

# EBA Consultation Paper: Draft GL on sound remuneration policies under Directive (EU) 2019/2034

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## Background

In 2015, EBA published guidelines on sound remuneration policies under the Capital Requirements Directive (CRD) which were applicable to credit institutions and investment firms. The guidelines for credit institutions have recently been revised to align with CRD V and in this consultation EBA is seeking feedback on proposed remuneration guidelines for investment firms under the Investment Firms Directive (IFD), 2019/2034. Like CRDV, it requires EBA to develop guidelines on remuneration for all staff as part of internal governance, for identified staff, and implementation of waivers by Member States. Remuneration policies must be gender neutral, respecting the principle of equal pay for equal work by men and women. The guidelines are applicable to investment firms unless, in line with the principle of proportionality, they are small and 'not-interconnected' with the rest of the financial system using tests set out in the IFD.

## BSG response: overview

BSG welcomes the opportunity to comment on the proposed guidelines. In doing so, we have reflected carefully on our earlier response to the consultation on remuneration guidelines for credit institutions<sup>1</sup> to ensure appropriate alignment.

We have answered EBA's specific questions below and have the following additional points:

### Differentiation by different investment services/activities

Paragraph 80: it is helpful to include indications of areas where a greater degree of sophistication is expected with reference to the MiFID II services and activities. However, we consider that points (8) [operation of an MTF] and 9 [operation of an OTF] also require a high degree of sophistication,

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<sup>1</sup> [BSG response: EBA Consultation Paper on Draft Guidelines on sound remuneration policies under Directive 2013/36/EU](#)

particularly because in the case of OTFs there may be few alternative regulated venues available on which to trade a particular financial instrument.

### Competent authorities

Paragraphs 290-300: the requirements addressed to competent authorities appear to be extremely limited and to have removed the indications given in the CRD guidelines of how supervisors could go about assessing the appropriateness of firms' remuneration policies. We recognize that some flexibility is needed to ensure that supervision is risk-based. However, we are concerned that this could lead to inconsistent and potentially ineffective approaches being taken and undermine the impact of the guidelines. We therefore recommend adding at the end of paragraph 293 new text based on paragraph 308 of the proposed CRD draft guidelines:

293. [Add at end] "In assessing investment firms' remuneration policies, competent authorities should review, on a risk-based basis, in particular:

- a. the governance arrangements and processes for designing and monitoring the remuneration policy;
- b. that a remuneration committee with sufficient powers and resources to perform its functions is established where required;
- c. the impact of the remuneration policy and practices on the conduct of business, including advising and selling of products to different customer groups.

#### Q1. Are the subject matter, scope and definitions appropriate and sufficiently clear?

1. In the definition of 'severance payments' it should be added for clarity that this refers to payments "to staff" as in the draft revised guidelines under Directive 2013/36/EU.

#### Q2. Is the section on gender neutral remuneration policies sufficiently clear?

### Gender neutral remuneration

2. In line with our response to the draft revised guidelines under Directive 2013/36/EU, we consider that the following additions to the text are needed to embed the Level 1 text and ensure that gender neutral remuneration policies are effectively and consistently applied in practice:

- a. Para 38: "The HR function should also assure that the remuneration policy is consistent with obligations on gender neutrality and equal treatment of different genders."
- b. Para 53g: add at the end "and is gender neutral;"
- c. Para 78: add "The obligation to have sound and effective remuneration policies and practices **that are gender neutral ...**"
- d. Para 189: add "Investment firms must have a fully flexible, **gender neutral** policy..."

## Equal value of work

3. In addition, expectations for the implementation of the aspects mentioned in para 27 and the rationale behind it should be clarified. When clarifying, current discussions at European level and the rulings of the ECJ regarding that matter (such as Commission Recommendation C(2014) 1405 final, para 10, or Commission Staff Working Document SWD/2013/0512 final) need to be taken into account. We would recommend referring to the above-mentioned documents in para 26 to determine the equal value of work. Para 27 should be reformulated to take into account additional aspects to determine the remuneration level beyond the equal value of work. In particular we are of the opinion that the nature of the employment contract, including if it is temporary or a contract with an indefinite period listed in para 27(e) does not provide any information as to the value of work.

4. Q3. Are the sections on the remuneration committee sufficiently clear?

5. Yes, these sections are generally clear.

Q4. Are the guidelines on the application of the requirements in a group context sufficiently clear?

6. We recommend adding to the end of the last sentence in paragraph 69: “with no prejudice to the rights of employee representatives and trade unions under national law.” Parts of the remuneration policy are in the scope of co-determination or collective bargaining rights, so that the consolidating institution is not in any case able to enforce the remuneration policy without undergoing the necessary procedures with the employee side.

Q5. Are the guidelines regarding the application of waivers within section 4 sufficiently clear?

7. We recommend adding the following sentence to para 86(d): “Severance payments covered by para 162 are not taken into account.” It is not comprehensible to not consider specific severance payments when calculating the general ratio of variable and fixed remuneration but to count it for the calculation of the ratio for the purpose of using the waivers under IFD. If the severance payment is made under one of the exemptions in para 162 this should not lead to deferral and paying in instruments of the severance payment e.g. in a case of loss of job.

8. Otherwise, these sections are generally clear.

Q6. Is section 9 on severance payments sufficiently clear?

9. A new point should be added to paragraph 162 as follows: “c. severance payments which are part of an agreement between the institution and employee representatives or trade unions under national law.” It is not in any case a mandatory obligation to conclude such agreements, but if they are concluded under the procedures of national law, they should be treated like the other exemptions in para 170.

10. Otherwise, these sections are generally clear.

Q7. Are the provisions on performance criteria sufficiently clear? Which other performance indicators e.g. regarding the performance of business units or portfolios are used to determine the variable remuneration of identified staff?

11. Yes, these sections are generally clear.

Q8. Is the section on pay out in instruments sufficiently clear?

12. Yes, these sections are generally clear.