

# POSITION PAPER



**ESBG response to the EBA's consultation on draft Guidelines on the benchmarking of diversity practices including diversity policies and gender pay gap under Directive 2013/36/EU and under Directive (EU) 2019/2034**

ESBG (European Savings and Retail Banking Group)

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**Dear Sir/Madam,**

**Thank you for the opportunity to comment on the European Banking Authority (EBA) consultation on its draft Guidelines on the benchmarking of diversity practices including diversity policies and gender pay gap under Directive 2013/36/EU and under Directive (EU) 2019/2034.**

**The European Savings and Retail Banking Group (ESBG) would like to provide you with the comments below, which we hope will be considered by the EBA.**

### **Questions for consultation**

#### **Question 1: Is the section on subject matter, scope, definitions, addressees, and implementation appropriate and sufficiently clear?**

ESBG would like to draw attention to one important issue that the EBA draft does not take into account, namely, the specificity of each country. In some Member States (e.g. Germany), the members of the management body in its supervisory function, especially in public law institutions, are not recruited but determined by the elected representative body of the local authority. Since, in this case, the institutions have no influence on the selection of the members of the supervisory body, they do not hold diversity guidelines for these members.

#### **Question 2: Is the section 1 on the sample of institutions and investment firms appropriate and sufficiently clear?**

Regarding the para. 15, ESBG would propose to replace a somewhat vague specification of the time frame (“in a good time before each data collection”) for the EBA to approach the competent authorities for the sake of more legal clarity.

Furthermore, we would appreciate at least a general explanation based on what criteria the EBA will establish for the sample of institutions and investment firms for which the data should be collected.

On the para. 16, for the sake of more legal clarity, ESBG would propose to replace a somewhat vague specification of the time frame (“in good time of”) and specify the deadline for the competent authorities to inform institutions and investment firms that form part of the sample for data collection, at least on a general basis (e.g. the competent authorities will inform institutions and investment firms that form part of the sample for data collection no later than 3 months prior the deadline for data collection).



**Question 3: Are the section 2 on the procedural requirements appropriate and sufficiently clear?**

When it comes to the para. 19, ESBG would propose to specify the deadline for the competent authorities to provide the necessary additional technical instructions to submit the data set out in Annexes I to XI of GL, at least on a general basis (e.g. the competent authorities should provide the additional technical instructions no later than when the respective institutions and investment firms are informed about being selected in the sample of institutions and investment firms for which data should be collected).

**Question 4: Are the general specifications for the data collection appropriate and sufficiently clear?**

Yes.

**Question 5: Are the specifications on the collection of data of members of the management body (read together with the definitions) appropriate and sufficiently clear?**

The distinction between the management body in its management function and the management body in its supervisory function (2-tier system) is not sufficiently clear. This should be made clear in the title, but also in the individual paragraphs. This is also the approach taken by the EBA, for example, in GL 2021/06 (Assessment of the suitability of members of the management body and key function holders).

**Question 6: Is the section on the instructions for the calculation of the gender pay gap appropriate and sufficiently clear?**

As for paragraphs 32 b) and c), it needs to be sufficiently clearly defined here and throughout the document whether the EBA means the accrual or the origination principle here when referring to the "granting" of remuneration. This is important for the institutions to be able to set up their data preparation accordingly.

It should also be clarified that additions to pension provisions are not taken into account.

About paragraph 32 c), the total variable remuneration granted for all performance periods that ended during the financial year should be taken into account, even if they concern performance periods of more than one year. We consider the wording "concern performance periods longer than one year" to be unclear. It should be clarified whether the variable remuneration is only pro rata for the year of recording or whether, in fact, the entire variable remuneration is meant, if applicable, also for several years.

Considering para. 40, it appears unclear how institutions and investment firms should proceed in case of data collection on a group consolidated basis for group



entities from countries with differing national gender definitions, i.e. in principle, countries allowing and countries not allowing a legal change of gender into non-binary in line with the national law.

Should institutions and investment firms take into account the differing national gender legislations and/ or non-representation of non-binary members in the management body and calculate the gender pay gap between male and non-binary members separately for two categories of entities?

I.e., should institutions and investment firms calculate the gender pay gap between male and non-binary members separately for the entities where it can be calculated as the category contains both of the respective genders, and separately for the entities where the gender pay gap cannot be calculated (because the category either does not contain both of the respective genders or because the national law does not recognise the non-binary gender) – and for the latter case, provide the value ‘n/a’ (not-available) instead of calculating the percentage?

**Question 7: Is the section on data quality appropriate and sufficiently clear?**

Yes.

**Question 8: Are the Annexes on the data collection appropriate and sufficiently clear?**

ESBG would like to raise some concerns over the following Annexes:

**Annex I**

In Annex I, the number of executive directors and non-executive directors is asked. We would appreciate further clarification on this matter: Only full members and no deputy members are to be considered as “directors” in this sense.

**Annex IV**

Regarding lines 1-3: It is not clear here who exactly is being queried with “Chairperson”: Chairperson of the Supervisory Board / Chairperson of the Committees / both?

**Annex VIII/IX**

It is very extensive and time-consuming to fill in Annexes VIII and IX in detail for the complete governing body. Therefore, please dispense with Annex VIII here.



## **Annex IX**

Regarding "Professional Background", delimitation of the term "professional experience". An explanation would be helpful with regard to the consideration of experience in the context of secondary activities (memberships in supervisory bodies, other secondary activities).

## **Annex X**

**Lit. b):** The scope of application should be limited to the members of the management body in its management function. The members of the management body in its supervisory function are not recruited at some institutions, but are determined by the elected representative body of the local authority. The institutions have no influence on this.

**Lit. c) Line 2:** For the question as to whether employee representatives are included in the targets, the distinction YES / NO is sufficient. The distinction proposed by the EBA when choosing the answer "NO" is neither understandable in terms of language nor with regard to the objective pursued by this differentiated query.

**Lit. d)** In the question "Was the political goal achieved by the deadline?", the answer option that no concrete targets exist should also be added.

## **Annex XI**

Regarding the category "Non-executive directors (including Chairperson, without employee representatives)", it should be clarified that only the supervisory board remuneration in the institute is to be reported and that other salaries are not to be included (in other companies/bodies). This could be done under point 6 of the guidelines.



## About ESBG (European Savings and Retail Banking Group)

ESBG represents the locally focused European banking sector, helping savings and retail banks in 21 European countries strengthen their unique approach that focuses on providing service to local communities and boosting SMEs. An advocate for a proportionate approach to banking rules, ESBG unites at EU level some 900 banks, which together employ more than 650,000 people driven to innovate at roughly 50,000 outlets. ESBG members have total assets of €5.3 trillion, provide €1 trillion in corporate loans (including to SMEs), and serve 163 million Europeans seeking retail banking services. ESBG members are committed to further unleash the promise of sustainable, responsible 21st century banking. Our transparency ID is 8765978796-80.



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