

EBA/CP/2014/05

07 April 2014

Consultation Paper

Draft Guidelines
on the data collection exercise regarding high earners

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1. Responding to this consultation

The European Banking Authority (EBA) invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in section 5.2.

Comments are most helpful if they:

- respond to the question posed;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 07.05.2014. Please note that comments submitted after this deadline, or submitted by other means may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 as implemented by the EBA in its implementing rules adopted by its Management Board. Further information on data protection can be found in the Legal notice section of the EBA website.

2. Executive Summary

The European Banking Authority (EBA) is updating its 'Guidelines on the data collection exercise for high earners', which was originally published on 27 July 2012, following the changes to the reporting requirements set out in Directive 2013/36/EU. The changes are necessary to adopt the changed requirements of the Directive, and some additional clarifications have also been given to ensure high quality of the data collected. The template has also been updated to better align with the data collected in the remuneration benchmarking exercise. Therefore the EBA is consulting on the updated Guidelines only for a limited time period of one month.

Directive 2013/36/EU requires the national competent authorities to collect information on the number of natural persons per institution remunerated EUR 1 million or more per financial year, in pay brackets of EUR 1 million, including their job responsibilities, the business area and the main elements of the salary, bonus, long-term award and pension contribution. Therefore, the data on high earners needs to be collected in a more granular manner than under the previous framework with regard to the need to collect the information in pay brackets of EUR 1 million and additional information on their job responsibilities. A new template for the collection of data has been provided in this Consultation Paper.

The information collected by the competent authorities has to be forwarded to the European Banking Authority (EBA), which will publish the data on an aggregate home Member State basis in a common reporting format. The new reporting format will apply for the collection of data on high earners as from the financial year 2013.

3. Background and rationale

1. Article 75(3) of Directive 2013/36/EU (CRD) states that '[c]ompetent authorities shall collect information on the number of natural persons per institution remunerated EUR 1 million or more per financial year, in pay brackets of EUR 1 million, including their job responsibilities, the business area involved and the main elements of salary, bonus, long-term award and pension contribution. That information shall be forwarded to EBA, which shall publish it on an aggregate home Member State basis in a common reporting format. EBA may elaborate guidelines to facilitate the implementation of this paragraph and ensure the consistency of the information collected.'
2. The EBA had a similar mandate under CRD III and, on 27 July 2012, published the 'Guidelines on the data collection exercise regarding high earners'. Under these Guidelines, data were collected from 2010 to 2012, and the results published on the EBA website. The objective of the data collection is to reveal year-to-year developments in the number of individuals earning at least EUR 1 million within the Union and the European Economic Area (EEA), and within the different Member States, and to assess the major components of remuneration awarded to high earners. This information can be used together with additional remuneration benchmarking data to analyse the application of remuneration policies within the Union and the EEA, and the trends in remuneration practices, in order to improve the remuneration framework. The EBA has updated the 'Guidelines on the data collection exercise regarding high earners' to facilitate the data collection exercise.
3. While the general structure of the data collection has been retained, the Capital Requirements Directive (CRD) requires information on the responsibilities of high earners to be collected in addition to the previous data. For this purpose, the Guidelines differentiate between management, senior management, staff whose professional activities have a material impact on the institution's risk profile (identified staff), staff in control functions and other staff. As set out in the previous Guidelines, data for business areas are collected separately to ensure consistency with historic data. However, management and staff in corporate functions (e.g. Human Resources, IT, etc.) cannot be assigned to a separate business line. To separate corporate functions from other business areas and independent control functions and to distinguish staff working in management from other senior managers, separate categories for these functions have been introduced. Depending on the data collected, the EBA might decide to aggregate data to some extent before the data are published.
4. To achieve an accurate allocation of staff to different categories, the revised Guidelines clarify to which category staff with more than one function should be assigned. The institution should select the function or business area in which the staff member's main activities are carried out. Each person and the amount they are paid should only be reported once, and amounts paid to one person should not be split between different business areas or responsibilities.

5. The CRD requirement to report data was extended compared to that set out in the CRD III, to be more granular. The requirement for the competent authorities to collect information on remuneration entered into force on 1 January 2014, and is not limited to remuneration received after that date. In addition to the previous data collected, information should be provided for payment brackets of EUR 1 million. This requires collecting multiple information from institutions to collect separate information for each payment band. However, this information should be readily available in institutions as corresponding disclosure requirements have been put in place.
6. The EBA has updated the Guidelines to take into account the requirements set out in Directive 2013/36/EU and the experience gained from the previous data collections. In the updated Guidelines some clarifications have been introduced to ensure a more consistent collection of data. As the EBA is updating the existing Guidelines and has limited the update to accommodate the changes set out in the Regulation, providing further clarity and improving the quality of the data collected, it is appropriate to limit the consultation period to one month.
7. As under the previous Guidelines, the data collection should take place at the highest EEA consolidated level of a banking group. However, unlike the scope of consolidation set out in the CRD, non-EEA subsidiaries and non-EEA branches are excluded from the scope of consolidation, in accordance with the reporting requirements defined in Directive 2013/36/EU. To ensure that all data for high earners throughout the EEA states are collected, all competent authorities should also collect this information from the EEA branches of non-EEA institutions.
8. The Guidelines should be read in conjunction with the CEBS 'Guidelines on remuneration policies and practices' and the forthcoming EBA 'Guidelines on remuneration policies', as appropriate. All definitions provided in those Guidelines and in Directive 2013/36/EU and Regulation (EU) No 575/2013 apply.

4. Draft EBA Guidelines on the data collection exercise regarding high earners

Status of these Guidelines

This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (*‘the EBA Regulation’*). In accordance with Article 16(3) of the EBA Regulation, competent authorities and financial institutions must make every effort to comply with the guidelines.

Guidelines set out the EBA’s view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. The EBA therefore expects all competent authorities and financial institutions to whom guidelines are addressed to comply with guidelines. Competent authorities to whom guidelines apply should comply by incorporating them into their supervisory practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting requirements

According to Article 16(3) of the EBA Regulation, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by dd.mm.yyyy. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form provided at Section 5 to compliance@eba.europa.eu with the reference ‘EBA/GL/201x/xx’. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities.

Notifications will be published on the EBA website, in line with Article 16(3).

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Title I – Subject matter, scope and definitions

Specific questions for the consultation process have been included in between the text of the draft Guidelines that follows specific questions for the consultation process have been included; these questions appear in a framed text box. Respondents are asked to provide their views in particular with respect to the revised reporting template introduced by the updated Guidelines.

Other parts of the Guidelines have been retained in substance, but have been clarified and reworded. The EBA does not intend to change the approach or processes already established, which are based on the requirements of Article 75(3) CRD. However, the EBA would welcome any comments on the clarity of the Guidelines.

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.

¹ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

² Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

Q1: Are the subject matter and scope of the guidelines 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 used³.

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

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

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?

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.

³ The EBA provides a link to the information on its website together with this Guideline; the exchange rate can also be accessed under http://ec.europa.eu/budget/contracts_grants/info_contracts/infoeuro/infoeuro_en.cfm

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?
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ANNEX 1 – Information on the remuneration of high earners

Name of the institution/group:								
EEA state to which the data relate:								
Performance year for which remuneration is awarded (year n):								
Payment bracket (n to less than EUR n+1 million)⁴:								
	MB Supervisory function⁵	MB Management function⁶	Investment banking⁷	Retail banking⁸	Asset management⁹	Corporate functions¹⁰	Independent control functions	All other¹¹
Number of individuals in senior management¹²	#	#	#	#	#	#	#	#

⁴ One template should be completed for each remuneration bracket of EUR 1 million, all amounts should be reported in full amounts in euro (e.g. EUR 123 456 789.00).

⁵ Members of the management body in its supervisory function; this includes all non-executive directors of any board in the scope of consolidation.

⁶ Members of the management body in its management function; this includes all executive directors of a board in the scope of consolidation.

⁷ Including corporate finance advice services, private equity, capital markets, trading and sales.

⁸ Including total lending activity (to individuals and enterprises).

⁹ Including portfolio management, managing of UCITS and other forms of asset management.

¹⁰ All functions that have responsibilities for the whole institution, e.g. Human Resources, IT.

¹¹ Staff who cannot be mapped into one of the other business areas, institutions should indicate the function of staff members in the footnote.

¹² Senior management as defined in Article 3(9) of Directive 2013/36/EU.

Number of individuals in control functions¹³			#	#	#	#	#	#
Number of other staff	#		#	#	#	#	#	#
Total Number of high earners	#	#	#	#	#	#	#	#
Of which: 'identified staff'¹⁴	#	#	#	#	#	#	#	#
Total fixed remuneration (in EUR)¹⁵								
Of which: fixed in cash								
Of which: fixed in shares and share-linked instruments								
Of which: fixed in other types instruments								
Total variable								

¹³ Control functions comprise control functions within the business units and the independent compliance, risk control and internal audit function.

¹⁴ Staff whose professional activities have a material impact on the institutions risk profile under Article 92(2) of Directive 2013/36/EU.

¹⁵ Fixed remuneration includes payments, proportionate regular pension contributions or benefits (where they are without consideration of any performance criteria).

remuneration (in EUR)¹⁶								
Of which: variable in cash								
Of which: variable in shares and share-linked instruments								
Of which: variable in other types of instruments ¹⁷								
Total amount of variable remuneration deferred in year N (in EUR)¹⁸								
Of which: deferred variable in cash in year N								
Of which: deferred variable in shares and share-linked instruments in year								

¹⁶ Variable remuneration includes additional payments or benefits depending on performance or, in exceptional circumstances, other contractual elements but not those which form part of routine employment packages (such as healthcare, childcare facilities or proportionate regular pension contributions). Both monetary and non-monetary benefits should be included.

¹⁷ Cash or instruments in accordance with Article 94(1)(l) of Directive 2013/36/EU.

¹⁸ Deferred remuneration in accordance with Article 94(1)(m) of Directive 2013/36/EU.

N									
Of which: deferred variable in other types of instruments in year N ¹⁹	€	€	€	€	€	€	€	€	€
Additional information regarding the amount of total variable remuneration									
Number of beneficiaries of severance payments	#	#	#	#	#	#	#	#	#
Total amount of severance payments paid in year N (in EUR)	€	€	€	€	€	€	€	€	€
Total amount of contributions to discretionary pension benefits in year N(in EUR)²⁰	€	€	€	€	€	€	€	€	€
Total amount of variable remuneration awarded for multi-year periods under programmes which	€	€	€	€	€	€	€	€	€

¹⁹ Instruments referred to in Article 94(1)(l)(ii) of Directive 2013/36/EU.

²⁰ As defined under Article 3(53) of Directive 2013/36/EU.

are not revolved annually (in EUR)								
Footnote: Staff reported in the column 'All other' consist of ... [to be completed as per footnote 12]²¹								

²¹ Competent authorities should aggregate the footnotes in a text field and submit it to the EBA.

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?

5.2 Overview of questions for consultation

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

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

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

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

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

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?

5.3 Views of the Banking Stakeholder Group (BSG)

The Banking Stakeholder Group was notified about the publication of the Consultation Paper and asked to provide an opinion by the end of the consultation period.