
Consultation Response

EBA Consultation: Guidelines on the Remuneration, Gender Pay Gap and approved higher ratios benchmarking exercise.

21 March 2022

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the **EBA Consultation Paper: Guidelines on the Remuneration, Gender Pay Gap and approved higher ratios benchmarking exercise**¹. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society¹.

Executive Summary

AFME Members are supportive of well-structured remuneration reporting requirements, that improve transparency and ensure robust governance of the remuneration process. We recognise the need to update the draft guidelines on remuneration and gender pay gap benchmarking exercise under the CRD and appreciate that the review provides some guidance on how to harmonise the benchmarking of approvals granted by shareholders to use higher ratios than 100% between variable and fixed remuneration.

Overall, we call for guidelines that enhance clarity and foster convergence in the implementation of the new requirements. We summarise below our high-level response to the Consultation, which is followed by answers to the individual questions raised.

Consistency of Approach

Global financial institutions with cross-border banking activities are subject to various remuneration reporting requirements, and the guidelines that support the requisite reports are not always aligned. Our Members advocate for a consistency in approach on all data submitted to the Competent Authorities. Furthermore, an alignment of approach with international Authorities, building upon existing frameworks and the future development of common international standards would benefit financial institutions operating in this multi-stakeholder model. We put forward proposals for a single common reference framework with commonly defined terms that help the benchmarking exercise and sets a unified approach to remuneration disclosures including more concise reporting, which will lead to improved disclosures from firms and help reduce uncertainty and implementation gaps.

Timeline:

The proposed date of 31st May is broadly acceptable to our Members, however there are wider concerns with this date. Firms need to take a point in time for reference, yet some challenges are introduced when reporting large amounts of data which may require manual intervention. If manual manipulation is introduced, this increases the risks of human error and inaccuracy. Specifically, there is a risk of double counting and Material

¹ AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. AFME is registered on the EU Transparency Register, registration number 65110063986-76.

risk takers (MRTs) could be counted twice by two Competent Authorities when data is consolidated at the EBA level. We would like to propose an alternative timeline of 30 June, to give firms sufficient time to prepare for the reporting.

Questions

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

Paragraph 14 of the Consultation Paper states that the EBA guidelines on the remuneration benchmarking exercise (EBA GL/2014/08), which was repealed in paragraph 13; would be construed as a reference to the Guidelines. It is not understood why the repealed guidelines would remain a reference point. We welcome clarity on this point, especially with regards to which extent the EBA GL/2014/08 should be a reference tool.

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

Paragraph 17 defines the institutions in-scope for the gender pay gap reporting and the scope for the participation of institutions from which the EBA / Competent Authorities will collect remuneration data is clearly defined. However, for other institutions who shall subsequently be elected to participate in the gender pay gap reporting, we strongly recommend that these institutions are informed in a timely manner, so that the institutions can make the requisite operational changes to accommodate the reporting obligations. For instance, notifying an institution about their participation late in 2023 is considered insufficient notice. We suggest that these institutions need to be notified at the latest, at the beginning of the performance year for which data needs to be reported.

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

We also wish to recommend that information requests by Competent Authorities are co-ordinated so that the timing and frequency is not overly burdensome for firms. As noted above, it will be helpful if the Competent Authorities, maintain commonly defined terms (e.g., with those defined in Pillar 3 reporting requirements).

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

No comments.

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

- Paragraphs 38 & 39 appear to stipulate that firms should report the remuneration but that the headcount should be excluded. It is common practice for firms to include staff who have left the firm provided they were in position for three months.
We welcome a consistent approach that includes both remuneration and headcount in the reporting, otherwise, the information reported will be imprecise.
- Paragraph 42(c) of the Consultation, state that Investment Banking should include **corporate finance advice services, private equity**, capital markets, trading and sales. On this, we note that some firms do not consider corporate finance advisory services as part of Investment Banking.
Firms rely on regulatory guidance for establishing the business functions to be included in their reporting. It is therefore critical that regulatory guidance is aligned; however, there is a potential conflict with Paragraph 4, table 2 of Article 317 Capital Requirements Regulation (CRR); where the scope of investment banking does not include corporate finance or private equity. We request that the Competent Authorities use the definition in CRR and Pillar 3 for clarity and consistency.

- Paragraph 42(f) cites HR as an example of a Corporate function. We would like to highlight that some firms, treat HR as an independent control function (e.g. as part of the Risk function). Such firms may include HR as an independent control function for their Pillar 3 reporting. For clarity and consistency, our Members would find it helpful if the guidelines were not so specific as to include examples in this instance.

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

We note that the instructions for the gender benchmarking exercise are unclear in some instances.

- Paragraph 48 of the Consultation Paper states that, *“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.”*

Our Members wish to clarify the approach to be undertaken for expatriates. We propose that expatriates are excluded from the analysis as they do not carry out their activities in the “home contracting entity.” We further suggest that they should also not be considered in the host country/entity as expatriate packages are different from local remuneration packages. We would also welcome clarity on if staff in branches are to be excluded from the calculation, even if such staff are working for their home states.

- Paragraph 49 defines the relevant staff to be captured in the exercise. Pursuant to Paragraph 49(a) the remuneration of leavers who left the institution during the relevant performance year should not be considered.

In Paragraph 49(b); remuneration of staff who receive 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 Paragraph 49 (a) with regard to the timing introduced under Paragraph 49(b), i.e. not to consider leavers with an exit date which is the last day of the performance year. We propose that Paragraph 49 (a) is re-drafted as follows:

*“49a. the gender pay gap should be calculated for staff **that remain** 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 (b) states that staff who receive less than their regular total annual remuneration should be excluded if they were, at the end of the financial year on any form of parental leave, long term sick leave or special leave. It is unclear why there is an instruction to exclude certain staff from the calculations at the end of the year. Staff salary remains the same at the end of the year as the start of the year, even when staff have been on parental leave. If the intention is to exclude these staff, We require additional clarification on whether they should be included in the pay gap calculation and only excluded for total remuneration.

We also wish to point out that the suggestion to exclude employees on parental leave may disproportionately impact women on maternity leave, and risks undermining the purpose of the gender pay gap exercise. We question the rationale for excluding this population from the gender pay

gap exercise especially as their annualised remuneration could be used to support the objective of the exercise. Our Members welcome clarity on the rationale for excluding women on maternity leave and suggest using an alternative metric, which may be more appropriately calibrated.

- Paragraph 49 (c) We wish to highlight that maternity policies will vary across firms. We also wish to note that the wording in paragraph 49 (c) is potentially contradictory with that in paragraph 51(e).
- Paragraph 51 defines which remuneration components are in or out of scope of the gender pay gap reporting. Paragraph 51(a) states that non-monetary benefits should be considered with their monetary equivalent. We wish to highlight that local tax laws vary, which presents a challenge for firms. For reasons of proportionality, a materiality threshold aligned to local tax laws should be applied (e.g. non-monetary benefits from non-independent work or which are not considered as remuneration pursuant to local tax laws should be disregarded).
The application in practice has shown that it is an operational challenge to determine non-monetary benefits. We welcome guidance on how to determine the total amount of non-monetary benefits that is aligned with the CRD requirements; including clarification that monetary benefits are calculated with regards to fixed total remuneration.
- Paragraph 51(c) Our Members would like to clarify if the scope of this paragraph includes long-term investment plans (LTIPS) from previous financial performance year(s) that become awarded as variable pay in that current financial performance year. We recommend that the new guidelines remain consistent with previous EBA guidelines on variable pay.
- Paragraph 51(e) Our Members welcome clearer drafting with more specific language on the instruction to extrapolate fixed and variable pay on a “best-efforts basis”. The outcome of this instruction in its draft form could lead to varying outcomes across the industry. As drafted, there is a concern that firms will provide data that is collected in an inconsistent way particularly with how firms calculate variable remuneration. We welcome further clarity on what the expectation is for the calculation of variable pay on a FTE basis. This should include if institutions should calculate the figures on an FTE basis or ‘pro-rated’.

Our Members would like to tread cautiously in managing the population of colleagues working part time to ensure there are no disproportionate awards or discriminatory outcomes. We welcome additional guidance to ensure that appropriate data is captured.

- Paragraph 56: We deem the instructions in paragraph 56(b) unclear. The first part of the paragraph is clear “*Staff members of a gender different from the male or female gender should be allocated to the gender they identify with*” However, the drafting goes on to state that “*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*”. Our Members consider that following this approach could provide potentially distorted results, thus undermining the overall objective of gender parity. We also note that data is not readily available as people may not wish to disclose such information which is categorised as Sensitive Personal Data requiring explicit consent under GDPR²².

We therefore propose an alternative approach for the data to be submitted initially for the male and female genders, as this data is more readily available.

²² Article 9(1) GDPR.

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

This section appears appropriate and sufficiently clear. However, there are a few concerns we would like to highlight.

- Paragraph 60 states that when checking the plausibility of benchmarking data, Competent Authorities should follow up on identified implausible data and correct these before submission. We are concerned that the that the proposed timeline, does not allow sufficient time for any follow up activity or corrections for the first year of submission. We recommend that additional time is allowed for firms and Competent Authorities where queries or rectifications need to be made.
- Under Data Quality checks in Annex 7, for rows 1 and 9 it was specified that the number of staff reported under the columns Management body, should be integer numbers.
- We also seek clarification that firms should report on staff working full time and that information for part time staff on the Management Body should not be reported.

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

The Annexes on the data collection are appropriate and clear. We have no comments to this section.

We trust these comments are helpful and would be pleased to engage further as the regulatory process continues.

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