



EBA Guidelines
On the Remuneration Benchmarking Exercise
EBA/GL/2012/4

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, mandates national competent authorities to collect information on remuneration practices of credit institutions and investment firms to benchmark remuneration trends. Moreover, these data should be submitted to the EBA to enable it to perform benchmarking at the Union level. In order to carry out this European benchmarking task, the EBA proposed guidelines and published a consultation paper (CP 46) on 28 July 2011, which 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.
2. 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 (henceforth '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 policies¹ (henceforth 'CRD III'), introduced requirements for data collection on remuneration practices.
2. Paragraph 3 of that Article provides that home Member State competent authorities shall collect remuneration data, on the basis of the information disclosed by institutions to the public in accordance with the criteria for disclosure established in point 15(f) of part 2 of Annex XII of the CRD that refer to aggregate quantitative information on remuneration, broken down by business area. The same Article provides that on the basis of this data, Member States' national competent authorities shall carry out a benchmarking. The data received shall be used to reveal year-to-year evolutions and to point to differences amongst groups/institutions that are headquartered in a single jurisdiction.
3. Article 22, paragraph 4 *in fine* provides that the EBA shall use remuneration data in order to carry out a benchmarking, at a second stage, at the EEA level. The data received by the EBA will be used to reveal year-to-year evolutions at an EEA-wide level and to point to differences depending on where groups/institutions are headquartered within the EEA. 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.
4. The present guidelines should be read in conjunction with the CEBS Guidelines on Remuneration Policies and Practices, published on 10 December 2010.
5. Article 72 CRD in conjunction with Article 145 CRD, in which reference to Annex XII of the CRD is made, provides that public disclosure by credit institutions must take place at the highest EEA consolidated level. This is similar to the data collection regarding high earners (EBA/GL/2012/5). To avoid loopholes in the remuneration data collection and to allow that the data gathering can be centrally organised in groups and be communicated only once to the group supervisor, the same level of consolidation should apply in the context of these guidelines. In the context of these guidelines, double reporting requests between the home and the host competent authorities are avoided; sub-consolidation is not relevant for the purpose of reporting data under these guidelines to EBA. The consolidation scope is set out in the CRD. Both EEA and non-EEA entities (i.e. non-EEA branches and

¹ OJ L 329, 14.12.2010, p. 3–35.

non-EEA subsidiaries) can be part of the scope of the consolidated numbers. The group context is further elaborated upon in section 1.3. of the CEBS Guidelines on Remuneration Policies and Practices.

6. In line with the requirements of the principle of proportionality, only certain institutions should be subject to this remuneration data collection. However, all local banking markets in the EEA should get a representative coverage in the data collection.

III. EBA Guidelines on the Remuneration Benchmarking Exercise (EBA/GL/2012/4)

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 with the reference 'EBA/GL/2012/4'. 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, definitions and scope

1. Subject matter and definitions

1.1. These guidelines provide further details about the carrying out by competent authorities and the EBA of the European remuneration benchmarking exercise (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.

1.3. 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'.

2. Scope of institutions subject to the data collection

2.1. National supervisory authorities should select the institutions to participate in the exercise, according to one of the following criteria:

- a) either the institutions should represent 60 % of the total banking and investment services sector of the Member State concerned, as defined in art. 2 (8) of Directive 2002/87/EC as expressed in terms of aggregated total assets of such institutions as of end of year;
- b) or the national supervisory authorities should select the 20 largest institutions in the banking and investment services sector of the Member State concerned, as expressed in terms of their total assets as of end of year.

2.2. Besides the institutions included in the exercise according to the above minimum criteria, national supervisory authorities may also include in their exercise any other institution they deem significant or relevant for obtaining a representative and diverse sample of institutions in terms of size, business models and risk profiles, or any other institution they deem necessary for supervisory purposes.

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 and in third countries.

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.

Title II- Requirements regarding the format and frequency of the reporting for the remuneration benchmarking exercise

4. Information to be submitted

4.1. The template provided in Annex 1 on information on the remuneration of all staff should be submitted by the institutions included in the exercise.

4.2. The template provided in Annex 2 on information on the remuneration of the 'identified staff' should be submitted by the institutions included in the exercise in relation to the 'identified staff' only.

5. Frequency of reporting and submission dates, and reference year

5.1. The information mentioned above in Article 4 should be submitted by the institutions to the competent authority referred to in Article 3.2 every year by the end of June. The competent authority should then submit this information to EBA each year by the end of August.

5.2. The information mentioned above in Article 4 should relate to fixed and variable remuneration awarded for performance during the year preceding the year of submission of the information.

5.3. The information mentioned above in Article 4 should be submitted using accounting year-end numbers in one of the major currencies or in the domestic currency of the EEA consolidation parent undertakings (the EBA will make conversions based on the public exchange rate used by the European Commission for financial programming and budget).

Title III- Transitional provisions and date of application

6. Transitional arrangements

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.

7. Date of application

7.1. 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.

7.2. 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 6.

ANNEX 1- Information on the remuneration of all staff

Name of the institution/group:				
Performance year for which the remuneration is awarded (Year N):				
Business areas:	Investment banking¹	Retail banking²	Asset management³	All other⁴
Total number of staff⁵	#	#	#	#
Total net profit in year N⁶	mn			
Total remuneration⁷	mn	mn	mn	mn
Of which: Total variable remuneration⁸	mn	mn	mn	mn

Footnote 4: Staff reported in the column "all other" consist of ... [to be completed as per footnote 4 below]

¹ Incl. corporate finance advice services, private equity, capital markets, trading and sales.

² Incl. total lending activity (to individuals and enterprises).

³ Incl. portfolio management, managing of UCITS and other forms of asset management.

⁴ This column should include staff 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 this staff work.

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

⁶ Net profits should be based on the accounting system used for regulatory reporting. For groups, it is the profit (or loss) of the whole group (i.e. the amount attributable to the equity holders of the parent and to the minority interest).

⁷ Total remuneration according to paragraph 11 of the CEBS Guidelines on Remuneration Policies and Practices. The amounts of remuneration provided should be gross numbers, including all costs for the institutions, except mandatory contributions by the institutions to social security and comparable schemes.

⁸ 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.

ANNEX 2- Information on the remuneration of identified staff

Name of the institution/group:				
Performance year for which the remuneration is awarded (Year N):				
Business areas:	Investment banking¹⁰	Retail banking¹¹	Asset management¹²	All other¹³
Number of identified staff¹⁴	#	#	#	#
Number of identified staff in senior management positions¹⁵	#			
Number of identified staff in control functions	#			
Total fixed remuneration¹⁶	mn	mn	mn	mn
Total variable remuneration¹⁷	mn	mn	mn	mn
Total variable in cash	mn	mn	mn	mn
Total variable in shares and share-linked instruments	mn	mn	mn	mn
Total variable in other types instruments ¹⁸	mn	mn	mn	mn
Total amount of variable remuneration deferred in Year N¹⁹	mn	mn	mn	mn
Total deferred variable in cash	mn	mn	mn	mn
Total deferred variable in shares and share-linked instruments	mn	mn	mn	mn
Total deferred variable in other types of instruments ²⁰	mn	mn	mn	mn

¹⁰ Incl. corporate finance advice services, private equity, capital markets, trading and sales.

¹¹ Incl. total lending activity (to individuals and enterprises).

¹² Incl. portfolio management, managing of UCITS and other forms of asset management.

¹³ This column should include staff 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 staff work.

¹⁴ Identified staff according to paragraph 16 of the CEBS Guidelines on Remuneration Policies and Practices.

¹⁵ This is equivalent to the first and second category of Identified Staff as explained in paragraph 16 of the CEBS Guidelines on Remuneration Policies and Practices.

¹⁶ Fixed remuneration according to paragraph 11 of the CEBS Guidelines on Remuneration Policies and Practices.

¹⁷ Variable remuneration according to paragraph 11 of the CEBS Guidelines on Remuneration Policies and Practices. This includes deferred and no-deferred remuneration. This also includes discretionary pension benefits, amounts regarding guaranteed variable remuneration and severance payments.

¹⁸ Different types of instruments defined in section 4.4.2 of the CEBS Guidelines on Remuneration Policies and Practices.

¹⁹ Deferred remuneration according to section 4.4.1 of the CEBS Guidelines on Remuneration Policies and Practices.

Amount of explicit ex post performance adjustment²¹ applied in Year N for remuneration awarded in previous years.	mn	mn	mn	mn
Number of recipients of guaranteed variable remuneration²²	#	#	#	#
Total amount of guaranteed variable remuneration	mn	mn	mn	mn
Number of recipients of severance payments	#	#	#	#
Total amount of severance payments paid in year N	mn	mn	mn	mn
Number of recipients of discretionary pension benefits	#	#	#	#
Total amount of discretionary pension benefits²³	mn	mn	mn	mn

Footnote: Staff reported in the column "all other" consist of ... [to be completed as per footnote 12 below]

²⁰Different types of instruments defined in section 4.4.2 of the CEBS Guidelines on Remuneration Policies and Practices.

²¹Explicit ex post performance adjustment according to paragraphs 134 to 139 of the CEBS Guidelines on Remuneration Policies and Practices.

²²Guaranteed variable remuneration according to section 3.2.1 of the CEBS Guidelines on Remuneration Policies and Practices.

²³Discretionary pension benefits according to section 3.1.2. of the 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 implementation of requirements introduced by CRD III, namely the collection and benchmarking of information on remuneration. As elaborated in the EU Commission's Impact Assessment accompanying CRDIII, the collection and benchmarking of remuneration 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. As the CRD III already states what data shall be collected and disclosed, the policy options for the EBA were limited. Notwithstanding this limitation, a policy choice appears to exist on the exact content of the quantitative information referred to in point 15(f) of part II of Annex 12 CRD, to which reference is made in Article 22(b)(3). The EBA considered whether a policy choice existed within this context. However point 15(g) describes the precise content of quantitative information that needs to be disclosed for senior management and 'risk takers', and as such EBA concluded that there was no scope for making distinct policy choices.
4. The EBA applies the same content for the quantitative information to be collected under these guidelines in order to avoid different scope of data collection for disclosure requirements under Annex 12 and for data collection for benchmarking purposes. Furthermore, the last paragraph of point 15 introduces the idea of proportionality for disclosure requirements on quantitative information. This is mirrored by the limited scope of these guidelines set out in Article 2.1 of these guidelines.

5. 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 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 allow 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. Only one reply expressed general doubts that these guidelines would be within the remit of the EBA's mandate. This is not the case, given the EBA powers to issue guidelines and recommendations addressed to competent authorities or financial institutions to ensure uniform and consistent application of Union law, based on Article 16 of the EBA regulation (1093/2010).

3. The Banking Stakeholder Group discussed the guidelines and did not object to the principles proposed therein.

Analysis of responses to CP 46:

Guidelines on the remuneration data collection benchmarking exercise

Article of CP46	Received Comments	EBA analyses	New text
Recital 1	<p>Lack of legal mandate for EBA to draft these guidelines.</p> <p>Risk of double-reporting at national and EU level.</p> <p>Need to integrate professional secrecy rules for EBA staff.</p>	<p>Based on article 16 of regulation 1093/2010, the EBA can issue guidelines and recommendations addressed to competent authorities or financial institutions to ensure uniform and consistent application of Union law. This data collection serves the purpose to ensure consistency of data across Member States.</p> <p>No double-reporting under this European benchmarking exercise: national competent authorities collect consolidated data and submit it to the EBA.</p> <p>EBA staff is bound by secrecy rules based on EU staff regulations.</p>	<p>None.</p> <p>None.</p> <p>None.</p>
Recital 2			
Recital 3			

Article of CP46	Received Comments	EBA analyses	New text
Recital 4	Clarification sought that data should be collected at EU consolidated level and transmitted by the EU parent company to its home supervisor.	Clarification needed.	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.
Recital 5	'Identified staff' should be defined according to home state authority's provisions.	A harmonized approach is necessary for the EU wide benchmarking. The Guidelines follow the approach chosen by the Guidelines on remuneration policies and practices.	None.
Article 1 Definitions	Definition of institutions within the scope of these guidelines unclear.	Clarification useful.	National supervisory authorities shall select the institutions to participate in the exercise, according to one of the following criteria: a) either the institutions shall represent 60 % of the total banking market of the Member State concerned, as expressed in terms of aggregated total assets of such institutions as of end

Article of CP46	Received Comments	EBA analyses	New text
	<p>Scope should explicitly state that they only apply to banking organizations.</p>	<p>Clarification useful.</p>	<p>of year;</p> <p>b) or the national supervisory authorities shall select the 20 largest institutions in the banking market of the Member State concerned, as expressed in terms of their total assets as of end of year.</p> <p>The term "banking and investment services sector" is clarified in article 2.1. The term "institutions" has the meaning as used in the Guidelines on Remuneration Policies and Practices.</p>
<p>Article 2 Information to be submitted</p>	<p>Inclusion of data for all staff goes beyond CRD III disclosure requirements.</p> <p>Increase in value of accrued pension benefits should be disclosed in addition to cash pension contributions.</p> <p>Differences in national</p>	<p>There is no such limitation in the CRD as regards data collection for benchmarking.</p> <p>Not taken on board in view of proportionality.</p> <p>Purpose of the guidelines is to</p>	<p>None.</p> <p>None.</p> <p>None.</p>

Article of CP46	Received Comments	EBA analyses	New text
	<p>definitions of remuneration may impede a homogeneous data collection.</p> <p>Art. 2 should be restricted to significant institutions.</p> <p>Categories of business areas should allow for greater flexibility in view of different organizational concepts.</p> <p>Not clear whether total number of staff is average yearly FTEs or headcount end of year.</p> <p>Split of net profits by</p>	<p>facilitate homogeneous data collection. Definitions given in these guidelines have the same meaning as used in the Guidelines on remuneration policies and practices.</p> <p>Guidelines provide guidance on how to define this group of significant institutions, in the absence of a valid fixed definition yet.</p> <p>Category 'All other' allows for such flexibility; institutions have the possibility to explain their approach in this regard. Footnotes provide guidance on mapping different business lines to the stated categories.</p> <p>Clarification useful.</p> <p>Relevant cells merged, so only total</p>	<p>Clarification introduced in Title 1, article 2.</p> <p>Box added at the end of the templates.</p> <p>Clarification inserted: 'The numbers of staff provided should be expressed in full time equivalents (FTEs) and be based on the year-end numbers.'</p> <p>Table in annex 1 changed.</p>

Article of CP46	Received Comments	EBA analyses	New text
	business area may lead to interpretation problems due to different taxation regimes.	profit must be given.	
Article 3 – Level of consolidation of the information provided	Level of application should focus on national markets, consolidated figures are not comparable.	European exercise follows the consolidated approach for disclosure as reference is made to annex XII of CRD.	None
Article 4 – Frequency of reporting and remittance dates, and reference year	<p>Wording of art. 4.2 appears to (unintentionally) exclude remuneration paid during the performance year.</p> <p>Submission date should be set as of end December.</p> <p>Reporting frequency should be set as annually.</p>	<p>Clarification that variable as well as fixed remuneration are included.</p> <p>Data should generally be available to the competent authority by the end of June.</p> <p>This is the case as end of June has been fixed as annual date for submission.</p>	<p>The information mentioned above in article 4 shall relate to fixed and variable remuneration awarded for performance during the year preceding the year of submission of the information (new article 5.2).</p> <p>The information mentioned above in article 4 should be submitted by the institutions to the competent authority referred to in article 3.2 every year by the end of June. The competent authority should the submit this information to EBA each year by the end of August. (new article 5.1)</p> <p>None.</p>

Article of CP46	Received Comments	EBA analyses	New text
Article 5 – Transitional arrangements	Unrealistic timeline for first submission, should be postponed to 2012.	Difficulties are acknowledged.	Transitional arrangement in article 6: '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 the 2010 and 2011 performance years.'
Article 6 – Date of application			
Annex 1	<p>All standard benefits and pensions shall be excluded from total fixed remuneration.</p> <p>Confirmation of acceptable valuation approaches requested.</p>	<p>GL follow definition of "remuneration" as laid down in GL on remuneration policies and practices.</p> <p>Some guidance on valuation is given in GL on remuneration policies and principles (e.g. paragraphs 101, 103, 125). In addition, a new footnote has been added.</p> <p>Acknowledged.</p>	<p>None.</p> <p>Clarification added: "Net profits shall be based on the accounting system used for regulatory reporting".</p> <p>Included: 'Variable remuneration according to paragraph 11 of the CEBS Guidelines on Remuneration Policies and Practices.'</p>

Article of CP46	Received Comments	EBA analyses	New text
	<p>Clarification of the concept of 'Total variable remuneration in Year N' requested.</p> <p>Which exchange rate should be used?</p>	<p>Acknowledged.</p>	<p>Clarification that EBA will make conversion (new article 5.3).</p>
Annex 2	<p>Data protection/confidentiality concerns for organizations with low numbers of identified staff.</p> <p>Benefits should be excluded as there is no common method for the evaluation of its financial value.</p>	<p>Only aggregated data will be collected. Situations where a significant institution has only a limited number of identified staff should be rare.</p> <p>According to article 101 of guidelines on remuneration policies and practices, national competent authorities are responsible for reviewing valuation methods.</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**¹:

Details of the partial compliance and reasoning:

Please send this notification to compliance@eba.europa.eu².

¹ 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.

² 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.