

Brussels, 7 May 2014

Launched in 1960, the European Banking Federation (EBF) is the voice of the European banking sector from the European Union and European Free Trade Association countries. The EBF represents the interests of some 4,500 banks, large and small, wholesale and retail, local and cross-border financial institutions. Together, these banks account for over 80% of the total assets and deposits and some 80% of all bank loans in the EU alone.

EBF response to the EBA Consultation Paper on Draft Guidelines on the remuneration benchmarking exercise

Main points

The European Banking Federation (EBF) welcomes the opportunity to comment on the proposed Guidelines. Effective guidelines help banks to fulfil their reporting requirements under the Capital Requirements Regulation (CRR) and Capital Requirements Directive IV (CRD IV). This consultation allows the EBF to request clarification on several points of the benchmarking exercise. In particular specific points regarding the scope, templates, currency conversion and impact of the proposals require further examination by the EBA.

The EBF would like to stress the importance of the avoidance of non-value-adding administrative work for both financial institutions and competent authorities, particularly with regard to the implementing of the new guidelines for remuneration data requests for 2013 (Q10). Clarification is sought on a number of points, especially i) the headings in Annexes 1-3 which, it is suggested (Q11), should reference the job description/category of the identified staff member, ii) in the impact assessment, reference to the identification of staff at year-end (Q10, see additionally the response the Question 8). In addition, regarding the impact analysis, it should be noted that the impact of these reporting requirements on the privacy of staff is significant and should be given consideration (Q10).

Responses to questions

Question 1: Are the subject matter and scope of the guidelines sufficiently clear?

The guidelines' subject matter and scope are mostly sufficiently clear. However, an important point to be clarified is the scope of inquiry in Annex 1 which makes reference to "all staff". In terms of a legal base to these disclosure requirements, it is questionable whether the provisions of the CRD/CRR legitimise such a request for data on all staff. The EBA has not previously addressed the objectives and benefits of remuneration data collection for all staff. Consequently the changes introduced by the completion of Annex 1 create additional costs for institutions, especially international groups, which mostly do not have group-wide information readily available on existing systems.

Question 2: Is the scope of institutions to be included in the exercise and the process regarding this matter sufficiently clear?

The scope of included institutions and the process are sufficiently clear. The EBF welcomes this aspect of the reporting requirements which include only the highest consolidated level; as this results in highly comparable and interpretable data, as well as efficient routines and processes for both multinational financial institutions and competent authorities.

Question 3: Is the scope of consolidation for the data to be reported sufficiently clear?

The scope of data consolidation is mostly sufficiently clear. The reference in the guideline to a “third country” should be clarified. Furthermore, clarification on reporting requirements for large subsidiaries within a group is required. The criteria for the identification of material risk takers results in some large subsidiaries applying and defining their own regulatory perimeter vis-à-vis CRDIV. On application of these guidelines at consolidated level, it is unclear who should disclose the requested information: the group or each individual EU-based subsidiary? It is evident that, depending on the answer to this question, the data submitted will differ accordingly.

Question 4: Is the information to be submitted to the EBA sufficiently clear?

For some new categories in the reporting requirements, definitions are not sufficiently clear. For example, ‘independent control function’ is a new category and on interpretation it is possible that an individual could fall in this category and in other categories. In this case it is not sufficiently clear in which category these individuals should be reported. It should be made clearer that Annex 3 of these guidelines on benchmarking exercise, only refers to Material Risk Takers remunerated EUR 1 million or more per financial year, as opposed to the data collection exercise regarding high earners, which covers all staff. In this respect, the proposed templates and explanatory texts are not sufficiently clear. (Please also see response to Question 1). It is also suggested that a stronger definition of ‘Remuneration’ is provided, in addition to the note in the template.

Question 5: Is the template in Annex 1 appropriate and sufficiently clear?

The request for detailed remuneration information excluding mandatory contributions to social security systems and comparable national schemes is problematic, especially for large international banking groups. Major discrepancies will result due to the differences in national security systems. In particular, in countries where social security systems are not developed, voluntary contributions are made and this will increase the overall total compensation amounts requested. On the flipside, mandatory contributions will be excluded from the total compensation amount, thus skewing the benchmark comparison with those countries which do not have developed social security systems. A breakdown of social charges between mandatory and company schemes would require each country’s payroll department to complete this annex, resulting in disproportionate costs to benefit obtained. Additionally, the Committee of European Banking Supervisors (CEBS) guidelines (Dec. 2010) paragraph 11¹ make clear that ancillary payments or benefits which are part of a general, non-discretionary, institution-wide policy pose no incentive in terms of risk-taking. Following these arguments, it is not clear why such information is needed for the benchmarking exercise and it is suggested that such data on institution-wide voluntary schemes be excluded.

¹ CEBS guidelines – 10 December 2010: <https://www.eba.europa.eu/documents/10180/106961/Guidelines.pdf>

The differences in the categories of Members of the management body in its supervisory function (MB Supervisory) and Members of the management body in its management function (MB Management) should be clarified. Furthermore, the inclusion of non-executive and executive directors of any board in the scope of consolidation add further unnecessary complexity. Within large groups the total number of staff in this category will be high due to the number of separate entities and subsidiaries. The cost of calculating individual remuneration for each board member of each board will be high, as well as time-consuming and burdensome. Additionally, some groups' remuneration data will mix whole-group management function remuneration data with that of small entities (particularly for low-income countries) and thus data will be diluted.

Footnotes 1 and 2 should be revised due to their contradictory nature. It is possible, for example, that identified staff can be non-executive members but also belong to the MB Management category due to their function and structure of the organisation. These footnotes also contradict the principle of reporting on each identified staff member only once. Consequently we suggest that the revision of these footnotes should exclude the explanation given on executive and non-executive directors.

Please also see the response to Question 1.

Question 6: Is the template in Annex 2 appropriate and sufficiently clear?

The change introduces detailing of information by business area, control function and corporate functions which were previous in an 'all other functions' column. This results in more granular requests which cannot be easily applied, as responses will depend on the specific internal organisation of each and every institution. This implies an impact on the quality of data submitted, especially for the purpose of benchmarking. The confidentiality of the remuneration data collected will be also affected as it will lead to the disclosure of data for each individual.

Clarification of the section on Article 450 h (iii) CRR is required (Total amount of outstanding deferred variable remuneration awarded in previous periods and not in year N). It must be ensured that reports cover granted and deferred variable remuneration without indexation to a certain date.

Please also see the response to Question 5 regarding Footnotes 1 and 2.

Question 7: Is the template in Annex 3 appropriate and sufficiently clear?

Again, please see the response to Question 5 regarding Footnotes 1 and 2.

It should be clarified that Annex 3 refers only to Material Risk Takers remuneration EUR 1 million or more per financial year.

Consideration of alignment of the two systems for remuneration reporting for high earners and for benchmarking would avoid possible loopholes in reporting.

Question 8: Are the reporting period, the specific amounts to be reported and the currency conversion sufficiently clear?

The specific amounts are sufficiently clear. Some clarifications are needed about the use of the currency conversion and exchange rate, as human resources financial systems and accounting systems use their own conversion table for the consolidation.

It is understood that the exchange rates and conversion reference only apply to non-Eurozone EU-based institutions. This is due to the high cost that Eurozone-based groups would suffer if they were forced to reconvert all staff expenses using marginally different exchange rates.

Furthermore, it would be sensible to use the rates for currency conversion used by an institution in its annual report, annual accounts etc. This is to ensure alignment with other reporting procedures.

On a point of presentation, Section 6.5 implies that numbers should be reported as text rather than figures. For the purposes of data processing and comparison it is suggested that a better method would be to use figures.

Question 9: Are the indicated time periods sufficient to ensure that the data for 2013 can be collected in line with the updated Guidelines?

The indicated time periods for 2013 data could be sufficient if clear guidance is issued by 1 July 2014. However, it should be ensured that the timeline dictated by the EBA and those of local regulators are compatible. For example, the EBA 31st August deadline would not be compatible with a two month ‘comply-or-explain’ deadline for the local regulator after the guidelines’ translation.

It should be ensured that all competent authorities follow the updated guidelines when requesting 2013 data in order to avoid non-value adding work for both financial institutions and competent authorities.

Question 10: Do you agree with our analysis of the impact of the proposals in this Consultation Paper? If not, can you provide any evidence or data that would explain why you disagree or might further inform our analysis of the likely impacts of the proposals?

The EBF members mostly agree with the impact analysis provided by the EBA. However, there are important points in the above responses which detail instances in the guidelines which will not be conducive to the calculation of a sound benchmark. This is mostly due to a failure to take into account various differences between organisations, especially international groups. Rectification and clarification of these points is essential to the achievement of organised data collection and consistent comparisons (i.e. the distinctions between MB management versus MB supervisory and corporate versus independent control are also not really appropriate and highly depend on the internal organisation of each institution).

For some institutions, the real costs and administrative burden of updating reporting systems will be high.

It should be reinforced and clarified that, in order to avoid non value-adding work, the remuneration benchmarking exercise refers to data on identified staff at year-end.

Clarification of the headings in Annexes 1-3 would be welcomed. It is suggested that these headings refer to the job description/category of the identified staff member rather than only the organisational belonging. For example, it should be made clear that the Head of Human Resources for Asset Management should be reported under Asset Management.

An important aspect of impact analysis is the effect of reporting requirements on the privacy of identified staff. Due to the higher amount of information requested, and the categorisation of this information, there is an increased likelihood that staff will be identifiable from the report (this is particularly the case for high earners). Therefore the impact on the privacy of staff should be reconsidered.