

**PRA RULEBOOK: CRR FIRMS: REMUNERATION (CAPITAL REQUIREMENTS DIRECTIVE V)
INSTRUMENT 2020**

Powers exercised

- A. The Prudential Regulation Authority (“PRA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137G (The PRA’s general rules);
 - (2) section 137H (General rules about remuneration);
 - (3) section 137T (General supplementary powers); and
 - (4) section 192V (Rules imposing consolidated requirements).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) of the Act.

Pre-conditions to making

- C. In accordance with section 138J of the Act (Consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

PRA Rulebook: CRR Firms: Remuneration (Capital Requirements Directive V) Instrument 2020

- D. The PRA makes the rules in Annexes A and B.

Commencement

- E. Annex A comes into force on 29 December 2020.
- F. Annex B comes into force on IP completion day, as defined in the European Union (Withdrawal Agreement) Act 2020.

Citation

- G. This instrument may be cited as the PRA Rulebook: CRR Firms: Remuneration (Capital Requirements Directive V) Instrument 2020.

By order of the Prudential Regulation Committee

28 December 2020

Annex A

Amendments to the Remuneration Part

In this Annex new text is underlined and deleted text is struck through.

...

1 APPLICATION AND DEFINITIONS

...

1.3 In this Part, the following definitions shall apply:

...

Article 273a(3) method

means the method for calculating the size of a firm's on- and off-balance- sheet derivative business set out in Article 273(a)(3) of CRR amended by point (73) of CRR2.

average total assets

means the arithmetic mean of the firm's total assets over its last four accounting reference dates.

...

consolidation group entity

means an *institution* or *financial institution* which is, ~~in relation to a CRR firm responsible for consolidation:~~

- (1) ~~the CRR firm~~ an undertaking responsible for consolidation;
- (2) ~~a subsidiary of the CRR firm~~ undertaking responsible for consolidation; or
- (3) where the consolidation group contains a PRA designated institution, a subsidiary of the EEA parent financial holding company or EEA parent mixed financial holding company by which the CRR firm responsible for consolidation PRA designated institution is controlled.

...

control functions

has the meaning provided in Article 3 of the Material Risk Takers Regulation.

CRR2

means Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019.

~~CRR firm responsible for consolidation~~

~~means a CRR firm which is either:~~

- (1) ~~an EEA parent institution; or~~

(2) ~~controlled by an EEA parent financial holding company or by an EEA parent mixed financial holding company and to which supervision on a consolidated basis by the PRA applies in accordance with Article 111 of CRD.~~

...

group

has the meaning in section 421 FSMA.

...

higher paid material risk taker

means a material risk taker:

(a) whose annual variable remuneration exceeds 33% of their total remuneration, and

(b) whose total remuneration exceeds £500,000.

...

large institution

has the meaning provided in point 146 of Article 4 of the CRR.

...

managerial responsibility

has the meaning provided in Article 2 of the Material Risk Takers Regulation.

material business unit

has the meaning provided in Article 4 of the Material Risk Takers Regulation.

...

Material Risk Takers Regulation

means the draft regulatory technical standards on criteria to define managerial responsibility and control functions, a material business unit and a significant impact on its risk profile, and categories of staff whose professional activities have a material impact on an institution's risk profile published by the EBA on 18 June 2020, Commission Delegated Regulation (EU) No 604/2014 of 4 March 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards with

...

significant firm

means a firm which is significant in terms of its size, internal organisation and the nature, scope and complexity of its activities.

significant impact on the relevant business unit's risk profile

has the meaning provided in Article 5 of the *Material Risk Takers Regulation*.

small CRR firm

means a CRR firm that satisfies both Condition 1 and Condition 2, where:

(1) Condition 1 is that the firm is not a large institution and either:

- (a) has average total assets not exceeding €5 billion; or
- (b) the firm has average total assets exceeding €5 billion but not exceeding €15 billion;

and where (in the case of Condition 1(b)):

- (i) it is appropriate for the firm not to be required to comply with the rules specified in 5.3, taking into account the nature, scope, and complexity of its activities, its internal organisation and, if applicable, the characteristics of the group to which it belongs;
- (ii) the firm has a small trading book;
- (iii) the total value of the firm's derivative positions held with trading intent does not exceed 2% of its total on- and off-balance-sheet assets and the total value of its overall derivative positions does not exceed 5%, both calculated in accordance with the Article 273a(3) method; and
- (iv) the firm is not subject to any obligations, or is subject to simplified obligations, in relation to recovery and resolution planning;

and

(2) Condition 2 is that the firm is not part of a group containing another firm which:

- (a) is subject to this Part on an individual basis; and
- (b) has average total assets exceeding €15 billion either on an individual basis, consolidated basis or sub-consolidated basis.

[Note: Art. 94(3) and (4) of the CRD]

small third country CRR firm

means a third country CRR firm that satisfies both Condition 1 and Condition 2, where

(1) Condition 1 is that the average total assets that relate to the activities of the branch operation of the third country CRR firm in the UK either:

- (a) do not exceed €5 billion; or
- (b) exceed €5 billion but do not exceed €15 billion;

and where (in the case of Condition 1(b)):

- (i) it is appropriate for the *third country CRR firm* not to be required to comply with the rules specified in 5.3, taking into account the nature, scope, and complexity of the activities and internal organisation of its *branch* operation in the *UK* and, if applicable, the characteristics of the *group* to which it belongs;
- (ii) the *firm's branch* operation in the *UK* has a *small trading book*; and
- (iii) the total value of the derivative positions held with trading intent relating to its *branch* operation in the *UK* does not exceed 2% of its total on- and off-balance-sheet assets and the total value of its overall derivative positions does not exceed 5%, both calculated in accordance with the *Article 273a(3) method*.

and

- (2) Condition 2 is that the *third country CRR firm* is not part of a *group* containing another *firm* which:
 - (a) is subject to this Part on an individual basis; and
 - (b) has *average total assets* exceeding €15 billion either on an individual basis, *consolidated basis* or *sub-consolidated basis*.

small trading book

means the size of the *firm's* (or for the purposes of a *small third country CRR firm*, the size relating to the activities of the *branch* operations in the *UK* of the *firm*) on- and off-balance-sheet trading-book business is equal to or less than both:

- (a) 5% of the *firm's* total assets; and
- (b) €50 million

on the basis of the assessment provided in Article 94 of the *CRR*, as amended by point (48) of Article 1 of *CRR2*.

...

undertaking responsible for consolidation

means a *PRA approved parent holding company*, a *PRA designated parent holding company*, a *PRA approved intermediate holding company*, a *PRA designated intermediate holding company*, or a *PRA designated institution*.

2 APPLICATION DATES AND TRANSITIONAL PROVISIONS

...

2.5 A firm must apply this Part to remuneration awarded in respect of a performance year starting on or after 29 December 2020.

2.6 A firm must apply this Part in accordance with 2.1 to 2.4 as it applied under those rules as of 28 December 2020 to remuneration awarded in respect of a performance year starting before 29 December 2020.

...

3 MATERIAL RISK TAKERS

3.1 A firm must, save where otherwise stated, apply the requirements of this Part in relation to a person (a “material risk taker”) who is:

- (1) an *employee* of a *CRR firm* whose professional activities have a material impact on the *firm’s* risk profile, including: ~~any employee who is deemed to have a material impact on the firm’s risk profile in accordance with criteria set out in articles 3 to 5 of the *Material Risk Takers Regulation*; or~~
- (a) all members of the *management body* and *senior management*;
 - (b) employees with *managerial responsibility* over the *firm’s* control functions or *material business units*;
 - (c) employees entitled to significant total *remuneration* in the preceding financial year, where:
 - (i) that total *remuneration* was equal to or greater than €500,000 and equal to or greater than the average *remuneration* awarded to the members of the *firm’s* *management body* and *senior management* referred to in (a); and
 - (ii) the *employee* performs the professional activity within a *material business unit* and the activity is of a kind that has a *significant impact* on the *relevant business unit’s* risk profile;
 - (d) employees whose professional activities are deemed to have a material impact on the *firm’s* risk profile under Articles 6 and 7 of the *Material Risk Takers Regulation*; or
- (2) ~~Subject to 3.2,~~ an *employee* of a *third country CRR firm* who would fall within 3.1(1) if it had applied in relation to him or her.

[Note: Article 92 of the CRD and the *Material Risk Takers Regulation*]

3.2 **[Deleted.]**

3.3 **[Deleted.]**

...

4 GROUPS

4.1 **[Deleted.]**

4.2 A *firm* that is a member of a *group* must:

(1A) comply with this Part on an individual basis;

(1B) comply, and ensure that the other members of the *group* comply, with the obligations set out in this Part on a *consolidated basis* or *sub-consolidated basis* including those members of the *group* established in a country or territory which is not in an *EEA State*;

(1) ensure that the risk management processes and internal control mechanisms of the other members of the *group* of which it is a member comply with the obligations set out in this Part on a *consolidated basis* or *sub-consolidated basis* including those members of the *group* established in a country or territory which is not in an *EEA State*; and

(2) ensure that compliance with (1A), (1B) and (1) enables the members of the *group* of which it is a member to have arrangements, processes and mechanisms that are consistent and well integrated and that any data relevant to the purpose of supervision can be produced.

4.3 Subject to 4.4, for the purposes of the application of 4.2(1B), (1) and (2) on a *consolidated basis*, *firm* includes a *PRA approved parent holding company*, a *PRA designated parent holding company*, a *PRA approved intermediate holding company*, a *PRA designated intermediate holding company*, or a *PRA designated institution*.

4.4 For the purposes of the application of 4.2(1B), (1) and (2) in respect of the obligation to comply, and ensure other members of the *group* comply, with Chapter 16 on a *consolidated basis*, *firm* does not include a *PRA approved parent holding company*, a *PRA designated parent holding company*, a *PRA approved intermediate holding company*, or a *PRA designated intermediate holding company*.

[Note: Arts. ~~92(1)~~ and 109 of the *CRD*]

...

5 PROPORTIONALITY

5.1 A *firm* must comply with this Part in a way ~~and to the extent~~ that is appropriate to its size, internal organisation and the nature, the scope and the complexity of its activities, when establishing and applying the total *remuneration* policies for *material risk takers*.

5.2 5.1 does not apply to the requirement in 7.4 for significant *firms* to have a *remuneration* committee.

[Note: Art. 92(2) of the *CRD*]

5.3 12.2 and 15.15 to 15.19 do not apply to *firm* that is a *small CRR firm* or a *small third country CRR firm*.

[Note: Art 94(3) and (4) of the *CRD*.]

...

12. PENSION POLICY

12.1 A *firm* must ensure that:

- (4) its pension policy is in line with its business strategy, objectives, values and long-term interests;
- ~~(2) when an *employee* leaves the *firm* before retirement, any discretionary pension benefits are held by the *firm* for a period of five years in the form of instruments referred to in 15.15; and~~
- ~~(3) when an *employee* reaches retirement, discretionary pension benefits are paid to the *employee* in the form of instruments referred to in 15.15 and subject to a five-year retention period~~

12.2 A *firm* that is not a *small CRR firm* or a *small third country CRR firm* must ensure that:

- (1) when an *employee* leaves the *firm* before retirement, any discretionary pension benefits are held by the *firm* for a period of five years in the form of instruments referred to in 15.15; and
- (2) when an *employee* reaches retirement, discretionary pension benefits are paid to the *employee* in the form of instruments referred to in 15.15 and subject to a five-year retention period.

unless the annual variable *remuneration* of the *employee*:

- (a) does not exceed €50,000; and
- (b) does not represent more than one third of the *employee's* total annual *remuneration*.

...

15 REMUNERATION STRUCTURES

15.A1 In this Chapter:

- (1) All the requirements of this Chapter apply to a *firm* that is neither a *small CRR firm* nor a *small third country CRR firm*.
- (2) 15.1 to 15.14, 15.20(1), (2) and 15.21 to 15.23 apply to a *small CRR firm* or a *small third country CRR firm*.
- (3) A *firm* is not required to comply with 15.15 to 15.19 in respect of an *employee* whose annual variable *remuneration*:
 - (a) does not exceed €50,000; and
 - (b) does not represent more than one third of the *employee's* total annual *remuneration*.

...

15.15 A *firm* must ensure that:

- (1) a substantial portion, which is at least 50%, of any variable *remuneration* consists of an appropriate balance of:

- (a) ~~shares or equivalent ownership interests, subject to the legal structure of the firm concerned, equivalent ownership interests; or, subject to the legal structure of the firm concerned, share-linked instruments or equivalent non-cash instruments in the case of a non-listed firm; and~~

...

15.17 (1) Unless a longer deferral period is required under (2), A firm must not award, pay or provide a variable *remuneration* component unless a substantial portion of it, which is at least 40%, is deferred over a period which is not less than:

- (a) in the case of a *material risk taker* who is not subject to (b) ~~or (c)~~, three four years, vesting no faster than on a pro-rata basis; or
- (b) in the case of a *material risk taker* who ~~does not perform a PRA senior management function, but is a member of the management body or senior management of a significant firm, five years, vesting no faster than on a pro-rata basis;~~ or

(2) A firm must not award, pay or provide a variable remuneration component to a higher paid material risk taker unless a substantial portion of it, which is at least 40%, is deferred over a period which is not less than:

(a) in the case of a higher paid material risk taker who does not perform a PRA senior management function, but

(i) who meets the criteria in 3.1(1)(a) or (b); or

(ii) whose professional activities meet the qualitative criteria set out in Article 3 6(1) to 3(9), 3 6(10 2) (but only by virtue of being responsible for a committee referred to therein), 3(13) or 3 6(15) of the Material Risk Takers Regulation

five years, vesting no faster than on a pro-rata basis; or

~~(c)~~

(b) in the case of a *higher paid material risk taker* who performs a *PRA senior management function*, seven years, with no vesting to take place until three years after award, and vesting no faster than on a pro-rata basis thereafter.

...

15.20 A firm must ensure that:

- (1) any variable *remuneration*, including a deferred portion, is paid or vests only if it is sustainable according to the financial situation of the *firm* as a whole, and justified on the basis of the performance of the firm, the business unit and the individual concerned;
- (2) any variable *remuneration* is subject to clawback, such that it is only awarded if an amount corresponding to it can be recovered from the individual by the firm if the recovery is justified on the basis of the circumstances described in 15.21(2) or in respect of a higher paid material risk taker, 15.23; and
- (3A) unless 15.20A applies, any variable remuneration is subject to a clawback period from the date on which the variable remuneration is awarded, in the case of:

- (a) the deferred portion of variable remuneration of a material risk taker who is a member of the management body or senior management of a significant firm, of at least six years.
 - (b) the deferred portion of variable remuneration of a material risk taker who is not subject to (a), of at least five years.
 - (c) an undeferred portion of variable remuneration, of at least one year.
- (3) any variable remuneration is subject to clawback for a period of at least 7 years from the date on which the variable remuneration is awarded;
- (4) in the case of a material risk taker who performs a PRA senior management function, the firm can, by notice to the employee to be given no later than 7 years after the variable remuneration was awarded, extend the period during which variable remuneration is subject to clawback to at least 10 years from the date on which the variable remuneration is awarded, where:
- ~~(a) the firm has commenced an investigation into facts or events which it considers could potentially lead to the application of clawback were it not for the expiry of the clawback period; or~~
 - ~~(b) the firm has been notified by a regulatory authority (including an overseas regulatory authority) that an investigation has been commenced into facts or events which the firm considers could potentially lead to the application of clawback by the firm were it not for the expiry of the clawback period; and~~
- ~~(5) it considers on an ongoing basis whether to use the power in (4).~~

...

15.20A In respect of a higher paid material risk taker, a firm must ensure that:

- (1) any variable remuneration is subject to a clawback period from the date on which the variable remuneration is awarded of at least 7 years from the date on which the variable remuneration is awarded;
- (2) in the case of a higher paid material risk taker who performs a PRA senior management function, the firm can, by notice to the employee to be given no later than 7 years after the variable remuneration was awarded, extend the period during which variable remuneration is subject to clawback to at least 10 years from the date on which the variable remuneration is awarded, where:
 - (a) the firm has commenced an investigation into facts or events which it considers could potentially lead to the application of clawback were it not for the expiry of the clawback period; or
 - (b) the firm has been notified by a regulatory authority (including an overseas regulatory authority) that an investigation has been commenced into facts or events which the firm considers could potentially lead to the application of clawback by the firm were it not for the expiry of the clawback period; and
- (3) it considers on an ongoing basis whether to use the power in (2).

...

15.22 In respect of a higher paid material risk taker:

- (1) Aa firm should reduce unvested deferred variable remuneration when, as a minimum:

...

- 15.23 In respect of a *higher paid material risk taker*, a *A-firm* must make all reasonable efforts to recover an appropriate amount corresponding to some or all vested variable *remuneration* where either of the following circumstances arise during the period in which clawback applies (including any part of such period occurring after the relevant employment has ceased):

...

17 REMUNERATION BENCHMARKING REPORTING REQUIREMENT

...

- 17.5 A *firm* that is not, and does not have in its *consolidation group*, an *undertaking responsible for consolidation* ~~EEA parent institution, an EEA parent financial holding company or an EEA parent mixed financial holding company~~ must complete that report on an unconsolidated basis in respect of *remuneration* awarded to *employees* of the *firm* in the last completed financial year.
- 17.6 ~~An undertaking responsible for consolidation~~ A *firm* that is a ~~CRR firm responsible for consolidation~~ must complete that report on a consolidated basis in respect of *remuneration* awarded to all *employees* of all *consolidation group entities* in its *consolidation group* in the last completed financial year.

...

18 HIGH EARNERS REPORTING REQUIREMENT

...

- 18.4 A *firm* that is not, and does not have in its *consolidation group*, an *undertaking responsible for consolidation* ~~EEA parent institution, an EEA parent financial holding company or an EEA parent mixed financial holding company~~ must complete that report on an unconsolidated basis in respect of *remuneration* awarded in the last completed financial year to all *high earners* of the *firm* who mainly undertook their professional activities within the *EEA*.
- 18.5 ~~An undertaking responsible for consolidation~~ A *firm* that is a ~~CRR firm responsible for consolidation~~ must complete that report on a *consolidated basis* in respect of *remuneration* awarded in the last completed financial year to all *high earners of the consolidation group entities* who mainly undertook their professional activities within the *EEA* at:
- (1) ~~the EEA parent institution, EEA parent financial holding company or the EEA parent mixed financial holding company~~ *PRA approved parent holding company, PRA designated parent holding company, PRA approved intermediate holding company, PRA designated intermediate holding company or PRA designated institution* of the *consolidation group*;
 - (2) each *consolidation group entity* that has its registered office (or if it has no registered office, its head office) in an *EEA State*; and
 - (3) each *branch* of any other *consolidation group entity* that is established or operating in an *EEA State*.

...

Annex B

Amendments to the Remuneration Part

In this Annex new text is underlined and deleted text is struck through.

1 APPLICATION AND DEFINITIONS

...

1.3 In this Part, the following definitions shall apply:

...

small CRR firm

...

- (1) Condition 1 is that the *firm* is not a *large institution* and either:
- (a) has *average total assets* not exceeding ~~€5~~ £4 billion; or
 - (b) the *firm* has *average total assets* exceeding ~~€5~~ £4 billion but not exceeding ~~€15~~ £13 billion;

...

- (2) Condition 2 is that the *firm* is not part of a *group* containing another *firm* which:
- (a) ...
 - (b) has *average total assets* exceeding ~~€15~~ £13 billion either on an individual, *consolidated* or *sub-consolidated* basis.

...

small third country CRR firm

...

- (1) Condition 1 is that the *average total assets* that relate to the activities of the *branch* operation of the *third country CRR firm* in the *UK* either:

- (a) do not exceed ~~€5~~ £4 billion; or
- (b) exceed ~~€5~~ £4 billion but do not exceed ~~€15~~ £13 billion;

...

- (2) Condition 2 is that the *third country CRR firm* is not part of a *group* containing another *firm* which:

- (a) is subject to this Part on an individual basis and
- (b) has *average total assets* exceeding ~~€15~~ £13 billion either on an individual basis, *consolidated* or *sub-consolidated* basis.

...

3 MATERIAL RISK TAKERS

3.1 A *firm* must, save where otherwise stated, apply the requirements of this Part in relation to a *person* (a “material risk taker”) who is:

(1) an *employee* of a *CRR firm* whose professional activities have a material impact on the *firm’s* risk profile, including:

...

(c) *employees* entitled to significant total remuneration in the preceding financial year, where:

(i) that total remuneration was equal to or greater than ~~€500,000~~ £440,000 and equal to or greater than the average *remuneration* awarded to the members of the *firm’s management body* and *senior management* referred to in (a); and

...

12. PENSION POLICY

...

12.2 A *firm* that is not a *small CRR firm* or a *small third country CRR firm* must ensure that:

(1) when an *employee* leaves the *firm* before retirement, any discretionary pension benefits are held by the *firm* for a period of five years in the form of instruments referred to in 15.15; and

(2) when an *employee* reaches retirement, discretionary pension benefits are paid to the *employee* in the form of instruments referred to in 15.15 and subject to a five-year retention period.

unless the annual variable remuneration of the *employee*:

(A) does not exceed ~~€50,000~~ £44,000; and

...

15 REMUNERATION STRUCTURES

15.A1 In this Chapter:

...

(3) A *firm* is not required to apply 15.15 to 15.19 in respect of an *employee* whose annual variable *remuneration*:

(c) does not exceed ~~€50,000~~ £44,000; and

...