

EBF response to the EBA GLs on remuneration and gender pay gap benchmarking exercise for banks and investment firms

The EBF welcome this consultation on benchmarking exercise, which enable to clarify some subjects and give more visibility to institutions on what is expected regarding the gender pay gap. In this respect, institutions are thankful to have an additional delay for the first benchmarking exercise on this topic until performance year 2023, i.e. a first reporting to be provided in 2024, as this will enable to have time to develop adequate tools on this new aspect.

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

As underlined, we welcome the deferred timing (2024 vs 2023) for the first submission of the benchmarking exercise on gender pay gap.

Background and rationale, point 5. (page 6) - we welcome the precision on the fact that the scope of identified staff concerns only the staff identified on the basis of the institution consolidated situation as this was not clearly defined in the previous guidelines.

Background and rationale, point 9. (page 6) - we understand that entities with less than 50 staff members do not have to provide data under the gender pay gap. We think that the same principle should apply for the internal analysis on the gender pay equity as the population is too tight to do statistical analysis.

Subject matter, scope and definitions

Paragraph 8.b - does individual level mean per legal entity? Or per banking licensed entity?

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

Paragraph 17 - defines the in-scope institutions for a gender pay gap reporting:

The participation for institutions from which EBA / local regulators collect remuneration data is clearly defined.

For other institutions which shall be elected to participate in the gender pay gap reporting, we highly recommend informing these institutions in a timely manner as the reporting obligation might cause challenges. Institutions should be in the position to be prepared appropriately and in a timely manner. An information about their participation late in 2023

might be too late. We would very much appreciate that regulators inform these institutions at the latest until end of 2022.

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

Paragraph 19 – Templates REM1, REM2, REM3, REM4 and REM of the Commission Implementing Regulation (EU) 2021/637 have to be used for public disclosure starting in 2022 (on performance year 2021. For performance year 2021 (i.e. benchmarks submitted in 2022), institutions will continue to use previous templates under Guidelines issued in 2014) and as of performance year 2022, they will also have to submit the new tables REM1 to REM5 to competent authorities in parallel to the new templates included in Annexes 1 to 6 of this new guidelines ? This was not specified in Commission Implementing Regulation (EU) 2021/637 and we would like to make sure that our understanding is correct.

The date of submission of 31 May of each year is one month earlier than current practices. For large groups which need to consolidate remuneration data from all the subsidiaries, which may have different calendars regarding remuneration, to fill in Annex 1 it will be more complicated to respond to this earlier deadline.

Paragraphs 21-22 - about the timing of information collection, we ask to confirm the previous timing:

- 30 June transmission to the competent national authorities
- 31 August broadcast to the EBA.

to avoid an increase in administrative burdens during the period of organizational effort related to the shareholders meeting and considering the numerous checks on the adequacy of the information carried out by each institution / investment firm, aimed at guaranteeing high data quality and reducing the checks and controls to be carried out part of the national competent authorities.

The same request for remuneration benchmarking, data on the differential by gender and on the approval of an upper limit on the ratio between variable and fixed remuneration.

Paragraph 22 – there is a typo:

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.

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

Paragraph 23 – As already specified earlier, for institutions which shall be elected to participate in the gender pay gap reporting, we highly recommend informing these institutions in a timely manner as the reporting obligation might cause challenges. Institutions should be in the position to be prepared appropriately and in a timely manner. An information about their participation late in 2023 or in March 2024 will be too late. We

would very much appreciate that regulators inform these institutions at the latest until end of 2022.

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

Paragraph 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.”

In order not to have distorted view of HC/FTE vs awards, we would suggest either to exclude in both sections (HC/FTE and remuneration) or include the staff members who left the institutions in the overall number of staff.

Paragraph 42 - regarding Management Body it seems to be a different definition between the benchmarking consultation paper and high earners consultation paper.

Specifically, in benchmarking consultation paper:

- 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’

Therefore, members of the Management Body in the supervisory / management function of the subsidiaries are to be placed relevant business area under points (c) to (i) where such a break down is provided and otherwise to the category ‘other identified staff’.

In high earners consultation paper:

- a. Members of the management body, including members of the management body of subsidiaries that are not subject to specific remuneration requirements, should be reported, as applicable, under the column ‘management body in its supervisory function’ or ‘management body in its management function’. Members of the management body of subsidiaries that are investment firms, UCITS and AIFM should be reported in the column ‘All staff in subsidiaries subject to a specific remuneration framework.’

We request to homogenize the two definitions in order to provide comparable data.

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

Paragraph 48 - this GL indicates that institutions should calculate the gender pay gap on an individual basis, i.e. not on a consolidated basis. And staff in other countries should not be taken into account. This implies that the gender pay gap should only be provided for the benchmarking exercise at the level of the local legal entity and only for its staff members working in the local legal entity. Is that correct?

'Predominantly active in the Member State' is not per definition the same as Host Country. Our advice is to exclude expats from this analysis/calculation of gender pay gap. Expats are 'predominantly active' in the host country, however their pay is usually determined by policy as regard the host countries. Since this is a very small group with a specific status and specific remuneration package structure and leads to disproportionate administrative burden, the advice would be to totally exclude them from the analysis.

Paragraph 49 - defines the relevant staff.

We would advise to disregard any staff who has not been present for the full year. Indeed, as for the variable remuneration, it is complicated to have reliable data for staff members who have been present only part of the year (due to sick leaves for instance or even for new recruits) by extrapolating amounts really awarded.

Paragraph 49.a - the remuneration of leavers who left the institution during the relevant performance year should not be considered.

Paragraph 49.b - remuneration of staff who receives less than their regular total annual remuneration should be disregarded if they were at the end of the financial year on any form of special leave (such as parental leave, etc.). We suggest aligning 49a.) with regard to this timing perspective used under 49b.), thus to do not consider leavers with an exit date which is the last day of the performance year and reword 49a.) as follows:

"a. the gender pay gap should be calculated for staff that is still staff at the end of the financial year, i.e. staff who has left the institution during or on the last day of the performance year is not considered in this exercise;"

Paragraph 49.c - it is proposed to exclude all those who, as new recruits, do not receive variable remuneration. In the event that they do receive variable remuneration, it should be treated in the same way as the other concepts (in a year basis).

Paragraph 49.e - clarification of footnote 4. is needed. We would advise to exclude all members of the supervisory board.

Paragraph 50 - other financial and non-financial benefits should be included on a 'best effort basis'. The best effort clause is appreciated as collecting those data means disproportionate costs and effort, especially for local entities. Very time consuming and it requires a lot of assumptions to be able to translate such benefits into monetary values. This leads to a risk that some benefits are included and others not with differences between

institutions and countries. And where benefits are included the calculation method may differ due to different assumptions on the calculation methodology. This all makes the data less consistent and more difficult to aggregate and compare. Advice would be to leave out these types of benefits.

Paragraph 51 - defines which remuneration components are in- or out of scope for the gender pay gap reporting. Pursuant to 51a) non-monetary benefits should be considered with their monetary equivalent.

For reasons of proportionality a materiality threshold aligned to local tax perspective (i.e., disregard non-monetary benefits which is not deemed income from non-independent work or which do not need to be considered as remuneration pursuant to local tax laws) should be implemented.

The application in practice has shown that it is almost impossible or difficult to determine non-monetary benefits. It should be possible to determine the total amount of thereof:

- If the share of the non-monetary benefits of an institution is immaterial, i.e. less than 5 % of the fixed or variable remuneration, offsetting should be waived in total.
- If the share of the non-monetary benefits of an institution is above this materiality threshold it should be possible to consider the total amount relative to other remuneration components of those employees who have received non-monetary benefits and the average share of the non-monetary benefits can be used to determine the individual's remuneration.

The proposed procedure would reflect the principles which have been advised by BaFin (German regulator) with regard to non-monetary benefits pursuant to the CRD remuneration requirements.

The best effort basis is indeed important to keep as some benefits are quite complicated to consolidate.

Paragraph 51.e - we would advise to exclude all staff who have not been employed for the full financial year in order to enhance coherence and reliability of data.

Paragraphs 54 - 56 - here we are facing a dilemma. The methodology is very clear and straightforward, so definitely something to keep. However, the downside is that with this lack of detailed analysis the gender pay gap that is calculated via this methodology by clustering the data roughly into 4 buckets does not properly reflect 'equal pay for work of equal value' (i.e. calculates a 'gross' gap). The methodology does take into account any overrepresentation of men in a quartile by also requesting this data in the first table in Annex 4. However, if men are overrepresented in roles with higher grades within that quartile, the pay differences could be very well justified based on 'equal pay for work of equal value' and is thus not necessarily indicative of an actual pay gap. To be able to calculate the actual (or 'net') pay gap you would have to compare pay for staff within a role/ grade/ level. And to do that properly this requires a very detailed and laborious analysis, which is also not ideal. The proposed approach seems like a workable compromise. However, when drawing conclusions on this, careful consideration and communication is key. When publishing a gender pay gap for the 'banking industry as a whole in Europe' it should be very clear that this is still a 'gross' gap that is calculated. If not properly explained and nuanced, this might lead to the wrong conclusions, wrongful imaging and be harmful for the sector as a whole.

Paragraph 56.b - it is not coherent to add staff members of a gender different from male or female to either one of these categories. This is a very sensitive topic and we would rather exclude these staff members for the analysis.

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

No comments.

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

ANNEX I: in case it is necessary to complete this annex as well, we consider that this is covered by Annex II which is intended for "Investment firms".

ANNEX II: if it were necessary to complete this annex, would it be necessary to complete one for each entity? In that case, please keep in mind the increased operational burden and duplication of reporting, as each subsidiary investment firm must submit its own.

Annex II and Annex III: some data on derogations seem to have to be included twice, once in Annex II (last 2 lines) and again in annex III, this point should be optimized.

About EBF

The European Banking Federation is the voice of the European banking sector, bringing together national banking associations from across Europe. The federation is committed to a thriving European economy that is underpinned by a stable, secure, and inclusive financial ecosystem, and to a flourishing society where financing is available to fund the dreams of citizens, businesses and innovators everywhere.

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