
REPORT ON

APPLICATION OF DEROGATIONS UNDER ART 94(3) AND ART 94(5) CRD REGARDING THE PAY OUT OF REMUNERATION TO IDENTIFIED STAFF

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Executive Summary

Article 94(6) of Directive 2013/36/EU¹ (CRD) mandates the European Commission, in close cooperation with the European Banking Authority (EBA), to review and report on the application of derogations/waivers under Article 94(3) and Article 94(5) CRD on the requirements to pay out the variable remuneration of identified staff partly under deferral arrangements and in instruments. This report forms part of the EBA's contribution to the review by the European Commission.

In line with Article 92(2) CRD, the specific requirements for the variable remuneration of identified staff should be applied in a manner that is appropriate to institutions' size, internal organisation and the nature, scope and complexity of their activities. Before introducing derogations in Article 94(3) CRD to the requirements to pay out a part of the variable remuneration of identified staff² in instruments and under deferral arrangements, in many Member States the national implementation of Article 92(2) CRD already allowed small and non-complex institutions, as well as staff with relatively low variable remuneration, to waive certain requirements based on proportionality grounds. In the past, some Member States had applied even higher thresholds that had been reduced to meet the CRD prescribed level.

Most Member States have implemented the derogation under Article 94(3)(a) CRD; see Annex I. However, the implementation of the derogation differs to some extent. While some Member States apply the derogations only to institutions that are not part of a group that is on a consolidated basis a large institution, other Member States allow smaller subsidiaries of large groups to benefit from the derogation.

The derogation under Article 94(3)(b) CRD has been implemented by most Member States with a threshold of EUR 50 000 variable remuneration, but some, considering national remuneration practices, implemented lower thresholds.

Concerning Article 94(5) CRD which allows Member States to 'decide that staff members entitled to annual variable remuneration below the threshold and share referred to in that point shall not be subject to the exemption set out therein because of national market specificities in terms of remuneration practices or because of the nature of the responsibilities and job profile of those staff members', no such practices have been identified.

¹ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338–436).

² Staff identified under Commission Delegated Regulation (EU) 2021/923 of 25 March 2021 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards setting out the criteria to define managerial responsibility, control functions, material business units and a significant impact on a material business unit's risk profile, and setting out criteria for identifying staff members or categories of staff whose professional activities have an impact on the institution's risk profile that is comparably as material as that of staff members or categories of staff referred to in Article 92(3) of that Directive (OJ L 203, 9.6.2021, p. 1–7).

The impact of the derogations that apply at the institutional level under Article 94(3)(a) seems mainly related to lower costs for administering identified staff members' variable remuneration.

The reduction in the numbers of staff to whom pay out in instruments and deferral need to be applied related to the derogation under Article 94(3)(b) CRD is likely to lead to only a marginal impact on the risk-taking behaviour as the amounts that would be deferred or paid out in instruments would, in the absence of the derogation, be very limited.

Moreover, institutions consider that the availability of institutional derogations in smaller institutions and subsidiaries has a positive impact on their ability to recruit staff. For institutions that do not benefit from institutional derogations, the need for renegotiations of the fixed remuneration has been mentioned if they compete with institutions that are benefiting from the derogations, which creates additional costs. Furthermore, when large institutions compete with other companies for specialised staff – such as IT companies – it is important to recognise that these companies operate without comparable constraints to pay out the variable remuneration partly under deferral arrangements and in instruments.

For most smaller institutions, in particular those that have a more retail-oriented business model, the derogations should not lead to any negative consequences for the risk alignment of variable remuneration. For staff with a low level of remuneration, this effect is not of much relevance, as explained before.

The EBA stands ready to provide further input into the discussion and the work of the European Commission as necessary to complete the review mandate.

1. Mandate and legal basis

1. Article 94(6) CRD mandates the European Commission, in close cooperation with the EBA, to review and report on the application of derogations/waivers under Article 94(3) and Article 94(5) CRD for the requirements to pay out the variable remuneration of identified staff partly under deferral arrangements and in instruments.

2. The review report to the European Parliament and to the Council was initially mandated for 28 June 2023, but has been postponed in agreement with the Commission, due to insufficient data available at that time on the application of the waivers³. Although the EBA collects the information from competent authorities as a remuneration benchmarking data collection exercise every year, information on the application of the derogations and exceptions to derogations to remuneration requirements has only been collected since 2022 as part of the remuneration benchmarking data collection.

3. The remuneration requirements within the CRD aim to ensure, inter alia, that remuneration policies are consistent with and promote sound and effective risk management, do not provide incentives for excessive risk taking, and are aligned with the long-term interests of the institutions across the EU. Points (l) and (m) of Article 94(1) CRD require that variable remuneration for identified staff⁴ is paid out partly in shares, share-linked or other instruments and under deferral arrangements. The pay out in instruments aims to achieve an implicit risk alignment via the change of prices of instruments, while the application of deferral forms the basis for the application of malus to the variable remuneration awarded in the past.

4. In line with Article 92(2) CRD, the specific requirements for the variable remuneration of identified staff should be applied in a manner that is appropriate to the institutions' size, internal organisation and the nature, scope and complexity of their activities.

5. Before introducing derogations in Article 94(3) CRD in many Member States, the national implementation of Article 92(2) allowed small and non-complex institutions, as well as staff with relatively low variable remuneration, to waive certain requirements based on proportionality grounds. This aimed to reduce the regulatory burden for small institutions. The EBA analysed the national implementation and published the results together with an EBA Opinion⁵ on the application of proportionality to the remuneration provisions, addressed to the European Commission, the European Parliament and the Council.

³ Guidelines on the benchmarking exercises on remuneration practices and the gender pay gap under CRD apply from 31 December 2022. In line with the guidelines, the data on waivers for the financial year ending in 2022, should have been submitted by competent authorities to the EBA by 31 October 2023.

⁴ That is, staff whose professional activities have a material impact on an institution's risk profile.

⁵ See [Opinion of the European Banking Authority on the application of the principle of proportionality to the remuneration provisions in Directive 2013/36/EU](#).

6. The amendments to Article 94(3) CRD introduced by Directive (EU) 2019/878 (CRD V)⁶ provide an explicit legal basis within the EU framework to derogate from the requirement to pay out at least 50% of variable remuneration in instruments and partly under deferral arrangements. The derogations are based on the following criteria:

- Article 94(3)(a) CRD: The institution is not a large one and the value of its assets is ‘on average ...equal to or less than EUR 5 billion over the four-year period immediately preceding the current financial year’. The threshold may be increased by Member States up to EUR 15 billion under certain conditions in line with Article 94(4) CRD.
- Article 94 (3)(b) CRD: ‘staff member whose annual variable remuneration does not exceed EUR 50 000 and does not represent more than one third of the staff member’s annual total remuneration’.
- Article 94(5) CRD allows Member States to ‘decide that staff members entitled to annual variable remuneration below the threshold and share referred to in ... [Article 94(3)(b)] shall not be subject to the exemption set out therein because of national market specificities in terms of remuneration practices or because of the nature of the responsibilities and job profile of those staff members.’

7. The derogations under Article 94(3)(a) CRD have not been implemented consistently across the EU. In some Member States⁷ this derogation is also available to small institutions that are subsidiaries of an institution that is large when considering the consolidated basis, while in others, the derogation would not apply to subsidiaries within a large banking group. Derogations under Article 94(3)(b) have been implemented by all Member States, but sometimes with lower thresholds. The derogation in Article 94(5) CRD has not been applied.

2. Methodology of the review

8. To fulfil its mandate the EBA has used different qualitative approaches in parallel, focusing first on the application of the derogations by institutions and its assessment on their impact and then on the observations of competent authorities in the application of waivers. In addition, the EBA analysed data available to it via the financial reporting of larger banking groups and data collected on the application of derogations within the remuneration benchmarking exercise.

9. To acknowledge the application of derogations by institutions, the EBA met three European banking associations that represent the private, public and cooperative banking sector within the EU. Based on a pre-submitted list of areas for discussions and questions, valuable industry input

⁶ DIRECTIVE (EU) 2019/878 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures.

⁷ The EBA has no complete overview of the implementation of this specific aspect for all Member States.

has been collected. Two of those associations have submitted additional written comments to the EBA.

10. The EBA also presented the review project to the Banking Stakeholder Group and the impact on the banking industry has been discussed. Overall, the derogations are appreciated, but a quantification of the effects has been deemed highly unlikely as many Member States had already introduced national derogations based on the principle of proportionality. No written opinion of the Banking Stakeholder Group on this subject has been submitted to the EBA.

11. The EBA has tasked competent authorities, via its subgroup on governance and remuneration to provide input into this review on their views and supervisory assessments made in this context.

3. Views of the industry

The effect on the administrative burden

12. A possible impact of derogations on the administrative burden at both institutional and individual staff level was examined in the above-mentioned interaction with industry representatives.

Derogations under Article 94(3)(a) CRD on an institutional level

13. Regarding the impact of the derogations on an institutional level under Article 94(3)(a) CRD on the deferral and pay out in instruments requirement for institutions that are not large and have total assets under the threshold determined, institutions benefiting from the derogations are assumed to have lower costs for administering identified staff members' variable remuneration. This is because they are not required to pay out a portion of it under deferral arrangements and in instruments, which might otherwise involve the creation and ongoing valuation of instruments, applying deferral and retention periods and managing pro rata payouts. However, these institutions must still fulfil all other remuneration requirements for identified staff, whose professional activities have a material impact on the institution's risk profile.

14. Industry perspectives align with the supervisory perception that derogations are highly relevant for smaller firms. Based on estimates made by industry, for these smaller institutions, derogations can significantly alleviate administrative burden, potentially reducing it approximately by half.

15. For institutions with a total balance sheet exceeding the threshold implemented under national law, the costs associated with paying out variable remuneration increase due to the application of pro rata payouts, leading to an increase in the number of payments that need to be made and the creation of instruments that can be used for the pay out of remuneration, as such instruments are not always readily available. In addition, instruments need to be valued regularly so that the costs

for the awarded, but not yet paid out instruments, are correctly reflected in the institutions' profit and loss accounting.

16. It is important to note that the burden for applying the requirements on variable remuneration is not solely linked to the payout process, but also to a certain extent results, according to comments from industry, from the need to identify staff.

Derogations under Article 94(3)(b) based on the level of remuneration of individual identified staff members

17. The EBA asked the industry whether the derogation under Article 94(3)(b) CRD based on staff members' variable remuneration with a maximum threshold for variable remuneration of EUR 50 000⁸, which shall not exceed one third of the total remuneration, led to a reduction in the burden to apply the deferral and pay out in instruments requirements and if the burden was material. While the industry's perspective confirms that applying derogations for staff earning less than EUR 50 000 variable remuneration per year results in a reduced administrative burden, it does also cause some additional burden for the monitoring of such thresholds by institutions that do not benefit from the derogations under Article 94(3)(a) on an institutional level. However, quantifying the overall reduction in the administrative burden can be challenging due to the impact of previous measures that were in place in the Member States. For identified staff that does not meet the criteria, institutions need to apply all requirements on variable remuneration and therefore the institution must have the processes and procedures in place to manage the pay outs or outsource such services.

18. For staff to whom the derogations apply, the industry mentioned the following tasks that can be eliminated:

- calculating the breakdown of variable remuneration into cash and share or instrument components;
- implementing and holding shares or instruments as remuneration components;
- calculating and distributing the retentions and the first payment amount;
- creating provisions for retentions;
- integrating compliance due to monitoring of pay out provisions;
- gathering detailed information about the employee concerned (multi-page complex bonus letters);
- control and communication tasks, including deferral calculation, communication, share buying, budgeting, maintenance of deferral information and reporting.

⁸ All the Member states have a threshold of EUR 50 000, except DK~ EUR 13 400, HU~ EUR 45 000, NO – EUR 20 000, RO – EUR 30 000.

19. Indeed, the threshold based on the remuneration of staff leads to a reduction in the numbers of staff to whom pay out in instruments and deferral need to be applied. Additionally, the use of simplified IT tools for identifying staff members whose remuneration is below the threshold has been recognised as a helpful measure to reduce administrative burden.

20. Moreover, institutions will need to manage the cliff effect impacting staff receiving variable remuneration just above the threshold, who might feel disadvantaged, as a part of the variable remuneration will be paid out at a later time, while, in general, there is no compensation for inflation⁹ and as during the deferral period, staff would not receive any dividends or interest for the deferred instruments.

21. While the overall implementation of derogations is not overly complex, the industry's representatives stressed that the application is complicated by the second condition related to the ratio (capturing the cases where variable remuneration does not represent more than one third of the staff member's total annual remuneration) which does not exclude many staff members from its application but does add additional administrative burden.

22. Moreover, it has been noted that, considering that the threshold is expressed in terms of variable remuneration awarded, i.e. gross and subject to taxation, its effective value is lower. The impact on behaviour of staff of the possible application of the 'deferral and pay out in instruments' rules is therefore limited, as the annual net amount per year that could be subject to malus and clawback, for staff with a low level of variable remuneration, is very low¹⁰. Therefore, some industry representatives have suggested that the EUR 50 000 threshold is too low for certain Member States and should be increased (e.g. up to EUR 75 000) and should also reflect inflation rates that lead to an increase in remuneration levels over time.

Recruiting and retaining identified staff

23. The EBA inquired whether the derogations impacted the institutions' capacity to recruit and retain staff.

24. Institutions view that the availability of institutional derogations in smaller institutions and subsidiaries has a positive impact on their ability to recruit staff. For institutions that do not benefit from institutional derogations, the need for renegotiation of the fixed remuneration has been mentioned if they compete with institutions that are benefiting from the derogations, which creates additional costs.

⁹ In line with the EBA Guidelines on sound remuneration policies, variable remuneration deferred and paid out in instruments cannot retroactively be adjusted upwards because of inflation. Also, staff cannot receive the interest from dividends of deferred instruments, as they are not yet the owners of the awarded instruments that have not vested yet. However, for long-term deferred instruments, institutions may apply a discounted rate when calculating the ratio between the variable and fixed components of remuneration.

¹⁰ At EUR 50 000, the minimum deferred part is EUR 20 000, i.e. EUR 5 000 per year gross remuneration, resulting in around EUR 2 500-3 000 net remuneration.

25. Additionally, for large institutions competing with other entities about specialised staff, e.g. IT companies that operate without similar constraints for the variable remuneration, recruiting and renegotiating contracts of existing staff to remain competitive is an additional burden when recruiting or retaining staff and impacts on both, the variable and the fixed part of remuneration.

Alignment between variable remuneration and risks and changes of risk-taking behaviour

26. The derogations that apply on an institutional level may have a more relevant impact than the derogations that apply only to staff with a low variable remuneration. The latter should likely lead to only a marginal impact on the risk-taking behaviour as the amounts that would be deferred or paid out in instruments would, in the absence of the derogation, be very limited.

27. The application of deferral forms the basis for the possible application of malus (reduction in variable remuneration). While clawback (reclaiming previously paid bonuses) could also be applied in the absence of deferral, this option is very limited under national laws and difficult to apply.

28. The pay out in instruments creates an implicit risk alignment as the prices of shares react to the performance of the institution, however, the price of instruments is also influenced by other market developments.

29. It also needs to be considered that the business model and risk profile of small institutions are often more retail oriented and different from internationally or globally active banks. Therefore, for small institutions, often the likely impact of the derogations on the alignment between variable remuneration and risks and on risk-taking is even more limited.

30. According to the industry, there is no significant impact on risk alignment caused by the derogations for staff earning less than EUR 50 000 variable remuneration and for institutions that have a business model less exposed to risks.

31. For *ex post* risk adjustments to variable remuneration in the absence of deferral arrangements it should be noted that in some Member States clawback is challenging to apply. However, for staff with low remuneration, the impact of not being able to apply *ex post* risk adjustments and the impact on the banks' costs or profits and losses are negligible¹¹.

Application of the derogations in a group context

32. The EBA was interested in knowing the experience with the application of the derogations in a group context. Especially, if there are any complications when confirming that the conditions to apply the derogations are met, including monitoring different employment contracts that might exist in parallel for one staff member, staff changing contracts between different entities during the year.

¹¹ For *ex post* risk adjustments applied, please refer also to the EBA's benchmarking report 2019 and 2020 available under: <https://www.eba.europa.eu/regulation-and-policy/remuneration>.

33. In some Member States the derogation based on the size of the institution (Article 94(3)(a) CRD) is based on the consolidated total assets, considering if the institution is a large institution or not, and applies to all subsidiaries. In some other Member States smaller subsidiaries of large groups are allowed to apply the derogation for their identified staff having only a material impact on the risk profile at an individual level, while for staff that is identified staff at the consolidated level, i.e. staff having a material impact on the groups' risk profile, the derogations are not available.

34. Different thresholds and different implementations of the CRD between Member States add complexity and additional burden to the application of the derogation requirements by banking groups operating in multiple Member States.

35. Article 94(5) CRD allows that the 'Member State may decide that staff members entitled to annual variable remuneration below the threshold and share referred to in that point shall not be subject to the exemption set out therein because of national market specificities in terms of remuneration practices or because of the nature of the responsibilities and job profile of those staff members.' The EBA was not informed of any cases of the exclusion of some categories of staff from the application of the derogation by industry or competent authorities.

4. Competent authorities' observations on the application of derogations

36. The EBA has also asked competent authorities their views on current practices of the application of derogations on the similar aspects: 1) assessment of the impact of the administrative burden by the derogations at institutional and individual staff level; 2) assessment of the impact of recruiting and retaining identified staff; 3) on the alignment between variable remuneration and risks and changes of risk-taking behaviour; 4) experience with the application of the derogations in a group context.

The effect on the administrative burden

37. Based on the feedback received by the EBA, most of the competent authorities can hardly assess the impact strictly attached to derogations introduced by CRD V, as in many Member States, proportionality rules were already in place before. In the past, some Member States had introduced higher thresholds that had to be reduced to meet the CRD prescribed level. Overall, for these Member States, the implementation of the derogations is resulting in a limited effect on remuneration practices.

38. However, the competent authorities that assessed the application of derogations or that received feedback from the banking sector on the application of the derogations acknowledged a positive impact of the derogations on the institutions and observed a reduction in the regulatory burden.

Recruiting and retaining identified staff

39. Most of the competent authorities mentioned that they have not identified any negative or unintended consequences of the derogations for institutions that cannot make use of them compared to institutions that are able to apply the derogations on an institutional level.

40. However, one competent authority mentioned that institutions not benefiting from derogations consider this is a competitive disadvantage to recruit as well as retain staff.

Alignment between variable remuneration and risks and changes of risk-taking behaviour

41. The EBA learned that competent authorities have not yet assessed the impact on the proportionate application of remuneration provisions or the application of derogations on the alignment between variable remuneration and risk.

42. According to the input provided by competent authorities, for most smaller institutions, in particular those with a more retail-oriented business model, the derogations should not lead to any negative consequences for the risk alignment of variable remuneration. For staff with a low level of remuneration, this effect is not of much relevance as explained before.

Application of the derogations in a group context

43. The EBA has observed varying practices across different Member States. In one Member State, the competent authority acknowledges the benefits of exemptions for smaller subsidiaries within groups. However, in another Member State, the authority intends to prohibit individual subsidiaries of credit institutions from using derogations. Also, the industry pointed to different practices in this regard.

44. Most institutions did not report any complications with applying the derogations in a group context. However, a few competent authorities found in their reviews that, for some cases, the group remuneration policies were not consistent across the whole group or granular enough to reflect different national implementations of requirements on the variable remuneration of identified staff.

45. Some competent authorities mentioned that they had limited experience with the application of the derogations in a group context, either because they did not focus on this aspect or because most of the credit institutions in their jurisdiction belonged to European parent institutions located in a different Member State.

5. Data on the impact of waivers

46. Within the EBA's register on credit institutions, currently 3 958 credit institutions are registered; many of them belong to banking groups. The EBA had available relevant data for 381 banking groups, collected on the highest level of consolidation, based on the regular financial reporting (FinRep) and calculated based on the implementation of waivers, the impact per Member State of the implemented derogations. However, the EBA does not have available data for the many small institutions that are likely to benefit from the derogations under Article 94(3)(a) CRD. The data available cover EUR 30 000 billion total assets which represents around three quarters of the total assets (EUR 42 000 billion) in monetary financial institutions¹² in the EU.

47. Considering the banking groups for which the EBA regularly receives financial data reports (FinRep), one third of the banking groups is benefitting from waivers under Article 94(3)(a) on a consolidated level. However, this represents only 1.37% of the total assets of all the 381 banking groups for which the EBA holds data. If a common threshold of EUR 5 billion were applied, the total percentage would be at 0.99% of the balance sheet, while with a common threshold at EUR 15 billion it would be at 3.98%. However, the impact of different uniform thresholds would have a material impact for some Member States and therefore could have negative impacts on the effectiveness of the remuneration framework, as at a higher threshold, the derogations would apply to nearly all institutions.

Figure 1: Number of banking groups and total assets per Member State below the threshold implemented for the application of derogations by Member State (see also Annex I) based on consolidated FinRep data¹³

Member State	Number of banking groups below threshold	Number of banking groups above threshold	Total balance sheet EUR bn of all banking groups	% of number of banking groups below threshold	% of balance sheet of banking groups below threshold
AT	6	11	927.57	35.29%	5.53%
BE	4	11	1 356.40	26.67%	0.78%
BG	6	5	62.82	54.55%	17.06%
CY					
CZ	0	10	324.60	0.00%	0.00%
DE	8	22	4 590.56	26.67%	0.93%
DK					
EE	5	4	47.75	55.56%	9.79%
EL					
ES	17	20	3 820.49	45.95%	1.05%

¹² See data from EUROSTAT on the assets of monetary financial institutions (data code: nasa_10_f_bs).

¹³ FinRep data is only available at the EBA on a consolidated basis and for 381 banking groups.

FI	2	9	787.02	18.18%	0.48%
FR	8	18	9 037.76	30.77%	0.24%
HR	0	6	79.57	0.00%	0.00%
HU					
IE	1	6	430.73	14.29%	0.88%
IS	1	3	33.54	25.00%	5.10%
IT	18	30	3 127.51	37.50%	1.16%
LI					
LT					
LU	12	6	273.13	66.67%	17.26%
LV	5	3	54.26	62.50%	5.31%
MT	5	0	28.35	100.00%	100.00%
NL	4	16	2 372.08	20.00%	0.46%
NO	9	13	504.90	40.91%	5.81%
PL	3	11	409.91	21.43%	1.84%
PT	8	8	407.08	50.00%	4.12%
RO	2	6	94.88	25.00%	1.42%
SE	13	11	1 019.08	54.17%	2.09%
SI	5	4	62.47	55.56%	18.74%
SK	2	4	88.73	33.33%	5.98%
EU/EEA	144	237	29 941.2	37.80%	1.37%

48. In addition to FinRep data, the EBA used data on the application of derogations received within its remuneration benchmarking data collection for the review. The data used refers to the institution on a consolidated basis under the EBA Guidelines on the benchmarking exercises on remuneration practices, the gender pay gap and approved higher ratios under Directive 2013/36/EU¹⁴.

49. For some institutions the data collected could not be used for the analysis, as data were not complete. The sample of institutions that are subject to the remuneration benchmarking data collections contained 84 institutions that submitted relevant and complete information on the application of the derogations. The data includes consolidated data from institutions of most Member States. In a few cases, data from subsidiaries is collected, where no data are collected on a consolidated basis. Member States where the local subsidiaries belonging to groups in other Member States included in the data collected on a group basis already cover at least 60% of the financial market, have not submitted data from parent institutions within their jurisdiction. A few institutions for which only a part of the data had been submitted within the remuneration benchmarking data collection or where the data submitted was implausible had to be removed from the sample as at present, the data are still subject to the data quality assurance process. A full set of remuneration benchmarking data will be published in Q4.

¹⁴ Annex III of <https://www.eba.europa.eu/activities/single-rulebook/regulatory-activities/remuneration/guidelines-remuneration-and-gender-pay-gap-benchmarking-exercises-under-ifd>

50. Only 3 of those institutions in the sample declared that they could apply the derogation under Article 94(3)(a) CRD, in some subsidiaries on an institutional level, while they applied the derogations under Article 94(3)(b) CRD within the group to identified staff with a low variable remuneration. All other 81 institutions only applied the latter derogation. In some Member States, different lower thresholds than EUR 50 000 variable remuneration have been implemented for the application of the derogation¹⁵.

51. Where the derogations are available, most institutions apply them to the pay out in instruments and to the application of deferral to a part of the variable remuneration. However, 6 institutions responded they would not make use of the derogations; another 7 institutions answered that they applied the derogation only to the requirement to pay out variable remuneration in instruments, while they applied the deferral requirements; and 6 institutions applied the derogation only to the requirement to apply deferral arrangements and not to the pay out in instruments.

52. For discretionary pension benefits, 5 institutions declared that they would apply the derogation to identified staff. However, only 2 institutions within the sample reported that this derogation was effectively applied to identified staff with a low level of variable remuneration.

Figure 2: Institutions that make use of the derogations under Article 94(3)(b) CRD, remuneration benchmarking data

Member State	Number of institutions	% of institutions applying derogations to pay out in instruments	% of institutions applying derogations to pay out under deferral arrangements	% of institutions applying the derogation to the pay out of discretionary pension benefits
AT	5	80.00%	80.00%	20.00%
BE	2	50.00%	50.00%	0.00%
BG	1	0.00%	0.00%	0.00%
CY	2	100.00%	100.00%	0.00%
DE	17	100.00%	100.00%	5.88%
DK	4	60.00%	20.00%	0.00%
EE	1	100.00%	100.00%	0.00%
EL	4	75.00%	75.00%	0.00%
ES	3	100.00%	100.00%	0.00%
FR	4	100.00%	100.00%	0.00%
HU	1	100.00%	100.00%	0.00%
IE	4	100.00%	100.00%	0.00%
IT	9	88.89%	77.78%	11.11%
LI	3	33.33%	33.33%	0.00%
LU	7	85.71%	100.00%	14.29%
MT	3	66.67%	66.67%	0.00%
NL	2	100.00%	100.00%	0.00%

¹⁵ See footnote 6

PL	3	66.67%	66.67%	0.00%
PT	5	80.00%	100.00%	0.00%
RO	1	0.00%	100.00%	0.00%
SE	1	100.00%	100.00%	0.00%
SI	2	100.00%	50.00%	0.00%
EU/EEA	84	80.68%	79.55%	4.55%

Figure 3: Percentage of identified staff in institutions that benefit from the application of derogations under Article 94(3)(b) CRD, based on remuneration benchmarking data

Member State	Total number identified staff	% of identified staff benefitting from the derogations to pay out in instruments	% of identified staff benefitting from the derogations to pay out under deferral arrangements	% identified staff benefitting from the derogation to the pay out of discretionary pension benefits
AT	2 276	43.63%	46.84%	7.03%
BE	541	4.99%	4.99%	0.00%
BG	42	0.00%	0.00%	0.00%
CY	241	0.00%	0.00%	0.00%
DE	5 538	37.07%	37.07%	0.00%
DK	805	18.51%	1.61%	0.00%
EE	95	75.79%	75.79%	-
EL	799	27.78%	27.78%	0.00%
ES	1 500	12.27%	12.27%	-
FR	4 914	40.35%	40.35%	0.00%
HU	572	53.32%	53.32%	0.00%
IE	756	11.38%	11.38%	0.00%
IT	2 040	37.35%	37.16%	0.00%
LI	345	6.96%	5.80%	0.00%
LU	457	45.95%	56.24%	7.44%
MT	318	14.78%	14.78%	0.00%
NL	1 084	11.07%	11.07%	0.00%
PL	473	16.91%	12.26%	-
PT	1 691	53.64%	56.36%	0.00%
RO	96	0.00%	27.08%	0.00%
SE	861	100.00%	100.00%	0.00%
SI	499	71.74%	19.64%	0.00%
EU/EEA	25 943	36.40%	35.50%	0.75%

53. Overall, a bit more than one third of identified staff is benefitting of the derogations, but the percentage differs materially per Member State. This may be related mainly to different thresholds

implemented and different remuneration levels in Member States. The range also differs materially between institutions.

Figure 4: Average remuneration (rem) of identified staff benefitting from the waiver and total ratio between variable and fixed remuneration (ratio) per Member State under Article 94(3)(b) CRD, based on remuneration benchmarking data

Member State	Remuneration of staff benefitting from derogations to the requirement to pay out variable remuneration in instruments		Remuneration of staff benefitting from derogations to the requirement to pay out variable remuneration under deferral arrangements		Remuneration of staff benefitting from derogations on discretionary pension benefits	
	Average variable remuneration	Ratio variable/ total	Average variable remuneration	Ratio variable/ total	Average discretionary pension benefit	Ratio variable / total
AT	18 957	12.92%	17 868	12.10%	35 941	8.64%
BE	32 010	16.90%	32 010	16.90%	-	-
BG	-	-	-	-	-	-
CY	-	-	-	-	-	-
DE	34 452	18.71%	34 452	18.71%	-	-
DK	11 653	7.88%	10 861	5.35%	-	-
EE	18 759	16.58%	18 759	16.58%	-	-
EL	13 359	11.59%	13 359	11.59%	-	-
ES	30 738	22.61%	30 738	22.61%	-	-
FR	20 543	15.81%	20 543	15.81%	-	-
HU	9 172	18.13%	9 172	18.13%	-	-
IE	25 254	12.40%	25 254	12.40%	-	-
IT	21 896	14.28%	21 827	14.35%	-	-
LI	27 887	18.51%	24 535	12.80%	-	-
LU	20 946	12.35%	21 122	11.50%	19 088	10.12%
MT	11 761	13.49%	11 761	13.49%	-	-
NL	3 999	2.29%	3 999	2.29%	-	-
PL	27 838	25.25%	22 586	27.05%	-	-
PT	5 767	8.23%	5 929	8.33%	-	-
RO	-	-	15 409	10.70%	-	-
SE	9 025	5.03%	9 025	5.03%	-	-
SI	19 009	20.95%	16 982	18.01%	-	-
EU/EEA	20 402	14.37%	20 279	14.10%	32 987	8.77%

54. The average variable remuneration of staff benefitting of the derogations is far below the threshold. It should be noted that a few Member States implemented different lower thresholds. Also, the ratio between variable and fixed remuneration is low in most Member States.

55. The average variable remuneration of identified staff and the ratio between total and variable remuneration show hardly any difference between the derogations on the pay out in instruments and the application of deferral. For both derogations, it becomes apparent that the average thresholds and ratios differ materially between institutions (Figures 5 and 6).

Figure 5: Derogation under Article 94(3)(b) CRD on the pay out in instrument, average variable remuneration of identified staff and ratio variable remuneration / total remuneration per institution, based on remuneration benchmarking data

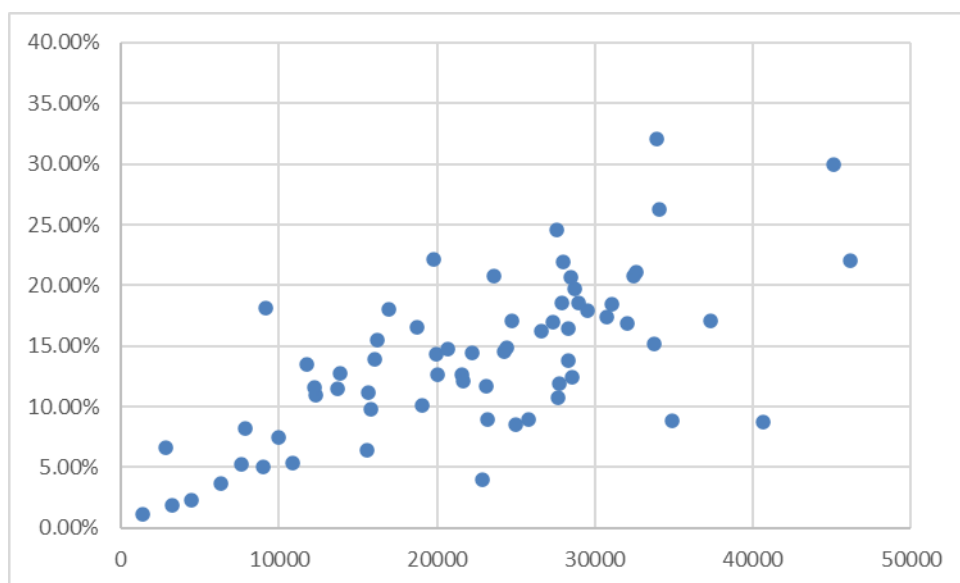
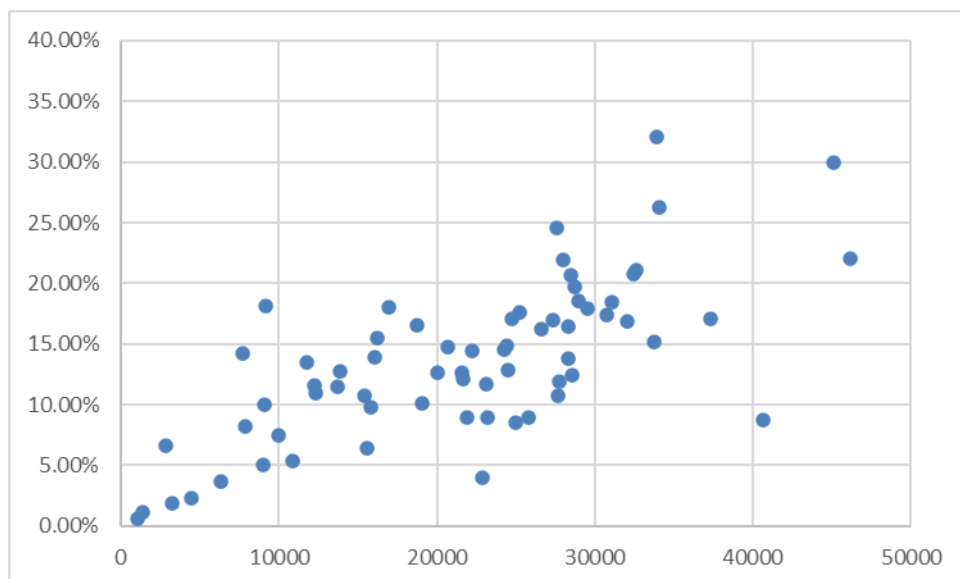


Figure 6: Derogation under Article 94(3)(b) CRD on deferral arrangements, average variable remuneration of identified staff and ratio variable remuneration / total remuneration per institution, based on remuneration benchmarking data



Annex I – Overview of the implementation of thresholds under Article 94(3)(a) CRD

MS	Threshold implemented under Article 94(3)(a) CRD (billion EUR)	Previous threshold implemented under national law (billion EUR)
	>= 5 and up to 15	
AT	Complete and identical transposition of Art. 94(3)(a) and Art. 94(4) CRD, i.e. balance sheet EUR 5 bn or - under conditions - up to 15bn.	up to 5
BE	>= 5	n/a
BG	>= 5	n/a
CY	-	-
CZ	>= 5	case-by-case basis (no waivers for institutions with a significant market position – the institution is considered to have significant market position if the share of the institution in the balance sheet total of all institutions on the given market reaches or exceeds 5%)
DE	>= 5 and up to 15 Germany made use of the possibility to increase the EUR 5 bn threshold (referred to in Art. 94 (3)(a) CRD) to EUR 15 bn as permitted by Art. 94(4)(a)(ii) CRD. To be allowed to do so, the requirements pursuant to Art. 94 (4)(a) CRD were also transposed to German law.	up to 15
DK	n/a	n/a
EE	>= 5	>= 5
EL	>= 5 and up to 15 This waiver has been applied as stipulated in the CRD	case-by-case basis pursuant to the proportionality principle
ES	>= 5 as long as the institution complies with all criteria of Article 4 (1)(145) CRR. Otherwise the threshold is 0	n/a
FI	>= 5	-

FR	EUR 5 bn of total assets and between EUR 5 bn and EUR 10 bn if the institution respects criteria c), d) and e) of Article 4(1)(145) CRR	up to 10
HR	≥ 1	≥ 1
HU	The value of the assets of which is on average equal to or less than HUF 1500 bn over the 4-year period.	The variable remuneration of identified staff can be paid in cash if a non-listed institutions' asset value is equal to or less than HUF 500 bn and all executive officers and staff members' annual total remuneration is equal to or less than HUF 300 mn.
IE	≥ 5	n/a
IS	≥ 5 This waiver has been applied as stipulated in the CRD. However, if variable remuneration does not amount to more than 10% of annual salary excluding the variable remuneration it may be awarded to a staff member without being deferred. For institutions that are not large, a 40% deferral rule applies for 3 years and no obligation to award variable remuneration in form of shares or share-linked instruments. The aforementioned 10% rule also applies for these institutions. These rules are currently being reviewed by the CBI.	There was no obligation that variable remuneration consisted of shares or share-linked instruments. However, there was a general principle on the composition of variable remuneration that the bonus schemes should be structured so that it would encourage the institution's sound and prudent operation in the long term. All credit institutions, on entity and consolidated level, as well as all staff members, that were subject to rules on variable remuneration were to defer at least 40% of the variable remuneration for at least 3 years. If variable remuneration did not amount to more than 10% of annual salary excluding the variable remuneration, it was allowed to be awarded to a staff member without being deferred.
IT	≥ 5	1) Total assets equal to or less than EUR 3.5 bn Total exemption to pay out the variable remuneration in instruments. If CI decided not to use the derogation the retention period applied in line with CI policy. 2) Total assets between EUR 3.5 bn and EUR 30 bn a) CIs had to pay $\geq 25\%$ of the variable remuneration in instruments, subject to a retention period of at least 6 months b) CIs had to defer $\geq 20\%$ of the variable remuneration ($\geq 30\%$ if there is a particularly high amount thereof) for at least 1 year and a half (2 years and a half if there is a particularly high amount)

c) Invested or paid out in financial instruments held for at least 2 years and a half

LI	-	-
LT	-	-
LU	>= 5 and up to 15 The threshold shall be increased to EUR 15 bn if: (a) the CRR institution is not a large institution as defined in point (146) of Article 4(1) of Regulation (EU) No 575/2013; (b) the CRR institution meets the criteria set out in letters (c), (d) and (e) of point (145) of Article 4(1) of Regulation (EU) No 575/2013; and (c) the CRR institution does not meet two or more of the criteria referred to in the first subparagraph of Article 38-2(3) of the LFS.	a) a total balance sheet below EUR 5 bn; b) an overall capital requirement below EUR 125 mn (base 100%) or EUR 1 562.5 mn (base 8%) respectively.
LV	>= 5	a) part of variable remuneration had to be paid out in instruments if the proportion of the variable remuneration was very high and the shares of the bank are traded in regulated market; b) deferral was required if the proportion of the variable remuneration was high (70%-100%) vis-a-vis the fixed remuneration.
MT	>= 5 and up to 15 same as CRD V	n/a
NL	>= 5	>= 5
NO	>= 5 Finanstilsynet may, by administrative decision, lower the threshold value of EUR 5 bn if the institution is not a large institution under the CRR/CRD IV Regulations, and it is considered appropriate to do so based on the nature, scale and complexity of its activities, its internal organisation or circumstances of the group of which the institution forms a part. According to Norwegian legislation, the threshold therefore does not exceed EUR 5 bn	n/a

PL	≥ 5	There were no explicit waivers in national law before implementation of CRD V – only the reference to the principle of proportionality.
PT	5	n/a
RO	1	Before 2019, credit institutions used exemptions from the requirements for variable remuneration (granting in instruments, deferral and withholding), the threshold being set by each individual credit institution, depending on its own criteria in the remuneration policies
SE	≥ 5	Undertakings with risk-weighted assets above SEK 500 billion shall pay out a certain part of the variable remuneration to the senior management in the form of shares or other instruments
SI	≥ 5	n/a
SK	≥ 5	n/a



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