



**EBA Guidelines**  
**On the Data Collection Exercise Regarding High Earners**  
**EBA/GL/2012/5**

**London, 27.07.2012**

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## **I. Executive Summary**

1. Directive 2010/76 (henceforth 'CRD III'), amending Directives 2006/48 and 2006/49, requires national competent authorities to collect information on the number of individuals per institution in pay brackets of at least EUR 1 million, including the business area involved and the main elements of the salary. This information has to be forwarded to the European Banking Authority (EBA), which shall disclose it on an aggregate home Member State basis in a common reporting format. The CRD explicitly states that the EBA may elaborate guidelines to facilitate the implementation of this paragraph and ensure the consistency of the information collected. These guidelines serve this purpose.
2. These guidelines have been publicly consulted and they have also benefited from feedback by the EBA's Banking Stakeholder Group. Eleven responses were received which mainly sought clarification on the following aspects: scope of application, level of consolidation and date of first remittance. These points have been considered in the final guidelines.
3. These Guidelines have to be applied as soon as possible and in any case no later than two months following their publication. The first data should be submitted by the competent authorities to EBA by the end of December 2012. They should relate to fixed and variable remuneration awarded for the 2010 and 2011 performance years.

## II. Background and rationale

1. Article 22 of Directive 2006/48/EC ('CRD'), as amended by Article 1 point 3 of Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies<sup>1</sup> ('CRD III'), introduced requirements for data collection on remuneration practices.
2. According to this Article, national supervisory authorities shall collect information on the number of individuals per credit institution in pay brackets of at least EUR 1 million. According to the same Article, this information shall be transmitted to the EBA. Further, also according to the same Article, the data shall be disclosed by the EBA on an aggregate home Member State basis. To streamline the data collection across the EEA and increase the consistency and comparability of the data, it is necessary and proportionate that EBA issues these guidelines.
3. Data collection should take place at the highest EEA consolidated level of a banking group, similar to the data collection for purposes of remuneration benchmarking (EBA/GL/2012/4). However, different from the normal consolidation scope as set out in the CRD (and as applied in GL EBA/GL/2012/4), non-EEA subsidiaries and non-EEA branches are excluded from the consolidation scope for the purposes of this type of data collection. The aim of the disclosure of this data by the EBA is to reveal year-to-year evolutions in the number of individuals earning at least EUR 1 million within the whole EEA and within the different separate Member States. Furthermore, the disclosure can point to differences in the numbers depending on where groups are headquartered and on where such staff members undertake their professional activities.
4. To obtain a consistent and comparable population, proportionality is applied through a permissions-based measure as materiality benchmark.

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<sup>1</sup>OJ L 329, 14.12.2010, p. 3–35.

### **III. EBA Guidelines on the Data Collection Exercise Regarding High Earners (EBA/GL/2012/5)**

#### **Status of the Guidelines**

1. This document contains guidelines issued under 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.

2. Guidelines set out 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. EBA therefore expects all competent authorities and financial institutions to whom guidelines apply to comply with them unless otherwise stated. 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 rules and/or guidance or supervisory processes), including where particular guidelines within the document are directed primarily at institutions.

#### **Reporting Requirements**

3. 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 with reasons for non-compliance, **by 30.09. 2012**. Notifications should be sent by submitting the form provided in Section V of the present document to [compliance@eba.europa.eu](mailto:compliance@eba.europa.eu) with the reference 'EBA/GL/2012/5'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities.

4. The notification of competent authorities mentioned in the previous paragraph shall be published on the EBA website, as per Article 16 of EBA Regulation.

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## **Title I –Subject matter, scope and definitions**

### 1. Subject matter

1.1. These Guidelines provide further details about the carrying out by competent authorities of the data collection exercise regarding high earners (henceforth 'exercise') of Article 22 of Directive 2006/48 (henceforth 'CRD').

1.2. They should be read together with the CEBS Guidelines on Remuneration Policies and Practices published on 10 December 2010.

### 2. Scope of institutions subject to the data collection

2.1. All EEA based institutions are subject to this data collection.

2.2. Investment firms that are referred to in Article 20(2) and (3) of Directive 2006/49/EC are excluded from this exercise, unless they are included in the consolidation scope of another institution subject to this data collection.

### 3. Scope of consolidation

3.1. The exercise is conducted at the highest level of consolidation, i.e. the EEA consolidation level as set out in the CRD, covering all subsidiaries and branches

which have been established by EEA institutions in other Member States. However, data from non-EEA branches and non-EEA subsidiaries of EEA parent undertakings are excluded from this exercise.

3.2. The entity that reports the supervisory data of the group at the highest EEA level of consolidation as set out in the CRD should complete and transmit the information described in these Guidelines to the competent authority responsible for the exercise of supervision on an EEA consolidated basis.

#### 4. Definitions

4.1. 'High earners' means all staff earning a total remuneration of at least EUR 1 million per year.

4.2. Unless where otherwise provided, terms (words or expressions) used in this guidance, which are also used in the Guidelines on Remuneration Policies and Practices, should have the same meaning as provided therein. This applies to, amongst others, the terms: 'institutions', '(identified) staff', 'fixed remuneration', 'variable remuneration', 'discretionary pension benefits', 'guaranteed variable remuneration', 'deferral' and 'instruments'.

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

#### 5. Information to be submitted

5.1. The template provided in the Annex on information on the remuneration of high earners should be submitted for institutions mentioned in Article 2.

5.2. Separate templates should be submitted in relation to each Member State where the group is operating. This means that the template has to be filled in as many times as the number of Member States in which the institution or group is active (either via branches or via subsidiaries) and where high earners can be found.

5.3. High earners who carry out their professional activities in a Member State should be classified under that particular Member State.

5.4. High earners who carry out professional activities for different legal entities in different Member States (e.g. both at parent and at subsidiary level, where the subsidiary is incorporated in another Member State) or who undertake professional activities for a branch in a host Member State, should be classified under the Member State where they mainly undertake their professional activities. High earners who carry out professional activities in and outside the EEA, should be classified under a Member State if they mainly undertake their professional activities within the EEA.

5.5. An EBA conversion rate table, based on public exchange rate used by the European Commission for financial programming and budget, should be provided annually by the EBA setting out the rates to be used to determine the population of staff who meet the high earners definition of earning at least EUR 1 million where remuneration is awarded in a currency other than EUR.

5.6. Institutions should submit the information set out in 5.1 and 5.2 above, using accounting year-end numbers denominated in EUR.

5.7. 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 the data set out above.

#### 6. Frequency of reporting and submission dates, and reference year

6.1. The information required above in Article 5 should be submitted by the institutions to the competent authority referred to in Article 3.2 annually by the end of June. The competent authority should submit aggregated data per Member State to EBA each year by the end of August.

6.2. The information required above in Article 5 should relate to remuneration awarded for performance during the year preceding the year of submission of the information.

### **Title III – Transitional arrangements and date of application**

#### 7. Transitional arrangements

The first data should be submitted by the competent authorities to EBA by the end of December 2012. It should relate to fixed and variable remuneration awarded for 2010 and 2011 performance years.

#### 8. Date of application

8.1. Competent authorities should implement these guidelines by incorporating them into their supervisory practices, including where particular guidelines within the document are directed primarily at institutions.

8.2. Competent authorities should undertake all the above steps to apply these guidelines the soonest possible and in any case at the latest within two months after their publication. Competent authorities should ensure that institutions comply with the Guidelines effectively in order to enable a timely first submission as stated in Article 7.

## **ANNEX - Information on the remuneration of high earners**

<b>Name of the institution/group:</b>				
<b>Member state to which the data relate:</b>				
<b>Performance year for which remuneration is awarded (Year N):</b>				
<b>Business areas:</b>	<b>Investment banking<sup>1</sup></b>	<b>Retail banking<sup>2</sup></b>	<b>Asset management<sub>3</sub></b>	<b>All Other<sup>4</sup></b>
<b>Total number<sup>5</sup> of individuals</b>	#	#	#	#
Of which: Number of "Identified Staff" <sup>6</sup>	#	#	#	#
<b>Total fixed<sup>7</sup> remuneration</b>	€ mn	€ mn	€ mn	€ mn
<b>Total variable<sup>8</sup> remuneration</b>	€ mn	€ mn	€ mn	€ mn
Of which: Total discretionary pension benefits <sup>9</sup>	€ mn	€ mn	€ mn	€ mn
Of which: Total variable remuneration deferred in Year N <sup>10</sup>	€ mn	€ mn	€ mn	€ mn

Footnote: Staff reported in the column "all other" consist of ... [to be completed as per footnote 6 below]

<sup>1</sup> Incl. corporate finance advice services, private equity, capital markets, trading and sales.

<sup>2</sup> Incl. total lending activity (to individuals and enterprises).

<sup>3</sup> Incl. portfolio management, managing of UCITS and other forms of asset management.

<sup>4</sup> This column should include high earners that cannot be allocated to one of the designated business areas. In this case, institutions should add a footnote (see end of the table) explaining in which areas these high earners work.

<sup>5</sup> The numbers of staff provided should be expressed in full time equivalents (FTEs) and be based on year-end numbers.

<sup>6</sup> Identified staff according to paragraph 16 of the CEBS Guidelines on Remuneration Policies and Practices.

<sup>7</sup> Fixed remuneration according to paragraph 11 of the CEBS Guidelines on Remuneration Policies and Practices.

<sup>8</sup> Variable remuneration according to paragraph 11 of the CEBS Guidelines on Remuneration Policies and Practices. This includes deferred and non-deferred variable remuneration. This also includes discretionary pension benefits, amounts regarding guaranteed variable remuneration and severance payments.

<sup>9</sup> Discretionary pension benefits according to section 3.1.2 of the CEBS Guidelines on Remuneration Policies and Practices.

<sup>10</sup> Deferred remuneration according to section 4.1.1 of CEBS Guidelines on Remuneration Policies and Practices.

## **IV. Accompanying documents**

### **a. Cost- Benefit Analysis / Impact Assessment**

1. According to Article 16(2) of Regulation 1093/2010 establishing the EBA, the Authority shall, where appropriate, conduct open public consultations regarding its guidelines and recommendations and analyse the related potential costs and benefits.
2. These Guidelines facilitate the collection of data on “high earners” as required in Article 22(5) CRD. This Article explicitly states that the EBA may elaborate guidelines to facilitate the implementation of this Article to ensure consistency of the collected information and disclose information on an aggregate home Member State basis in a common reporting framework. As elaborated in the EU Commission’s Impact Assessment accompanying CRDIII, the disclosure of this remuneration data in a consistent common framework will assist to review the structure of remuneration schemes and to assess whether they manage to align employees’ incentives with the long-term objectives of the company.
3. While operating within the scope given by the CRD, the EBA appears to have a limited policy choice regarding the level of aggregation of data: Namely territorial approach versus the consolidating supervisor approach. While it is understood that the intended form of disclosure would follow the territorial approach, it was acknowledged that in case of banking groups with operations in more than one Member State reporting of local figures to different host supervisors would unduly increase reporting obligations for institutions. Hence, it was decided to keep the principle to report to one supervisor, i.e. to the home supervisor, indicating the location to which the figures pertain. The aggregation at Member State level would then be performed by the competent authorities.
4. In addition, EBA conducted a public consultation, where respondents’ comments complemented the findings of the EU Commission’s own Impact Assessment accompanying CRDIII. However, respondents were concerned on the remittance timeline for the initial reporting. Accordingly EBA has proposed transitional arrangements to minimise the costs for banks to comply with the framework for the first date for data submission (cf. section 4 (b) and feedback tables).

## b. Feedback on the public consultation and on the opinion of the Banking Stakeholder Group

1. The consultation period lasted for five weeks. Replies from eleven parties were received, including banks, associations, one financial holding company and one private person. The comments were mainly technical in nature and requested clarification on a number of items, e.g. scope of application, level of consolidation, award period, and staff covered by the Guidelines.
2. Most of these points were addressed by changes in the text (see feedback table). One major concern was the date of first remittance, which was originally envisaged for the end of 2011. A significant number of respondents stated that this would not be feasible as the data are not readily available. In order to address this issue, a transitional arrangement has been included in the guidelines, which allows for the first transmission by the competent authorities to EBA at the end of December 2012, including remuneration awarded for the 2010 and 2011 performance years.
3. The Banking Stakeholder Group discussed the guidelines and did not object to the principles proposed therein.

**Analysis of responses to CP 47:**

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

<b>Article of CP47</b>	<b>Received Comments</b>	<b>EBA analyses</b>	<b>New text</b>
<b>Recital 1</b>	Need to integrate professional secrecy rules for EBA staff.	EBA staff is bound by secrecy rules based on EU staff regulations.	None.
<b>Recital 2</b>	Uncertainty what entity is in charge of reporting.	Clarification recommended.	The entity that reports the supervisory data of the group at the highest EEA level of consolidation as set out in the CRD shall complete and transmit the information to the competent authority responsible for the exercise of supervision on an EEA consolidated basis (article 3.2).
<b>Recital 3</b>			
<b>Recital 4</b>			
<b>Article 1 Definitions</b>	<p>Concept of 'high earner' deviates from CRD III definition.</p> <p>Threshold for reporting obligation needs to be introduced/ scope for reporting obligation should</p>	<p>CRD explicitly refers to the EUR 1 million threshold.</p> <p>No such threshold is envisaged in the CRD.</p>	<p>None.</p> <p>None.</p>

Article of CP47	Received Comments	EBA analyses	New text
	be the same as for CP 46, i.e. only significant institutions.		
<b>Article 2 Information to be completed and submitted</b>	Scope too wide	Acknowledged	Investment firms that are referred to in Article 20(2) and (3) of Directive 2006/49/EC are excluded from this exercise, unless they are included in the consolidation scope of another institution subject to this data collection.
<b>Article 3 – Scope of the information provided</b>	<p>Exclusion of non-EU subsidiaries and branches goes against normal accounting and disclosure practices</p> <p>Substitute 'EEA parent companies' by 'institutions' in 3.2.</p> <p>Level of application should be national markets.</p>	<p>CRD requires disclosure on aggregate Member State level, so data on high earners outside the Member States are excluded in this exercise.</p> <p>Acknowledged.</p> <p>According to article 5.2 separate templates should be submitted in relation to each Member State where the group is operating. This means that the template has to be filled in as many times as the number of Member States in which the institution or group is active (either via branches or via</p>	<p>None.</p> <p>'Companies' replaced by 'undertakings' (article 3.1)</p> <p>Further clarification in new art. 6.1: '[...] The competent authority should submit aggregated data per Member State to EBA each year by the end of August.'</p>

Article of CP47	Received Comments	EBA analyses	New text
		subsidiaries) and where high earners can be found.	
<b>Article 4 – Member State of the high earner</b>	Problem of 'mobile employees' in terms of under which Member State shall data be disclosed.	Clarification useful.	High earners who carry out professional activities for different legal entities in different Member States (e.g. both at parent and at subsidiary level, where the subsidiary is incorporated in another Member State) or who undertake professional activities for a branch in a host Member State, should be classified under the Member State where they mainly undertake their professional activities. High earners who carry out professional activities in and outside the EEA, should be classified under a Member State if they mainly undertake their professional activities within the EEA. (new article 5.4)
<b>Article 5 – Frequency of reporting and remittance dates, and reference year</b>	Remittance date should be aligned with CRD III requirements, i.e. 31 December of each year.	Data should generally be available to the competent authority by the end of June.	The information required above in article 5 should be submitted by the institutions to the competent authority referred to in article 3.2 annually by the end of June. The competent authority should submit aggregated data per Member State to EBA each year by the end of

Article of CP47	Received Comments	EBA analyses	New text
	<p>Reporting should only occur once per year.</p> <p>Alignment with national reporting obligations/systems.</p> <p>Art. 5.2 appears to (unintentionally) exclude remuneration paid during the performance year.</p>	<p>This is the case as end of June has been fixed as annual date for submission.</p> <p>Aim of the guidelines is to facilitate homogenous data collection throughout the EU; national supervisors will use the templates from the guidelines.</p> <p>Clarification that variable as well as fixed remuneration are included.</p>	<p>August. (new article 6.1)</p> <p>See above.</p> <p>None.</p> <p>The information required above in article 5 should relate to remuneration awarded for performance during the year preceding the year of submission of the information. (new article 6.2 of the Guidelines)</p>

<b>Article of CP47</b>	<b>Received Comments</b>	<b>EBA analyses</b>	<b>New text</b>
<b>Article 6 – Transitional arrangements</b>	Data collection should only start for remuneration awarded in 2011, i.e. not before October 2012.	First remittance day postponed, but data for the year 2010 are needed to be CRD III compliant.	None.
<b>Article 7 – Date of application</b>			
<b>Annex 1</b>	<p>Anonymity of data could be compromised in organizations with a small number of high earners.</p> <p>Contradiction with current CRD IV proposal on high earners.</p> <p>Template should not include name of institution for confidentiality reasons.</p>	<p>Only aggregate data are collected.</p> <p>The guidelines only facilitate reporting obligation on high earners stemming from CRD III.</p> <p>No names will be disclosed externally, only aggregated numbers per Member State.</p>	<p>None.</p> <p>None.</p> <p>None.</p>

**V. Form for Confirmation, on the part of  
Competent Authorities, of Compliance  
with the Guidelines**

## Confirmation of compliance with guidelines and recommendations

Member/EEA State:

Competent authority:

Guidelines/recommendations:

Name:

Position:

Telephone number:

Email address:

I am authorised to confirm compliance with the guidelines and recommendations on behalf of my competent authority:  **Yes**

The competent authority complies or intends to comply with the guidelines and recommendations:

**Yes**       **No**       **Partial compliance**

My competent authority does not, and does not intend to, comply with the guidelines and recommendations for the following **reasons**<sup>1</sup>:

Details of the partial compliance and reasoning:

**Please send this notification to [compliance@eba.europa.eu](mailto:compliance@eba.europa.eu)<sup>2</sup>.**

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<sup>1</sup> In cases of partial compliance, please include the extent of compliance and of non-compliance and provide the reasons for non-compliance for the respective subject matter areas..

<sup>2</sup> Please note that other methods of communication of this confirmation of compliance, such as communication to a different e-mail address from the above, or by e-mail that does not contain the required form, shall not be accepted as valid.