



EBA/CP/2022/04

21 January 2022

Consultation Paper on draft Guidelines

on the data collection exercises regarding high earners under
Directive 2013/36/EU and under Directive (EU) 2019/2034

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1. Responding to this consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2.

Comments are most helpful if they:

- respond to the question stated;
- 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 21 March 2022. Please note that comments submitted after this deadline, or submitted via 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 (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under 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 regarding high earners’, which has been originally published in 2012 and has been revised in 2014. The current update implements the changes to the data collection requirements specified in Directive 2013/36/EU¹, following the amendments introduced by Directive (EU) 2019/878², and changes to the disclosure requirements in Regulation (EU) 575/2013³, introduced by Regulation (EU) 2019/876⁴. It was necessary to reflect those amendments in the Guidelines, in particular the introduction of derogations to the requirements to pay out a part of the variable remuneration in instruments and under deferral arrangements. These Guidelines have also been updated in accordance with Directive (EU) 2019/2034⁵ and Regulation (EU) 2019/2033⁶. The establishment of two distinct regulatory frameworks required a separation of the data collection on high earners in credit institutions and investment firms. The templates and instructions have been updated accordingly and specific templates for investment firms have been provided.

Directive 2013/36/EU and Directive (EU) 2019/2034 require competent authorities to collect information on the number of natural persons, per institution and investment firm respectively, who are 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.

The annual collection of data regarding high earners under the updated Guidelines should start in 2023 for the financial year that ends in 2022. For the financial year 2021 high earners data collection exercise, competent authorities will continue to collect data under the EBA guidelines EBA/GL/2014/07 for institutions and investment firms, unless they are small and non-interconnected. The EBA will continue to annually publish high earner data on an aggregate home Member State basis in a common format.

Next steps

The EBA is consulting on the draft Guidelines for a period of two months. A shorter time period for the public consultation than usual is needed to ensure that the Guidelines can be finalised in good time so that the revisions to the data collection exercises can be implemented in the reporting systems of institutions, investment firms, competent authorities and the EUCLID system of the EBA with regard to data for the financial year 2022.

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

2 Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU

3 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012

4 Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 and Regulation (EU) No 648/2012

5 Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms

6 Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms

3. Background and rationale

1. The objective of the data collection on high earners is to analyse and publish year-to-year developments in the number of individuals earning at least EUR 1 million within the European 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 in different business areas. This information can be used together with other remuneration benchmarking data to analyse the application of remuneration policies within the European Union and the EEA, and the trends in remuneration practices, to improve the remuneration framework.
2. The EBA started the collection of high earner data in 2010 based on a mandate provided in Directive 2010/76/EU and published the 'Guidelines on the data collection exercise regarding high earners' in 2012 (EBA/GL/2012/05). Those Guidelines have been revised in 2014 (EBA/GL/2014/07) taking into account the changes introduced by Directive 2013/36/EU.
3. The current updates to the 'EBA Guidelines on the data collection exercise regarding high earners' (EBA/GL/2014/07) implement the changes to CRD, introduced by Directive (EU) 2019/878. Those amendments concern, in particular, the introduction of derogations to the requirements to pay out a part of the variable remuneration in instruments and under deferral arrangements. The updates also implement changes to the disclosure requirements in CRR, introduced by Regulation (EU) 2019/876.
4. 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.'
5. Article 34(4) of Directive (EU) 2019/2034 (IFD) states that 'Member States shall ensure that investment firms provide competent authorities with information on the number of natural persons per investment firm that are remunerated EUR 1 million or more per financial year, in pay brackets of EUR 1 million, including information on their job responsibilities, the business area involved and the main elements of salary, bonus, long-term award and pension contribution ... Competent authorities shall forward the information ... to EBA, which shall publish it on an aggregate home Member State basis in a common reporting format. EBA, in consultation with ESMA, may issue guidelines to facilitate the implementation of this paragraph and to ensure the consistency of the information collected.' In line with IFD, investment firms that meet all of the conditions to qualify as small and non-interconnected investment firms

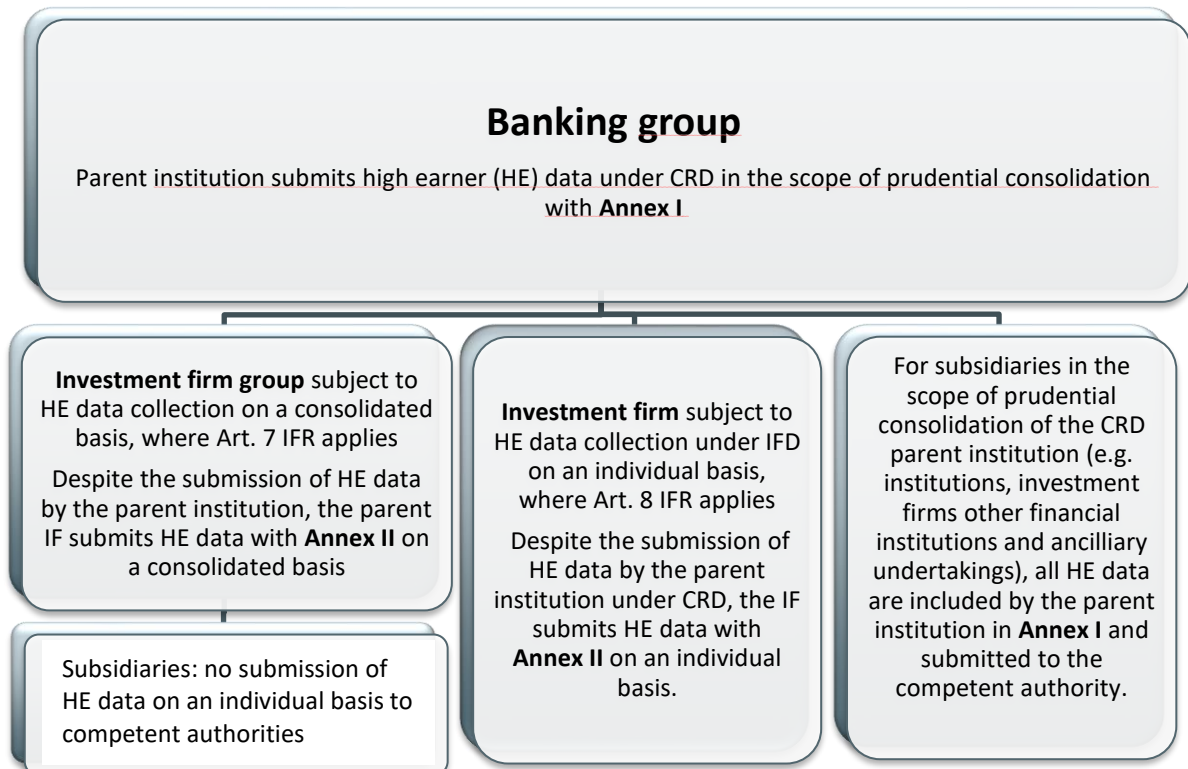
under Article 12(1) of Regulation (EU) 2019/2033 (IFR) do not fall under the scope of application of these guidelines on the individual basis. The revised Guidelines specify the collection of high earner data for investment firms under IFD and IFR. The CRD and IFD require competent authorities of Member States to collect data regarding high earners from institutions and investment firms respectively. Given the distinct regulatory frameworks, the consulted guidelines include two templates, one for institutions and investment firms that have to apply remuneration requirements under CRD and one for investment firms that have to apply remuneration requirements under IFD. The consulted Guidelines should be read in conjunction with the applicable 'EBA Guidelines on sound remuneration policies under CRD' and the 'EBA Guidelines on sound remuneration policies under IFD'.

6. To ensure proportionality, the EBA is streamlining the collection of data at the consolidated and the individual levels to ensure that double reporting is avoided, and the burden imposed on competent authorities and financial institutions remains commensurate to the objective pursued. To that end, high earners data should be reported at the level of consolidation set out in Article 13 CRR and Article 7 IFR and should concern all the high earners data for all entities and branches of the banking or the investment firm group while, where no group exists, high earner data should be reported at the individual level and include also data relevant to branches. Further, competent authorities should ensure that third country branches submit information in accordance with these Guidelines.
7. While the data collected is consistent with the consulted 'EBA guidelines on the benchmarking exercises on the remuneration practices, on the gender pay gap and on approved higher ratios under Directive 2013/36/EU', the number of datapoints to be submitted for high earners has been reduced. Datapoints that are to be submitted for remuneration benchmarking purposes as part of the additional information on the variable remuneration of identified staff that is disclosed by institutions or investment firms, but concern the remuneration awarded for preceding financial years, are not included in the templates for the data collections on high earners.
8. Information should be provided for payment brackets of EUR 1 million as required by the CRD and IFD. The data collected covers all main elements of variable and fixed remuneration for high earners in institutions and investment firms.
9. The CRD and IFD require to collect information on high earners responsibilities and the business areas involved. The Guidelines differentiate between management body in its management and in its supervisory function, 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. Business areas have been specified, having in mind the internal organisation of institutions and investment firms and their typical business activities.
10. To ensure an accurate allocation of staff to different categories, the Guidelines clarify that staff with more than one relevant function or business area should be assigned to the function or business area in which the staff member's main activities are carried out. Each individual and

the amount they are paid should only be reported once, and amounts paid to one individual should not be split between different functions, business areas or responsibilities. Staff that is predominantly active in subsidiaries and branches of EEA groups that are located in third countries are excluded from the data collections. Data is only collected for high earners that are predominantly active in the EU/EEA.

11. The data collections regarding high earners should take place at the highest level of consolidation within the EEA, including also institutions and investment firms that report only on a stand-alone basis and are not part of an EU banking or investment firm group. The data collection should also encompass EEA branches of institutions and investment firms that have their head office in a third country.
12. For data submitted by institutions, it is necessary, where group data is reported, to separate high earners that are reported for financial institutions, including investment firms, that are subject to a specific remuneration framework, as they apply a different remuneration regime in line with Article 109(4) CRD. Moreover, it is necessary to separate the number of high earners in subordinated investment firms and their subsidiaries, as to avoid that they are counted twice, i.e. once in the data collection under CRD and once in the data collection under IFD, when the total number of high earners as an aggregate of both exercises is established.

Figure 1: example of reporting responsibilities for high earners (HE) in banking groups and investment firms (IF)



13. Additional guidance is provided to ensure that the data has the appropriate quality for deriving reliable and consistent information. Institutions, investment firms and competent authorities should check the consistency of the data, before they are submitted.
14. The EBA aggregates the submissions of competent authorities for each EEA state and publishes an annual report regarding high earners. In this context the EBA informs competent authorities of aggregated data per payment bracket received from other competent authorities.
15. For the financial year 2021 high earners data collection exercise, competent authorities should continue to collect data from institutions and investment firms (unless they are small and non-interconnected) in line with the 2014 guidelines allowing for a continuous data collection.

4. Draft guidelines

EBA/GL-REC/20XX/XX

DD Month YYYY

Consultation Paper on draft Guidelines

on the data collection exercises
regarding high earners under Directive
2013/36/EU and under Directive (EU)
2019/2034

Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010⁷. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions must make every effort to comply with the guidelines.
2. Guidelines set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at financial institutions.

Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, 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 available on the EBA website with the reference 'EBA/GL/202x/xx'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

⁷ 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, (OJ L 331, 15.12.2010, p.12).

Subject matter, scope and definitions

Subject matter

1. These Guidelines specify, in accordance with Article 75(3) of Directive 2013/36/EU⁸ and Article 34(4) of Directive (EU) 2019/2034⁹, how these provisions should be implemented concerning the collection of information regarding the individuals per institution and per investment firm remunerated EUR 1 million or more per financial year, ensuring also the consistency of the information submitted by institutions and investment firms to competent authorities and by competent authorities to the EBA.

Scope of application

2. These Guidelines apply in relation to the information that competent authorities should collect from institutions and investment firms regarding high earners and submit to the EBA for the purposes of publishing that information on an aggregate home Member State basis in a common reporting format.
3. When Article 13 of Regulation (EU) 575/2013¹⁰ and Article 7 of Regulation (EU) 2019/2033¹¹ apply, these guidelines apply in accordance with paragraphs 12 and 15 at the consolidated level.
4. When Article 13 of Regulation (EU) 575/2013 and Article 7 of Regulation (EU) 2013/2033 do not apply, these guidelines apply at the individual level set out in Articles 6 to 10 of Regulation (EU) 575/2013 and in Articles 5 and 6 of Regulation (EU) 2019/2033.

Addressees

5. These Guidelines are addressed to competent authorities as referred to in Article 4(2), points (i) and (viii) of Regulation No 1093/2010 (i) and to financial institutions as defined in Article 4(1) of Regulation No 1093/2010 that are institutions as defined in point (3) of Article 4(1) of Regulation (EU) 575/2013 having regard to Article 2 (5) of that Regulation ('institutions') and to investment firms as defined in point (1) of Article 4(1) of Directive 2014/65/EU that are subject

⁸ 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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

⁹ Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU

¹⁰ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012

¹¹ Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms

to Articles 25 and 34 of Directive (EU) 2019/2034 ('investment firms'), (collectively referred to as 'firms').

Definitions

6. Unless otherwise specified, terms used and defined in Directive 2013/36/EU and Regulation (EU) 575/2013 and Directive (EU) 2019/2034 and Regulation (EU) 2019/2033 as well as the EBA guidelines on sound remuneration policies under Directive 2013/36/EU¹², where the definition refers to institutions, and under the EBA guidelines on sound remuneration policies under Directive (EU) 2019/2034¹³, where the definition refers to investment firms, have the same meaning in these guidelines.
7. In addition, for the purposes of these Guidelines, the following definitions should apply:

High earner(s)	means staff member(s) earning a remuneration of at least EUR 1 million in the reported financial year.
Firm	means all institutions, investment firms, branches of third country credit institutions and branches of third country investment firms for which data on high earners should be collected.
Payment bracket	means the range of the amount of the annual total gross remuneration of a high earner, which is defined in steps of EUR 1 million and starts at EUR 1 million.

Implementation

Date of application

8. These Guidelines apply from 31 December 2022.

Transitional arrangements

9. High earners data for the financial year ending in 2022 should be submitted by firms to competent authorities by 31 August 2023 and from the competent authorities to the EBA by 31 October 2023.

¹² The Guidelines are published under: <https://www.eba.europa.eu/regulation-and-policy/remuneration/guidelines-on-sound-remuneration-policies>

¹³ The Guidelines are published under: <https://www.eba.europa.eu/regulation-and-policy/investment-firms/guidelines-remuneration-policies-investment-firms>

Repeal

10. The EBA Guidelines on the data collection exercise regarding high earners (EBA/GL/2014/07) from 16 July 2014 are repealed with effect from 31 December 2022.
11. References to the Guidelines repealed by paragraph 10 shall be construed as references to these guidelines.

Q1: Are the sections on subject matter, scope, definitions and implementation appropriate and sufficiently clear?

Guidelines on the data collection exercises regarding high earners under Directive 2013/36/EU and under Directive (EU) 2019/2034

1. Scope of application of the data collection exercises

1.1 Scope of institutions that are subject to the high earner data collection under Directive 2013/36/EU (CRD)

12. In case of a group, the EU parent institution, the EU parent financial holding company or the EU parent mixed financial holding company should submit to the consolidating supervisor the high earners data as set out in section 2 for all the entities of the group that are subject to prudential consolidation.
13. An institution, including investment firms having regard to Article 1 (2) and (5) of Regulation (EU) 2019/2033, that does not belong to a group should submit to the competent authority its high earners data as set out in section 2.
14. Competent authorities should ensure that branches of third country institutions established in their Member State submit to them their high earners data as set out in section 2.

1.2 Scope of investment firms that are subject to the high earner data collection under Directive (EU) 2019/2034 (IFD)

15. In case of an investment firm group, the Union parent investment firm, the Union parent investment holding company or the Union parent mixed financial holding company should

submit to the consolidating supervisor the high earners data as set out in section 2 for all the entities of the investment firms group that are subject to prudential consolidation.

16. Competent authorities should ensure that branches of third country investment firms established in their Member State submit to them their high earners data as set out in section 2.

Q2: Are the sections on the scope of the data collection exercises sufficiently clear?
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2. Procedural specifications for firms

17. High earners data should be submitted to the competent authorities each year for any given financial year (the “reported year”) by 31 May of the next calendar year, by:
 - a. institutions referred to in sub-section 1.1, using the template for the data collection specified under Annex I
 - b. investment firms referred to in sub-section 1.2, using the template for the data collection specified in Annex II
18. High earner data should be submitted to competent authorities and therefrom to the EBA only after firms and competent authorities have ensured the completeness and correctness of the data, in line with the technical instructions provided by the competent authorities and in accordance with the general and data quality specifications set out in sections 3 and 9 and the additional specifications set out in sections 4 and 5.

3. General specifications regarding the high earner data collections

19. Firms should submit data on high earners for each Member State in which high earners are located and for each payment bracket of EUR 1 million (e.g., EUR 1 million to less than EUR 2 million; EUR 2 million to less than EUR 3 million, etc.). Each high earner should be allocated to the payment bracket based on his or her total remuneration awarded for the financial year.
20. Firms should submit the required information using financial year-end figures denominated in euro. Amounts should be reported as full amounts, i.e., not as rounded amounts, in euro (e.g., EUR 1 234 567.00 instead of EUR 1.2 million).
21. All staff that received EUR 1 million or more for the financial year should be reported, even if the staff has left the firm before the end of the financial year or that the amount of EUR 1 million is achieved only because of the granting of guaranteed variable remuneration or severance payments.
22. Where high earners data is reported by firms which disclose financial figures 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 for the conversion of the figures to be reported.

23. The number of high earners should be reported as the number of natural persons (headcount), independently of the number of working hours on which their contract is based. For high earners the remuneration paid in euro, elements of remuneration, the Member State, function or business area and responsibility should be reported.
24. The number of individuals in control functions should include all high earners in control functions within the business units and the independent compliance, risk control and internal audit function.
25. High earners should be classified under the Member State, function or business area and responsibility where they carry out the main part of their business activities. The full amount of remuneration awarded to the relevant high earner within the group or reporting firm should be reported under this Member state, function or business area and responsibility. If two or more areas for a high earner have the same weight, the firm should allocate the high earner and his or her remuneration taking into account the allocation of other high earners, so that the report best reflects the distribution of high earners within the firm. For each high earner, figures should only be reported once and the full amounts should be assigned to one Member State, one function or business area and responsibility.
26. High earners who carry out professional activities both within and outside the Union should be classified under a Member State only if they perform the main part of their professional activities within the Union. Otherwise, figures should not be reported for this staff.
27. The allocation of the remuneration to the fixed and variable part of remuneration should be made, as applicable, according to section 7 of the EBA Guidelines on sound remuneration policies under Directive 2013/36/EU and section 7 under the EBA Guidelines on sound remuneration policies under Directive (EU) 2019/2034.
28. Non-monetary items of remuneration should be reported with their monetary equivalent (e.g., the taxed amount) and be included as “other forms” of remuneration.
29. Severance payments, guaranteed variable remuneration and discretionary pension benefits should be included in the total variable remuneration and in addition be provided under the additional information.
30. For the purpose of the data collection exercise regarding high earners, high earners should be reported as ‘identified’ staff if they are treated by firms as ‘identified staff’ at the consolidated level or at the individual level, including in subsidiaries that are subject to a requirement to identify staff under their applicable legal framework (e.g., investment firms, UCITS, AIFM).

Q3: Are the sections 2 and 3 regarding the procedural and general specifications appropriate and sufficiently clear?

4. Additional specifications regarding the high earner data collection with Annex I

31. For the allocation of staff to business areas, firms should consider their internal organisation and the following:

- a. Members of the management body, including members of the management body of subsidiaries that are not subject to specific remuneration requirements, should be reported, as applicable, under the column 'management body in its supervisory function' or 'management body in its management function'. Members of the management body of subsidiaries that are investment firms, UCITS and AIFM should be reported in the column 'All staff in subsidiaries subject to a specific remuneration framework'.
 - i. Management body (MB) supervisory function, are the members of the management body in the role of overseeing and monitoring management decision-making (i.e. non-executive directors).
 - ii. Management body (MB) management function, are the members of the Management Body, who are responsible for its management functions (i.e. executive directors).
- b. Investment banking should include corporate finance advice services, private equity, capital markets, trading and sales.
- c. Retail banking should include the institutions total lending activity (to individuals and enterprises).
- d. Asset management should include:
 - i. the asset management within the institution,
 - ii. where the institution reports on a consolidated basis, its subsidiaries that are institutions, and
 - iii. where Article 109(5) or (6) of Directive 2013/36/EU is applied, staff employed by investment firms, Undertakings for Collective Investments in Transferable Securities (UCITS) or Alternative Investment Funds Managers (AIFM).
- e. Corporate functions should include staff in all functions that have responsibilities for the whole institution at the consolidated level and for subsidiaries with such functions at the solo level, e.g. human resources, information technology.
- f. Independent control functions should include staff active in the independent risk management, compliance and internal audit functions as described in section 19 of the EBA Guidelines on internal governance under Directive 2013/36/EU.

- g. All staff in subsidiaries subject to a specific remuneration framework should include all staff, that is employed by investment firms, UCITS or AIFM, with the exception of staff in subsidiaries where Article 109(5) or (6) of Directive 2013/36/EU is applied which should be allocated to the appropriate business area.
- h. All other staff should include staff that cannot be allocated to one of the business areas under (a) to (g).

Q4: Are the additional specifications to Annex I sufficiently clear?

5. Additional specifications regarding the high earner data collection with Annex II

- 32. Investment firms submitting high earners data on a consolidated basis, should allocate members of the management body of subsidiaries as specified under points (i) and (ii) of paragraph 31 (a), to the 'management body in its supervisory function' or 'management body in its management function'.
- 33. For the allocation of staff to business areas, investment firms should consider their internal organisation and the following:
 - a. Dealing on own account, underwriting and placing of instruments should include the services and activities under points (3), (6) and (7) of Annex I, Section A of Directive 2014/65/EU¹⁴.
 - b. Investment advice, order execution should include the services and activities under points (1), (2) and (5) of Annex I, Section A of Directive 2014/65/EU.
 - c. Portfolio management should include the services and activities under points (4) of Annex I, Section A of Directive 2014/65/EU.
 - d. Operation of MTF/OTF should include the services and activities under points (8) and (9) of Annex I, Section A of Directive 2014/65/EU.
 - e. Independent control functions should include staff active in the independent risk management, compliance and internal audit functions as described in section 17 of the EBA Guidelines on internal governance under Directive (EU) 2019/2034.
 - f. All other staff should include staff that cannot be allocated to one of the business areas under (a) to (e).

¹⁴ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU

Q5: Are the additional instructions to Annex II sufficiently clear?

6. Collection of data by competent authorities

34. Competent authorities should annually collect the required data regarding high earners from:
- a. Institutions, as applicable, at the consolidated or individual level in accordance with Annex I and in the manner specified in these Guidelines.
 - b. Investment firms, as applicable at the consolidated or individual level, as specified in section 2, in accordance with Annex II and in the manner specified in these Guidelines.

7. Aggregation of data by competent authorities

35. Competent authorities should aggregate the data collected within their Member State from firms separately for high earners that belong to the scope defined in sub-section 1.1 (institutions) and high earners that belong to the scope defined in sub-section 1.2 (investment firms).
36. When aggregating the high earner data for investment firms that belong to the scope defined in sub-section 1.2, competent authorities should aggregate and submit to the EBA separately the high earner data for:
- a. investment firms included in the scope of prudential consolidation of institutions and
 - b. investment firms that are not included in the scope of consolidation of institutions.
37. High earners data should also be aggregated per each payment bracket in accordance with Article 75 (3) of Regulation (EU) 575/2013 and Articles 34 (4) of Regulation (EU) 2019/2033
38. Before aggregating data, competent authorities should control if only firms included in the scope of the data collection as set out in sub-section 1.1 and 1.2 have reported data. Data submitted by other firms (e.g., a small and non-interconnected investment firm), should not be taken into account, when aggregating data.
39. Where there is more than one competent authority in a Member State or where the responsibility for supervision lies with the European Central Bank, the competent authorities should co-ordinate the data collection to ensure that only one set of data is collected and reported to the EBA by that Member State.

8. Submission of data by competent authorities to the EBA

40. Competent authorities should submit the high earners data aggregated in accordance with the previous section to the EBA by 15 July of each year

41. If competent authorities establish that they do not have to report any data on high earners, they should inform the EBA accordingly by 15 July of each year.

Q6: Are the sections 6 to 8 regarding the instructions for competent authorities sufficiently clear?

9. Data quality

42. Firms and competent authorities should have appropriate processes and controls in place to ensure that the high earners data is aggregated and provided correctly.
43. Firms and competent authorities should check the completeness and plausibility of the high earners data provided, taking into account the validation rules in Annex III. Competent authorities should apply those checks also to the aggregated data that are to be submitted to the European Banking Authority.
44. Firms and competent authorities should ensure that the sum of sub positions of the variable and fixed remuneration equals the total and that the average total remuneration of staff is consistent with the payment bracket selected.
45. In accordance with the applicable minimum requirements under CRD and IFD, high earners data regarding deferral arrangements and the paid out in instruments should be plausible, after the deduction of amounts awarded to high earners that are identified staff benefitting from derogations.
46. For institutions the ratio between the variable and fixed remuneration for high earners that are identified staff should be below 100% (200% with shareholders' approval), after the deduction of amounts awarded as severance pay or guaranteed variable remuneration that have not been taken into account for the calculation of the ratio and amounts awarded to high earners within firms that apply a specific remuneration framework.
47. When checking the completeness of high earners data, competent authorities should take into account, in particular, the size and numbers of staff of the firms and the number of high earners provided in the past.
48. Competent authorities should make plausibility checks to establish that firms that have to provide high earners data have indeed provided it in accordance with these Guidelines. In particular, where competent authorities do not receive high earners data from firms that have previously submitted such data, they should contact the firms to receive confirmation of the fact that no high earners had to be reported. Competent authorities should also follow up on material changes to the number of reported high earners.
49. Where competent authorities are aware of developments that materially increased or reduced the number of high earners, they should inform the EBA of the underlying reason.

50. Regarding submitted data that show potential data quality issues, EBA may ask competent authorities to review the data and to provide the information necessary for the correct interpretation of data.
51. Competent authorities should provide as necessary corrected data or explanations to any implausible data as soon as possible. Competent authorities should closely cooperate with the EBA to ensure that the dataset for the analysis is stable and of good quality by 30 September.
52. When submitting high earners data to the EBA in accordance with these guidelines, competent authorities should ensure that they also comply with EBA/DC/335 of 5 June 2020 on EUCLID (“EUCLID Decision”)¹⁵ as amended and that they provide institutions and investment firms with any technical specification necessary for the continuous compliance with the EUCLID Decision.

Q7: Are the section on data quality and the Annex III sufficiently clear?

Q8: Is the Annex I appropriate and sufficiently clear?

Q9: Is the Annex II appropriate and sufficiently clear?

¹⁵https://www.eba.europa.eu/sites/default/documents/files/document_library/Risk%20Analysis%20and%20Data/Reporting%20by%20Authorities/885459/Decision%20on%20the%20European%20Centralised%20Infrastructure%20of%20Data%20%28EUCLID%29.pdf

ANNEX I – Information on the remuneration of high earners – Directive 2013/36/EU¹ (CRD)

		Name of the institution/investment firm applying Title VII of CRD/group:									Name
		EU/EEA state to which the data relate:									Country code
		Financial year for which remuneration is awarded (year N):									year
		Payment bracket (EUR 1mn to less than EUR 2mn; EUR 2mn to less than 3mn; etc.) :									Amount of payment bracket
row	Referen ce to ITS		MB Supervisory function	MB Management function	Investment banking	Retail banking	Asset management	Corporate functions	Independent control functions	All other staff	All staff in subsidiaries subject to a specific remuneration framework
1		Number of individuals in senior management									
2		Number of individuals in control functions									
3		Number of other staff									

¹ The instructions specified in the Commission Implementing Regulation (EU) 2021/637 (ITS on disclosure) should be applied by analogy regarding the rows in this template.

4		Total number of high earners									
5		Of which: 'identified staff'									
6	REM1 Row 2	Total fixed remuneration (in EUR)									
7	REM 1 Row 3	Of which: cash-based									
8	REM 1 Row EU-4a	Of which: shares or equivalent ownership interests									
9	REM 1 Row 5	Of which: share-linked instruments or equivalent non-cash instruments									
10	REM 1 Row EU-5x	Of which: other instruments									
11	REM 1 Row 7	Of which: other forms									
12	REM 1 Row 10	Total variable remuneration (in EUR)									
13	REM 1 Row 11	Of which: cash-based									

14	REM 1 Row 12	Of which: deferred									
15	REM 1 Row 13a	Of which: shares or equivalent ownership interests									
16	REM 1 Row 14a	Of which: deferred									
17	REM 1 Row 13b	Of which: share- linked or equivalent non- cash instruments									
18	REM 1 Row 14b	Of which: deferred									
19	REM 1 Row 14x	Of which: other instruments									
20	REM 1 Row 14y	Of which: deferred									
21	REM 1 Row 15	Of which: other forms									
22	REM 1 Row 16	Of which: deferred									

Reference to ITS		Additional information regarding the above positions (all the amounts below should be included also in total variable remuneration or total fixed remuneration respectively)									
23	REM 2 Row 1	Guaranteed variable remuneration awards – number of high earners									
24	REM 2 Row 2	Guaranteed variable remuneration awards – Total amount									
24a	REM 2 Row 3	Of which: guaranteed variable remuneration awards paid out to identified staff during the financial year, that are not taken into account in the bonus cap									
25	REM 2 Row 6	Severance payments awarded during the financial year – Number of high earners									
26	REM 2 Row 7	Severance payments awarded during the financial year - Total amount									
26a	REM 2	Of which severance payments paid out									

	Row 10	during the financial year to identified staff, that are not taken into account in the bonus cap									
27		Number of beneficiaries of contributions to discretionary pension benefits in year N									
28		Total amount of contributions to discretionary pension benefits in year N ²									
29		Total amount of variable remuneration awarded for multi-year periods under programmes which are not revolved annually									
30		For institutions that benefit from a derogation at an institutional level Number of high earners benefitting from the derogations under									

² As defined under Article 3(53) of Directive 2013/36/EU.

		Article 94 (3) (a) of Directive 2013/36/EU									
31		For institutions that benefit from a derogation at an institutional level Variable remuneration of individual high earners that are identified staff in institutions benefitting from the derogations under Article 94 (3) (a) of Directive 2013/36/EU									
32		Total amount of variable remuneration of high earners that are not identified staff									
33		Total amount of fixed remuneration of high earners that are not identified staff									

ANNEX II – Information on the remuneration of high earners – Directive (EU) 2019/2034 (IFD) ³

		Name of the investment firm/group:								Name (free text)
		The investment firm is a subsidiary of an EU parent undertaking that is subject to Directive 2013/36/EU (CRD) that reports data on high earners on a consolidated level?								Yes/no
		The investment firm is a subsidiary of an EU parent undertaking that is subject to Directive (EU) 2019/2034 (IFD) that reports data on high earners on a consolidated level?								Yes/no (if yes, no individual HE report is to be made)
		EU/EEA state to which the data relate:								Please select Member State
		Financial year for which remuneration is awarded (year n):								Year
		Payment bracket (EUR 1mn to less than EUR 2mn; EUR 2mn to less than 3mn; etc.):								Please select
row	Referen ce to ITS		MB Supervisory function	MB Management function	Dealing on own account, underwriting and placing of instruments	Investment advice, order execution	Portfolio management	Operation of MTF/OTF	Independent control functions	All other staff
1		Number of individuals in senior management								
2		Number of individuals in control functions								
3		Number of other staff								
4		Total number of high earners								
5		Of which: 'identified staff'								

³ The instructions specified in the ITS on disclosure³, with regards to the rows where references to the tables REM1 and REM2 of that ITS are included in Annex II, should be applied.

6	REM1 Row 2	Total fixed remuneration (in EUR) in year N								
7	REM 1 Row 3	Of which: cash-based								
8	REM 1 Row EU-4a	Of which: shares or equivalent ownership interests								
9	REM 1 Row 5	Of which: share- linked instruments or equivalent non-cash instruments								
10		Of which: other types of instruments under point (j)(iii) of Article 32(1) IFD								
10a		Of which: non-cash instruments which reflect the instruments of the portfolios managed								
10b		Of which: approved alternative arrangements								
11	REM 1 Row 7	Of which: other forms								
12	REM 1 Row 10	Total variable remuneration (in EUR) in year N								
13	REM 1 Row 11	Of which: cash-based								
14	REM 1	Of which: deferred								

	Row 12									
15	REM 1 Row 13a	Of which: shares or equivalent ownership interests								
16	REM 1 Row 14a	Of which: deferred								
17	REM 1 Row 13b	Of which: share- linked instruments or equivalent non-cash instruments								
18	REM 1 Row 14b	Of which: deferred								
19	REM 1 Row 14x	Of which: other types of instruments under point (j)(iii) of Article 32(1) IFD								
20	REM 1 Row 14y	Of which: deferred								
20a		Of which non-cash instruments which reflect the instruments of the portfolios managed								
20b		Of which: deferred								
20c		Of which: approved alternative arrangements								
20d		Of which: deferred								

21	REM 1 Row 15	Of which: other forms								
22	REM 1 Row 16	Of which: deferred								
Additional information regarding the above positions (all the amounts below should be included also in total variable remuneration)										
23	REM 2 Row 1	Guaranteed variable remuneration awards – number of high earners								
24	REM 2 Row 2	Guaranteed variable remuneration awards – Total amount								
25	REM 2 Row 6	Severance payments awarded during the financial year – Number of high earners								
26	REM 2 Row 7	Severance payments awarded during the financial year - Total amount								
27		Number of beneficiaries of contributions to discretionary pension benefits in year N								
28		Total amount of contributions to discretionary pension benefits in year N								
29		Total amount of variable remuneration awarded for multi- year periods under								

		programmes which are not revolved annually								
30		For investment firms that benefit from a derogation at an institutional level Number of high earners benefitting from the derogations under Article 32(4)(a) of Directive (EU) 2019/2034								
31		For investment firms that benefit from a derogation at an institutional level Thereof variable remuneration of high earners that are identified staff, where the investment firm is benefitting from the derogations under Article 32(4)(a) of Directive (EU) 2019/2034								
32		Total amount of variable remuneration of high earners that are not identified staff								
33		Total amount of fixed remuneration of high earners that are not identified staff								

ANNEX III – Data quality checks

Institutions, investment firms and competent authorities should apply the following data quality checks, as applicable, with regard to ANNEX I and ANNEX II.

Row	Data quality check
1 to 5	The number of staff reported should be integer numbers.
4	The number in row 4 should be equal to the sum of row 1 to 3
5	The number in row 5 should be lower or equal to the number in row 4
6	The total fixed remuneration should be the sum of the rows 7 to 11
12	The total variable remuneration should be the sum of the rows 13, 15, 17, 19, 21 in Annex I and with regard to Annex II the sum of the rows 13, 15, 17, 19, 20a, 20c, 21
12	The total variable remuneration should not be lower than the sum rows 24, 26, 28 and 29
12	The sum of deferred remuneration in rows 14, 16, 18, 20, 22 of Annex I and with regard to Annex II in rows 14, 16, 18, 20, 20b, 20d, 22 should not be higher than the value in row 12
-	Correctness of the selected payment band: For each business area, the sum of the fixed remuneration (row 6) and the variable remuneration (row 12) divided by the number of high earners (row 4) should result in a value that is within the selected payment band.
-	Ratio of deferred remuneration: The sum of deferred remuneration in rows in rows 14, 16, 18, 20, 22 of Annex I and with regard to Annex II in rows 14, 16, 18, 20, 20 b, 20 d, 22 after the deduction of the values in rows 24, 26, 31 and 32 should be higher than or equal to 0.4 times the value in row 12 after the deduction of the value in row 32.
	Institutions and investment firms should consider that this simplified validation rule is for benchmarking purposes only and is not a validation of the compliance with the remuneration requirements regarding guaranteed variable remuneration and severance payments, i.e. while the full amounts are deducted,

parts of the amounts are possibly subject to the requirement to pay out parts of the variable remuneration under deferral arrangements.

This validation rule does not apply to institutions and investment firms where all high earners benefit from the derogation to the requirement to pay out parts of the variable remuneration under deferral arrangements under Article 94 (3) (a) of Directive 2013/36/EU or Article 32(4) (a) of Directive (EU) 2019/2034.

Payout in instruments: The sum of rows 15, 17 and 19 of Annex I and 15, 17, 19, 20a and 20c of Annex II after deducting the values in rows 24, 26, 31 and 32 should be higher than or equal to 0.5 times the value in row 12 after the deduction of the values in rows 31 and 32.

Institutions and investment firms should consider that this simplified validation rule is for benchmarking purposes only and is not a validation of the compliance with the remuneration requirements regarding guaranteed variable remuneration and severance payments, i.e. while the full amounts are deducted, parts of the amounts are possibly subject to the requirement to pay out parts of the variable remuneration in instruments.

This validation rule does not apply to institutions and investment firms where all high earners benefit from the derogation the requirement to pay out parts of the variable remuneration in instruments under Article 94 (3) (a) of Directive 2013/36/EU or Article 32(4) (a) of Directive (EU) 2019/2034.

Ratio between variable and fixed remuneration in institutions: With regard to identified staff in institutions (Annex I) the variable remuneration in row 12 after the deduction of the values in rows 24, 26a and 32 divided by the fixed remuneration in row 6 after the deduction of the value in row 33 should be, as applicable, at or below 100% or 200%. This validation rule does not apply to the business area 'All staff in subsidiaries subject to a specific remuneration framework'.

5. Accompanying documents

5.1 Draft cost-benefit analysis/impact assessment

Article 16(2) 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) (EBA Regulation)¹⁹ provides that the EBA should carry out an analysis of ‘the potential related costs and benefits’ of any guidelines it develops. Such analyses shall be proportionate in relation to the scope, nature and impact of the guidelines. This analysis should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options.

The EBA is updating the existing Guidelines on the annual data collection exercise regarding high earners for which an impact assessment has already been carried out when it was first published in 2012.

The baseline scenario for the impact assessment includes the existing EBA Guidelines, as well as the disclosure requirements and changes, included in the CRD and the IFD. It also considers the obligation of the competent authorities to collect high earner data and submit them to the EBA, which is encoded in Article 75 (3) of the CRD and Article 34 (4) of the IFD. Despite many similarities, the two data collections are separate, because they refer to two distinct regulatory frameworks and because some of the underlying remuneration requirements differ.

The impact assessment does not consider additional data that may be collected by competent authorities and is limited to the marginal effects of the updated Guidelines in comparison to the baseline scenario.

No changes in scope

In the past, both investment firms and institutions were subject to the provisions under CRD that required submitting to the competent authorities data on high earners. With the entry into force of the IFR/IFD rules, the regulatory framework was split into two separate directives, but the scope of the high earner data collection exercise overall stays the same. Minor changes in scope stem from the specific scope of the IFD that, differently to the previously applicable CRD, includes all investment firms. However, the data collection on high earners is limited to investment firms that are not small and non-interconnected (i.e. Investment firms that fulfil all the requirements under Article 12(1) of the IFR). Therefore, there is no cost incurred by the guidelines in terms of change in scope.

Data on derogations to the requirements to pay out the variable remuneration in instruments and under deferral arrangements

CRD and IFD introduced derogations to the requirements to pay out the variable remuneration in instruments and under deferral arrangements. A requirement to provide information on the extent to which such derogations are used has been included in the disclosure requirements under CRR and

¹⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010R1093>

IFR. The CRD and IFD require competent authorities to collect such information from institutions and investment firms. Competent authorities are required to submit the information to the EBA. The guidelines specify the collection of the disclosed information. The change is thus a consequence of the mandate provided by the new legislation, and the guidelines themselves do not impose any additional burden or costs on institutions and investment firms.

Alignment with the ITS on Disclosures

The alignment of the tables for data collection with the tables under the guidelines on remuneration benchmarking and the ITS on Disclosures entailed changes to the previous guidelines that ensure consistency in table structure and terminology of positions already defined in the ITS and the EBA guidelines. Only rows that are relevant for the high earners data collection have been included, or rows that can be used to validate the quality of the data provided.

The data collection for high earners concerns only a small number of individuals, i.e. those earning more than EUR 1 million. Not all high earners are identified staff and therefore not all of their remuneration is part of the disclosures by institutions or investment firms. However, the datapoints collected for high earners will be the same due to the alignment of tables.

This approach will minimize additional work for the purpose of this specific exercise, by leveraging the data and data definitions that already exists in house.

Data quality provisions

The existing Guidelines are addressing only the competent authorities, specifying processes and data quality checks to be conducted to ensure completeness and plausibility of the data. Nevertheless, it is expected that the institutions and investment firms included in the scope of the data collection will do these checks as well.

The revised Guidelines are directed instead towards competent authorities, institutions, and investment firms. The requirements for data quality assessment was explicitly extended also to the institutions and investment firms.

The Guidelines also provide some guidance on the type of data quality checks to be conducted to ensure plausible and complete result. It was decided not to include a detailed list of data quality checks (formulas) to reduce the burden for institutions and investment firms of formula-based checks in reporting systems that concern only a limited number of staff. Considering the limited number of staff and data points, providing specific formulas has been considered unnecessary and disproportionate.

Conclusion

The impact of the Guidelines is expected to be very low, given that most changes stem directly from CRD and IFD mandates. Moreover, the main change not connected to the IFR IFD mandate – the alignment with the ITS Disclosures – aims to leverage the existing data collections, facilitate the data flows, and therefore ease the burden on institutions submitting the data.

5.2 Questions for the public consultation

Q1: Are the sections on subject matter, scope, definitions and implementation appropriate and sufficiently clear?

Q2: Are the sections on the scope of the data collection exercises sufficiently clear?

Q3: Are the sections 2 and 3 regarding the procedural and general specifications appropriate and sufficiently clear?

Q4: Are the additional instructions to Annex I sufficiently clear?

Q5: Are the additional instructions to Annex II sufficiently clear?

Q6: Are the sections 6 to 8 regarding the instructions for competent authorities sufficiently clear?

Q7: Are the section on data quality and the Annex III sufficiently clear?

Q8: Is the Annex I appropriate and sufficiently clear?

Q9: Is the Annex II appropriate and sufficiently clear?