the individual staff member.

95. When applying quantitative criteria defined in EUR, investment firms which award remuneration in a currency other than the euro should convert the applicable thresholds using either the internal exchange rate used for the consolidation of the accounts or the exchange rate used by the Commission for financial programming and the budget for the month where the remuneration was awarded or the exchange rate for the last month of the investment firm's financial year. The investment firm should document the applicable method to determine the exchange rate in their remuneration policy.

96. The self-assessment should be clear, consistent, properly documented and periodically updated during the year at least with regard to qualitative criteria within the RTS on identified staff and, where appropriate, in addition based on investment firms' criteria. Investment firms should ensure that staff who fall or are likely to fall under the criteria in Article 3 of the RTS on identified staff for a period of at least three months in a financial year are treated as identified staff.

97. The following information should at least be included in the documentation of the self-assessment done regarding the identification of staff:

    a. the rationale underlying the self-assessment and the scope of its application;

    b. the approach used to assess the risks emerging from the investment firm's business strategy and activities, including in different geographical locations;

c. how persons working in investment firms and other entities within the scope of consolidation, subsidiaries and branches, including such located in third countries, are assessed;

d. the role and responsibilities of the different corporate bodies and internal functions involved in the design, oversight, review and application of the self-assessment process; and

e. the identification outcome.

98. Investment firms should keep records of the identification process and its results and should be able to demonstrate to their competent supervisory authority how staff have been identified according to both the qualitative and quantitative criteria provided for within the RTS on identified staff and any additional criteria used by the investment firms.

99. The documentation of the self-assessment should at least include the number of identified staff, including the number of staff identified for the first time, the job responsibilities and activities, the names or another unique identifier and the allocation within the investment firm of the identified staff to business areas and a comparison with the results of the previous year's self-assessment.

100. The documentation should also include staff members who have been identified under quantitative criteria, but whose professional activities are assessed as not having a material impact on the risk profile of the investment firm or the assets it manages, in accordance with RTS on identified staff. Investment firms should maintain the documentation for an appropriate time period to enable the review by the competent authorities.

5.1 Prior approval of exclusions

101. Where the investment firm determines in accordance with the RTS on identified staff that the professional activities of the staff member do not have a material impact on the investment firm or the assets it manages and applies for a prior approval, the following should apply:

a. the management body should decide based on the performed analysis within the annual identification process if staff have in fact no material impact on the risk profile of the investment firm or the assets it manages and inform the supervisory function of the decision taken. The supervisory function or the remuneration committee when it is established should review the criteria and process under which the decisions are taken and approve the exemptions made;[19]

b. any application for prior approval should be made without delay, but at the latest within six months after the end of the preceding financial year. The competent authority should assess the application and approve or reject the application, to the extent possible, within a three-month period after receiving the complete documentation;

[19] Please refer to paragraph 103 with regard to the approval of exemptions to the remuneration policy.

c. where the staff member was awarded total remuneration of EUR 1,000,000 or more in the preceding financial year, the competent authority should immediately inform the European Banking Authority about the application received and provide its initial assessment. On request, the competent authority should immediately submit all information received by the investment firm to the EBA. The EBA will liaise with the competent authority to ensure that such exclusions are granted in a consistent way before the decision regarding the approval or rejection of the application is taken by the competent authority.

102. The prior approval regarding exclusions of staff identified in relation to the quantitative criteria should be granted only for a limited time period. The request for prior approval under the RTS on identified staff should be made each year. With respect to staff for whom a decision on the application is taken for the first time, the prior approval should only concern the financial year in which the prior approval was requested and the following financial year. For staff for whom the exclusion has already been approved for the ongoing financial year, the prior approval should only concern the following financial year.

103. Where identified staff would be excluded in subsidiaries which are not themselves subject to Directive (EU) 2019/2034, the competent authority is the competent authority of the parent investment firm. For branches of investment firms where the head office is located in a third country, the competent authority is the competent authority responsible for the supervision of investment firms in the Member State where the branch is located.

104. Requests for prior approval should include all names or another unique identifier for identified staff for whom an exclusion should apply, the percentage of the business unit's contribution to the investment firm's total own funds requirement in which the staff member is active and the analysis of the impact of staff on the investment firm's risk profile for each identified staff member. Where identified staff are active in the same business unit and have the same function, a joint assessment should be made.

5.2 Governance of the identification process

105. The management body has the ultimate responsibility for the identification process and the respective policy. The management body in its supervisory function should:

a. approve the identification process policy as part of the remuneration policy;

b. be involved in the design of the self-assessment;

c. ensure that the assessment for the identification of staff is properly made in accordance with Directive (EU) 2019/2034, the RTS on identified staff and these guidelines;

d. oversee the identification process on an ongoing basis;

e. approve any material exemptions from or changes to the adopted policy and carefully consider and monitor their effect;

f. approve or oversee any exclusion of staff in accordance with the RTS on identified staff where the investment firm deems that the quantitative criteria defined in the RTS on identified staff are not met by the staff, as they, in fact, do not have a material impact on the risk profile of the investment firm or the assets it manages;

g. periodically review the approved policy and, if needed, amend it.

106. Where a remuneration committee is established, it should be actively involved in the identification process in line with its responsibilities for the preparation of decisions regarding remuneration. Where no remuneration committee is established, the non-executive and where possible the independent members of the management body in its supervisory function should execute the respective tasks.

107. The compliance function, the risk management function or the staff entrusted with the risk management procedures, the business support functions (e.g. legal, human resources) and the relevant committees of the management body (i.e. risk, nomination and audit committees) should be involved in the identification process in accordance with their respective role and also on an ongoing basis. In particular, where a risk committee is established, it should be involved in the identification process without prejudice to the tasks of the remuneration committee. Investment firms should ensure a proper exchange of information among all internal bodies and functions involved in the identification process. The identification process and its result should be subject to an independent internal or external review.

5.3 Identification process on individual and consolidated level

108. When identifying the categories of staff under Article 30(1) of Directive (EU) 2019/2034, investment firms should apply the qualitative and quantitative identification criteria included RTS on identified staff and those additionally set by the investment firms both, on an individual basis, using the figures and considering the situation of the individual investment firm, and in addition on a consolidated basis. On a consolidated basis, the Union parent undertaking should apply the criteria using the consolidated figures and considering the consolidated situation and the impact on the investment firms' risk profile on a consolidated basis.

109. When applying qualitative identification criteria at consolidated level, staff members in a subsidiary are only captured if they are responsible for the functions referred to in these criteria on a consolidated basis. For example, a staff member in a subsidiary who is a member of the management body of such subsidiary should be captured by the criterion 'the staff member is a member of the management body in its management function' only if he or she is also a member of the management body of the EU parent investment firm.

110. When applying quantitative identification criteria on a consolidated basis, investment firms should take into account all remuneration awarded to a staff member within the full scope of prudential consolidation.

111. When applying qualitative identification criteria, investment firms should identify the staff responsible for the function named in the qualitative criteria; the main criterion for the identification is not the name of the function but the authority and responsibility conferred on the function.

5.4 Role of the Union parent undertaking

112. The Union parent undertaking should ensure the overall consistency of the group remuneration policies, including the identification processes and the correct implementation on a consolidated and solo basis.

5.5 Role of subsidiaries and branches

113. Investment firms that are subsidiaries of a Union parent undertaking should implement within their remuneration policy the policy issued by the consolidating Union parent undertaking and the process for the identification of staff.

114. All subsidiaries should actively participate in the identification process carried out by the consolidating Union parent undertaking. In particular, each subsidiary in the scope of prudential consolidation, including those not themselves subject to Directive (EU) 2019/2034, should provide the Union parent undertaking with all information necessary to properly identify all staff who have a material impact on the risk profile of the investment firm or the assets it manages on a consolidated basis.

115. Subsidiaries that are not themselves subject to Directive (EU) 2019/2034 are not required to perform an identification process on the solo level, unless they are required to do so under sector-specific remuneration requirements. For those subsidiaries that are not subject to the Directive or other specific remuneration requirements, the assessment should be performed by the Union parent undertaking on the consolidated basis, based on information provided by the subsidiary. Investment firms falling within the scope of Directive (EU) 2019/2034 should conduct their own self-assessment for the identification of staff on the solo level. Investment firms which are included in an identification process on a consolidated basis may delegate the practical application of the identification process on a solo level to the Union parent undertaking.

116. Branches in a Member State of investment firms having their head office in a third country and investment firms in a Member State which are subsidiaries of parent investment firms in third countries should conduct the identification process and inform their parent investment firm of its results. Investment firms in a Member State should also include their subsidiaries that fall in the scope of prudential consolidation and branches located in third countries in their assessment. Investment firms should be aware that branches form a non-independent part of the investment firm.

117. For third country branches located in a Member State, the criteria for the identification should be applied in the same way to the functions, business activities and staff located in a Member State as they would be for an investment firm on an individual level.

6. Capital base

118. Investment firms and competent authorities should ensure that the award, pay-out and vesting of variable remuneration, including the application of malus and clawback arrangements under the investment firms' remuneration policy, is not detrimental to the investments firms' ability to ensure a sound capital base.

119. When assessing if the capital base is sound, the investment firm should take into account its overall own funds, its composition and in particular the Common Equity Tier 1 capital and its own funds' requirements. The requirement to maintain a sound capital base also applies on a consolidated basis. Additionally, competent authorities should take into account the results of their supervisory reviews.

120. Investment firms should include the impact of variable remuneration - both upfront and deferred amounts - in their capital and liquidity planning and in their overall internal capital adequacy assessment process.

121. The total variable remuneration awarded by an investment firm must not limit the ability of the investment firm to maintain or restore a sound capital base in the long term and should consider the interests of shareholders and owners, investors and other stakeholders. Variable remuneration should not be awarded or paid out when the effect would be that the capital base of the investment firm would no longer be sound. The investment firm should consider these requirements, the results from the internal capital adequacy assessment process, its multi-year capital planning and recommendations on distributions by competent authorities and European Supervisory Authorities, when determining:

a. the overall pool of variable remuneration that can be awarded for that year; and

b. the amount of variable remuneration that will be paid out or will be vesting in that year.

122. Investment firms which do not have a sound capital base or where the soundness of the capital base is at risk should take the following measures with regard to variable remuneration:

a. reduce the variable bonus pool, including the possibility to reduce it down to zero;

b. apply the necessary performance adjustment measures, in particular malus;

c. use the net profit of the investment firm for that year and potentially for subsequent years to strengthen the capital base. The investment firm should not compensate for any reduction of the variable compensation made in order to ensure a sound capital basis in

later years or by other payments, vehicles or methods which lead to a circumvention of this provision.

123. Competent authorities should intervene where the awarding of variable remuneration is detrimental to the maintenance of a sound capital base by requiring the investment firm to reduce or apply a cap to the overall pool of variable remuneration determined until the capital adequacy situation improves; and if necessary to apply performance adjustment measures, in particular malus, and require investment firms to use net profits to strengthen own funds.

Title II - Structure of remuneration

7. Categories of remuneration

124. Under Directive (EU) 2019/2034, remuneration is either fixed or variable remuneration; there is no third category of remuneration. Without prejudice to the national implementation of waivers under paragraphs (4) to (7) of Article 32 of Directive (EU) 2019/2034, where remuneration is variable and is paid to identified staff, all requirements of Article 32 of Directive (EU) 2019/2034 have also to be met in addition to the general requirements contained in Articles 26 and 30 thereof. For that purpose, investment firms should allocate in line with these guidelines the components of remuneration to either fixed or variable remuneration and their remuneration policies should set out clear, objective, predetermined and transparent criteria to assign all remuneration components to either the fixed or variable categories in line with these guidelines.

125. Where the clear allocation of a component to the fixed remuneration is not possible based on the criteria provided in these guidelines, it should be considered as variable remuneration.

126. Remuneration is fixed where the conditions for its award and its amount:

a. are based on predetermined criteria;

b. are non-discretionary reflecting the level of professional experience and seniority of staff;

c. are transparent with respect to the individual amount awarded to the individual staff member;

d. are permanent, i.e. maintained over a period tied to the specific role and organisational responsibilities;

e. are non-revocable; the permanent amount is only changed via collective bargaining or following renegotiation in line with national criteria on wage setting;

f. cannot be reduced, suspended or cancelled by the investment firm;

g. do not provide incentives for risk assumption; and

h. do not depend on performance.

127. Remuneration components that are either part of a general investment firm-wide policy where they meet the conditions listed in paragraph 128 or payments mandatory under national law, are considered as fixed remuneration. This includes payments which form part of routine employment packages as defined in these guidelines.

128. The following remuneration components should also be considered as fixed, where all similar situations are treated in a consistent way:

a. remuneration paid to expatriate staff considering the cost of living and tax rates in a different country;

b. allowances used to increase the basic fixed salary in situations where staff work abroad and receive less remuneration than would be paid on the local employment market for a comparable position where all of the following specific conditions are met:

i. the allowance is paid on a non-discriminatory basis to all staff in a similar situation;

ii. the allowance is awarded because staff work temporarily abroad or in a different position with a remuneration level requiring adjustment to reflect pay levels in the relevant market;

iii. the level of additional payments is based on predetermined criteria;

iv. the duration of the allowance is tied to the duration of the situation referred to above.

8. Particular cases of remuneration components

8.1 Allowances

129. The variable and fixed remuneration of investment firms may consist of different components, including additional or ancillary payments or benefits. Investment firms should analyse allowances[20] and allocate them to the variable or fixed component of remuneration. The allocation should be based on the criteria in section 7.

130. In particular where allowances are considered as fixed remuneration, but show any of the following features, the investment firm should duly document the results of the assessments made under section 7:

[20] The label may differ according to the investment firm: 'role-based pay, staff allowance, adjustable role allowance, fixed pay allowance', etc.

a. they are paid only to identified staff members[21];

b. they are limited to cases where the ratio between the variable and the fixed components of remuneration would otherwise exceed the ratio set within the remuneration policy;

c. the allowances are linked to indicators that could possibly be understood as proxies for performance. In that case the investment firm should be able to demonstrate that these indicators are not linked to the performance of the investment firm, e.g. by analysing the correlation with the performance indicators used.

131. Where allowances are based on the role, function or organisational responsibility of staff, in order to be correctly mapped to the fixed component of remuneration, they should meet the criteria set out in paragraph 128 taking into account all of the following particulars:

a. the allowance is tied to a role or organisational responsibility and awarded as long as no material changes happen regarding the responsibilities and authorities of the role so that in fact the staff would have a different role or organisational responsibility;

b. the amount does not depend on any factors other than fulfilling a certain role or having a certain organisational responsibility and the criteria in paragraph 14;

c. any other staff member fulfilling the same role or having the same organisational responsibility and who is in a comparable situation would be entitled to a comparable allowance.

132. Competent authorities should ensure that allowances are not a vehicle or method that facilitates the non-compliance of investment firms with Directive (EU) 2019/2034.

8.2 Variable remuneration based on future performance

133. When the award of variable remuneration, including long term incentive plans (LTIPs), is based on past performance of at least one year, but also depends on future performance conditions, the following should apply:

a. investment firms should clearly set out to staff the additional performance conditions that have to be met after the award for the variable remuneration to vest;

b. investment firms should assess before the vesting of variable remuneration that the conditions for its vesting have been met;

c. the additional forward-looking performance conditions should be set for a predefined performance period of at least one year;

[21] Being an identified staff member should not be considered as a role or function.

d. when the additional forward looking performance conditions have not been met, up to 100% of the variable remuneration awarded under those conditions should be subject to malus arrangements;

e. the deferral period should end at the earliest one year after the last performance condition has been assessed; all other provisions regarding the deferral of variable remuneration for identified staff set out in section 15 apply in the same way as to variable remuneration that is exclusively based on performance previous to its award;

f. for the calculation of the ratio between the variable and the fixed component of the total remuneration, the total amount of the variable remuneration awarded should be taken into account in the financial year for which the variable remuneration, including LTIPs, was awarded. This should also apply when the past performance was assessed in a multi-year accrual period.

134. Where a prospective remuneration plan for variable remuneration, including LTIPs, is exclusively based on future performance conditions (e.g. where new staff receive an LTIP at the beginning of the first year of employment), the amount should be considered as awarded after the performance conditions have been met, and otherwise no award should be made. Awarded amounts should be taken into account for the calculation of the ratio between the variable and the fixed component of the total remuneration in the financial year prior to their award. Where a specific number of instruments are awarded, they should exceptionally be valued for the purpose of the calculation of the ratio between the variable and the fixed component of the total remuneration with the market price or fair value determined at the time the prospective remuneration plan for variable remuneration was granted. Points (a) to (c) of paragraph 134 should apply. All other requirements apply in the same way as to variable remuneration, e.g. the deferral period starts after the award of the variable remuneration.

8.3 Dividends and interest payments

135. Dividends paid on vested shares or equivalent ownership interests that staff receive as shareholders or owners of an investment firm are not part of remuneration for the purpose of these guidelines. The same applies to interest paid to staff on other instruments awarded after they have vested.

8.4 Retention bonuses

136. Investment firms should be able to substantiate their legitimate interest in awarding retention bonuses to retain an identified staff member. For example, retention bonuses may be used under restructurings, in wind-down or after a change of control or to ensure the finalisation of major projects within an investment firm. Investment firms should document the event or justification that made it necessary to award a retention bonus and the time period,

including the start and the end date, for which the reason is assumed to exist. Investment firms should define the retention conditions and applicable performance conditions. Investment firms should specify a retention period and a date or event after which it determines whether the retention and performance conditions have been met.

137. As a general principle, investment firms should not award multiple retention bonuses to a staff member; in exceptional cases and where duly justified, more than one retention bonus may be paid to a staff member, but at different moments in time and under the conditions specified in this section with regard to each retention bonus. The retention bonuses should only be awarded after the retention conditions and applicable performance conditions have been met. Moreover, the retention bonus should only be awarded if no reasons exist that lead to a situation where the retention bonus should not be awarded, e.g. material compliance breaches, misconduct or other failures of that staff member.

138. A retention bonus should be in accordance with the requirements to maintain a sound capital base under Article 31 and Article 32(1)(d) of Directive (EU) 2034/2019 and the respective supervisory powers under Article 39(2)(g) of Directive (EU) 2034/2019 that could lead to a situation where the retention bonus might need to be reduced, possibly even down to zero.

139. When assessing and considering whether the award of a retention bonus to identified staff is appropriate, investment firms and competent authorities may take into account at least the following:

a. the concerns that lead to the risk that certain staff may choose to leave the investment firm;

b. the reasons why the retention of those staff is crucial for the investment firm;

c. the consequence if the staff member concerned leaves the investment firm;

d. whether the amount of the awarded retention bonus is necessary and proportionate to retain the targeted staff member.

140. A retention bonus should be based on specific conditions that differ from the performance conditions applied to other parts of the variable remuneration and include a retention condition and specific performance conditions. The specific conditions for a retention bonus should lead to the retention objective (i.e., retention of staff in the investment firm for a predefined period of time or until a certain event). The specific performance conditions should include conditions that are related to the legitimate interest for which the staff member should be retained, the conduct of staff and be compatible with the provisions in paragraph 138. Retention bonuses should not lead to a situation where the total variable remuneration, consisting of performance-related variable remuneration and retention bonus, of the staff member is no longer linked to the performance of the individual, the business unit concerned and the overall results of the investment firm as required under Articles 30(j)(ii) and 32(1)(a) of Directive (EU) 2034/2019.

141. Retention bonuses should not be awarded to merely compensate for performance-related remuneration not paid due to insufficient performance or the investment firm's financial situation.

142. Investment firms should set the retention period as the point in time of the event or as the period between the start date and the end date of the event when the retention condition should be met. The retention bonuses should be awarded after the retention period ends. No pro rata awards should be made during the retention period.

143. Retention bonuses are variable remuneration and therefore if awarded to identified staff, must comply with the requirements on variable remuneration under Article 32 of IFD, including the internally set maximum ratio between the variable and fixed remuneration, the ex post risk alignment, payment in instruments, deferral, retention, malus and clawback.

144. Independent of the fact that the retention bonus will be awarded only after the end of the retention period, the retention bonus should be taken into account in the calculation of the ratio between the variable and the fixed part of remuneration following one of the methods specified below:

a. the retention bonus is split into annual amounts for each year of the retention period calculated on a linear pro rata basis. Where the exact length of the retention period is not known upfront, the investment firm should set and duly document a period considering the situation and measures taken that justify the payment of a retention bonus. The calculation of the ratio should be based on the period set, or

b. the full amount of the retention bonus is considered in the year when the retention condition is met.

8.5 Discretionary pension benefits

145. Discretionary pension benefits are a form of variable remuneration. Where the terms of the company's pension scheme include pension benefits that are not based on performance and are consistently granted to a category of staff, such pension benefits should not be considered discretionary, but should be considered as part of routine employment packages in line with the section of these guidelines on definitions. Discretionary pension benefits are not severance payments, even if the employee decides to retire early.

146. The investment firm should ensure that where a staff member leaves the investment firm or retires, discretionary pension benefits are not paid without the consideration of the economic situation of the investment firm or risks that have been taken by the staff member which can affect the investment firm in the long term.

147. The full amount of discretionary pension benefits must be awarded, in accordance with Article 32(3) of Directive (EU) 2019/2034 and subject to the derogation under Article 32(4) of

this Directive, in instruments referred to in point (j) of this Article or, where approved by competent authorities, within the alternative arrangements under Article 32(1)(k) and:

a. where an identified staff member leaves the investment firm before retirement, the investment firm must hold the full amount of discretionary pension benefits at least for a period of five years without the application of pro rata vesting;

b. where identified staff member reaches retirement, a five-year retention period must be applied to the full amount paid.

148. Investment firms should ensure that malus and clawback arrangements are applied in the same way to discretionary pension benefits as to other components of variable remuneration.

9. Exceptional remuneration components

9.1 Guaranteed variable remuneration

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

150. When awarding guaranteed variable remuneration in accordance with Article 32(1)(e) of Directive (EU) 2019/2034 when hiring new staff, investment firms are not permitted to guarantee variable remuneration for longer than the first year of employment. Guaranteed variable remuneration is exceptional and can only occur where the investment firm has a strong capital base in line with these guidelines.

151. Investment firms should only award once to the same single staff member guaranteed variable remuneration. This requirement should also apply at a consolidated level and includes situations where staff receive a new contract from the same investment firm or another firm within the scope of consolidation.

152. As part of the arrangements guaranteeing this part of variable remuneration, investment firms may decide to not apply the requirements on malus and clawback arrangements to guaranteed variable remuneration. Investment firms may pay out the full amount in non-deferred cash.

9.2 Compensation or buyout from previous employment contract

153. The compensation for the buyout of a previous contract should be awarded only when the conditions defined in section 9.1 of these guidelines are met.

154. Remuneration should be considered as being granted as compensation or for the buyout of a previous contract where the deferred variable remuneration of the staff member was reduced or revoked by the previous employer because of the termination of the contract or

where the staff member has to reimburse received payments (e.g. as part of an educational expense coverage agreement). For remuneration packages relating to compensation or buyout from contracts in previous employment, all requirements for variable remuneration and the provisions within these guidelines apply, including deferral, retention, pay-out in instruments and clawback arrangements.

9.3 Severance and other payments after the end of a contract

9.3.1 Severance pay

155. Investment firms' remuneration policies should specify the possible use of severance payments, including the maximum amount or criteria for the determination of such amounts that can be awarded as severance pay to identified staff. When determining the maximum amounts of severance payments, investment firms should consider in particular the fixed components of the remuneration of staff. Investment firms should consider how they will apply the ratio set between the variable and fixed remuneration to severance payments.

156. Investment firms should have a framework in which severance pay is determined and approved in the context of the early termination of a contract by the investment firm, including a clear allocation of the responsibilities and decision-making powers and the procedural involvement of the control functions.

157. Severance payments should not provide for a disproportionate reward, but for an appropriate compensation of the staff member in cases of early termination of the contract. In accordance with Article 32(1)(f) of Directive (EU) 2019/2034 severance payments must reflect performance achieved over time and must not reward failure or misconduct.

158. Severance pay should not be awarded where there is an obvious failure which allows for the immediate cancellation of the contract or the dismissal of staff.

159. Severance pay should not be awarded where a staff member resigns voluntarily in order to take up a position in a different legal entity, unless a severance payment is required by national labour law.

160. Additional payments in the context of the regular end of a contractual period or appointment as member of the management body, e.g. awarded discretionary pension benefit, should not be treated as severance payments, but as normal variable remuneration that is for identified staff subject to all specific requirements for variable remuneration.

161. Severance payments include additional payments on top of the regular remuneration in the following specific situations:

a. redundancy remuneration for loss of office in case of an early termination of the contract by the investment firm or its subsidiary;

b. remuneration awarded for a limited time period that is agreed to introduce a cooling-off period after the termination of the contract and is subject to a non-competition clause in the contract;

c. the investment firm terminates the contracts of staff because of a failure of the investment firm or early intervention measures;

d. the investment firm wants to terminate the contract following a material reduction of the investment firm's activities in which the staff member was active or where business areas are acquired by other investment firms without the option for staff to stay employed in the acquiring investment firm;

e. the investment firm and a staff member agree on a settlement in case of an actual labour dispute that could otherwise realistically lead to an action in front of a court.

162. Where investment firms award severance pay, the investment firms should be able to demonstrate to the competent authority the reasons for the severance payment, the appropriateness of the amount awarded and the criteria used to determine the amount, including that it is linked to the performance achieved over time and that it does not reward failure or misconduct.

163. When determining the amount of severance payments to be made, the investment firm should take into account the performance achieved over time and assess where relevant the severity of any failure. Identified failures should be distinguished between failures of the investment firm and failures of the identified staff as follows:

a. failures of the investment firm should be considered when the total amount of the severance payments for staff is determined, taking into account the capital base of the investment firm; such severance payments should not be higher than the reduction of costs achieved by the early termination of contracts;

b. failures of identified staff should lead to a downward adjustment of the amount of severance pay which would otherwise be awarded when only the performance over time would be considered in the estimation of the severance pay, including the possibility for a reduction of the amount down to zero.

164. Failures of investment firms include the following situations:

a. where the opening of normal insolvency proceedings of the investment firm, as defined in Article 2(1)(47) of Directive 2014/59/EU, has been filed;

b. where significant losses lead to the situation that the investment firm no longer has a sound capital base and, following this, the business area is sold or the business activity is reduced.

165. Failures of identified staff should be assessed on a case-by-case basis, and include the following situations:

a. where a member of the management body is no longer considered as meeting appropriate standards of fitness and propriety;

b. where the identified staff member participated in or is responsible for conduct which resulted in significant losses for the investment firm, as defined in the investment firms' remuneration policy;

c. where an identified staff member acts contrary to internal rules, values or procedures based on intent or gross negligence.

166. Severance payments should be considered as variable remuneration and as a general principle therefore, if awarded to identified staff, all requirements under Article 32 of Directive (EU) 2019/2034 apply. However, severance payments should in the following circumstances not be taken into account for the purpose of the calculation of the ratio between variable and fixed remuneration set within the remuneration policy and for the application of deferral and the pay out in instruments:

a. severance payments mandatory under national labour law or mandatory following a decision of a court;

b. severance payments under (i) and (ii) where the investment firm is able to demonstrate the reasons and the appropriateness of the amount of the severance payment:

(i) severance payments calculated through an appropriate predefined generic formula (e.g. gardening leave) set within the remuneration policy in the cases referred to in paragraph 161;

(ii) severance payments corresponding to the additional amount due in application of a non-competition clause in the contract and paid out in future periods up to the amount of the fixed remuneration which would have been paid for the non-competition period, if staff were still employed.

c. severance payments under paragraph 161, not fulfilling the condition in point (i) of paragraph 166, where the investment firm has demonstrated to the competent authority the reasons and the appropriateness of the amount of the severance payment.

9.3.1 Other payments after the end of a contract

167. Regular remuneration payments related to the duration of a notice period should not be considered as severance payments. The payment of an appropriate fixed amount after the regular end of an employment contract (i.e. after coming to its regular end or being cancelled by staff in line with the applicable notice periods) and to compensate staff where the

investment firm restricts the taking up of an occupational activity, should not be subject to the requirements applicable to variable remuneration, where this is compatible with national law. Such payments should not be made to replace severance payments under paragraph 161.

168. Additional payments in the context of the regular end of a contractual period or of the appointment as member of the management body, e.g. awarded discretionary pension benefit should not be treated as severance payments. Where such components are variable remuneration and are paid to identified staff, they are subject to all specific requirements for variable remuneration and the provisions within these guidelines.

10 Prohibitions

10.1 Personal hedging

169. Where an appropriate remuneration policy is aligned with risks, it should be sufficiently effective and able to result in practice in a downward adjustment to the amount of variable remuneration awarded to staff and the application of malus and clawback arrangements.

170. Investment firms should ensure to the extent possible that identified staff members are not able to transfer the downside risks of variable remuneration to another party through hedging or certain types of insurance, e.g. by implementing policies for dealing in financial instruments and disclosure requirements.

171. Identified staff should be considered to have hedged the risk of a downward adjustment in remuneration if the identified staff member enters into a contract with a third party or the investment firm and either of the following conditions is met:

a. the contract requires the third party or the investment firm to make payments directly or indirectly to the identified staff member that are linked to or commensurate with the amounts by which the staff member's variable remuneration has been reduced;

b. the identified staff member purchases or holds derivatives that are intended to hedge losses associated with financial instruments received as part of the variable remuneration.

172. Identified staff should be considered to have insured the risk of a downward adjustment where staff takes out an insurance contract with a stipulation to compensate them in the event of a downward adjustment in remuneration. This should in general not prevent taking out insurance to cover personal payments such as healthcare and mortgage instalments.

173. The requirement to not use personal hedging strategies or insurance to undermine the risk alignment effects embedded in their remuneration arrangements should apply to deferred and retained variable remuneration.

174. Investment firms should maintain effective arrangements to ensure that the identified staff member complies with the provisions of this section. At least a declaration of self-commitment by the identified staff member that he or she will refrain from concluding personal hedging strategies or insurances for the purpose of undermining the risk alignment effects is necessary. Where applicable, investment firms' human resources or internal control functions should perform at least spot-check inspections of the compliance with this declaration with regard to the internal custodianship accounts. Such random checks should at least include the internal custodianship accounts of identified staff. Notification to the investment firm of any custodial accounts outside the investment firm should also be made mandatory.

10.2 Circumvention

175. Investment firms should ensure that variable remuneration is not paid through vehicles or methods which aim at or effectively lead to non-compliance with remuneration requirements and the provisions of these guidelines for identified staff or, where such requirements are applied to all staff, with remuneration requirements for all staff. This includes arrangements between the investment firm and third parties where the staff member has a financial or personal interest.

176. 'Circumvention' is the non-compliance with remuneration requirements and takes place if an investment firm is actually not meeting the objective and purpose of requirements when considered together, while formally the investment firm complies with the wording of the single remuneration requirements.

177. Circumvention takes place in the following circumstances, among others:

a. where variable remuneration is considered as fixed remuneration in line with the wording of these guidelines, but not with its objectives;

b. where variable remuneration other than guaranteed variable remuneration is awarded or vests although, effectively:

   i. there has been no positive performance measured in line with Title IV of these guidelines by the staff member, business unit or investment firm;

   ii. there is no effective risk alignment (i.e. ex ante or ex post risk adjustment); or

   iii. the variable remuneration is not sustainable according to the investment firm´s financial situation;

c. where staff receive payments from the investment firm or an entity within the scope of consolidation which do not fall under the definition of remuneration, but are vehicles or methods of pay that contain an incentive for risk assumption or provide disproportionate returns on investments on instruments of the firm that are significantly different from conditions for other investors who would invest in such a vehicle;

d. where staff receive payments from the investment firm or an entity within the scope of consolidation which do not fall under the definition of remuneration, but are vehicles or methods to circumvent the remuneration requirements;

e. where fixed remuneration components are awarded as a fixed number of instruments and not as a fixed amount;

f. where staff are awarded remuneration in instruments or are able to buy instruments which are not priced at the market value or the fair value in the case of non-listed instruments and the additional value received is not taken into account in the variable remuneration;

g. where adjustments to fixed remuneration components are frequently negotiated and adjustments are in fact made to align the remuneration with the performance of staff;

h. where allowances are awarded at an excessive amount that is not justified for the underlying circumstances;

i. where remuneration is labelled as payment for early retirement and not taken into account as variable remuneration, where in fact the payment has the character of a severance pay, as it is made in the context of the early termination of the contract, or where in fact the staff member does not retire after such award is made or where the payments are not granted on a monthly basis;

j. any measures that would lead to a situation where in fact the remuneration policy would not any longer be gender neutral.

178. Investment firms should ensure that the method for measuring the performance has appropriate controls to ensure that the award criteria cannot be manipulated. Where such controls are not in place, the variable remuneration is not appropriately linked to performance and the remuneration policy is not appropriately implemented and any payment of variable remuneration can lead to a violation of regulatory requirements. Possible manipulations include, for instance, courtesy decisions in the bilateral performance measurement process, e.g. where no objective standards exist for the decision-making process regarding staff members' goal attainment.

179. Investment firms should not provide compensation for any reduction or restructuring of variable remuneration, e.g. made in the context of recovery and resolution measures or other exceptional government intervention, in later years or by other payments, vehicles or methods.

180. Investment firms should not create group structures or offshore entities or contracts with persons who act on behalf of the investment firm in order to manipulate the outcome of the identification process and to circumvent the application of the remuneration requirements and the provisions of these guidelines to staff to whom these requirements and provisions should otherwise apply.

181. Where short-term contracts (e.g. one year) are used and renewed on a regular basis by investment firms, competent authorities should review if such contracts form a vehicle or method of circumvention of the remuneration requirements of Directive (EU) 2019/2034, e.g. as they would in fact create variable remuneration, and take appropriate measures to ensure that investment firms comply with the requirements of Articles 30 and 32 of Directive (EU) 2019/2034.

182. Where remuneration is fixed remuneration in accordance with the guidelines in section 7, but is paid out in instruments, investment firms and competent authorities should consider if the instruments used turn the fixed component of remuneration into a variable component of remuneration, as a link to the performance of the investment firm is established. Investment firms should not use financial instruments as part of the fixed remuneration to circumvent variable remuneration requirements and the instruments used should not provide incentives for excessive risk taking.

Title III – Remuneration of specific functions

11. Remuneration of members of the management and supervisory function of the management body

183. The remuneration of the members of the management body in its management function (hereafter 'management function') should be consistent with their powers, tasks, expertise and responsibilities.

184. In order to properly address conflicts of interest and without prejudice to paragraphs 185 and 186, members of the supervisory function should be compensated for this role only with fixed remuneration. Incentive-based mechanisms based on the performance of the investment firm should be excluded. The reimbursement of costs to members of the supervisory function and the payment of a fixed amount for working hours or days, even if the time to be reimbursed is not predefined, are considered as fixed remuneration.

185. Where the supervisory function in exceptional cases is awarded variable remuneration, the variable remuneration and risk alignment should be strictly tailored to the assigned oversight, monitoring and control tasks, reflecting the individual's authorities and responsibilities and the achievement of objectives linked to their functions.

186. Where variable remuneration is awarded in instruments, appropriate measures should be taken to preserve the independence of judgement of those members of the management body, including the setting of retention periods until the end of the mandate.

12 Remuneration of control functions

187. The internal control functions should have sufficient resources, knowledge and experience to perform their tasks with regard to the investment firm's remuneration policy. The control

functions should cooperate actively and regularly with each other and other relevant functions and committees with regard to the remuneration policy and risks which may arise from remuneration policies.

188. The remuneration of staff in control functions should allow the investment firm to employ qualified and experienced personnel in these functions. The remuneration of control functions should be predominantly fixed to reflect the nature of their responsibilities.

189. The methods used for determining the variable remuneration of control functions, i.e. risk management, compliance and internal audit function, should not compromise staff's objectivity and independence.

Title IV – Remuneration policy, award and pay-out of variable remuneration for identified staff

13. Remuneration policy for identified staff

190. Investment firms must ensure that the remuneration policy for identified staff complies with all principles set out in Articles 30 and 32 and, where applicable, Article 31 of Directive (EU) 2019/2034 and is gender neutral.

191. The appropriate ratio between the variable and fixed remuneration components for identified staff should be set independent of any potential future ex post risk adjustments or fluctuation in the price of instruments.

192. Investment firms should implement, for different categories of identified staff, specific remuneration policies and risk alignment mechanisms as appropriate to ensure that the impact of the category of identified staff on the investment firm's risk profile is appropriately aligned with their remuneration.

193. Where investment firms consider paying out less than 100% of the fixed component of remuneration in cash, this decision should be well reasoned and approved as part of the remuneration policy.

194. Where an investment firm in the legal form of a stock corporation and in particular a listed investment firm applies a shareholding requirement to some categories of identified staff in order to achieve a better alignment of the incentives provided to staff with the risk profile of the investment firm in the long term, the amount should be clearly documented in the investment firm's policies. When a shareholding requirement is applied, staff should hold a certain number of shares or nominal amount of shares as long as they are employed in the same position or a position of equal or higher seniority.

13.1 Fully flexible policy on variable remuneration

195. Investment firms must have a fully flexible policy on variable remuneration for its staff, including identified staff, in accordance with Article 30(1)(k) of Directive (EU) 2019/2034. The amount of variable remuneration awarded should appropriately react to changes of the performance of the staff member, the business unit and the investment firm. The investment firm should specify how the variable remuneration reacts to performance changes and the performance levels. This should include performance levels where variable remuneration decreases down to zero. Unethical or non-compliant behaviour should lead to a significant reduction of the staff member's variable remuneration.

196. The amount of fixed remuneration must be sufficiently high in order to ensure that the reduction of the variable remuneration down to zero would be possible. Staff should not be dependent on the award of variable remuneration as this might otherwise create incentives for short-term-oriented excessive risk taking, including the mis-selling of products, where without such short-term risk taking the performance of the investment firm or staff would not allow for the award of variable remuneration.

197. The pay-out of fixed remuneration in instruments, if any, should not impair the ability of the investment firm to apply a fully flexible policy on variable remuneration.

13.2 Ratio between fixed and variable remuneration

198. When setting the fixed remuneration components for staff under Article 30(1), the investment firm should set them at a level that would allow a fully flexible policy on variable remuneration for all staff. To this end the remuneration policy should set an appropriate ratio between the variable and the fixed components of the total remuneration.

199. The ratio set is the ratio between the variable component of remuneration that could be awarded as a maximum for the following performance period and the fixed component of remuneration of the following performance period. The maximum ratios allowable should include levels of pay-outs that would cover 'above target' or exceptional performance and should not only reflect 'on target' or expected performance. The effective ratio between variable remuneration awarded and fixed remuneration should increase with the performance achieved.

200. When setting the ratio, investment firms should take into account their business activities, risks and the impact of the staff or categories of staff on the risk profile of the investment firm or the assets it manages as well as the incentives for staff to act in the best interest of the investment firm and the need to maintain cost flexibility in light of changes of profits and losses over time.

201. When setting the ratio, investment firms should consider that a variable component linked to performance can have a positive effect on 'risk-sharing' and incentivising prudent risk taking

behaviour in line with the investment firms risk appetite, while a variable component that is inappropriately balanced could, under certain circumstances, have negative effects. The higher the possible variable remuneration compared to the fixed remuneration, the stronger the incentive will be to deliver the needed performance, and the bigger the associated risks may become. Investment firms should consider that staff may become accustomed to and expect to receive a considerable variable remuneration. If the fixed component is too low compared to the variable remuneration, an investment firm may find it difficult to reduce or eliminate variable remuneration in a poor financial year.

202. Investment firms may set different ratios for different jurisdictions, different business units, corporate and internal control functions and different categories of staff, e.g. identified staff, unidentified staff responsible for managing assets, sales staff, staff in control functions or staff within administrative functions. In exceptional and duly justified cases, the remuneration policy may provide for a different ratio for individual identified staff members belonging to a certain category of staff compared with other staff members included in the same category of staff.

203. The maximum ratio should be calculated as the sum of all variable components of remuneration that could be awarded as a maximum in a given performance year, including the amount to be taken into account for the retention bonus, divided by the sum of all fixed components of remuneration to be awarded in relation to the same performance year. In any case, all remuneration components should be correctly allocated to either variable or fixed remuneration in line with these guidelines. Investment firms may omit some of the fixed remuneration components where they are immaterial, e.g. where proportionate non-monetary benefits are awarded.

204. The effective ratio should be calculated as the sum of all variable components of remuneration that have been awarded for the last performance year as set out in these guidelines, including amounts awarded for multi-year accrual periods, divided by the sum of fixed components of remuneration awarded for the same performance year. For multi-year accrual periods that do not revolve annually, investment firms may alternatively take into account in each year of the performance period the maximum amount of variable remuneration that can be awarded at the end of the performance period divided by the number of years of the performance period.

205. Investment firms may not take into account the amount of guaranteed variable remuneration awarded that may be awarded as a sign-on bonus to new staff in the calculation of the ratio between the variable and fixed components of the total remuneration for the first performance period when determining if they comply with the ratio set within their remuneration policy.

206. Investment firms should be able to explain the reasoning for the maximum ratios set between the variable and fixed remuneration components through their remuneration policy and how the actual ratios would change compared to the maximum ratio depending on risk and performance indicators.

14. Risk alignment process

207. The risk alignment process includes the performance and risk measurement process (section 14.1); the award process (section 14.2); and the pay-out process (section 15). At each stage of the risk alignment process, the variable remuneration should be adjusted for all current and future risks taken. An investment firm should ensure that incentives to take risks are balanced by incentives to manage risk.

208. An investment firm should align the time horizon of the risk and performance measurement with its business cycle in a multi-year framework. Investment firms should set the accrual period and the pay-out periods for remuneration at an appropriate length, differentiating between remuneration that should be paid upfront and remuneration that should be paid after deferral and retention periods. The accrual and pay-out periods should take into account the business activity and position of the category of identified staff or in exceptional cases of a single identified staff member.

209. Within the risk alignment process, an appropriate combination of quantitative and qualitative criteria in the form of absolute and relative criteria should be used at all stages to ensure that all risks, performance and necessary risk adjustments are reflected. Absolute performance measures should be set by the investment firm on the basis of its own strategy, including its risk profile and risk appetite. Relative performance measures should be set to compare performance with peers, either 'internal' (i.e. within the organisation) or 'external' (i.e. similar investment firms). Quantitative and qualitative criteria and the applied processes should be transparent and predefined as much as possible. Both quantitative and qualitative criteria may partly rely on judgement.

210. Where judgemental approaches are used, investment firms should ensure a sufficient level of transparency and objectivity when judgements are made by:

a. setting a clear written policy outlining parameters and key considerations on which the judgement will be based;

b. providing clear and complete documentation of the final decision regarding the risk and performance measurement or applied risk adjustments;

c. involving relevant control functions;

d. considering the personal incentives of the staff making the judgement and any conflicts of interest;

e. implementing appropriate checks and balances, including, for example, making such adjustments within a panel involving staff from business units, corporate and control functions, etc.;

f. approving the assessment made by a control function or at an appropriate hierarchical level above the function making the assessment, e.g. at the management body in its management or supervisory function or at the remuneration committee.

211. Investment firms should make the risk alignment process transparent to identified staff, including any elements that are based on judgement rather than objective facts or data.

212. Investment firms should provide detailed information to the remuneration committee or to the supervisory function if the final outcome after applying judgemental measures is significantly different from the initial outcome using predefined measures.

14.1 Performance and risk measurement process

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

14.1.1 Risk assessments

214. The investment firm should define the objectives of the investment firm, business units and staff. These objectives should be derived from its business and risk strategy, corporate values, risk appetite and long-term interests and consider also the cost of capital and the liquidity of the investment firm. The investment firms should assess the investment firm's business units' and identified staff members' achievements during the accrual period against their objectives.

215. Investment firms should take into account all current and future risks, whether on or off-balance-sheet, differentiating amongst risks relevant for investment firm, business units and individuals. Though investment firms usually bear all types of risk at investment firm-wide level, at the level of individual identified staff members or business units only some types of risk may be relevant.

216. Investment firms should also use measures for risk alignment of remuneration where an exact quantification of the risk exposure is difficult, such as reputational and operational risk. In such cases the risk assessment should be based on suitable proxies, including risk indicators, capital requirements or scenario analysis.

217. In order to conservatively take into account all material risks at the investment firm and business unit levels, investment firms should use the same risk measurement methods as used for internal risk measurement purposes, e.g. within the internal capital adequacy assessment process (ICAAP). Investment firms should take into account expected and unexpected losses and stressed conditions.

218. The investment firms should be able to demonstrate to the competent authority how the risk calculations are broken down by business units and different types of risks. The extent and quality of methods and models used within the ICAAP should be reflected by the investment firm in a proportionate way in the remuneration policy.

14.1.2 Risk-sensitive performance criteria

219. Investment firms should set and document both quantitative and qualitative, including financial and non-financial, performance criteria for individuals, business units and the investment firm. The performance criteria should not incentivise excessive risk taking or mis-selling of products.

220. Investment firms should use an appropriate balance between quantitative and qualitative as well as absolute and relative criteria.

221. The criteria used to measure risk and performance should be linked as closely as possible to the decisions made by the identified staff member and the category of staff members subject to the performance measurement and should ensure that the award process has an appropriate impact on staff's behaviour.

222. Performance criteria should include achievable objectives and measures on which the identified staff member has some direct influence. When assessing performance, the effectively realised results and outcomes should be measured.

223. Quantitative criteria should cover a period which is long enough to properly capture the risk taken by identified staff members, business units and the investment firm and should be risk-adjusted and include economic efficiency measures. Investment firms should also use performance criteria for the assets they manage. Examples of quantitative performance measures used in the asset management sector which fulfil the abovementioned provisions are the internal rate of return (IRR), earnings before interest, taxes, depreciation and amortization (EBITDA), Alpha Ratio, absolute and relative returns, Sharpe Ratio and assets raised.

224. Operating efficiency indicators (e.g. profits, revenues, productivity, costs and volume metrics) or some market criteria (e.g. share price and total shareholder return) do not incorporate explicit risk adjustment and are very short-term and therefore not sufficient to capture all risks of the identified staff member's activities. Such performance criteria require additional risk adjustments.

225. Qualitative criteria (such as the achievement of results, compliance with strategy within the risk appetite and compliance track record) should be relevant at an investment firm, business unit or individual level. Examples of qualitative criteria are the achievement of strategic targets, customer satisfaction, adherence to risk management policy, compliance with

internal and external rules, leadership, team work, creativity, motivation and cooperation with other business units, internal control and corporate functions.

14.1.3 Specific criteria for control functions

226. Where control functions' staff receive variable remuneration, it should be appraised and the variable part of remuneration determined separately from the business units they control, including the performance which results from business decisions (e.g. new product approval) where the control function is involved.

227. The criteria used for assessing the performance and risks should predominantly be based on the internal control functions' objectives. Variable remuneration for control functions should predominantly follow from control objectives. Their variable remuneration may also be based to some extent on the performance of the investment firm as a whole. The investment firm should consider setting a significant lower ratio between the variable and the fixed components of remuneration for control functions compared to the business units they control.

228. If the head of the risk management function (Chief Risk Officer or CRO), where established, is also a member of the management body, the principles set out in paragraphs 226 and 227 should also apply to the CRO's remuneration.

229. Where an investment firm does not establish and maintain an audit or risk management function, it should be able to demonstrate upon request that the performance criteria for staff in charge of the related processes do not provide for incentives to perform the control processes inappropriately.

14.2 Award process

230. Investment firms should set a bonus pool. When determining bonus pools or individual awards, investment firms should consider all current risks, expected losses, estimated unexpected losses and stressed conditions associated with the investment firm's activities.

231. Variable remuneration should be awarded after the end of the accrual period. The accrual period should be at least one year. Where longer periods are used, different accrual periods may overlap, for example if a year, a new multi-year period starts each year.

232. After the accrual period, the investment firm should determine the individual identified staff members' variable remuneration by translating the performance criteria and risk adjustments into actual remuneration awards. During this award process, the investment firm should adjust remuneration for potential adverse developments in the future ('ex ante risk adjustment').

14.2.1 Setting of bonus pools for identified staff

233. Investment firms should define one or more bonus pools for the period for which variable remuneration is awarded and calculate the overall investment firm-wide bonus pool for identified staff as a sum of these bonus pools. The bonus pool should be linked to an investment firm's performance. In addition, staff might benefit from appropriate carried interest payments for which no bonus pool is defined.

234. When setting the bonus pools, investment firms should take into account the ratio between the variable and the fixed components of total remuneration applicable to categories of identified staff, performance and risk criteria defined for the overall investment firm, control objectives and the financial situation of the investment firm, including its capital base and liquidity. The performance indicators used to calculate the bonus pool should include long-term performance indicators and take into account the realised financial results. A prudent use of accounting and valuation methods should be in place which ensures a true and fair evaluation of the financial results, capital base and liquidity.

235. The bonus pools should not be set at a certain level to meet remuneration demands.

236. Investment firms should have appropriate processes and controls in place when determining the overall bonus pool.

237. Where investment firms use a top-down approach, they should set the amount of the bonus pool at the level of the investment firm, which is then fully or partially distributed among the business units and control functions after the evaluation of their performance. The individual awards should subsequently be based on the assessment of the individual's performance.

238. Where investment firms set the bonus pool in a bottom-up approach, the process should start at the level of the individual staff member. Depending on the performance criteria by which the staff are assessed, a bonus pool allocation should be made for the staff member; the bonus pool of the business unit and the investment firm equals the sums of potential awards allocated to the respective subordinated levels. The investment firm should ensure that the investment firm's overall performance is appropriately taken into account.

239. When distributing the bonus pool to the level of the business unit or individual staff member, the allocation should be based as appropriate on predefined formulae and judgemental approaches. Investment firms may use scorecards or other appropriate methods to combine different approaches.

240. When choosing the approach, investment firms should take into account the following: formulae are more transparent and, therefore, lead to clear incentives, as the staff member knows all factors determining his or her variable remuneration. However, formulae may not capture all objectives, especially the qualitative ones, which can be better captured by judgemental approaches. The judgemental approach gives more flexibility to management and

can, therefore, weaken the risk-based incentive effect of the performance-based variable remuneration. It should, therefore, be applied with appropriate controls and in a well-documented and transparent process.

241. Factors such as budget constraints, retention of staff and recruiting considerations, subsidisation among business units etc. should not dominate the distribution of the bonus pool as they can weaken the relationship between performance, risk and remuneration.

242. Investment firms should maintain records on how the bonus pool and the staff's remuneration were determined, including how estimates based on different approaches were combined.

14.2.2 The ex ante risk adjustment in the award process

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

244. Depending on the availability of risk adjustment criteria, investment firms should determine at what level they apply ex ante risk adjustments to the calculation of the bonus pool. This should be at the level of the business unit or at the level of organisational substructures thereof, e.g. the trading desk or the individual staff member.

245. Risk alignment should be achieved by using risk-adjusted performance criteria, including performance criteria that are adjusted for risk based on separate risk indicators. Quantitative and qualitative criteria should be used.

246. The ex ante risk adjustments made by investment firms, where based on quantitative criteria, should largely rely on existing measures within the investment firms, used for other risk management purposes. Where adjustments to such measures are made within risk management processes, investment firms should also make consistent changes in the remuneration framework.

247. When measuring the profitability of the investment firm and its business units, the measurement should be based on the net revenue where all direct and indirect costs related to the activity are included. Investment firms should not exclude costs of corporate functions, e.g. IT costs, group overheads or discontinued businesses.

248. Investment firms should make qualitative ex ante risk adjustments when determining the bonus pool and identified staff's remuneration through, for example, the use of balanced scorecards that explicitly include risk and control considerations such as compliance breaches, risk limit breaches and internal control indicators (e.g. based on internal audit results) or other similar methods.

15. Pay-out process for variable remuneration

249. Without prejudice to the application of waivers under Article 32(4) of Directive (EU) 2019/2034, investment firms should pay the variable remuneration partly upfront and partly deferred and, where required, in instruments and cash in accordance with Article 32 of Directive (EU) 2019/2033. Where a high amount of variable remuneration is paid in instruments, investment firms should consider if the risk alignment with the risk profile of the investment firm or the assets it manages would be improved if a combination of different instruments were awarded. Before paying out the deferred part of cash or the vesting of deferred instruments, a reassessment of the performance and, if necessary, an ex post risk adjustment should be applied to align variable remuneration to additional risks that have been identified or materialised after the award. This applies also where multi-year accrual periods are used.

15.1 Non-deferred and deferred remuneration

250. Without prejudice to the application of waivers under Article 32(4) of Directive (EU) 2019/2034, investment firms should implement a deferral schedule that appropriately aligns the remuneration of staff with the investment firm's activities, business cycle and risk profile and the activities of the identified staff members, so that a sufficient part of the variable remuneration can be adjusted for risk outcomes over time through ex post risk adjustments.

251. A deferral schedule is defined by different components:

a. the proportion of the variable remuneration that is being deferred (section 15.2);

b. the length of the deferral period (section 15.2);

c. the speed at which the deferred remuneration vests, including the time span from the end of the accrual period until the vesting of the first deferred amount (section 15.3).

252. Investment firms should take into account within the deferral schedule the form in which the deferred variable remuneration is awarded and should, where appropriate, differentiate their deferral schedules by varying these components for different categories of identified staff. The combination of these components should lead to an effective deferral schedule, in which clear incentives for long-term-oriented risk taking are provided by transparent risk alignment procedures.

15.2 Deferral period and proportion of deferred remuneration

253. The deferral period starts after the award is made (e.g. at the moment the upfront part of the variable remuneration is paid out). Deferral can be applied to both types of variable remuneration, cash and instruments.

254. When setting the actual deferral period and proportion to be deferred in accordance with the minimum requirements under Article 32(1) (l) of Directive (EU) 2019/2034, investment firms should consider:

a. the responsibilities and authorities by identified staff and the tasks they performed;

b. the business cycle and nature of the investment firm's activities;

c. expected fluctuations in the economic activity and performance and risks of the investment firm and business unit and the impact of identified staff on these fluctuations;

d. the ratio between the variable and fixed components of the total remuneration and the absolute amount of variable remuneration.

255. Investment firms should determine for which categories of identified staff, also considering their roles and responsibilities, deferral periods longer than the required minimum period of at least three to five years should be applied to ensure that the variable remuneration is aligned with the risk profile in the long term. Where longer multi-year accrual periods are used and where the longer accrual period provides more certainty about the risks that have materialised since the beginning of the accrual period, investment firms should consider this fact when setting deferral and retention periods and may, where appropriate, introduce deferral periods that are shorter than the deferral periods which would be appropriate when a one-year accrual period would be used. The minimum requirement of a three-year deferral period applies in any case.

256. Investment firms should set an appropriate portion of remuneration that should be deferred for a category of identified staff or a single identified staff member at or above the minimum proportion of 40%. In case of particularly high amounts of variable remuneration, the proportion of deferral period for such staff members should be of at least 60%.

257. Investment firms should define what level of variable remuneration constitutes a particularly high amount, taking into account the average remuneration paid within the investment firm, when available the EBA remuneration benchmarking report on investment firms and, where available, national and other remuneration benchmarking results and the thresholds set by competent authorities. When implementing the guidelines, competent authorities should set an absolute or relative threshold, considering the above criteria. Remuneration at or above that threshold should always be considered as being of a particular high amount.

258. Where investment firms determine the proportion that is deferred by a cascade of absolute amounts (e.g. part between 0 and 100: 100% upfront; part between 100 and 200: 50% upfront and the rest is deferred; and part above 200: 25% upfront and the rest is deferred), investment firms should be able to demonstrate to the competent authority that on an average weighted basis for each identified staff member the investment firm respects the 40% to 60% minimum

deferral threshold and that the deferred portion is appropriate and correctly aligned with the nature of the business, its risks and the activities of the member of identified staff in question.

259. Where the general principles of national contract and labour law prevent the substantial reduction of variable remuneration where subdued or negative financial performance of the investment firm occurs, investment firms should apply a deferral scheme and use instruments for the award of variable remuneration that ensure that ex post risk adjustments are as far as possible applied. This may include any of the following:

a. setting longer deferral periods;

b. avoiding the use of pro rata vesting in situations where malus can be applied, but the application of clawback would be subject to legal impediments;

c. awarding a higher portion of variable remuneration in instruments that are aligned to the performance of the investment firm and subject to sufficiently long deferral and retention periods.

15.3 Vesting of deferred remuneration

260. The first deferred portion should not vest sooner than 12 months after the start of the deferral period. The deferral period ends when the awarded variable remuneration has vested or where the amount was reduced to zero as malus was applied.

261. Deferred remuneration should either vest fully at the end of the deferral period or be spread out over several payments in the course of the deferral period in accordance with Article 32(3) of Directive (EU) 2019/2034.

262. Pro rata vesting means, for example, a deferral period of four years that at the end of years n+1, n+2, n+3 and n+4, one quarter of the deferred remuneration vests, with n being the moment at which the upfront part of awarded variable remuneration is paid.

263. Vesting should not take place more frequently than on a yearly basis to ensure a proper assessment of risks before the application of ex post adjustments.

15.4 Award of variable remuneration in instruments

264. The instruments used for the award of variable remuneration should contribute to the alignment of variable remuneration with the performance and risks of the investment firm.

265. Investment firms should prioritise the use of instruments, as set out in Article 32 (j) of Directive (EU) 2019/2034, issued by the investment firm itself. Investment firms may also use the instruments listed in points (i), (ii) and (iii) of Article 32(j) of Directive (EU) 2019/2034 issued within the scope of consolidation. The variable remuneration may consist of a balance of different types of instruments.

266. Where an investment firm does not issue any eligible instruments, but does not benefit from a waiver under Article 32(4) of Directive (EU) 2019/2034, it should apply for the use of an alternative arrangement, demonstrating that it does not issue such instruments.

267. Competent authorities, when deciding on applications to use alternative arrangements, should take into account:

a. that investment firms which are stock corporations (both listed and non-listed) have issued shares and therefore in general shares and in any case share-linked instruments are available for the pay-out of variable remuneration;

b. if it would be possible and proportionate for the investment firm to make use of share-linked instruments or equivalent non-cash instruments, subject to the legal structure of the investment firm;

c. if 'other instruments' under Article 32(j)(iii) of Directive (EU) 2019/2034 have been issued, which depends on whether an investment firm or an investment firm in the scope of consolidation has already issued such instruments and sufficient amounts of such instruments are available. Where investment firms are primarily wholesale funded, or rely to a large extent on additional Tier 1, Tier 2 or bail-in-able debt to meet their capital requirements, such instruments should be available for the purposes of variable remuneration, provided that these 'other instruments' comply with Commission Delegated Regulation mandated under the IFD;

d. If there are specific requirements under national labour law that prevent the use of an issued eligible instrument for the pay-out of variable remuneration.

268. Share-linked or other equivalent non-cash instruments (e.g. stock appreciation rights, types of synthetic shares) are those instruments or contractual obligations, including instruments based on cash, whose value is based on the market price or, where a market price is not available, the fair value of the stock or equivalent ownership right and track the market price or fair value. All such instruments should have the same effect in terms of loss absorbency as shares or equivalent ownership interests.

269. Investment firms should ensure that they have the awarded instruments available when the variable remuneration awarded in instruments vest. Investment firms may decide not to hold the instruments during the deferral period, but should in that case take into account the relevant market risks.

270. Instruments should be priced at the market price or their fair value on the date of the award of these instruments. This price is the basis for the determination of the initial number of instruments and for later ex post adjustments to the number of instruments or their value. Such valuations should also be done before the vesting to ensure that ex post risk adjustments are applied correctly and before the retention period ends. Investment firms that are not listed

may establish the value of the ownership interests and ownership interest-linked instruments based on the last annual financial results.

271. Investment firms may award a fixed number or nominal amount of deferred instruments using different techniques, including trustee depot facilities and contracts, provided that in every case, the number or nominal amount of the instruments awarded is provided to identified staff at vesting, unless the number or nominal amount is reduced by the application of malus. Investment firms should make sure that the awarded instruments are available for the pay out to staff at the latest when they vest.

272. Investment firms should not pay any interest or dividend on instruments which have been awarded as variable remuneration under deferral arrangements to identified staff; this means also that interest and dividends payable during the deferral period should not be paid to staff after the deferral period ends. Such payments should be treated as received and owned by the investment firm. The same should apply for non-cash instruments which reflect the instruments of the portfolios managed.

15.5 Minimum portion of instruments and their distribution over time

273. Where applicable, the requirement to pay, in accordance with Article 32(1)(j) of Directive (EU) 2019/2034, at a minimum 50% of any variable remuneration in instruments. Investment firms should apply this requirement either equally to the non-deferred and the deferred part or choose to award a higher portion of the deferred part of remuneration in instruments, as long as in total the minimum requirement of 50% is met.

274. Investment firms should prioritise the use of instruments rather than award variable remuneration in cash. Investment firms should set the percentage which is awarded in instruments at or above 50%. Where investment firms award a higher portion than 50% of the variable remuneration in instruments, they should prioritise a higher share of instruments within the deferred portion of the variable remuneration component.

275. The ratio of variable remuneration that is paid out in instruments should be calculated as the quotient between the amount of variable remuneration awarded in instruments and the sum of the variable remuneration awarded in cash, instruments and in any other form. All amounts should be valued at the point of award unless stated otherwise in these guidelines.

15.6 Retention policy

276. The retention period applied to variable remuneration paid in instruments should be set at an appropriate length in order to align incentives with the longer-term interests of the investment firm.

277. The investment firm should be able to explain how the retention policy relates to other risk alignment measures and how they differentiate between instruments paid upfront and deferred instruments.

278. When setting the retention period, investment firms should consider the overall length of the deferral and the planned retention period and the impact of the category of identified staff on the investment firms' risk profile and the length of the business cycle relevant for the category of staff.

279. A longer retention period as applied in general to all identified staff should be considered in cases where the risks underlying the performance can materialise beyond the end of the deferral and standard retention period, at least for the staff with the highest impact on the investment firms' risk profile.

280. For awarded instruments, a retention period of at least one year should be set. Longer periods should be set in particular where ex post risk adjustments mainly rely on changes of the value of instruments which have been awarded. Where the deferral period is at least five years, a retention period for the deferred part of at least six months may be imposed for identified staff other than members of the management body and senior management for whom a minimum retention period of one year should be applied.

15.7 Risk adjustment

15.7.1 Malus and clawback

281. Malus or clawback arrangements are explicit ex post risk adjustment mechanisms where the investment firm itself adjusts remuneration of the identified staff member based on such mechanisms (e.g. by lowering awarded cash remuneration or by reducing the number or value of instruments awarded).

282. Without prejudice to the general principles of national contract or labour law, investment firms must be able to apply malus or clawback arrangements up to 100% of the total variable remuneration in accordance with Article 32(1)(m) of Directive (EU) 2019/2034 regardless of the method used for the payment, including deferral or retention arrangements.

283. Ex post risk adjustments should always be performance or risk-related. They should respond to the actual risk outcomes or changes to persisting risks of the investment firms, business line or staff's activities. They should not be based on the amount of dividends paid or the evolution of the share price.

284. Investment firms should analyse whether their initial ex ante risk adjustments were sufficient, e.g. whether risks have been omitted or underestimated or new risks were identified or unexpected losses occurred. The extent to which an ex post risk adjustment is needed depends on the accuracy of the ex ante risk adjustment and should be established by the investment firm based on back-testing.

285. When setting criteria for the application of malus and clawback in accordance with Article 32(1)(m) of Directive (EU) 2019/2034, investment firms should also set a period during which malus or clawback will be applied to identified staff. This period should at least cover deferral and retention periods. Investment firms may differentiate between criteria for the application of malus and clawback. Clawback should in particular be applied in the case of fraud or other conduct with intent or severe negligence which led to significant losses.

286. Investment firms should use at least the initially used performance and risk criteria to ensure a link between the initial performance measurement and its back-testing. Investment firms should, in addition to the criteria set out in Article 32(1)(m)(i) and (ii) of Directive (EU) 2019/2034, use specific criteria including:

a. evidence of misconduct or serious error by the staff member (e.g. breach of code of conduct and other internal rules, especially concerning risks);

b. whether the investment firm and/or the business unit subsequently suffers a significant downturn in its financial performance (e.g. specific business indicators);

c. whether the investment firm and/or the business unit in which the identified staff member works suffers a significant failure of risk management;

d. significant increases in the investment firm's or business unit's economic or regulatory capital base;

e. any regulatory sanctions, e.g. punitive, administrative, disciplinary or otherwise, where the conduct of the identified staff member contributed to the sanction.

287. Where malus can only be applied at the moment of vesting of the deferred payment, investment firms may choose, where possible, to apply clawback after paying out or vesting of the variable remuneration. The application of malus may not be possible where the derogation under Article 32(4) of Directive (EU) 2019/2034 applies as the requirement to defer variable remuneration is not applied; investment firms should ensure that clawback can be applied.

288. Malus and clawback arrangements should lead to a reduction of the variable remuneration where appropriate. Under no circumstances should an explicit ex post risk adjustment lead to an increase of the initially awarded variable remuneration or, where malus or clawback was already applied in the past, to an increase of the reduced variable remuneration.

15.7.2 Implicit adjustments

289. Investment firms should use instruments for variable remuneration where the price reacts to changes of the investment firm's performance or risk. The evolution of the stock price or the price of other instruments should not be considered as a substitute for explicit ex post risk adjustments.

290. Where instruments were awarded and staff, after deferral and retention periods, sell these instruments or the instrument is paid out in cash at its final maturity, staff should be able to receive the amount due. The amount can be higher than the initially awarded amount where the market price or the instrument's fair value has increased.

Title V – Investment firms that benefit from government intervention

16. State support and remuneration

291. In line with section 6 of these present guidelines, where investment firms benefit from exceptional government intervention, competent authorities and investment firms should establish regular contacts with regard to the setting of the bonus pool of possible variable remuneration and the award of variable remuneration to ensure compliance with Article 31 of Directive (EU) 2019/2034 and any additional restrictions imposed by competent authorities. Any payment of variable remuneration should not endanger compliance with the established recovery and exit plan from exceptional government intervention.

292. For investment firms that fall under the scope of Directive 2014/59/EU, the Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis (2013/C 216/01) should be applied within the remuneration policies. Any condition with regard to remuneration imposed on investment firms when state aid has been approved by the Commission and granted and within any related acts should be reflected appropriately in the investment firms' remuneration policy.

293. The variable remuneration of an investment firm's staff should not prevent an orderly and timely payback of the exceptional government intervention or the achievement of objectives set in the restructuring plan.

294. The investment firm should ensure that a bonus pool or the vesting and paying out of variable remuneration do not pose damage the timely building up of its capital base and a decrease in its dependence on exceptional government intervention.

295. Competent authorities should monitor that the investment firm complies with the conditions of Article 31 of Directive (EU) 2019/2034 and may set a maximum percentage of the net revenue that can be used for the pay-out of variable remuneration.

Title VI - Competent authorities

17. Remuneration policies

296. Competent authorities should apply a risk-based approach when supervising the remuneration policies and practices of investment firms and review them in line with the EBA guidelines on the supervisory review process.

297. Competent authorities should ensure within their supervisory review, taking into account these guidelines, that investment firms comply with the requirements on remuneration policies set out in Directive (EU) 2019/2034 and the provisions of the RTS on identified staff, including that they have appropriate gender neutral remuneration policies for all staff and for identified staff.

298. Competent authorities should ensure that investment firms align their remuneration policy and practices to the business strategy and the long-term interest of the investment firm taking into account its business and risk strategy, corporate culture and values, and risk profile.

299. Competent authorities should ensure that investment firms' remuneration policies, practices and processes are appropriate, including the award of guaranteed variable remuneration, severance payments and discretionary pension benefits.

300. Competent authorities should ensure that investment firms have set an appropriate maximum ratio between the variable and the fixed part of total remuneration.

301. Competent authorities should review the gender pay gap within investment firms and follow up on any indication that remuneration policies are not gender neutral.

302. Competent authorities should be satisfied with the overall outcome of the identification process and should assess if all staff members whose activities have or may have a material impact on the investment firm's risk-profile or of the assets that it manages have been identified and that any exclusions of staff from the category of identified staff, where staff were only identified by the quantitative criteria in the RTS are well-reasoned and that the respective processes set out in these guidelines and the RTS have been complied with.

303. Without prejudice to other supervisory and disciplinary measures and sanctions, competent authorities should require investment firms to take adequate actions in order to remedy any identified deficiencies. Where investment firms do not comply with such request, appropriate supervisory measures should be taken.

20. Disclosures

304. Competent authorities should review the public disclosures on remuneration made by investment firms in accordance with Article 51 of Regulation (EU) 2019/2033, and should establish for which investment firms a regular review of disclosures should be performed.

305. In addition to the benchmarking of remuneration practices required under Article 34(1) of Directive (EU) 2019/2034 and the exercise on data collection regarding high earners under Article 34(4) of that Directive, competent authorities should require periodic (or ad hoc) supervisory reporting on remuneration disclosures as appropriate in order to monitor the development of remuneration practices within investment firms and in particular within the largest investment firms in that Member State.

21. Colleges of supervisors

306. Colleges of supervisors established pursuant to Article 48 of Directive (EU) 2019/2034 should discuss remuneration issues in line with the supervisory review process, taking into account the additional areas of supervisory review required under these guidelines.

5. Accompanying documents

5.1 Cost-benefit analysis/impact assessment

1. Article 16(2) of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority) (EBA Regulation) provides that the EBA should carry out an analysis of 'the potential related costs and benefits' of any guidelines it develops. This analysis should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options.

A. Problem identification and policy objectives

2. Directive (EU) 2019/2034 is replacing for investment firms the requirements on remuneration policies that have previously been encoded in Directive 2013/36/EU (CRD). The EBA has been mandated to develop the present guidelines.

B. Baseline scenario

3. The current EU legislative framework for investment firms' remuneration policies consists mainly of Directive 2013/36/EU and the EBA guidelines on sound remuneration policies, guidelines on the collection of data on high earners and on the remuneration benchmarking exercise. The framework set under IFD is largely equivalent to the framework under CRD.

4. The impact assessment covers guidelines developed to ensure the harmonised application of remuneration requirements introduced by Directive (EU) 2019/2034 where they differ from the previously applicable framework. The assessment is limited to areas where the guidelines have changed compared to the framework established as applicable on 28 December 2020 (CRD V). Areas that have not changed in substance and the changes introduced within the Directive (EU) 2019/2034 (IFD) and Regulation (EU) 2019/2033 have not been assessed.

C. Options considered

5. With regard to aspects that have been changed within CRD V, the EBA has already published a consultation paper on revised remuneration policies, including an impact assessment on gender neutral remuneration policies, retention bonuses and severance payments. The present consultation paper includes the same changes and therefore no additional impact assessment is made for those aspects.

Implementation date.

6. Specific requirements on remuneration policies are being introduced for investment firms by implementation of Directive (EU) 2019/2034 into national law on 26 June 2021.

7. Considering that the IFD remuneration framework as such is equivalent to the requirements under CRD, a short implementation period is sufficient. Some of the requirements under the IFD require changes to remuneration policies and investment firms' governance arrangements. This concerns, for example, the establishment of a remuneration committee and the setting of a ratio for variable remuneration to fixed remuneration for all staff. An application date of 31 April 2022 appears appropriate to allow investment firms that have not been subject to the CRD provisions to establish internal remuneration policies in line with the provisions set out in the guidelines

8. Transitional provisions have been added to ease the challenges of investment firms to document any changes made and to allow for an effective implementation of the guidelines, taking into account to have in some situations an adoption of policies by shareholders.

Remuneration policies for all staff

9. The IFD requires investment firms to set an appropriate ratio between the variable and the fixed remuneration for all staff. Guidance has been provided on how investment firms should set such a ratio within their remuneration policy.

   Option A: The guidelines should set out the considerations that investment firms should take into account when setting the ratio, how it is calculated and give guidance on the expectations regarding the implementation in throughout the investment firm. Such guidance would ensure an appropriate framework so that competent authorities can supervise the setting of the ratio. A more procedural approach would give the investment firm the responsibility to set the appropriate ratio, but require investment firms to be able to demonstrate the appropriateness of their policy.

   Option B: In addition to Option A, a range of ratios should be set that in general are considered as appropriate.

   Option A would lead to some additional costs for the competent authority compared to maintaining Option B; the appropriateness of the ratio also has to be supervised in any case, but on a risk-based approach. However, Option B might be perceived as imposing restrictions and would run the risk of investment firms not being able to align their remuneration policy with their risk profile and national remuneration practices. As those investment firms do not pose a systemic risk to the financial system, it is not necessary to strictly limit the ratio for that reason. While it is a competent authority's obligation to supervise the prudential risks the policy could cause in terms of reducing the soundness of the capital, the approach taken also

relies on the control by owners and markets so that the distribution of profits between owners, investors and staff is appropriate.

Option A has been retained.

Monitoring the gender pay gap

10. IFD requires investment firms to submit information on the gender pay gap to competent authorities. In addition IFR requires specific disclosure requirements. The guidelines should provide for some provisions that allow competent authorities to benchmark trends regarding the gender pay gap.

    Option A: Limit monitoring of the pay gap to identified staff

    While this approach would be consistent with disclosure requirements, it would not be effective as the issue of the gender pay gap may concern all staff. Given different levels of pay at different levels of seniority, an overall benchmark based on all identified staff or all staff would lead to figures that are difficult to interpret, as the gap may depend on random effects resulting from having one gender better represented at the level of the highest paid staff. Moreover, members of the management body in the supervisory function receive in most cases no remuneration, but a fee for their services and participation.

    Option B: Perform the monitoring of the pay gap for the different functions within the management body, identified staff and other staff.

    The approach would overcome the above-described differences. The allocation of staff to those groups is anyway required, in the same way the collection of remuneration data has to be done separately under IFD/IFR requirements. Hence there is no material additional burden for this more granular monitoring and reporting. Disclosure would still follow a less granular approach.

    Option C: Monitoring on a country-by-country basis

    Most investment firms will be active mainly in one Member State. However, the establishment of branches and provision of services is also possible in other Member States. Moreover, the need to monitor the gender pay gap and to inform the competent authority applies also on consolidated level. Given material differences in remuneration levels and pools of available human resources per gender may differ between Member States, therefore monitoring country by county would be more effective. To reduce the burden and to avoid an analysis based on small groups of staff, this approach should only be taken in firms that have at least 50 staff. This number is in line with the Commission Recommendation C(2014) 1405 final.

    Option B and C have been retained.

Pay-out in instruments

11. Investment firms have to pay a part of the variable remuneration in instruments. Guidance on the instruments and the ratio is provided.

12. Option A: In line with the approach taken under the CRD allowing the use of shares, share linked, AT 1 and AT 2 and other instruments issued in a group context if there is a link to the risk profile.

13. Option B: Allowing also the use of instruments that reflect the instruments of the portfolios managed in a group context.

14. Option C: Requiring that the 50% of variable remuneration that has to be paid in instruments should be either equally applied for the deferred and non-deferred part or that a higher ratio of deferred remuneration should be paid in instruments.

    Regarding Option A, any additional restrictions would lead to additional costs and therefore Option A was retained even if instruments issued, e.g. by a parent credit institution, are not leading to a strong alignment of the risk to clients with the remuneration paid in instruments. However, it could be disproportionate to use a stricter approach for investment firms as compared to credit institutions. Where investment firms manage portfolios, such instruments that are linked to the assets they manage should refer to the assets managed by the investment firm to ensure an alignment of remuneration with the risks to assets. Even if there is a small additional cost for creating instruments on an individual level and considering that the IFD does not require a balance of different instruments to be used, Option B has not been retained. Option C has been retained as the alignment of remuneration to risk increases if the pay-out in instruments concerns deferred remuneration. There are no additional costs as compared to an approach where the minimum ratio is applied equally to the deferred or non-deferred part.

    Options A and C have been retained.

E. Cost-benefit analysis

Given the limited changes compared to the baseline scenario and the easing of some requirements within IFD and the guidelines, it is assumed that the changes to the guidelines as such create low implementation costs mainly for updates to internal policies and additional required documentations.

5.2 Feedback on the public consultation and the opinion of the Banking Stakeholder Group

Summary of key issues and the EBA's response

The guidelines have been consulted on for a three-month period until 17 March 2021. The EBA received overall 15 responses, of which 14 have been published. One was submitted on a confidential basis. In addition, the EBA's Banking Stakeholder Group (BSG) submitted its advice.

Most respondents noted that the date of application is too ambitious and investment firms need some time for internal implementation of the new guidelines.

Some respondents found that the framework under the guidelines is very similar to the framework under the CRD. Respondents proposed to introduce more references to the application of proportionality.

A few respondents highlighted the importance of avoiding 'conflicts of laws' among the guidelines and national social and labour legislations or conflicts with regard to collective bargaining, in particular concerning gender neutral remuneration policies. Furthermore, it was found that the provisions on anti-discrimination and equal opportunities would go beyond the requirement to have gender neutral remuneration policies.

Some respondents wondered why the thresholds for waivers and the calculation of the ratio between variable and fixed remuneration followed a different approach.

Views of the BSG[22]

The BSG submitted its comments to the draft GL during the period of public consultation. In general, the BSG is supportive with regard to many parts of the guidelines, including the provisions on waivers, performance criteria and pay-out in instruments and suggested further clarifications in some areas.

Among other points, the BSG suggested to further clarify the application of the proportionality principle and to detail the level of sophistication expected from different investment firms. The BSG notes that the requirements addressed to competent authorities appear to be limited, since – compared to the CRD guidelines – some indications have been removed on how supervisors could assess the appropriateness of firms' remuneration policies.

The BSG also outlines that, with regard to gender pay neutrality, some additions to the text are needed to embed the Level 1 text and ensure that gender neutral remuneration policies are effectively and consistently applied in practice. The BSG also expressed the view that the EBA should take due account of the rights of employee representatives and trade unions under national law, as well as the payments agreed in collective bargaining.

[22] The response of the BSG is available under: https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Consultations/2021/Consultation%20on%20Guidelines%20on%20remuneration%20policies%20for%20investment%20firms/964578/BSG%20on%20GL%20on%20remuneration%20policies%20for%20investment%20firms.pdf

EBA's response

The EBA has taken into account the comments received and the opinion of the Banking Stakeholder Group and revised the guidelines. Where appropriate, the EBA has also aligned the guidelines with changes made to the guidelines under CRD.

The guidelines provide a set of criteria that should be taken into account when applying the guidelines in a proportionate manner. Providing for specific thresholds or criteria, which would demand the implementation of specific provisions, as suggested, would reduce the flexibility of investment firms and competent authorities. Given the multitude of different but overlapping business models, such a system of specifications would potentially lead to an unlevel playing field in certain areas.

The guidelines aim to further specify requirements under the IFD and to achieve harmonisation at the EU level. Given the need of Member States to implement the CRD provisions and to abide by the principles set out within the European Charter of Fundamental Rights, it would be surprising if social or labour law, including collective bargaining, would lead to results that are not gender neutral. Therefore, it is presumed that the guidelines do not lead to any conflicts regarding those matters. However, the obligation to ensure a gender neutral remuneration policy applies to the investment firms and not the social partners that negotiate employment conditions.

All aspects of the remuneration policy must be gender neutral. Some aspects concerning equal opportunities and anti-discrimination have been further specified in the EBA guidelines on internal governance under IFD. However, some aspects have also been retained in these guidelines as they are linked to the remuneration of staff.

The different calculation of amounts regarding the application of waivers under Article 32 of the IFD and the application of the maximum ratio set by the investment firm in the context of severance payments have been retained, but have been further specified. The calculation differs as the context and the underlying provisions of the IFD differ. The thresholds for the application of waivers are set out in the IFD and cannot be increased by guidelines. The waivers introduced and thresholds set by the co-legislators have the purpose of reducing the burden for the pay-out of a part of the variable remuneration in instruments and under deferral arrangements, in situations where only a low amount is paid. Where in fact a higher amount is paid out, the prudential benefits of applying those requirements exceed the burden for their application.

The different calculation of amounts in the context of severance payments is a technical necessity and ensures that the limitation of the ratio between variable and fixed remuneration set within the investment firm's policy can be applied in a meaningful way. The calculation of a ratio with regard to severance payments differs, as the payment is made for the early termination of a contract and not for a defined performance period, so that a ratio between the variable and fixed remuneration for such elements can hardly be calculated.

More detailed feedback on the comments is included in the following feedback table.

Summary of responses to the consultation and the EBA's analysis

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
General comments			
Date of application	Some respondents observe that some investment firms that are subject to the guidelines have not been subject to CRD in the past and must comply for the first time with detailed remuneration requirements, in particular the identification of risk takers and the pay-out rules, which may require considerable implementation effort. Some respondents would find it helpful if the guidelines made it clear that the transitional timelines apply to the remuneration requirements of Directive (EU) 2019/2034 itself, as well as to these EBA guidelines. Another respondent requests that the EBA provide more clarity regarding the application of the transitional provisions to the remuneration structure requirements, since the draft guidelines do not specify the date on which the remuneration structure requirements (e.g. the pay-out process rules and related provisions) apply, so that it would be unclear whether firms are required to apply the remuneration structure requirements by 26 June 2021 (e.g. the current performance year) or whether such requirements are subject to the transitional provisions and do not apply until 1 January 2022. A respondent, while appreciating the transitional period provided, points out that any changes to individual contracts may need a longer period for implementation due to the rights of staff under labour laws, and believes that this should be adequately reflected under paragraph 11.	The date of implementation has been moved back to 31 April 2022. The set date of application should provide for sufficient time to implement the guidelines and aligns their application with the calendar year. The IFD does not contain transitional arrangements for the application of remuneration requirements that are further specified within these guidelines. The application of IFD provisions cannot be altered by the means of EBA guidelines.	GL amended
Impact assessment	One respondent raised concerns regarding the very limited scope of the impact assessment. The EBA is reminded that many firms now subject	As explained in the impact assessment section, the EBA's impact assessments are limited to the impact caused by the	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	to IFD would have been exempt from remuneration rules under CRD on the principle of proportionality and non-significance.	guidelines and do not assess the impact created by the implementation of IFD. Different waivers have been introduced within the CRD and IFD for certain remuneration provisions. Such waivers did not exist beforehand in the respective level-1 texts at EU level.	
Policies for all staff	Some respondents ask for clarification on the application of remuneration policies to all staff and to identified staff. In particular, a respondent disagrees with the proposed scope that the remuneration policies and practices shall apply to all staff. According to the respondent, remuneration policies for all staff should be limited to (1) the application of the principle of equal pay for male and female workers for equal work or work of equal value and (2) clear principles on how to align remuneration with the risk profile of investment firms, while all other requirements on the remuneration policies should be limited to identified staff members and to the content defined in Article 30 IFD.	Article 26 IFD requires investment firms to have remuneration policies that are gender neutral. Those policies should apply to all staff. Investment firms should also have policies for their tied agents, as they are in the scope of prudential consolidation. It should be ensured that the use of tied agents should not led to a circumvention of the remuneration requirements. The remuneration policies for identified staff must comply with the requirements under Articles 30 and 32 of the IFD. Investment firms should consider if it would be appropriate to apply such elements or parts of them also to all staff as part of the firm's policy.	No change
Principle of proportionality	Some respondents, while appreciating the acknowledgement that the guidelines should be applied with due regard to the principle of proportionality, believe that the principle of proportionality is not reflected in several areas set out in the guidelines and that it could be further strengthened in particular in how it applies to the structure of remuneration (Section III). In addition, the guidelines are based on hard quantitative thresholds, which are not deemed appropriate for asset managers holding a MiFID license. A respondent highlights that the amount of assets under management could not be a stand-alone criterion for a risk measurement approach, since also the nature, scope and complexity of the activities should be	The guidelines specify the provisions within the IFD. The principle of proportionality ensure that the respective provisions are applied in an appropriate manner. The guidelines provide for the needed flexibility. Given the multitude of different but overlapping business models, a system of specifications e.g. per authorised activity would potentially lead to an unlevel playing field in certain areas. Additional waivers on top of the ones included in the IFD cannot be granted by means of guidelines.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	relevant (such as the underlying risk profiles of the business activities that are carried out). One respondent suggested including indications of investment services and activities for which a greater degree of sophistication is expected, but consider that points (8) [operation of an MTF] and (9) [operation of an OTF] of Section A of Annex 1 to Directive 2014/65/EC (MiFID 2) also require a high degree of sophistication, particularly because in the case of OTFs, there may be few alternative regulated venues available on which to trade a particular financial instrument. Some respondents suggested that the proportionality principle may allow for different governance structures (provided that the high-level requirements of the IFD/IFR are met) and for a greater amount of flexibility with respect to each remuneration parameter (including structure and deferral period, retention structures, procedures for risk adjustment) as compared to the framework under CRD.	All criteria provided for in the guidelines need to be considered in parallel, however, waivers are based on fixed thresholds. The requirements on the variable remuneration under IFD are very similar to the requirements under CRD. Most investment firms have been subject to those requirements. The guidelines cannot alter the application of minimum requirements included in the IFD, e.g. regarding deferral ratios and periods and should ensure that the objectives, namely an alignment between risk profile and variable remuneration, are indeed achieved.	
Principle of proportionality	Some respondents commented that guidelines under CRD for significant institutions should not be automatically carried forward under IFD, since their application to investment firms with a balance sheet above EUR 100 million does not appear adequate and proportionate.	Specific provisions for significant investment firms have been removed from the guidelines. The proportionality criteria have been reviewed.	GL amended
Impact of variable remuneration on capital base	A respondent suggests reflecting in Section 6 on capital base that an extensive use of variable remuneration to key members of staff can lower a firm's exposure to operational costs, which mainly is made up of salaries, in case of falling revenues from asset management services.	The EBA is well aware of the impact of fixed remuneration on the fixed overheads of an investment firm. However, the underlying provisions are part of the IFD/IFR and cannot be changed via guidelines. At the same time, some fixed remuneration is required under IFD to ensure that the firm can comply for its identified staff with the requirements under Articles 30 and 32 of the IFD.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
EBA guidelines and national legislations	A respondent points out the importance for these guidelines of not creating a conflict of law with national social and labour legislations, which would lead to a situation where actors scoped in are not able to comply both with the guidelines and with national legislations that the IFD does not amend.	Member States are required to implement the IFD, in some cases this might create the need to also change other laws that are not directly targeted by the IFD. However, it would be surprising if, for example, provisions on gender neutral remuneration or anti-discrimination would conflict with the principles encoded in national social or labour law.	No change
Background and rationale Para. 7 Report on the application of gender neutral remuneration policies	A respondent asks for greater clarity about the report that the EBA is mandated to issue on the application of gender pay neutral policies and how this may impact the current requirement of the IFD and other Directives.	The report will review the application and provide its findings to the European Commission and national competent authorities. Depending on the findings further legislative measures might follow. This is, however, not for the EBA to decide on.	No change
Para. 168 Custodial accounts	A respondent asks for the final sentence of the paragraph to be removed from the guidelines, since the proposed requirement for staff to notify the firm of any custodial accounts outside the investment firm is disproportionate, goes beyond the personal account dealing requirements under MiFID and would require firms to impose an intrusive requirement on staff. It is also pointed out that the two most conspicuous ways in which staff might seek to hedge against the IFD remuneration requirements are insurance policies or derivative transactions, neither of which are typically held in custodial accounts.	While it is true that not each and every hedging attempt can be prevented, this provision has been retained, as it is an effective measure to enable investment firms to monitor if staff comply with the requirements.	No change
Para. 227 Bonus pool	A respondent, whilst recognising that investment firms must not undermine their capital and liquidity requirements, deems it inappropriate and disproportionate to require some firms (such as MiFID 'adviser-arranger' entities within alternative asset management groups, which have predictable revenue streams, for example advisory	Investment firms should set bonus pools for their identified staff, who should receive a performance related remuneration. This part of the variable remuneration allows the staff to benefit from the overall profits.	GL amended

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	fees charged on a 'cost-plus' basis) to set bonus pools and comply with associated obligations. It is remarked that allowing greater flexibility would make sense purposively for such firms, where the most substantial part of remuneration awards typically takes the form of carried interest awards rather than bonuses.	Carried interests are defined as a share of generated profit of a portfolio and allows staff to benefit from the performance of the portfolio. The guidelines have been clarified.	
Para. 293 Requirements for competent authorities	A respondent recognises that some flexibility is needed to ensure that supervision is risk-based, but is concerned that this could lead to inconsistent and potentially ineffective approaches being taken and undermine the impact of the guidelines. The respondent suggested clarifications to the section on risk-based supervision.	The supervisory processes for investment firms will be subject to a separate set of guidelines. The present guidelines consulted on the areas that should be reviewed by supervisors.	No change
Responses to questions in Consultation Paper EBA/CP/2020/26			
Question 1. Are the subject matter, scope and definitions appropriate and sufficiently clear?			
Disclosure requirements	Some respondents note that the guidelines do not include any guidance on the implementation timeline for disclosure requirements under Article 51 of Regulation (EU) 2019/2033. They suggest that such requirements should only apply in respect of remuneration awarded under policies that are subject to the remuneration policy and governance requirements within the IFD/IFR package. Hence, the remuneration disclosure requirements should only apply to remuneration awarded in respect of performance years starting after 31 December 2021.	Disclosure requirements are included in the IFD/IFR package. The IFR is directly applicable EU law. IFD requires Member States to implement the requirements into national law by 26 June 2021. The date of application of the IFR requirements is set at the level 1 text and cannot be altered by guidelines.	No change
Para. 8 Scope of application	Some respondents ask for the scope of the EBA guidelines to be clearly limited to the Level 1 scope of investment firms in the meaning of Article 2 IFD (authorised and supervised under MiFID II) which do not meet the conditions of Article 12 IFR.	The consulted guidelines follow the suggested approach. The scope of the guidelines is clearly limited to investment firms that are subject to the IFD.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	A respondent notes that the guidelines are addressed to '*financial institutions as referred to in Article 4 (1) of Regulation (EU) No 1093/2010 that are investment firms as defined in Article 4(1)(1) of Directive 2014/65/EU and do not meet all of the conditions to qualify as small and non-interconnected investment firms under Article 12(1) of Regulation (EU) 2019/2033*' and claims that, being the definition of investment firm taken from MIFID II, all credit institutions would also be within the scope of these GLs, as they are financial institutions that are investment firms under MiFID II. Since this cannot have been the intent of the EBA (which is also mandated to adopt separate GLs specifically for credit institutions), the respondent asks for the EBA to change the addressees of the GL in a way that credit institutions are clearly excluded from their scope of application.		
Para. 9 Definitions	A respondent, noting that the definition of 'remuneration' includes carried interests within the meaning of Article 4(1)(d) AIFMD, states that carried interests are not a 'remuneration' but an incentive model comparable to a very specific type of performance fee, and that the typical carried interest model always satisfies the inherent policy intent of remuneration regulation (i.e. carried interest is only paid out once the external investors have received back all of their drawn-down capital, plus an agreed preferred return). Finally, it is requested to clarify that any returns from co-investments in funds, where they represent a pro-rata return on investments made by firm's staff members, should not be subject to the IFD guidelines.	Payments received as carried interest are to be treated as variable remuneration. This is in line with the framework provided under the AIFMD.	No change
Para. 9 Definitions	With specific regard to the definition of 'retention bonus', the respondents recommend amending it in order to make it clear that deferred compensation grants (i.e. compensation granted as the deferred portion of an annual bonus) are not intended to be included within the scope of the definition.	Deferral is a mechanism that can or has to be applied to variable remuneration. There are only two types of remuneration. Fixed remuneration that meets all the specifications provided in the guidelines and variable	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		remuneration, which includes all remuneration elements that are not fixed.	
Para. 9 Definitions	A respondent recommends that the definition of gender neutral remuneration policies include the priority and commitment to actively tackle the gender pay gap in investment firms, as well as the commitment that firms address the gender pension gap in their remuneration policies. With regard to the definition of 'gender pay gap', a respondent notes that it does not take into account the type of work, nor does it include the level of responsibility or the experience, and therefore a gender pay gap, where calculated in this manner, does not meet the purpose of gender neutral remuneration policies. Additionally, it is suggested replacing the term 'earnings' with 'remuneration' and to switch from 'hourly' (which is not a common practice in the financial/banking industry) to 'full-time annual remuneration awarded' in order to be consistent with paragraph 25.	In line with work published by the European Parliament, the gender pay gap is the difference in average gross hourly earnings between women and men. It is based on salaries paid directly to employees before income tax and social security contributions are deducted. Calculated this way, the gender pay gap does not take into account all the different factors that may play a role, for example education, hours worked, type of job, career breaks or part-time work. The gender pay gap indicates more than just the difference in hourly or annual gross remuneration for the same job (which should not be different at all), but provides information on how successfully equal opportunities have been provided within society and within the investment firm. The GL were amended to replace unclear terms.	GL amended
Question 2. Is the section on gender neutral remuneration policies sufficiently clear?			
Equal value of work	Some respondents suggest further strengthening the language on equal value of work, drawing inspiration from (or referring to) documents such as the Commission Recommendation C(2014) 1405 final, para. 10, or the Commission Staff Working Document SWD/2013/0512, or from the rulings of the ECJ. It is observed that, especially when it comes to topics such as severance payments and evaluation of value of work based on the contract type in question, great care should be shown to ensure the promotion of equality and impartiality.	The criteria included in the Commission Recommendation have been included; however, the recommendation does not provide for an exhaustive enumeration of criteria.	GL amended

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Gender neutral policies and ESG factors	A respondent recommends clarifying that gender neutral remuneration policies also be aligned with investment firms' sustainability performance objectives on social issues (the 'S' of ESG) and explaining how such policies are linked with internal gender equality performance targets. This would ensure firms account for the way their governance operations impact on gender equality, and action plans are set out when remuneration policies do not meet performance targets on reducing the gender pay and pension gap.	Remuneration policies must be aligned with their risks; ESG risk factors are relevant to the risk profile of investment firms. Moreover, investment firms are obliged in line with the national implementation of Directive 2006/54/EU to ensure equal opportunities. The provisions on equal opportunities and anti-discrimination have been reviewed.	GL amended
Para. 23 Gender neutral remuneration policies	A respondent suggests deleting the reference to '*all related employment conditions that have an impact on the pay per unit of measurement or time rate should be gender neutral*', since it goes beyond gender neutral remuneration policies. The same respondent claims that the guidelines significantly broaden the scope of gender neutral remuneration policies as required by the IFD by including issues related to gender equality policies (e.g. career development, succession plans), and consequently requests the deletion of the second sentence of paragraph 23.	Other conditions have an impact on the value of pay received. Some other benefits may have a material value in financial terms. See also comment above.	No change
Para. 25 Gender neutral remuneration policies	A respondent suggests using '*working time arrangements*' as unit of measurement, as it is simpler and clearer than 'the remuneration awarded'.	The section has been revised to provide further clarity.	GL amended
Para. 26 Documentation on gender neutral remuneration policies	Many respondents do not support the wording of paragraph 26, since the documentation requirements are excessively prescriptive, onerous and time-consuming, do not focus on categories of job positions and do not reflect cross-border firms' obligations to comply with Member State rules and guidance in respect of equal pay. It is observed that job descriptions for all staff members are not the norm and that the aim of	The mandate of the EBA is to ensure compliance with the principle of equal pay for male and female workers for equal work or work of equal value, thus there is a need to identify the jobs considered as equal or of equal value.	GL amended

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	equal pay for male and female workers for equal work or work of equal value could be achieved through a general documentation and determination of the positions (and not of each staff member) based on assessments and scoring systems on skills, knowledge, activities or tasks. In the same vein, it is requested to specify that investment firms retain flexibility in determining how to properly document that a gender neutral remuneration policy is being applied.	The GL have been amended to allow the use of job classification systems. The provisions of the guidelines have been clarified.	
Para. 27 Determination of the value of work	A respondent asks for the paragraph be rephrased to take into account additional aspects to determine the remuneration level, beyond the equal value of work. In particular, it is pointed out that the nature of the employment contract, including if it is temporary or a contract with an indefinite period (letter e), does not provide any information as to the value of work. A respondent recommends adding an item on 'specific skills or competence of staff' and changing the wording of point h): '*h) appropriate benefits, including the payment of additional* ***voluntary*** *household and other allowances to staff with dependent* ***family members (e.g.*** *children****, other closed relatives)***.'	The guidelines have been better aligned with Commission Recommendation C(2014) 1405 and further clarifications have been made.	GL amended
Para. 38 Gender neutral remuneration policies and HR	A respondent suggests adding to the paragraph that: '***The HR function should also ensure that the remuneration policy is consistent with obligations on gender neutrality and equal treatment of different genders***'.	The remuneration policy must be gender neutral. This fact is true for all aspects of the remuneration policy and its development, implementation or review, without this being mentioned in each and every part of the guidelines.	No change
Para. 59 Gender pay gap	A respondent is concerned that publishing gender pay gap reports for management bodies is highly confidential and conflicts with GDPR requirements, given the very small size of the sample. It is therefore requested that this requirement be clarified as being for internal documentation only.	The guidelines do not require the publication of data that would lead to a breach of GDPR requirements. The supervisory review of the gender pay gap and its monitoring is a lawful purpose mandated under the IFD. In addition	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		investment firms are required to disclose certain remuneration data for their management body.	
Question 3. Are the sections on the remuneration committee sufficiently clear?			
Remuneration committee and proportionality	Some respondents observe that the draft EBA guidelines apply the exact same requirements as currently applied to the largest, riskiest banks, to a broad range of small investment firms, which pose far less risk to the financial system, and urge the EBA to reconsider such approach.	Certain investment firms are required under the IFD to have a remuneration committee. The guidelines provide already for some proportionality for firms with smaller boards.	No change
Remuneration committee and engagement with shareholders	A respondent asks for the guidelines to clarify that the remuneration committee should actively engage with shareholders on gender equality issues within firms' direct operations and across their supply chains, and should also explain in its reports what engagement with investors has taken place and how the outcomes of these engagements have been integrated into the subsequent remuneration policies.	While engagements with shareholders might be required under the shareholder rights directive, the IFD does not contain such a requirement.	No change
Para. 50 Composition of the remuneration committee	Some respondents raise doubts about the requirement for a gender balanced remuneration committee, since setting up such a committee could be problematic and burdensome, and investment firms may at times be constrained in the selection of committee members, so that strict gender balance may not be practical at all times. The EBA is therefore advised to clarify that the expectation is for investment firms to use their best efforts to have a gender balanced remuneration committee over time. Some respondents note that the wording used in paragraph 50 is relatively unclear as to the definition of balanced, and in particular how this might apply to remuneration committees with an odd number of committee members, and proposes updating it to specify that '*the remuneration committee should be **appropriately** gender balanced*'.	The requirement Is included in the IFD and cannot be altered by guidelines. The term balance does not imply that there should always be a 50% representation of the male and female gender. With regard to the population of identified staff, it is assumed that the results of collective arrangements are less relevant.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	Another respondent welcomes the specific reference made to the inclusion of employee representatives in the remuneration committee, but would like it to be highlighted that where national and sectoral collective agreements have been reached, these should form the base for the work of the remuneration committee.		
Para. 51 Independence of members of the remuneration committee	A few respondents note that the requirement for remuneration committee members to be independent appears to be replicated from the existing guidelines under CRD and is not supported by the Level 1 text, which only requires members of the remuneration committee to comprise 'members of the management body who do not perform any executive function in the investment firm concerned'.	Having independent members within the management body and remuneration committee is part of the provisions of robust governance arrangements which are required under IFD.	No change
Para. 51 Independence of members of the remuneration committee	Some respondents ask for a clarification that, as the paragraph is meant to address conflicts of interest, other alternative measures can be taken, as long as these are efficiently addressing these risks.	The guidelines have been clarified. In any case there should be measures to ensure that decisions are not unduly influenced by conflicts of interests.	GL amended
Para. 58 Meetings of the remuneration committee	Some respondents deem it unnecessary for members of the risk committee to participate in all meetings of the remuneration committee. It should be clarified that they should have the possibility to participate when appropriate. Moreover, there would be no point in requiring a member of the remuneration committee to participate in each meeting of the risk committee. All matters regarding the tasks of the remuneration committee should be discussed within the remuneration committee where a member of the risk management committee can provide input.	The comment has been accommodated.	GL amended
Question 4. Are the guidelines on the application of the requirements in a group context sufficiently clear?			

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Scope of the group application	A respondent asks for the scope of the group application on a consolidated level to be clarified exhaustedly in only one section (such as section 3).	References to the IFD/IFR requirements on prudential consolidation have been added. There is additional work conducted at EBA to clarify the issue of consolidation further.	GL amended
Terms used	Some respondents request that all references to 'subsidiaries', 'investment firms as subsidiaries', 'consolidating parent investment firm', 'consolidating institution', 'EU parent investment firm' be reviewed, alleging that the terms used would not comply with the definitions and scope of the prudential consolidation of IFD/IFR framework in all cases (e.g. the parent company of an investment firm group may not be an investment firm).	The guidelines contain a definition of consolidating institution that includes both the consolidating institution being an institution or an investment firm.	No change
Investment firms belonging to banking groups	A respondent deems it helpful to clarify how the guidelines apply to investment firms as subsidiaries of a banking (or insurance) group, since under the new Article 109(4)a) CRD V, these investment firms in Member states are required to apply the remuneration rules on an individual basis, independent of the fact that they are subsidiaries of a banking group.	The scope of application of the guidelines is clearly set out. It includes investment firms that are part of a banking group.	No change
Para. 69 Subsidiaries within investment firms' groups	Several respondents, while acknowledging that IFD does not have a provision equivalent to Art. 109 CRD, think that the EBA should (and is entitled to) provide guidance on how the remuneration rules in the IFD should apply within groups of investment firms. They recommend that the EBA clarify in the guidelines that if a subsidiary of an investment firm is subject to another EU remuneration regime (or would be if it were established in the EU), then that subsidiary will only have to apply its sectoral requirements, without being required to apply the requirements of the IFD (other than any requirements explicitly specified by the EBA). The only exception to that would be for any individuals working for the subsidiary who are mandated to perform	Article 25 IFD determines that where Section 2 (including remuneration requirements) applies and prudential consolidation as referred to in Article 7 of Regulation (EU) 2019/2033 is applied, Member States shall ensure that this Section is applied to investment firms on an individual and consolidated basis. This means that the consolidating investment firm must ensure that the provisions are applied consistently in the scope of consolidation as if all consolidated entities would form one investment firm.	GL amended

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	professional activities that have a direct material impact on the risk profile or business of the IFD firms within the consolidation group. A respondent notes that in case of parts of the remuneration policy falling within the scope of co-determination or collective bargaining rights, the consolidating institution may not be able to enforce the remuneration policy without undergoing the necessary procedures with the employee side, and recommends adding to the end of the last sentence of paragraph 69: '***with no prejudice to the rights of employee representatives and trade unions under national law***'.	The IFD does not provide for any exclusion of firms from the consolidated application, i.e. it includes also small and not interconnected investment firms that are not subject on an individual basis to the remuneration provisions and also firms that are subject to a specific remuneration framework themselves. The GL have been clarified.	
Para. 70 Group's remuneration policy	A respondent welcomes the clarification that specific remuneration requirements of subsidiaries should be taken into account at consolidated level, but requests amendments in view of some general remarks on the application of the remuneration policies to all staff and on the scope of prudential consolidation as referred to in Article 7(1) IFR. Another respondent asks for clarification on the 'specific remuneration requirements of subsidiaries', since such requirements always have to be taken into account and are independent of gender neutrality provisions.	See comments above	No change
Para. 72 Staff with a material impact on the group's risk profile	A respondent requests deleting the reference to identified staff that has a material impact on the group's risk profile, since such category of staff is not required by Article 30(1) IFD. Moreover, as long as the IFD framework does not require a bonus cap for investment firms and the EBA argues that the IFD remuneration requirements are consistent with other sector-specific requirements, there would be no need to establish a category of staff that has a material impact on the group's risk profile.	The provisions apply on a consolidated basis and require specific provisions to be applied to identified staff (risk takers). Hence, their identification is required on an individual and consolidated basis.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Para. 73 Staff secondment	Some respondents deem it disproportionate to expect an overseas entity not subject to the remuneration provisions of Directive (EU) 2019/2034 to set up and administer a 'European remuneration program' only for a limited number of individual employees who may periodically be carrying out short, ad-hoc projects. They therefore believe that the application of European remuneration rules to seconded staff should include a *de minimis* threshold, which could consist of a stay of at least three or six months.	The guidelines need to be read together with the RTS on identified staff. Staff on short-term secondments would not become identified staff. The minimum period established in the RTS is three months.	No change
Para. 75 Third country groups	A respondent alleges that the application to investment firms in Member States on an individual level is not addressed with proper terms in the group context, and requests that exemptions for subsidiaries established in third countries, as addressed in Article 25(4) IFD, should also be clarified in in the guidelines. Moreover, in view of a better understanding, it could be helpful to separate the third-country approach from the application to investment firms on an individual basis.	Subsidiaries of an EU parent in a third country are within the scope of consolidated application of the IFD requirements unless the application of the remuneration requirements in this country is unlawful.	No change
Question 5. Are the guidelines regarding the application of waivers within section 4 sufficiently clear?			
Individual vs. consolidated level	Some respondents ask the EBA to clarify that waivers can be obtained if the assets of the particular entity are below the relevant threshold (i.e. EUR 100 million or the increased/lowered threshold) and that it is not necessary for the assets of the consolidation group to be below EUR 100 million (i.e. an investment firm should be able to avail itself of the waiver where, on an individual basis, it does not exceed the relevant threshold).	The scope of application of provisions and waivers is set within the IFD. Firms can apply waivers on the individual level, where implemented by Member States, with the thresholds applicable under national law. The same applies at the consolidated level with regard to the Member State where the consolidating firm is located regarding the staff that has been identified on a consolidated level, even if employed in a subsidiary.	GL amended

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Para. 85-86 Application of waivers	Some respondents ask to review and amend the terms used in the group context, since the parent company of an investment firm group may not be an investment firm and the determination of the effective ratio between the variable and fixed remuneration should be limited to identified staff. A respondent does not understand why severance payments under para. 162 of the draft guidelines are not considered when calculating the general ratio of variable and fixed remuneration, but are instead counted for the calculation of the ratio for the purpose of the waiver under Art. 32(4)(b) IFD. It is therefore recommended adding to letter d: '***Severance payments covered by para. 162 are not taken into account***'. A respondent sees no point in establishing a specific exchange rate in the guidelines and recommends deleting the reference to it, or stressing that the rate to be used should be part of the entities remuneration policy before each yearly exercise is launched.	The requirements in Articles 30 and 32 IFD, including the requirement to set a maximum ratio in the policy, apply to identify staff on an individual and consolidated level. Severance payments are variable remuneration and are taken into account when calculating the thresholds. See also the additional explanations in the summary of the EBA response.	No change
Para. 85	A respondent also invites the EBA to amend paragraph 85 so as to explicitly state that, where the relevant applicable threshold is exceeded on an individual basis, it is not possible for the investment firm to avail itself of a waiver on the grounds that on a consolidated basis, the (higher) applicable threshold in another Member State is not exceeded.	While this is correct, it is clear without providing additional guidelines as all requirements apply also on an individual level.	No change
Para. 244 Waivers and deferral	A respondent requests an amendment to the paragraph to clarify that '*without prejudice to the application of waivers under Article 32(4)*' should be interpreted as meaning '*subject to the application of waivers under Article 32(4)*'.	The formulation is a standard formulation for legal texts. The application depends on the national implementation by Member States.	No change
Question 6. Is section 9 on severance payments sufficiently clear?			

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Severance payment framework	Some respondents suggest that the full detail of an investment firm's severance payment framework should remain confidential to the firm and for review by local regulators and supervisory bodies as appropriate, rather than being replicated in full detail within the remuneration policy itself, which could instead refer to the main principles and confirm existence of a more detailed framework. According to the respondent, the publication of the detailed severance payment framework could create disproportionate legal risks for firms and increase complexity in employee relations.	Severance payments are sometimes based on standard formulas, e.g. that reflect past court cases, or can be negotiated individually. It is therefore not necessary to develop a framework for severance payments that covers each and every possible situation. However, the remuneration policy should provide for a framework; whenever there would be a deviation from the framework, a decision of the management body would be necessary.	No change
Notice pay	Some respondents welcome the confirmation that notice pay is excluded from severance payments, but suggest clarifying that any other standard payments related to notice periods are also excluded.	The guidelines have been clarified.	GL amended
Para. 156 Severance payments and normal variable remuneration	A respondent observes that: (i) not 'any' additional payments in the context of the termination of the mandate of a board member should be considered as 'normal variable remuneration'; (ii) the reference to 'member of the management body' should be deleted, since non-executive members of the management body have a remuneration structure that is different to more 'traditional' risk takers; (iii) the reference to 'regular end' of 'a contractual period' should be dropped, as it would result in a new unregulated concept, different from 'early' termination and might prove an issue in jurisdictions where indefinite contracts are widely used.	The guidelines and the concept of early termination have been clarified with regard to different types of contracts. Also indefinite contracts have a regular end. The reference to members of the management body has been retained, the treatment of non-executive directors may differ between Member States. In some cases they receive also remuneration and not only participation fees.	GL amended
Para. 157 Labour dispute	A respondent recommends amending point e), as a court ruling would be necessary for each case, which is not workable. '*e. The investment firm and a staff member agree on a settlement in case of **a potential or** an actual labour dispute that could potentially*	The GL do not have the intention to force each and every severance payment to be brought in front of the court. The GL have been clarified.	GL amended

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	bring an action in front of a court ~~*lead to a court ruling*~~*, to avoid a decision on a settlement by the courts*'.		
Para. 162 Exemptions	A respondent asks the EBA to clarify why non-competition clauses have been included separately from other severance payments and to amend the paragraph, as it considers transactional severance payments as variable remuneration (to be included in the variable/fixed ratio and to be deferred).	The provision allows for the grant of gardening leave periods after the contract has ended. The GL have been further clarified regarding payments that are made for the fact that staff cannot take up an occupational activity at a competitor.	No change
Question 7. Are the provisions on performance criteria sufficiently clear, which other performance indicators, such as regarding the performance of business units or portfolios, are used to determine the variable remuneration of identified staff?			
Para. 178 and 249 Remuneration of members of the management body in its supervisory function	Some respondents observe that in smaller to medium-sized investment firms with unitary board structures, the management body fulfils multiple functions (a supervisory function as well as an executive management function) and is accountable for the day-to-day management of the undertaking, so that its role cannot be separated from its role as a collective supervisory function. Another respondent does not agree that members of the supervisory function may receive variable remuneration only in exceptional cases, which sets the bar too high. While acknowledging the importance that remuneration of members of the supervisory function should not create conflicts of interest, it is observed that: (i) conflicts can be managed, for example, through the setting of an appropriate maximum ratio between fixed and variable remuneration; (ii) it is disproportionate for smaller firms, which do not necessarily have separate management and supervisory functions, to be subject to such standard.	The functions of the board are defined in the IFD and MiFID and depend also on national company law. The approach is consistent with Article 4(1)(36) of Directive 2014/65/EU: '…the managerial and supervisory functions of the management body are assigned to different bodies or different members within one body …'. The EBA is aware that there are exceptions to this principle in small investment firms. Members in the management body that have a management function can receive variable remuneration. It should be noted that the guidelines apply only to firms that are subject to specific remuneration provisions under IFD. The guidelines have been clarified.	GL amended
Para. 196	A respondent requests the term 'asset management' be replaced with the term 'portfolio management'. Asset management is a term used by	The GL apply to firms that are subject to the specific remuneration provisions under IFD.	GL amended

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Variable/fixed ratio	the European Directives (AIFMD and UCITS Directive) dealing with collective investment undertakings. Portfolio management as a MiFID service should be used under the IFD framework.	The wording has been revised to cover all activities that involve the management of assets within the investment firm.	
Para. 217 Performance criteria	Some respondents appreciate that quantitative criteria should cover a period which is long enough to properly capture the risk taken by identified staff members, business units and the investment firm, but ask for greater clarity on whether one year is acceptable for certain non-investment-related roles, where multi-year performance is less appropriate and the risks relevant to the role (e.g. reputational and operational risk) can be assessed on an annual basis.	The system of performance indicators depends on the business cycle of the firm. In many cases, the main performance criteria for the annual bonus of most staff are aligned with the financial year. In particular, for the management body, a multi-year framework might often be more appropriate because it is responsible for setting the firm's strategy.	No change
Question 8. Is the section on the pay-out in instruments sufficiently clear?			
Para. 243 Balance between instruments and cash	Some respondents point out that the paragraph should better reflect the fact that the requirement is to have a balance between non-cash instruments and cash (as opposed to having a balance between equity, equity-linked instruments, other instruments and cash).	The use of different types of instruments, in particular if a higher amount of variable remuneration is awarded, can contribute to a better risk alignment. However, there is no hard requirement to use a balance of instruments. The guidelines have been corrected and clarified.	GL amended
Para. 249 Deferral's length	A respondent notes that the minimum requirement of a three-year deferral period leaves no room to apply the principle of proportionality and goes beyond what is required in the Level 1 text (no minimum deferral period is set for the management body in the Level 1 text). Some respondents also note that the last sentence of the paragraph is not drafted with due regard to the proportionality principle and should be removed.	The IFD sets a minimum requirement for the application of the deferral requirement. The proportionate application is starting at this length of the deferral period, in cases where deferral has to be applied. Most medium-sized investment firms will be able to benefit from the waivers of the requirement to defer variable remuneration. Para. 249 has been amended and the last sentence has been removed.	GL amended

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Para. 250 Variable remuneration of a particularly high amount	With regard to variable remuneration of a particularly high amount, a respondent is concerned that thresholds set by competent authorities and/or through remuneration benchmarking reports covering all investment firms will span a broad range of the financial services industry and will not sufficiently distinguish between investment firm types, resulting in a disproportionate outcome. If investment firms are required to consider benchmarking reports, it is important that such benchmarking exercises are sufficiently granular to distinguish between types of investment firms, for example by breaking them down according to what MiFID II services and activities the investment firm performs.	Payment levels differ between Member States. As the requirement is applied to variable remuneration, it is appropriate to consider separately the variable and fixed remuneration components. The GL have been amended as this could be based on the absolute amounts. The EBA will develop a remuneration benchmarking exercise for investment firms; however, benchmarks should be considered, but do not provide hard thresholds.	GL amended
Para. 261 Use of alternative arrangements	Regarding the use of alternative arrangements by investment firms not issuing eligible financial instruments, many respondents wonder whether subparagraph (a) of paragraph 261 reads as a declaratory statement or as a query. If subparagraph (a) were to be understood as a declaratory statement, this would deviate from the Level 1 text, since many investment firms are unlisted stock corporations and do not issue shares, other than to the founders of the firm (which could be individuals, or a corporation when the investment firm is held by a holding company). If these firms were required to issue new shares to a high number of individuals, this would substantially increase the regulatory burden and costs for those firms and might also materially affect their ownership structures (e.g. in the case of wholly owned subsidiaries within alternative asset management groups). Finally, it is suggested that for unlisted MiFID firms within alternative asset management groups, carried interests could be the sort of 'alternative arrangements' that competent authorities should be encouraged to approve.	Firms that issue shares have instruments available and therefore competent authorities cannot approve alternative arrangements. Where shares are issued, in any case share-linked instruments can be used without any dilution of shareholdings. Investment firms can also use other types of instruments for the pay-out of variable remuneration as specified in the IFD and the delegated regulation mandated under IFD. Under Article 32(1)(k) of the IFD, alternative arrangements can only be approved where an investment firm does not issue any of the instruments referred to in point (j) and if they fulfil the same objective. Further conditions for alternative arrangements are specified in a Commission Delegated Regulation that is based on the draft submitted by the EBA.	GL amended

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		The wording has been clarified.	
Para. 269 Payment in instruments	Some respondents propose the following amendment: '*The ratio of variable remuneration that is paid out in instruments should be calculated as the quotient between the amount of variable remuneration awarded in instruments and the sum of the variable remuneration awarded in cash, instruments and in* ***any*** *other* ***form*** ~~***benefits***~~.'	The comment has been accommodated.	GL amended
Para. 274 Retention period for financial instruments	Some respondents do not support the minimum twelve-month retention period for financial instruments, since it contradicts the flexibility granted to investment firms by paragraphs 270-272 to determine the retention period that is appropriate to their risk profile and long-term interests, and in some scenarios a lower retention period (such as six months) may be more appropriate. It is pointed out that the ESMA Guidelines on Sound Remuneration Policies under UCITS and AIFMD do not mandate a minimum twelve-month retention period, and that some national competent authorities recommended a minimum six-month retention period under UCITS and AIFMD. The respondents request paragraph 274 be removed, so as to have a better alignment to UCITS and AIFMD rules, or alternatively a minimum six-month retention period be mandated, as opposed to a twelve-month period.	A sufficiently long retention period ensures a better alignment with the risk of the investment firm and facilitates the application of clawback. A shorter retention period would not meet this objective and such a remuneration policy would therefore not promote sound and effective risk management as required under Article 26 (1)(d) IFD. In particular, where no deferral is applied, even longer periods are in many cases appropriate.	No change