

Directive (EU) 2019/2034 of the European Parliament and of the Council
of 27 November 2019 on the prudential supervision of investment
firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU,
2013/36/EU, 2014/59/EU and 2014/65/EU (Text with EEA relevance)

TITLE IV

PRUDENTIAL SUPERVISION

CHAPTER 2

Review process

Section 2

Internal governance, transparency, treatment of risks and remuneration

Article 32

Variable remuneration

1 Member States shall ensure that any variable remuneration awarded and paid by an investment firm to categories of staff referred to in Article 30(1) complies with all of the following requirements under the same conditions as those set out in Article 30(3):

- a where variable remuneration is performance related, the total amount of variable remuneration is based on a combination of the assessment of the performance of the individual, of the business unit concerned and of the overall results of the investment firm;
- b when assessing the performance of the individual, both financial and non-financial criteria are taken into account;
- c the assessment of the performance referred to in point (a) is based on a multi-year period, taking into account the business cycle of the investment firm and its business risks;
- d the variable remuneration does not affect the investment firm's ability to ensure a sound capital base;
- e there is no guaranteed variable remuneration other than for new staff only for the first year of employment of new staff and where the investment firm has a strong capital base;
- f payments relating to the early termination of an employment contract reflect performance achieved over time by the individual and shall not reward failure or misconduct;
- g remuneration packages relating to compensation or buy out from contracts in previous employment are aligned with the long-term interests of the investment firm;
- h the measurement of performance used as a basis to calculate pools of variable remuneration takes into account all types of current and future risks and the cost of the capital and liquidity required in accordance with Regulation (EU) 2019/2033;

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- i the allocation of the variable remuneration components within the investment firm takes into account all types of current and future risks;
 - j at least 50 % of the variable remuneration consists of any of the following instruments:
 - (i) shares or equivalent ownership interests, subject to the legal structure of the investment firm concerned;
 - (ii) share#linked instruments or equivalent non#cash instruments, subject to the legal structure of the investment firm concerned;
 - (iii) Additional Tier 1 instruments or Tier 2 instruments or other instruments which can be fully converted to Common Equity Tier 1 instruments or written down and that adequately reflect the credit quality of the investment firm as a going concern;
 - (iv) non#cash instruments which reflect the instruments of the portfolios managed;
 - k by way of derogation from point (j), where an investment firm does not issue any of the instruments referred to in that point, competent authorities may approve the use of alternative arrangements fulfilling the same objectives;
 - l at least 40 % of the variable remuneration is deferred over a three# to five#year period as appropriate, depending on the business cycle of the investment firm, the nature of its business, its risks and the activities of the individual in question, except in the case of variable remuneration of a particularly high amount where the proportion of the variable remuneration deferred is at least 60 %;
 - m up to 100 % of the variable remuneration is contracted where the financial performance of the investment firm is subdued or negative, including through *malus* or clawback arrangements subject to criteria set by investment firms which in particular cover situations where the individual in question:
 - (i) participated in or was responsible for conduct which resulted in significant losses for the investment firm;
 - (ii) is no longer considered fit and proper;
 - n discretionary pension benefits are in line with the business strategy, objectives, values and long#term interests of the investment firm.
- 2 For the purposes of paragraph 1, Member States shall ensure the following:
- a individuals referred to in Article 30(1) do not use personal hedging strategies or remuneration and liability#related insurances to undermine the principles referred to in paragraph 1;
 - b variable remuneration is not paid through financial vehicles or methods that facilitate non#compliance with this Directive or with Regulation (EU) 2019/2033.

3 For the purposes of point (j) of paragraph 1, the instruments referred to therein shall be subject to an appropriate retention policy designed to align the incentives of the individual with the longer#term interests of the investment firm, its creditors and clients. Member States or their competent authorities may place restrictions on the types and designs of those instruments or prohibit the use of certain instruments for variable remuneration.

For the purposes of point (l) of paragraph 1, the deferral of the variable remuneration shall vest no faster than on a pro#rata basis.

For the purposes of point (n) of paragraph 1, where an employee leaves the investment firm before retirement age, discretionary pension benefits shall be held by the investment firm for a period of five years in the form of instruments referred to in

point (j). Where an employee reaches retirement age and retires, discretionary pension benefits shall be paid to the employee in the form of instruments referred to in point (j), subject to a five#year retention period.

4 Points (j) and (l) of paragraph 1 and the third subparagraph of paragraph 3 shall not apply to:

- a an investment firm, where the value of its on and off#balance sheet assets is on average equal to or less than EUR 100 million over the four#year period immediately preceding the given financial year;
- b an individual whose annual variable remuneration does not exceed EUR 50 000 and does not represent more than one fourth of that individual's total annual remuneration.

5 By way of derogation from point (a) of paragraph 4, a Member State may increase the threshold referred to in that point, provided that the investment firm meets the following criteria:

- a the investment firm is not, in the Member State in which it is established, one of the three largest investment firms in terms of total value of assets;
- b the investment firm is not subject to obligations or is subject to simplified obligations in relation to recovery and resolution planning in accordance with Article 4 of Directive 2014/59/EU;
- c the size of the investment firm's on and off#balance sheet trading#book business is equal to or less than EUR 150 million;
- d the size of the investment firm's on and off#balance sheet derivative business is equal to or less than EUR 100 million;
- e the threshold does not exceed EUR 300 million; and
- f it is appropriate to increase the threshold, taking into account the nature and scope of the investment firm's activities, its internal organisation, and, where applicable, the characteristics of the group to which it belongs.

6 By way of derogation from point (a) of paragraph 4, a Member State may lower the threshold referred to in that point, provided that it is appropriate to do so, taking into account the nature and scope of the investment firm's activities, its internal organisation, and, where applicable, the characteristics of the group to which it belongs.

7 By way of derogation from point (b) of paragraph 4, a Member State may decide that staff members who are 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.

8 EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify the classes of instruments that satisfy the conditions set out in point (j)(iii) of paragraph 1 and to specify possible alternative arrangements set out in point (k) of paragraph 1.

EBA shall submit those draft regulatory technical standards to the Commission by 26 June 2021.

Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

9 EBA, in consultation with ESMA, shall adopt guidelines facilitating the implementation of paragraphs 4, 5 and 6 and ensuring their consistent application.