

EBA/CP/2022/02

21 January 2022

Consultation Paper

Guidelines

on the benchmarking exercises on the remuneration practices, on the gender pay gap and on approved higher ratios under Directive 2013/36/EU

Contents

1. Responding to this consultation	3
2. Executive summary	4
3. Background and rationale	5
4. Draft guidelines	8
Compliance and reporting obligations	9
Subject matter, scope and definitions	10
Implementation	11
Draft Guidelines	12
1. Scope of institutions to be included in the benchmarking data exercises	12
1.1 Scope of institutions for the remuneration data collection	12
1.2 Scope of institutions for the gender pay gap data collection	12
1.3 Scope of institutions for the benchmarking of approved higher ratios	12
2. Submission of benchmarking data to the competent authorities	13
3. Submission of benchmarking data to EBA	13
3.1. List of institutions included in the benchmarking exercises	13
3.2. Submission of data to the EBA	14
4. General specifications for the submission of benchmarking data	14
5. Additional specifications for remuneration data	15
5.1. Additional specifications for remuneration data under Annex 2	17
5.2. Additional specifications for the remuneration data under Annex 3	18
6. Additional instructions for the gender pay gap data in Annex 4	18
7. Data quality	20
Annex 1: General information and information on remuneration of all staff	22
Annex 2: Additional information on remuneration of identified staff	23
Annex 3: Derogations to the application of requirements to pay out parts of variable remuneration deferred and in instruments under Directive 2013/36/EU (CRD)	24
Annex 4: Information on the gender pay gap	25
Annex 5: Approved higher ratios between variable and fixed remuneration – institutions	26
Annex 6: Approved higher ratios between variable and fixed remuneration – aggregation by competent authorities	27
Annex 7 – Data quality checks	28
5. Accompanying documents	32
5.1 Draft cost-benefit analysis / impact assessment	32
5.2 Overview of questions for consultation	37

1. Responding to this consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 21 March 2022. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section of the EBA website.

2. Executive summary

The European Banking Authority (EBA) is updating its 'Guidelines on the remuneration benchmarking exercise' under Directive 2013/36/EU (CRD), which has been originally published in 2012 and updated in 2014. The review is necessary to take into account additional requirements introduced by Directive (EU) 2019/878 (CRD V) regarding the application of derogations under Article 94(3) of the CRD and the benchmarking of the gender pay gap. In addition, guidelines to harmonise the benchmarking of approvals granted by shareholders to use higher ratios than 100% between the variable and fixed remuneration under Article 94(1)(g)(ii) of the CRD have been added.

The update also considers the amendments to the disclosure requirements under Regulation (EU) 575/2013. In this regard, the templates for the data collection have been revised, taking also into account the Commissions Implementing Regulation (EU) 2021/637 (ITS on disclosures).

The principle of equal pay for equal work or work of equal value laid down in Article 157 of the Treaty on the Functioning of the European Union (TFEU) and measures to ensure equal opportunities have already been included in the EBA Guidelines on sound remuneration policies under Directive 2013/36/EU and EBA Guidelines on internal governance under Directive 2013/36/EU. The benchmarking of the gender pay gap will allow competent authorities to monitor the implementation of such measures and their development at different levels of pay. The Guidelines aim at ensuring that the benchmarking of the gender pay gap covers a representative sample of institutions. Therefore, the sample of institutions used for the gender pay gap benchmarking exercise includes different types of institutions to allow for an appropriate benchmarking not only of the largest institutions, but also of smaller institutions.

Next steps

The EBA is consulting on the draft Guidelines for a period of two month. A shorter time period for the public consultation than usual is needed to ensure that the Guidelines can be finalised in good time so that the revisions to the data collection exercises can be implemented in the reporting systems of institutions, investment firms, competent authorities and the EUCLID system of the EBA with regard to data for the financial year 2022.

It is planned that the benchmarking data will be collected under the updated Guidelines in 2023 for the financial year 2022. The first data on the gender pay gap will be collected in 2024 for the financial year 2023.

3. Background and rationale

1. The European Banking Authority (EBA) is updating its 'Guidelines on the remuneration benchmarking exercise' under Directive 2013/36/EU, which has been originally published in 2012 and has been updated in 2014. The review is necessary to take into account additional requirements introduced by Directive (EU) 2019/878 regarding the application of derogations and the benchmarking of the gender pay gap. In addition, guidelines to harmonise the benchmarking of approvals granted by shareholders to use higher ratios between the variable and fixed remunerations under Article 94(1)(g) of Directive 2013/36/EU have been added.
2. Under Article 75(1) of Directive 2013/36/EU, 'competent authorities shall collect the information disclosed in accordance with the criteria for disclosure established in points (g), (h), (i) and (k) of Article 450(1) of Regulation (EU) 575/2013 as well as the information provided by institutions on the gender pay gap and shall use this information it to benchmark remuneration trends and practices. The competent authorities shall provide EBA with that information.' Par (2) of this Article requires that 'EBA shall use the information received from the competent authorities in accordance with paragraph 1 to benchmark remuneration trends and practices at Union level.'
3. Points (g), (h), (i) and (k) of Article 450(1) of Regulation (EU) 575/2013 set out certain information that institutions are required to disclose. Small and non-complex institutions are subject to the disclosure requirements under Article 433b of Regulation (EU) 575/2013 and disclose only the information under points (a) to (d), (h), (i), (j) of Article 450(1) of Regulation (EU) 575/2013. The disclosure requirements apply to the consolidated level, but also to individual institutions. The consolidated data concern the scope of prudential consolidation and include data on the variable remuneration of institutions, investment firms, other financial institutions and ancillary undertakings. The Commission Implementing Regulation (EU) 2021/637 of 15 March 2021¹ specify the CRR requirements and provide tables for the remuneration data to be disclosed. The remuneration benchmarking data collection under Directive 2013/36/EU is based mainly on the disclosed information. In addition, some limited additional information is needed to analyse the 'other forms' of remuneration disclosed and the impact of derogations under Article 94(3) of Directive 2013/36/EU to the requirements to pay out a part of the variable remuneration in instruments and under deferral arrangements.
4. In line with the tables provided under the Commission Implementing Regulation (EU) 2021/637, the granularity of the remuneration benchmarking for different business lines has been reduced. Depending on supervisory needs or requests from relevant stakeholders, the EBA might decide in the future to suggest amendments to the Commission Implementing Regulation (EU) 2021/637 and amend the Guidelines to increase the granularity of the data collected for different business areas.

¹Commission Implementing Regulation (EU) 2021/637 of 15 March 2021 laying down implementing technical standards with regard to public disclosures by institutions of the information referred to in Titles II and III of Part Eight of Regulation (EU) No 575/2013 of the European Parliament and of the Council, available under <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02021R0637-20210628>

5. In line with the Commission Implementing Regulation (EU) 2021/637, the scope of identified staff on the institutions consolidated basis concerns only the identified staff that is identified staff on the basis of the institutions consolidated situation. Where the requirements apply to the individual basis, the identified staff is the staff identified on the individual basis, even if data would be disclosed and collected for an institution that is a subsidiary of a consolidating institution.
6. Pursuant to point (k) and the second subparagraph of Article 450(1) of Regulation (EU) 575/2013, institutions must disclose information on whether the institution benefits from a derogation laid down in Article 94(3) of Directive 2013/36/EU and, if they do so, indicate whether they benefit from that derogation on the basis of point (a) or (b) of Article 94(3) of Directive 2013/36/EU. They should also indicate for which of the remuneration principles they apply the derogation(s), the number of staff members that benefit from the derogation(s) and their total remuneration split into fixed and variable remuneration. This information is collected as part of the remuneration benchmarking exercise based on templates provided in these Guidelines.
7. The ratio between the variable and fixed remuneration is limited to 100% (up to 200% with shareholders' approval). Article 94(1)(g)(ii) of Directive 2013/36/EU prescribes the procedure for the approval of higher ratios (i.e., ratios > 100 % and ≤ 200 %) by shareholders and requires competent authorities to use the information received from institutions to benchmark the practices of institutions in that regard. The competent authorities are required to provide EBA with that information and EBA publishes it on an aggregate home Member State basis in a common reporting format. To ensure a consistent submission, the EBA has developed guidelines, including a template, to ensure the consistency of the information collected on a biennially basis.
8. The principle of equal pay for equal work or work of equal value laid down in Article 157 of the Treaty on the Functioning of the European Union and measures to ensure equal opportunities have already been included in the EBA Guidelines on sound remuneration policies under Directive 2013/36/EU and EBA Guidelines on internal governance under Directive 2013/36/EU. The benchmarking of the gender pay gap will allow competent authorities to monitor the implementation of such measures and their development at different levels of pay. The Guidelines aim at ensuring that the benchmarking of the gender pay gap covers a representative sample of institutions, including different types of institutions i.e., not only of the largest institutions, but also of smaller institutions.
9. The gender pay gap is the difference expressed as percentage between the average earnings of men and women across a workforce. It is calculated independently from the position of the staff members. Institutions selected to participate in the gender pay gap benchmarking exercise must have a certain number of staff, so that the results of the analysis are statistically sound. In line with the EU Commissions recommendation², the sample of institutions selected should only include institutions that have at least 50 staff members. In line with the principle of proportionality and to analyse the gender pay gap for different categories of staff and levels of payment, the gender pay gap should be calculated for institutions with more 250 or more staff members for each quartile of

² Commission recommendation on strengthening the principle of equal pay between men and women through transparency <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014H0124&from=EN>

payment levels as mean and median and separately for different categories of staff (i.e., all staff and identified staff).

10. Some additional instructions are provided to ensure that the data have the appropriate quality for deriving reliable benchmarks. To this end and to further harmonise the national implementation, the Guidelines are also addressed to institutions.

11. The Guidelines should be read in conjunction with the EBA guidelines on sound remuneration policies under Directive 2013/36/EU.

12. Competent authorities may perform additional benchmarking exercises for national benchmarking purposes.

4. Draft guidelines

EBA/GL/20XX/XX

DD Month YYYY

Draft Guidelines

on the benchmarking exercises on the remuneration practices, on the gender pay gap and on approved higher ratios under Directive 2013/36/EU

Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010¹. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions 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 institutions.

Reporting requirements

3. According to 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 [dd.mm.yyyy]. 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/202x/xx'. 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).

¹ 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).

Subject matter, scope and definitions

Subject matter

5. These Guidelines specify, for the purposes of the oversight of remuneration policies in accordance with Article 75 of Directive 2013/36/EU, the information to be provided by institutions to competent authorities for benchmarking remuneration trends and practices, including information disclosed in accordance with the criteria for disclosure established in points (g), (h), and (i) and (k) of Article 450(1) of Regulation (EU) No 575/2013 ('remuneration data') and the information to be provided for benchmarking gender pay gap ('gender pay gap data').
6. These Guidelines also specify, in accordance with the sixth indent of point (ii) of Article 94 (1) (g) of Directive 2013/36/EU, the common reporting format to be used for the purposes of the benchmarking of approved higher ratios between the fixed and variable components of remuneration ('higher ratios data').
7. These Guidelines specify how competent authorities will collect from institutions the approved higher ratios, the remuneration and gender pay gap data (collectively referred to as 'benchmarking data') and how they will then submit the benchmarking data to the EBA.

Scope of application

8. These guidelines apply on an individual, sub-consolidated and consolidated level as follows:
 - a. remuneration data should be collected at the level of application of disclosure requirements as set out in Articles 6 (3) and 13 of Regulation (EU) 575/2013;
 - b. gender pay gap and approved higher ratio data should be collected only at the individual level.

Addressees

9. These guidelines are addressed to competent authorities as defined in Article 4 (2), points (1) and (viii) of Regulation (EU) No 1093/2010 and to financial institutions as defined in point (1) of Article 4 of Regulation No 1093/2010 that are institutions as defined in point (3) of Article 4(1) of Regulation (EU) 575/2013 having regard to Article 2 (5) of that Regulation ('institutions').

Definitions

10. Terms used and defined in Directive 2013/36/EU, Regulation (EU) 575/2013 and the EBA Guidelines on sound remuneration policies under Directive 2013/36/EU, have the same meaning in these Guidelines.

Implementation

Date of application

11. These Guidelines apply from 31 December 2022.

Transitional arrangements

12. The benchmarking data for the financial year ending in 2022, excluding gender pay gap data, should be submitted by institutions to competent authorities by 31 August 2023 and from competent authorities to the EBA by 31 October 2023. The first benchmarking exercise regarding the gender pay gap should concern the financial year 2023.

Repeal

13. The EBA guidelines on the remuneration benchmarking exercise (EBA/GL/2014/08)² are repealed with effect from 31 December 2022.

14. References to the Guidelines repealed by paragraph 13 shall be construed as reference to these Guidelines

Q1: Is the section on subject matter, scope, definitions, addressees and implementation appropriate and sufficiently clear?

² See <https://www.eba.europa.eu/regulation-and-policy/remuneration/guidelines-on-the-remuneration-benchmarking-exercise>

Draft Guidelines

1. Scope of institutions to be included in the benchmarking data exercises

1.1 Scope of institutions for the remuneration data collection

15. Competent authorities should collect and submit to the EBA remuneration data from the largest institutions in terms of asset volume in their Member State ensuring a coverage of at least 60% of the banking system's asset volume in that Member State.
16. Where the coverage of 60% referred to in the previous paragraph cannot be reasonably achieved in a Member State, competent authorities should collect and submit to the EBA remuneration data from up to twenty (20) of the largest institutions in terms of asset volume in their Member State, except where these institutions' data will be collected by the consolidating supervisor as per the level of application of disclosure requirements set out in Article 13 of Regulation (EU) 575/2013. Competent authorities should request information from the EBA as to whether the Union parent undertakings of these up to twenty (20) largest institutions have been included in the list referred to in paragraph 23.

1.2 Scope of institutions for the gender pay gap data collection

17. Competent authorities should collect and submit to the EBA gender pay gap data from the institutions from which these competent authorities collect remuneration data. Competent authorities should also collect gender pay gap data from institutions that do not qualify as small and non-complex in accordance with point (145) of Article 4 (1) of Regulation (EU) 575/2013 and adequately represent the variety of the different types of institutions in that Member State, including institutions with securities admitted to trading or privately held, cooperative and savings banks, state-owned banks and investment firms applying Directive 2013/36/EU. When applying this paragraph, competent authorities should endeavour to collect gender pay gap data from at least 5 institutions (on an individual basis) in each of the following size categories in their Member State:
 - a. Total assets up to EUR 5 bn;
 - b. Total assets between EUR 5 bn and EUR 15 bn;
 - c. Total assets of EUR >15 bn or above.

1.3 Scope of institutions for the benchmarking of approved higher ratios

18. Competent authorities should collect and submit to the EBA approved higher ratio data from all institutions, on individual basis, that have an approval of their shareholders to apply a ratio

between the variable and fixed remuneration which is higher than 100% under Article 94 (1)(g)(ii) of Directive 2013/36/EU.

Q2: Is the section on the scope of institutions appropriate and sufficiently clear?

2. Submission of benchmarking data to the competent authorities

19. To enable competent authorities to collect and submit to the EBA remuneration data in accordance with these guidelines, institutions referred to in sub-section 1.1 should, by 31 May of each calendar year, submit to the competent authorities, the following information:

- a. the information specified in the tables REM1, REM2, REM3, REM4 and REM5 of the Commission Implementing Regulation (EU) 2021/637;
- b. information on remuneration of all staff as set out in Annex 1;
- c. information on the remuneration of identified staff as set out in Annex 2;
- d. information on the derogations set out in Article 94 of Directive 2013/36/EU as set out in Annex 3.

20. To enable competent authorities to collect and submit to the EBA gender pay gap data in accordance with these Guidelines, institutions referred to in sub-section 1.2 should, by 31 May every three years starting from 2024 with regard to the financial year 2023, submit at the individual level to competent authorities, the information set out in Annex 4.

21. To enable competent authorities to collect, aggregate and submit to the EBA approved higher ratios data in accordance with these Guidelines, institutions referred to in sub-section 1.3 should, by 31 May every two years starting from 2023 with regard of the financial year 2022, submit at the individual level to competent authorities, the information set out in Annex 5.

22. To enable competent authorities to collect, aggregate and submit to the EBA approved higher ratios data in accordance with these Guidelines by 31. August, the European Central Bank should, every two years starting from the in 2023 for the financial year 2022, provide national competent authorities with the information it has received in accordance with the previous paragraph from institutions under its supervisory remit in a timely manner.

Q3: Is the section on the procedural requirements for institutions appropriate and sufficiently clear?

3. Submission of benchmarking data to EBA

3.1. List of institutions included in the benchmarking exercises

23. Competent authorities should inform the EBA by 31 March of the calendar year, following the financial year for which data is to be collected, about the list of institutions that should be included in:

- a. the remuneration benchmarking and
 - b. the gender pay gap benchmarking exercise.
24. Changes to the sample of institutions should be avoided as much as possible to ensure that the sample remains stable. For the purposes of paragraph 23, competent authorities should inform the EBA about any changes compared to the previous data collection, including with regard to changes of names of institutions or their legal entity identifier.
25. Competent authorities should, following a communication from the EBA, remove from the list institutions for remuneration benchmarking that are subsidiaries of Union parent undertakings established in another Member State and for which the relevant data will be submitted to the EBA by another competent authority at a higher level of consolidation.

3.2. Submission of data to the EBA

26. Competent authorities should submit the information, after ensuring the completeness, correctness and plausibility of the information in line with these guidelines and any other technical specifications provided by EBA as follows:
- a. Remuneration data, by 15 July every year.
 - b. Gender pay gap data, by 15 July every three years starting from 2024 with regard to the financial year 2023.
 - c. Aggregated information on approved higher ratios as set out in Annex 6 by 31 August every two years starting from 2023 with regard to the financial year 2022.

Q4: Is the section on the procedural requirements for competent authorities appropriate and sufficiently clear?

4. General specifications for the submission of benchmarking data

27. When submitting benchmarking data in accordance with sections 2 and 3 and Annexes of these Guidelines, institutions and competent authorities should apply the general specifications set out in this section, the additional specifications set out in section 5 and 6 and the instructions set out in Annex 7.
28. Benchmarking data should be submitted using accounting year-end figures in EUR. Where remuneration is disclosed in a currency other than EUR, the exchange rate used by the European Commission for financial programming and the budget for December of the reported year should be used for the conversion of the consolidated figures to be reported³.
29. All amounts should be reported as full amounts, i.e., not rounded amounts, in euro (e.g., EUR 1 234 567 should be reported, instead of EUR 1.2 million).

³ The EBA provides a link to the information on its website together with these Guidelines; the exchange rate can also be accessed under http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm.

30. Benchmarking data should be submitted for the calendar year in which the financial year ended in the following calendar year. E.g. for the benchmarking exercise for the financial year ending at any date in the year '20yy', data will be submitted in the year '20yy+1'.
31. The allocation of submitted amounts to the fixed and variable part of remuneration should be made in line with section 7 of the EBA guidelines on sound remuneration policies under Directive 2013/36/EU.

5. Additional specifications for remuneration data

32. With regard to the tables REM1, REM2, REM3, REM4 and REM5, institutions should take into account the instructions set out in ANNEX XXXIV of Commission Implementing Regulation (EU) 2021/637 in addition to this section and the validation rules in Annex 7.
33. The number of staff should be submitted as determined at the end of the financial year (i.e., staff that left during the financial year should not be counted, while staff that was recruited within the financial year should be counted, taking into account their contractual working time arrangements).
 - a. Where the number of staff is to be submitted in terms of the headcount, the number of natural persons should be entered, independently of the number of working hours on which their contract is based or changes of the number of staff during the year and taking into account the total amounts of remuneration paid throughout the year.
 - b. Where the numbers are to be submitted in terms of the full-time equivalent, the numbers should be based on the percentage of time that a staff member is employed compared to a full-time contract (e.g., 0.5 would be reported for a staff member who is working half-time).
34. When submitting tables REM1, REM2, REM3, REM4 and REM5 of Commission Implementing Regulation (EU) 2021/637 and Annex 2 and Annex 3 of these Guidelines, identified staff should be understood as the staff who has a material impact on the institutions' risk profile on a consolidated basis. Staff of subsidiary undertakings that is subject to specific remuneration framework as set out in Article 109(4) of Directive 2013/36/EU (e.g. UCITS, AIFM, Investment firms) should be subject to the identification process on a consolidated basis only where Article 109 (5) or (6) of Directive 2013/36/EU apply.
35. Information on remuneration awarded for the financial year should comprise the fixed and variable gross remuneration awarded for the whole financial year preceding the year of the remuneration data submission.
36. When submitting table REM1 of the Commission Implementing Regulation (EU) 2021/637 in accordance with these Guidelines, non-monetary items of remuneration should be included with their monetary equivalent (e.g., the taxed amount) and should be included as "other forms" in that table.
37. When submitting tables REM1 and REM3 of Commission Implementing Regulation (EU) 2021/637 in accordance with these Guidelines: only the amounts of variable remuneration awarded for the

submitted financial year that have been deferred should be included under the position 'of which: deferred' in the table REM1, while deferred variable remuneration for previous periods should be included separately in line with the instructions for the table REM3.

38. Severance payments to identified staff should be included in the amount of variable remuneration in the table REM1 of the Commission Implementing Regulation (EU) 2021/637, in addition in the specific rows in table REM2 and where deferral is applied in table REM3 of that Regulation.
39. Where identified staff left the institution before the end of the financial year, the remuneration received for the financial year, including severance payments and all other forms of remuneration, should be submitted, while the staff member should not be counted towards the number of identified staff submitted when the contract has already ended before the end of the financial year.
40. Guaranteed variable remuneration should be included in the variable remuneration in the table REM1 of the Commission Implementing Regulation (EU) 2021/637, in addition be included in table REM2 and where deferral is applied in table REM3 of that Regulation.
41. When submitting Annex 1 and REM 5 of Commission Implementing Regulation (EU) 2021/637, staff should be classified under the function or business area where they carry out the predominant part of their business activities. The full amount of remuneration awarded to that staff member within the group or institution should be included under this function or business area.
42. For the allocation of staff to business areas, institutions should consider their internal organisation and the following:
 - a. Management body (MB) supervisory function, should be the members of the management body at the highest level of consolidation acting in the role of overseeing and monitoring management decision-making (i.e. non-executive directors), as specified in the instructions to table REM1 column letter (a) of the Commission Implementing Regulation (EU) 2021/637. Institutions should allocate members of management bodies of subsidiaries to the relevant business area under points (c) to (i) where such a break down is provided and otherwise to the category 'other identified staff'.
 - b. Management body (MB) management function, should be the members of the management Body at the highest consolidating level, who are responsible for its management functions (i.e. executive directors) as specified in the instructions to table REM1 column letter (a) of the Commission Implementing Regulation (EU) 2021/637. Institutions should allocate members of management bodies of subsidiaries to the relevant business area under points (c) to (i), where such a break down is provided and otherwise to the category 'other senior management'.
 - c. Investment banking should include corporate finance advice services, private equity, capital markets, trading and sales.
 - d. Retail banking should include the institutions total lending activity (to individuals and enterprises).

- e. Asset management should include:
 - i. the asset management within the institution that is included in the sample,
 - ii. where the institution reports on a consolidated basis, its subsidiaries that are institutions for the purposes of application of Regulation (EU) 575/2013, and
 - iii. where Article 109(5) or (6) of Directive 2013/36/EU applies, staff employed by investment firms, Undertakings for Collective Investments in Transferable Securities (UCITS) or Alternative Investment Funds Managers (AIFM).
- f. Corporate functions should include staff in all functions that have responsibilities for the whole institution at the consolidated level and for subsidiaries with such functions at the solo level, e.g., human resources, information technology.
- g. Independent control functions should include staff active in the independent risk management, compliance and internal audit functions as described in section 19 of the EBA guidelines on internal governance under Directive 2013/36/EU.
- h. Staff in subsidiaries subject to a specific remuneration framework should be understood as including all staff, that is employed by a subsidiary that are investment firms, UCITS or AIFM, not falling under Article 109(5) or (6) of Directive 2013/36/EU.
- i. All other staff should include staff and members of the management body of subsidiaries, other than investment firms, UCITS and AIFM, that cannot be allocated into the categories under (a) to (h).

5.1. Additional specifications for remuneration data under Annex 2

- 43. Discretionary pension benefits should be included in table REM1 and, where deferral is applied, table REM3 of the Commission Implementing Regulation (EU) 2021/637 in 'other forms of variable remuneration' and, in addition, be reported in the table in Annex 2.
- 44. Variable remuneration awarded based on multi-year accrual periods that do not revolve on an annual basis, i.e. where institutions do not start a new multi-year accrual period every year, should be fully allocated to the total variable remuneration of financial year in which it was awarded within table REM1 and, where deferral is applied, table REM3 of the Commission Implementing Regulation (EU) 2021/637, without consideration of the point in time when the variable remuneration is effectively paid or the length of the performance period. To allow a further analysis of fluctuations of the variable remuneration the amount should also be submitted also in the table in Annex 2.
- 45. In addition to the table in Annex 3 on the impact of derogations under Article 94(3)(a) and (b) of Directive 2013/36/EU, institutions to which the derogation referred to in Article 94(3)(a) of Directive 2013/36/EU does not apply, should submit in the table included in Annex 2 the fixed and variable remuneration of identified staff to which the derogation referred to in Article (94(3)(b) of that Directive applies.

5.2. Additional specifications for the remuneration data under Annex 3

46. Institutions should specify in Annex 3, if they are eligible to apply the derogations under Article 94 of Directive 2013/36/EU regarding the requirement to pay out a part of variable remuneration in instruments and under deferral arrangements and provide the information requested regarding the identified staff to whom the derogations are applied.
47. Derogations under Article 94 (3) of Directive 2013/36/EU should be considered as applied, when the institution that is subject to the derogation decides to not apply the minimum requirements regarding the portion to be deferred or paid out in instruments under Article 94(1) of that Directive (e.g., a derogation is still applied, if 30 % of the variable remuneration of an executive director is deferred, or if it is deferred for only 3 years, as the minimum requirements of 40% deferral for at least 4 years have not been met).

Q5: Is the section on the instructions for the remuneration benchmarking exercise appropriate and sufficiently clear?

6. Additional instructions for the gender pay gap data in Annex 4

48. Institutions that are participating in the gender pay gap benchmarking exercise should calculate the gender pay gap on an individual basis, considering the staff that is predominantly active in the Member State where the institution is located. Staff located predominantly in branches in another Member State or in a third country should not be taken into account.
49. Institutions should establish a list of all relevant staff, in line with the following criteria:
- a. the gender pay gap should be calculated for the staff that is staff at the end of the financial year, i.e., staff who has left the institution during the financial year is not considered in this exercise;
 - b. staff who receives less than their regular total annual remuneration, because they were at the end of the financial year on any form of parental leave, long term sick leave or special leave should be excluded from the exercise;
 - c. staff who has been recruited during the last three month of the financial year should not be taken into account in this exercise;
 - d. members of the management body in the management function should be treated as staff;
 - e. members of the management body in the supervisory function should not be included in the calculation, where they only receive a participation fee for attending board meetings⁴.

⁴ Where staff is represented in the management body in the supervisory function due to labor law and receives a participation fee, the respective staff should not be included as member of the management body in its supervisory function but located according to their job profile as employee, if the role as employee representant as member of the management body does not cover more than 50 % of the job profile.

50. The gender pay gap should be calculated as the difference between the remuneration of men and women expressed as a percentage of the remuneration of men. Institutions should use for the calculation the annual gross remuneration of staff on a full-time equivalent basis. In line with the EBA Guidelines on sound remuneration policies under Directive 2013/36/EU, institutions should consider the total remuneration awarded and also on a best effort basis the working time arrangements, annual leave periods and other financial and non-financial benefits when calculating the gender pay-gap, taking into account the provisions of the following paragraph.
51. For each relevant member of staff, the institutions should establish their total gross annual remuneration as the sum of fixed and variable remuneration considering the following:
- a. Non-monetary benefits (e.g., company car, interest rate free loans, free company kindergarten etc.) should be taken into account with their monetary equivalent, i.e. the taxable amount.
 - b. Regular payments into the pension system and health insurance for all staff should not be considered. Discretionary pension benefits should be considered.
 - c. The full variable remuneration awarded for all performance periods that ended during the financial year on which the calculation is based should be used, even if they concern performance periods longer than one year, this should include variable remuneration based on non-revolving multiannual performance periods as specified in paragraph 44.
 - d. Guaranteed variable remuneration (sign-on bonus) and severance payments (e.g., where the contract of staff has not yet ended at the end of the financial year) should not be taken into account in the calculation.
 - e. For staff that has been working part-time or has not been employed for the full financial year or has been on other forms of leave during parts of the year (e.g., unpaid or parental leave), the FTE amount for the variable and fixed remuneration should be established on a best effort basis by extrapolating the amounts effectively awarded to the total annual gross remuneration on FTE basis.
52. Institutions should calculate the gender pay gap for all staff (including the identified staff, identified on an individual basis) and separately for their identified staff.
53. Institutions that have 250 or more staff or 250 or more identified staff respectively should calculate the gender pay gap for each quartile of the total remuneration and in total. Institutions with less than 250 staff or less than 250 identified staff respectively should only submit the gender pay gap based on the total figures for all staff and identified staff respectively.
54. Institutions should calculate the pay gap in terms of the representation of each gender in percent of male and female staff based on the number of all staff and all identified staff respectively. Where applicable under paragraph 53, per quartile, whereby the percentages of the male and female representation together should result in 100.00% for each quartile calculated and for the total figures for all staff and also for identified staff.

55. The gender pay gap based on the gross remuneration should be expressed as the difference between the remuneration level of male and female staff as the:

- a. difference between the mean remuneration of men and the mean remuneration of women, expressed as a percentage of the mean remuneration of men; and
- b. difference between the median remuneration of men and the median remuneration of women, expressed as a percentage of the median remuneration of men.

56. For the calculation, institutions should apply the following instructions:

- a. The remuneration of staff members (independent of their gender) should be sorted by the amount beginning with the lowest amount. Each amount of remuneration of a staff member should be allocated to the male or female gender and it should be recorded whether or not the staff member is identified staff.
- b. Staff members of a gender different from the male or female gender should be allocated to the gender they identify with or if this is unknown or if it is different from the male or female gender, those staff members should be allocated to the male or female gender that in total has the lower number of staff members.
- c. The established list of staff should, where applicable under paragraph 53, be separated into quartiles that should form the basis of the calculation.
- d. The median and mean of the remuneration for all male and female staff and separately for male and female identified staff should be calculated – in total and, where applicable under paragraph 53, for each quartile.

57. All figures should be submitted as percentages with two decimal places (e.g., '17.23%' or '- 17.23%' in the case of a negative value). Where the gender pay gap for one category cannot be calculated, as there are only female staff members, the data point in Annex 4 should receive the value 'N/A', where there are only male staff members the result should show '100.00%'.

Q6: Is the section on the instructions for the gender pay gap benchmarking exercise appropriate and sufficiently clear?

7. Data quality

58. Institutions and competent authorities should check the completeness and plausibility of the benchmarking data before they submit this data to the competent authority or EBA. Data quality checks should include the validation rules set out in Annex 7 and the ones specified in the technical instructions.

59. Where there are strong fluctuations of benchmarking data over time, the institution and the competent authorities should be able to provide explanations.

60. When checking the plausibility of benchmarking data, competent authorities should take into account the size and number of employees of the institution and typical remuneration levels. Identified implausible data should be followed up and corrected before submission.
61. Where benchmarking data appears to be implausible, but is in fact correct, competent authorities should inform the EBA of the underlying reasons.
62. Regarding submitted benchmarking data that show potential data quality issues or are considered to be implausible, EBA may ask competent authorities to review the data or to provide the information necessary for the correct interpretation of data.
63. Competent authorities should provide as necessary corrected data or explanations to any implausible data as soon as possible. Competent authorities should closely cooperate with the EBA to ensure that the dataset for the analysis is stable and of good quality by at the very latest 30 September of the year where data has been reported..
64. When submitting benchmarking data to the EBA, competent authorities should ensure that they also comply with EBA/DC/335 of 5 June 2020 on EUCLID (“EUCLID Decision”)⁵ as amended and that they provide institutions with any technical specification necessary for the continuous compliance with the EUCLID Decision.

Q7: Is the section on the instructions for the data quality and in Annex 7 appropriate and sufficiently clear?

Q8: Are the Annexes on the data collection appropriate and sufficiently clear?

⁵https://www.eba.europa.eu/sites/default/documents/files/document_library/Risk%20Analysis%20and%20Data/Reporting%20by%20Authorities/885459/Decision%20on%20the%20European%20Centralised%20Infrastructure%20of%20Data%20%28EUCLID%29.pdf

Annex 1: General information and information on remuneration of all staff

Name of the institution/group						name			
The institution benefits from the derogation under Article 94 (3)(a) of Directive 2013/36/EU on an institutional level?						yes/no			
Financial year for which the remuneration is awarded (year N)						year			
	MB Supervisory function	MB Management function	Investment banking	Retail banking	Asset management	Corporate functions	Independent control functions	All staff in subsidiaries subject to a specific remuneration framework¹	All other staff
Number of members (Headcount)									
Total number of staff, FTE²									
Total net profit in year N (in EUR)³	Full amount in Euro (e.g. 123 456 789.00)								
Total dividends (or similar distributions) paid for year N (in EUR)	Full amount in Euro								
Total remuneration (EUR)									
Of which: variable remuneration (in EUR)									
Of which: fixed remuneration (EUR)									

¹ Staff within investment firms, Undertakings for Collective Investments in Transferable Securities or Alternative Investment Funds Managers companies that are subject to a specific remuneration framework under Union acts.

² The numbers of staff should be expressed in full time equivalents (FTEs) and be based on year-end numbers.

³ Net profits should be based on the accounting system used for regulatory reporting. For groups, it is the profit (or loss) based on the consolidated accounts.

Annex 2: Additional information on remuneration of identified staff

Name of the institution/group:	name			
Financial year for which the remuneration is awarded (year N):	year			
	Management body supervisory function	Management body management function	Other senior management	Other identified staff
Number of beneficiaries of contributions to discretionary pension benefits in year N				
Total amount of contributions to discretionary pension benefits (in EUR) in year N (included in other forms of variable remuneration)				
Total amount of variable remuneration awarded for multi- year periods under programmes which are not revolved annually (in EUR)				
For institutions that do not benefit from the derogation under Article 94(3)(a) of Directive 2013/36/EU on an institution wide level Total amount of variable remuneration of identified staff members benefitting from the derogations under Article 94(3)(b) of Directive 2013/36/EU, based on a low level of variable remuneration.				
For institutions that do not benefit from the derogation under Article 94(3)(a) of Directive 2013/36/EUCRD on an institution wide level Total amount of fixed remuneration of identified staff members benefitting from the derogations under Article 94(3)(b) of Directive 2013/36/EU, based on a low level of variable remuneration.				

Annex 3: Derogations to the application of requirements to pay out parts of variable remuneration deferred and in instruments under Directive 2013/36/EU (CRD)

Name of the institution/group:	name	
Financial year for which the remuneration is awarded (year N):	year	
Information on the availability of waivers	Derogations on a firm wide basis under Art. 94(3)(a) CRD	Derogations for identified staff under Art. 94(3)(b) CRD
Does the institution apply the derogations regarding the requirement to pay out a part of the variable remuneration deferred and in instruments under Article 94(3)(a) CRD to all its identified staff. If this question has been answered with “yes” the below information does not need to be provided.	Yes/no	
Does the institution apply the derogation to the requirement under Article 94 (1)(l) CRD (pay out in instruments)	Yes/no	Yes/no
Where the institution applies the derogation under 94 (1)(l) CRD, but with a lower threshold as implemented under national law, please indicate the threshold applied in EUR		Threshold
Number of identified staff benefitting from the derogation under Article 94 (1)(l) CRD	Headcount	Headcount
Percentage of identified staff benefitting from the derogation under Article 94 (1)(l) CRD	Percentage	Percentage
Total remuneration of identified staff benefitting from the derogation under Article 94 (1)(l) CRD	EUR	EUR
Of which: variable remuneration	EUR	EUR
Of which: fixed remuneration	EUR	EUR
Does the institution apply the derogation to the requirement under Article 94 (1)(m) CRD (pay out under deferral arrangements)	Yes/no	Yes/no
Where the institution applies the derogation under Article 94(1)(m) CRD, but with a lower threshold as implemented under national law, please indicate the threshold applied in EUR		Threshold
Number of identified staff benefitting from the derogation under Article 94 (1)(m) CRD	Headcount	Headcount
Percentage of identified staff benefitting from the derogation under Article 94 (1)(m) CRD	Percentage	Percentage
Total remuneration of identified staff benefitting from the derogation under Article 94 (1)(m) CRD	EUR	EUR
Of which: variable remuneration	EUR	EUR
Of which: fixed remuneration	EUR	EUR
Does the institution apply the derogation to the requirement under Article 94 (1) second paragraph of point (o) (derogations with regard to the pay out in instruments of discretionary pension benefits)	Yes/no	Yes/no
Number of identified staff benefitting from the derogation under Article 94 (1) second paragraph of point (o)	Headcount	Headcount
Total remuneration of identified staff benefitting from the derogation under Article 94 (1) second paragraph of point (o)	EUR	EUR
Of which: variable remuneration	EUR	EUR
Of which: fixed remuneration	EUR	EUR

Annex 4: Information on the gender pay gap

Institution (individual level)	Name
Legal entity identifier	Number
Member State	ISO code (e.g. AT, BE, CY)
Year	YYYY
Total number of staff	Headcount
Total number identified staff	Headcount

Representation of staff of different gender per quartile of remuneration level

Representation of male and female staff in each quartile of remuneration level	All male staff in percent of all staff	All female staff in percent of all staff	All male identified staff in percent based on all identified staff	All female identified staff in percent based on all identified staff
Quartile 1 (low)	Percentage (e.g. 42.43%)	Percentage	Percentage	Percentage
Quartile 2 (low to medium)	Percentage	Percentage	Percentage	Percentage
Quartile 3 (medium to high)	Percentage	Percentage	Percentage	Percentage
Quartile 4 (high)	Percentage	Percentage	Percentage	Percentage
Total staff/identified staff	Percentage	Percentage	Percentage	Percentage

Gender pay gap based on the total gross remuneration

Total gross annual remuneration level	Gender pay gap of all staff, based on median	Gender pay gap of all staff, based on mean	Gender pay gap of identified staff, based on median	Gender pay gap of identified staff based on mean
Quartile 1 (low)	Percentage (e.g. 42.43%)	Percentage	Percentage	Percentage
Quartile 2 (low to medium)	Percentage	Percentage	Percentage	Percentage
Quartile 3 (medium to high)	Percentage	Percentage	Percentage	Percentage
Quartile 4 (high)	Percentage	Percentage	Percentage	Percentage
Total staff/identified staff	Percentage	Percentage	Percentage	Percentage

Annex 5: Approved higher ratios between variable and fixed remuneration – institutions¹¹

Institution name	Name
Legal Entity Identifier	LEI
Year	YYYY
Total number of staff (end of the financial year)	Headcount
Total number of identified staff (outcome of the yearly identification process)	Headcount
Balance sheet total (end of the financial year)	Amount in EUR
Approved higher ratio (i.e. ratio of variable to fixed remuneration which is above 100%)	Percentage
Date of latest approval of higher ratio by the shareholders' meeting	dd/mm/yyyy
Total number of identified staff potentially benefitting from an approved ratio above 100%	Headcount
Total number of identified staff that has been in fact awarded a remuneration that leads to a ratio of variable to fixed remuneration above 100% for the financial year ¹²	Headcount

¹¹ Data should be reported by institutions on an individual basis.

¹² Guaranteed variable remuneration and severance payments, where not included in the calculation of the ratio pursuant to the Guidelines on sound remuneration policies, should not be taken into account.

Annex 6: Approved higher ratios between variable and fixed remuneration – aggregation by competent authorities

Member State	<i>ISO code</i>
Year of the collected data	<i>yyyy</i>
Total number of institutions that have their legal seat within the Member State (additional information to be provided below) – e.g. derived from banking statistics	<i>Number</i>
Aggregated total number of staff of all institutions within the Member State	<i>Number</i>
Aggregated total number of identified staff of institutions within the Member State (where available, otherwise N/A)	<i>Number</i>
Aggregated balance sheet total of institutions within the Member State	<i>Number</i>
Number of institutions where shareholders have approved a higher ratio that have their legal seat within the Member State (additional information to be provided below)	<i>Number</i>
Thereof: number of institutions with their legal seat within the Member State that have approved 200% as the maximum ratio	<i>Number</i>
Aggregated total number of staff of these institutions	<i>Number</i>
Aggregated total number of identified staff of these institutions	<i>Number</i>
Aggregated balance sheet total of these institutions	<i>Number</i>
Aggregated total number of identified staff potentially benefitting from an approved ratio above 100%	<i>Number</i>
Aggregated total number of identified staff that has been in fact awarded a remuneration that leads to a ratio of variable to fixed remuneration above 100% for the financial year	<i>Number</i>
Changes to the previous data submission	
Number of institutions that have introduced a higher ratio after the last submission of data to the EBA (re-approvals should not be reported)	<i>Number</i>
Number of institutions that have discontinued the practice of higher ratio after the last submission of data to the EBA	<i>Number</i>

Annex 7 – Data quality checks

Institutions and competent authorities should apply the following data quality checks with regard to the tables on remuneration included in the Commission Implementing Regulation (EU) 2021/637¹³.

Table REM1:

Row	Data quality check
1 and 9	The number of staff reported under the columns management body, should be integer numbers.
2	The total fixed remuneration should be the sum of the rows 3, EU 4a, 5, EU5x, 7; where identified staff is reported the amount should be > zero
9	The number of staff reported should not be higher than the number of staff reported in row 1
10	The total variable remuneration should be the sum of the rows 11, EU-13a, EU-13b, EU-14x, 15
10	The total variable remuneration should not be lower than the sum of severance payments and guaranteed variable remuneration in table REM2 row 2 and 7
-	The sum of deferred remuneration in rows 12, EU-14a, EU-14b, EU-14y, 16 should not be higher than the value in row 10
-	Ratio of deferred remuneration: The sum of deferred remuneration in rows 12, EU-14a, EU-14b, EU-14y, 16 should be higher than or equal to 0.4 times the value in row 10 after the deduction of guaranteed variable remuneration (table REM2 row 3) as well as severance payments (table REM2 row 10) and the amounts of variable remuneration awarded to staff where the derogation under Article 94(3)(b) applies (see Annex 2).
-	Institutions should consider that this simplified validation rule is for benchmarking purposes only and is not a validation of the compliance with the remuneration requirements regarding guaranteed variable remuneration and severance payments, i.e. while the full amounts are deducted, parts of the amounts are possibly subject to the requirement to pay out parts of the variable remuneration under deferral arrangements.

¹³ The ITS is available under: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0637&from=EN>

This validation rule does not apply to institutions where all identified staff benefit from the derogation to the requirement to pay out parts of the variable remuneration under deferral arrangements under Article 94 (3) (a) of Directive 2013/36/EU.

11 and 12	The value in row 12 must not be higher than the value in row 11
EU-13a and EU-14a	The value in row EU-14a must not be higher than the value in row EU-13a
EU-13b and EU-14b	The value in row EU-14b must not be higher than the value in row EU-13b
EU-14x and EU-14y	The value in row EU-14y must not be higher than the value in row EU-14x
15 and 16	The value in row 16 must not be higher than the value in row 15
-	The ratio between fixed (row 2) and variable remuneration (row 10) must not be higher than, as applicable, 100% or 200 %, after excluding rows 3 and 10 of table REM2 (bonus cap)
-	<p>Payout in instruments: The sum of rows EU 13-a, EU 13-b, EU-14x should be equal to or higher than 50 % of the total variable remuneration (REM2 row 10) after deducting the variable remuneration of staff where the derogation under Article 94(3)(b) applies (see Annex 2), guaranteed variable remuneration (table REM2 row 3) and severance payments (table REM2 row 10).</p> <p>Institutions should consider that this simplified validation rule is for benchmarking purposes only and is not a validation of the compliance with the remuneration requirements regarding guaranteed variable remuneration and severance payments, i.e. while the full amounts are deducted, parts of the amounts are possibly subject to the requirement to pay out parts of the variable remuneration in instruments.</p> <p>This validation rule does not apply to institutions where all identified staff benefit from the derogation the requirement to pay out parts of the variable remuneration in instruments under Article 94 (3) (a) of Directive 2013/36/EU.</p>

Table REM2

Row	Data quality check
1, 4 and 6	Number of staff reported under the columns 'a' and 'b', should be integer numbers.
1 and 2	If row 2 has a positive value, row 1 needs to have a positive value as well and vice versa.
2	The value of row 3 should not be higher than the value in row 2
6 and 7	If row 7 has a positive value, row 6 needs to have a positive value as well and vice versa.
7	The value of the sum rows 8 and 9 must be equal to the value in row 7
10	The value of row 10 must not be higher than the value of row 8
11	The value of row 11 must not be higher than the value in row 7

Table REM3

Row	Data quality check
1	The values must be equal to the sum of the values of rows 2, 3, 4, 5, and 6 for each column
7	The values must be equal to the sum of the values of rows 8, 9, 10, 11 and 12 for each column
13	The values must be equal to the sum of the values of rows 14, 15, 16, 17 and 18 for each column
19	The values must be equal to the sum of the values of rows 20, 21, 22, 23, and 24 for each column
25	The values must be equal to the sum of the values of rows 1, 7, 13, and 19 for each column

- The value in column 'a' must be equal to the sum of the values of columns 'b' and 'c' for each row

Table REM5

Row	Data quality check
1	The number in column 'j' must be equal to the sum of row 2 column 'c', row 3 columns 'd' to 'i', row 4 columns 'd' to 'i'
2	Column 'c' must be equal to the sum of columns 'a' and 'b'
3	The sum of the numbers in column 'd' to 'i' must be equal to the number in row 1 column 'c' of table REM1
4	The sum of the numbers in column 'd' to 'i' must be equal to the number in row 1 column 'd' of table REM1
5	The value in each column 'a' to 'i' must be equal to the sum of the rows 6 and 7 of the respective column
5	The sum of column 'c' to 'i' must be equal to the sum of columns 'a' to 'd' of row 17 in Table REM1
6	The values in columns 'a' and 'b' must be equal to the values in columns 'a' and 'b' in row 10 in table REM1, respectively
6	The sum of column 'c' to 'i' must be equal to the sum of columns 'a' to 'd' of row 10 in Table REM1
7	The values in columns 'a' and 'b' must be equal to the values in columns 'a' and 'b' in row 2 in table REM1, respectively
7	The sum of column 'c' to 'i' must be equal to the sum of columns 'a' to 'd' of row 2 in Table REM1

5. Accompanying documents

5.1 Draft cost-benefit analysis / impact assessment

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)¹⁴ provides that the EBA should carry out an analysis of ‘the potential related costs and benefits’ of any guidelines it develops. Such analyses shall be proportionate in relation to the scope, nature and impact of the guidelines. 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.

Compared to the previous guidelines, this version includes additional specifications for benchmarking, additional tables related to gender pay gap and related to derogations to the application of requirements to pay out parts of variable remuneration deferred and in instruments for institutions. Both requirements were introduced by Directive 2019/878 (CRDV), which amended Directive 2013/36/EU (CRD). Therefore, the impact of these additional requirements will not be assessed, as it stems directly from the Level 1 text, rather than from these Guidelines.

On the contrary other aspects of procedural specifications within these guidelines, as well as other changes implemented, will be assessed from the perspective of costs and benefits that they entail to the institutions, NCAs and on the financial stability. More generally, the guidelines are not expected to create a significant burden on the credit institutions, given that they already apply the previous guidelines. For the additional data to be collected to fulfil the benchmarking results within the CDR, to the extent possible, the EBA minimised the amount of data to be provided, while ensuring that the overall objective of the legislative mandates are fulfilled. At the same time, the EBA has proposed the streamlining of some previous data specifications and proposes to rely on the Commission Implementing Regulation (EU) 2021/637.

In this section we look at specific issues where various options were weighed, and choices made. The section explains the costs of benefits of each of these options and the preferred option.

Data for remuneration benchmarking

Problem identification: Most data required for remuneration benchmarking is also disclosed as part of the Commission Implementing Regulation (EU) 2021/637. However, there are additional data tables included in the guidelines compared to the disclosure tables in the Commission Implementing Regulation (EU) 2021/637 that are needed for benchmarking purposes.

¹⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010R1093>

Requiring tables different than the ones used for disclosures would lead to additional burden for institutions as additional data operations would need to be processed. EBA therefore decided to align the tables of the data requirements with the Commission Implementing Regulation (EU) 2021/637 and to collect all data that is to be disclosed also for benchmarking purposes. As result the tables on remuneration benchmarking were removed, and the guidelines instead refer to the tables within the Commission Implementing Regulation (EU) 2021/637. These are complemented by a few tables to supplement those tables with some additional datapoints required for fulfilling the received benchmarking mandates.

The dividends paid will be collected in addition to the previous guidelines, those are available based on accounting figures. This addition is therefore not considered burdensome.

The break down in business areas for the remuneration of all staff has been slightly amended to identify the overall part of remuneration paid in groups that is subject to a specific remuneration regime. This is necessary to identify trends in remuneration practices in parts of the group that subject to a specific remuneration regime and the parts that are subject to the regime under Directive 2013/36/EU.

Overall, due to the changes the costs on institutions will be reduced, first because the granularity for a material part of the benchmarking exercise will be reduced (data by business line will be required only for the totals of fixed and variable remuneration), and, second, because both the tables and the instructions will be the ones from the Commission Implementing Regulation (EU) 2021/637, which implies that the data can be reused exactly as they are compiled for disclosure purposes, without additional effort. Contrary, the few additions are minor, rely on data available in accounting, and therefore are not considered to create a notable cost increase.

Data for gender pay gap assessment

CRD explicitly introduced that institutions must apply gender neutral remuneration policies and that the EBA should benchmark the gender pay gap. The monitoring of the gender pay gap is an element specified in the EBA Guidelines on internal governance and EBA Guidelines on sound remuneration policies.

However, the requirements that there must be equal treatment of men and woman and that any form of discrimination is prohibited is not new and was already included Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation¹⁵, which were subsequently translated in various ways into rules for implementation at national level. To provide guidance on the way the gender pay gap is to be monitored, and to encourage harmonisation of the methodology across MSs, the European Commission published in 2014 the Pay Transparency Recommendation¹⁶, providing specific

¹⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0054>

¹⁶ Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014H0124>

instruction to entities of 50 staff and above on how the gender pay gap should be calculated as one of the measures to monitor the compliance with the above Directive.

While the Recommendation to monitor the gender pay gap is not new, it has now been specified in CRD that competent authorities should collect information on the gender-pay gap and provide this to the EBA for benchmarking purposes. The EBA is aware that not all the MS have translated these using the methodology proposed in the Recommendation.

The current guidelines specify the data that institutions should provide on the gender pay gap, and, therefore, also needs to provide a table and instructions on what figures to provide and how to calculate them. Not specifying any methodology would lead to incomparable data being provided, and inconclusive findings.

The updated Guidelines therefore specify how the institutions calculate the gender pay gap using the methodology proposed by the European Commission in its 2014 Pay Transparency Recommendation and providing further specifications on the calculation in the context of the remuneration requirements under CRD and in particular that institutions must have gender neutral remuneration policies for all staff and their identified staff.

Using this methodology has several benefits. It ensures that many pitfalls related to gender pay gap calculations are addressed, to ensure relevance and comparability of the final figures (for example the adjustment of the time worked to consider part-time work, maternity/ paternity-leave, partial work during the year etc).

The guidelines foresee for institutions with 250 or more staff a more granular approach than for institutions with 50 staff up to 249 staff. Such an approach is consistent with the principle of proportionality. However, the calculation proposed, once the annual remuneration for each staff is established, can be performed with standard calculation tools that are available in institutions.

In addition, the methodology has been already published and is familiar at least to institutions in the MSs that have implemented the Recommendations at national level. Consequently, while all the institutions must monitor the gender pay gap in accordance with the CRD and to ensure that they comply with the Directive on Equal Opportunities, the costs that the institutions will incur as a result of these guidelines will mostly depend on the methodology they currently apply:

- If the monitoring is done using the methodology in accordance the 2014 Pay Transparency Recommendation, then the additional costs will be minimal.
- If the monitoring is done in a different way, the costs may be substantial, as the implementation of the methodology may require adjustments to the HR systems that would allow the automatic identification of the gender of the employee, their Identified Staff status, their annual number of hours worked adjusted to consider part-time work, maternity/paternity leaves etc. or the same would need to be done manually.

The costs for the data submission to competent authorities and from competent authorities to EBA have not been assessed as they are born by the requirement introduced within the CRD.

Scope of gender pay gap assessment

The scope of this data requirements includes all the institution covered in the remuneration benchmarking, with additional institutions to be added to the sample by the NCA, to ensure representativeness of the sample in terms of types of institutions. All the institutions are to report the data at individual level, unlike the remuneration data, which is disclosed and reported at consolidated level. The slightly larger scope compared to remuneration benchmarking is necessary to ensure that all kinds of institutions are represented and that the results of the monitoring are relevant and representative.

Data on derogations

Regarding the data requirements related to derogations to the application of requirements to pay out parts of variable remuneration deferred and in instruments for institutions, the tables include only the data that is strictly required as part of the CRD benchmarking mandate and CRR disclosure requirements. Lower granularity could not be considered. As such, there is no impact deriving directly from the Guidelines.

Data requirements on approved higher ratios

Finally, the guideline also specify data on higher ratios to be reported. The aim of these tables is to harmonise benchmarking of approvals granted by shareholders to use higher ratios between the variable and fixed remunerations under Article 94(1)(g)(ii) of the CRD, for better monitoring and impact assessment.

Currently, the information on higher ratios is collected via a one-off notification. As a result, it cannot be assessed what is the period and the ongoing impact on the institution and remuneration practices in general during which the higher ratio applies. To enable the monitoring limited available relevant information about the institution, such as total assets, total staff, during the time when this higher ratio applies, number of identified staff (i.e. the subsequent years after the approval of such a ratio) needs to be collected.

The approach proposed in these guidelines, implies the regular reporting of information on higher ratios for each institution, as well as the additional relevant information, which will allow EBA to monitor and assess the impact of this provision. The costs are limited to the regular submission as the general information on the remuneration policies, including the ratio used, are subject to disclosure requirements.

Overall conclusion

Overall, the costs created by the guidelines are minimal, but depend regarding the benchmarking of the gender pay gap on the current practices in Member States in institutions. For individual

institutions, the implementation costs for this specific aspect can be material, but those costs would mainly be one-off implementation costs. The requirement as such is created by the CRD. The guidelines overall ensure that the benchmarking exercises can be conducted efficient and that the derived information is relevant for reviewing how remuneration practices develop and the remuneration framework, including the application of derogations. While the guidelines do not have a direct impact on the financial stability, they allow to monitor remuneration practices and if they are aligned with the performance of institutions and the risks they take. Overall, the increased transparency on remuneration practices should have a positive effect on the financial stability as it provides indicators for the monitoring of long term oriented incentives for prudent behaviour.

5.2 Overview of questions for consultation

Q1: Is the section on subject matter, scope, definitions, addressees and implementation appropriate and sufficiently clear?

Q2: Is the section on the scope of institutions appropriate and sufficiently clear?

Q3: Is the section on the procedural requirements for institutions appropriate and sufficiently clear?

Q4: Is the section on the procedural requirements for competent authorities appropriate and sufficiently clear?

Q5: Is the section on the instructions for the remuneration benchmarking exercise appropriate and sufficiently clear?

Q6: Is the section on the instructions for the gender pay gap benchmarking exercise appropriate and sufficiently clear?

Q7: Is the section on the instructions for the data quality and in Annex 7 appropriate and sufficiently clear?

Q8: Are the Annexes on the data collection appropriate and sufficiently clear?