

Response from the Italian Banking Association
to the EBA consultation document

**Draft Guidelines on the data
collection exercise regarding high
earners**

May 2014

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Preliminary remarks

The EBA, with its consultation document, is updating the guidelines published in July 2012, adding the changes introduced by Regulation 575/2013 and by Directive 2013/36/EU.

The Italian Banking Association is grateful for the opportunity to contribute to the definition of the guidelines for the collection of data concerning high earners.

Apart from the update to take legislative provisions into account, the EBA has anticipated greater granularity of the information, making the task of corporate reporting more onerous and complex.

The *trade-off* between the value of a greater granularity of the information and the related burden for preparing the new tables should be assessed.

The consultation document predicts that the new reporting will regard the 2013 fiscal year and the data may be sent to the competent authorities by 31 August 2014. Then will be sent to the EBA by 31 October 2014.

The timeframe available to the intermediaries is too short to enable them reporting under the new provisions.

This consultation ends on 7 May 2014. The EBA will then publish the consultation findings and guidelines. At that point each of the competent national authorities shall introduce the guidelines in their own country.

The time left to the intermediaries for preparing the reporting is quite limited and insufficient for gathering such granular information and for making changes in their information reporting procedures.

Therefore, it is hereby requested that the new reporting be prepared for **the first time with regard to the 2014 fiscal year**, still keeping the 31 August 2014 deadline for the transmission of the 2013.

In addition, it should be noted that the public disclosure provided by many businesses in their 2013 financial statements (published in early 2014), was set out based on previous legislative provisions, using the forms from the 2012 *Guidelines*. It would therefore be appropriate to avoid duplication of the burdens for 2013.

Response to the Consultation questions

Title I – Subject matter, scope and definitions

1. Scope of the data collection

1.1. *These guidelines facilitate the implementation of Article 75(3) of Directive 2013/36/EU¹ concerning the collection of information regarding the natural persons per institution remunerated EUR 1 million or more per financial year, and ensure the consistency of the information collected.*

1.2. *The guidelines are addressed to competent authorities and institutions.*

1.3. *The terms defined in Article 4 of Directive 2013/36/EU or Article 4 of Regulation (EU) No 575/2013² have the same meaning in these guidelines.*

1.4. *In these guidelines 'high earners' means staff earning total remuneration of at least EUR 1 million per financial year.*

1.5. *Competent authorities should collect information on high earners from all institutions established in the EEA, including EEA branches of institutions that have their head office in a third country.*

1.6. *Firms that are referred to in Article 4(2)(c) of Regulation (EU) No 575/2013 are excluded from this exercise, unless they are included in the scope of consolidation of an institution that is subject to this data collection exercise. The latter also applies to other firms for which Directive 2013/36/EU is not directly applicable, but which are included in the scope of consolidation according to Chapter 2 Section 1 of Regulation (EU) No 575/2013 of a firm subject to Directive 2013/36/EU.*

1.7. *Institutions should provide, and competent authorities should collect, information at the highest level of consolidation as set out in Part One, Title II, Chapter 2, Section 1 of the Regulation (EU) No 575/2013, covering all subsidiaries and branches within the group established in the EEA and EEA branches of institutions which have their head office in a third country. Data on high earners within third countries should not be collected within this exercise.*

Q1: Are the subject matter and scope of the guidelines sufficiently clear?

The subject matter and scope of the guidelines are sufficiently clear.

Title II – Requirements concerning the format and frequency of the reporting for the data collection exercise for high earners

2. Information to be submitted

2.1. The institution responsible for reporting at the highest EEA level of consolidation on own funds requirements under Article 99 CRR and EEA branches of institutions which have their head office in a third country should complete and submit the information described in these guidelines to the competent authority responsible for its supervision on an EEA-consolidated basis.

2.2. Competent authorities should aggregate the data reported for their Member State and submit them to the EBA. Where there is more than one competent authority in a Member State, the competent authorities should co-ordinate the data collection to ensure that only one set of data is collected and reported for that Member State.

2.3. The EBA will aggregate the submissions of competent authorities for each EEA state and publish an annual report on high earners.

2.4. The EBA will inform competent authorities of aggregated data which have been reported for their Member State by another competent authority.

2.5. Competent authorities should collect, and institutions should provide, data on high earners in accordance with Annex I. A separate set of data should be collected/provided for each EEA state in which high earners are located and for each payment bracket of EUR 1 million (e.g. EUR 1 to less than EUR 2 million; EUR 2 to less than EUR 3 million etc.). Competent authorities should submit aggregated figures for each Member State and for each pay bracket to the EBA.

2.6. The number of high earners should be reported as the number of natural persons (headcount), independent of the number of working hours on which their contract is based. For high earners the remuneration paid in euro, elements of remuneration, the EEA state, business area and responsibility should be reported in accordance with Annex I.

2.7. High earners should be classified under the EEA state, business area and responsibility where they carry on the predominant part of their business activities. The full amount of remuneration awarded to that staff member within the group or institution should be reported under this EEA state, business area and responsibility. If the predominant areas for one high earner have the same weight, the institution should allocate the high earner and its remuneration taking into account the allocation of other high earners, so that the report best reflects the distribution of high earners within the institution. For each high earner, figures should only be reported once and the full amounts should be assigned to one area and responsibility only.

2.8. High earners who carry out professional activities both within and outside the EEA should be classified under an EEA state only if they undertake the predominant part of their professional activities within the EEA. Otherwise, figures should not be reported.

2.9. Institutions should submit the required information using financial year-end numbers denominated in euro. All amounts should be reported as full amounts in euro (e.g. EUR 123 456 789.00 instead of EUR 1.2 million). Institutions that do not have any high earners in their EEA consolidation scope should provide their consolidated group supervisor with a response stating this fact without the need to submit additional data.

2.10. Where remuneration is awarded in a currency other than euro, the exchange rate used by the Commission for financial programming and the budget for December of the reported year should be used.³ Title II – Scope of the data collection

Q2: Is the information to be submitted to the EBA sufficiently clear?

We agree with the provision to use the variable “number of heads” in the place of the FTE, referring to the staff in service at the end of the year.

Values are to be indicated in € and not in millions of €, as provided for in the 2012 guidelines.

Q3: Is the template in Annex 1 appropriate and sufficiently clear?

For the purposes of proper compilation and to ensure uniformity at a European level, it would appear to be necessary to specify what is meant by management body in its function as an oversight and governance body in its managerial function.

It is necessary to specify the meaning of Corporate function: for example, Human Resources and IT are indicated in the notes. For a banking group, the group's Human Resources and IT departments act all across the entire group, whilst those departments in companies that are a part of the group are transversal for each individual company. Are these to be nevertheless included within the scope of Corporate function?

It should be useful to insert a note in the table to specify that the values are at the year end.

Greater granularity of the requests has been noted both in terms of a greater disaggregation of the business areas and of the information requested.

Indeed, the disaggregation of the variable deferred remuneration component in cash, stock and instruments linked to other financial instruments was included. There is no indication whatsoever for at least 5

years of the deferred remuneration paid in instruments to which it is possible to apply the discount rate; it is requested that an item be inserted wherein this component is indicated in order to assess the application of the provision contained in the Directive.

In addition, there have been included requests in terms of severance and variable remuneration assigned for multi-year periods, regarding which there is no evidence of EU legislation (this latter variable was also included in the remuneration *benchmarking*).

The additional requests have no correspondents in the provisions introduced with the Directive and EU Regulations. Therefore, these represent an additional management burden not estimated in the charges connected to EU regulations.

It should be clarified the definition of "independent control functions" especially as regards the concept of "independent" (as it seems to have a different meaning from "control functions").

Please, clarify also what is intended by "Total amount of variable remuneration deferred in year N" – meaning the confirmation that it refers to the deferred part of the incentive awarded for year N (therefore part of "Total variable remuneration" above) or, alternatively, that it refers to the previous years deferrals vesting in year N.

3. Frequency of reporting, submission dates and reference year

- 3.1. *The information on high earners should be submitted by institutions to the competent authority responsible for the consolidated supervision by 30 June each year.*
- 3.2 *Competent authorities should aggregate the data and submit it per EEA state to the EBA by 31 August each year using the EBA's remuneration data reporting system. If there is no data to be reported, the competent authority should inform the EBA accordingly.*
- 3.3. *The data reported should relate to remuneration awarded to staff for the financial year preceding the year in which the information is submitted.*
- 3.4. *Remuneration awarded based on multi-year accrual periods which do not revolve on an annual basis should be fully allocated to the financial year in which the remuneration was awarded.*

Q4: Are the reporting period and the specific amounts to be reported sufficiently clear?

The reporting period and the specific amounts to be reported are sufficiently clear.

As concerns the request in 3.4, it should be better specified what is meant by "*do not revolve on an annual basis*"; it is assumed that this has to do with systems where the new multi-year plan begins only when the previous

plan ends.

Then for the other multi-year plans (*“revolve on an annual basis”*) the remunerations shall be recognised proportionally over the different fiscal years to which they pertain.

4. Data quality

- 4.1. *Competent authorities should check the completeness and plausibility of the data reported by each institution and should have appropriate processes and controls in place to ensure that data are aggregated correctly.*
- 4.2. *The EBA will perform additional data quality checks based on the aggregated figures and may request specific data quality checks to be performed by the competent authorities. The EBA will have appropriate processes and controls in place to ensure that data are aggregated correctly.*

Title III – Other provisions; date of application

5. Repeal

The EBA Guidelines on the data collection exercise regarding high earners (EBA/GL/2012/05), published on 27 July 2012 are revoked with immediate effect.

6. Transitional arrangements

- 6.1. *Data relating to the performance year 2013 should be submitted by the institutions to competent authorities by 31 August 2014.*
- 6.2. *Data relating to the performance year 2013 should be submitted by the competent authorities to the EBA by 31 October 2014.*

7. Date of application

These guidelines shall apply from [1 July 2014].

Q5: Are the indicated time periods sufficient to ensure that the data for 2013 can be collected in line with the updated guidelines?

The document provides that the data be transmitted to the competent authorities by 31 August 2014 and to the EBA by 31 October 2014.

The timeframe available to the intermediaries is too short to enable reporting under the new provisions.

The consultation ends on 7 May 2014. The EBA will then publish the consultation findings and guidelines. Then the competent national authorities shall introduce the guidelines in their own country.

The time left to the intermediaries for preparing the reporting is quite limited and insufficient for gathering such granular information and for

making changes in their information reporting procedures.

Therefore, it is hereby requested that the new reporting be prepared for **the first time with regard to the 2014 fiscal year**, still keeping the 31 August 2014 deadline for the transmission of the 2013.

In addition, it should be noted that the public disclosure provided by many businesses in their 2013 financial statements (published in early 2014), was set out based on previous legislative provisions, using the forms from the 2012 *Guidelines*. It would therefore be appropriate to avoid duplication of the burdens for 2013.

5. Accompanying documents

5.1 Draft cost-benefit analysis / impact assessment

1. *The EBA is updating existing Guidelines for which an impact assessment has already been carried out. The changes concern additions made in Directive 2013/36/EU and clarifications on how figures should be reported based on the experience gained from the previous data collections. The Guidelines also take into account that the requirements for variable remuneration have changed, e.g. it is now possible to discount variable remuneration provided it is paid in instruments which are deferred for at least five years.*
2. *The baseline scenario for the impact assessment includes the existing EBA Guidelines and the changes to the additional disclosure requirements introduced by CRD IV. All Member States are currently fully compliant with these Guidelines. The impact of the intervention is measured in terms of the additional data required under the proposed EBA Guidelines. The impact assessment does not take into account additional data that may be collected by the competent authorities and is limited to the marginal effects of the updated Guidelines compared to the baseline scenario.*
3. *Regarding the added business areas a couple of options were considered:*
 - Option A: introducing business lines similar to those defined under the standardised approach for operational risk.*
 - Option B: maintaining the structure of the data as far as possible and introducing a more granular collection of the data included in 'other areas'.*
4. *Option A would have required introducing new mapping criteria for all staff and would have provided for a more granular approach regarding the data collected. The costs for mapping the data would have been higher compared to Option B. Option B allows the data collected for 2010-2012 to be compared with the data collected in the future as the main reporting structure is maintained. The institutions only need to develop additional mapping routines regarding the staff so far reported under 'other areas'. Option B singles out the most relevant business areas and separates business areas from the support function. For these reasons, Option B was retained to allow the use of the existing historic data, to be consistent with the data collection for benchmarking purposes and to limit the costs for the implementation of these Guidelines.*

5. *To collect data according to the responsibilities of high earners as required by the CRD, the EBA has retained the previously defined business areas, but has separated staff into categories of senior management, control functions and other staff. This takes into account the usual organisational structure of business units. For managers, data on management and supervisory functions, corporate functions and independent control functions are collected separately. In the previous Guidelines, all of these functions were reported together under 'All other'. This change takes into account the governance structure and the fact that business units, corporate functions and control functions are usually separate business units with separate responsibilities, namely generating business, providing support and exercising independent control.*
6. *The number of data fields to be collected has roughly doubled, and institutions may have to submit multiple forms as the CRD requires figures to be reported in payment brackets of EUR 1 million. There will be some additional costs associated with implementing the changes in the reporting tools. However, the EBA is only collecting additional data as required under Directive 2013/36/EC, and therefore the costs are triggered by the Directive and not by the Guidelines. The EBA has chosen to implement an approach that allows the collection of data regarding responsibilities based on the seniority of staff and for a few functions. Approaches that require a more detailed set of data based on a more specific set of functions were considered but not retained as they would have resulted in a small population of data in single categories (i.e. data supply would have decreased with the level of detail).*
7. *Regarding the collection of information on the remuneration awarded, two options were considered:*

Option A: retaining the limited information included in the EBA/GL/2012/05

Option B: collecting additional information on instruments used, deferral arrangements, severance payments and multi-year accrual periods.
8. *The information collected so far (Option A) did not allow for the analysis of remuneration paid to high earners. The CRD requires the collection of the main elements of remuneration. As CRD IV amended the requirements regarding remuneration for staff whose professional activities have a material impact on the institutions' risk profile, e.g. by introducing a cap for variable remuneration and a requirement to use a balanced range of instruments if possible, the approach taken so far has not been effective.*
9. *The information collected under Option B allows for comparison with data collected under the remuneration benchmarking exercise. The data provide the information required under the CRD. The inclusion of severance payments and multi-year accrual periods better explains the fluctuations in the number of high earners and their remuneration.*
10. *For the above reasons Option B was retained.*
11. *Additional information concerning fixed remuneration and the instruments in which it was paid will be collected for an analysis of the remuneration practices, in particular the changes in the reported figures after the cap on variable remuneration came into force and some institutions started to pay out 'allowances' in shares.*

12. *A clearer definition of the data will potentially reduce the costs of the data collection process as data corrections will be limited, and will increase the quality of reported data.*
13. *The Guidelines clarify that data from EEA branches of non-EEA institutions should also be collected. This is not an additional requirement because it is within the framework of the Directive, and Member States already have to comply with this reporting requirement.*
14. *The general approach for data collection has not changed. As a result, the impact of the transition to the new Guidelines is negligible. Furthermore, the number of high earners per institution is limited.*

Q 6: 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 greater granularity of the requests, as in terms of the greater disaggregation of the business areas as of the information requested, does not represent a direct consequence of the provisions contained in the Regulation and in the EU Directive; therefore it should be assessed within the economic impact of the guidelines.

The additional information requested concern the disaggregation of the variable deferred remuneration in cash, stock and instruments linked to other financial instruments. There is no provision for the identification of the deferred remuneration paid in instruments for at least 5 years, to which it will be possible to apply the nominal discount rate, which is the reason indicated on page 18, which would justify the additional information included.

In addition, there have been included requests in terms of severance and variable remuneration assigned for multi-year periods, regarding which there is no evidence of EU legislation.

The affects connected to the legislation – not pointed out in the document - have their origins in the implementation of the new system, only in part attributable to the EU legislation (one off cost) and to the ongoing cost for reclassification in case the personnel change position and job.