

Comments

Regarding EBA Consultation Paper 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”

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The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks.

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Comments regarding EBA Consultation Paper EBA/CP/2023/08

General:

The EBA draft does not take into account cases where institutions have no influence on the appointment of the members of the management body in its supervisory function because these members are not recruited but elected by municipal trustees, appointed/elected by public bodies or shareholders or are ex-officio members and therefore do not hold diversity guidelines for these members.

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

It should be clearly stated in the guidelines that benchmarking only covers entities directly supervised by the NCA or ECB.

Q5: 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).

The Guidelines should refrain from referring to "legal gender." For one thing, there is no uniformly recognized EU-wide definition of "legal gender." In some Member States, such as Germany, gender is not registered on the ID card. In addition, the question of gender may also be inadmissible against the background of legal requirements for protection against anti-discrimination, at least in some member states. For ethnical provenance, the above applies accordingly.

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

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.

Paragraph 32 c) Here, 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.

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

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

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 VI "Newly appointed non-executive directors": Delimitation of the term "same position".

It would be helpful to clarify here that "same position" refers only to the level of the entire supervisory board (without committees), since elsewhere (cf. Annex III "Composition of Committees") an extension of the previous data collection to the committee level has taken place.

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 "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 elected by municipal trustees, appointed/elected by public bodies or shareholders or are ex-officio members. 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.

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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.
