

EBACP/2023/08

24/04/2023

Consultation Paper on

Draft Guidelines

on the benchmarking of diversity practices including diversity policies and gender pay gap 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 24/07/2023. 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 issuing 'Guidelines on the benchmarking of diversity practices including diversity policies and gender pay gap under Directive 2013/36/EU and under Directive (EU) 2019/2034'. The guidelines are necessary to ensure a harmonised benchmarking of diversity practices, including the composition of the management body, diversity policies and the gender pay gap at the level of the management body of institutions and investment firms.

The benchmarking of diversity practices will allow competent authorities to monitor diversity trends over time, including the identification of common practices for diversity policies and information on the gender pay gap at the level of the management body. The aspects of diversity that will be analysed concern the gender, age, educational and professional background as well as the geographical provenance of members of the management bodies. The benchmarking of diversity practices should be based on a representative sample of institutions and investment firms.

Templates for the data collection are included in the guidelines, data will be collected via the EBA's data collection platform [EUCLID] and additional technical information for competent authorities regarding the submission of data will be provided separately. Competent authorities will inform the participants of the data collection accordingly.

The EBA will analyse the diversity practices, including diversity policies and the gender pay gap at the level of the management body and publish a benchmarking report at the Union level, including a country-by-country analysis every three years. The data is not collected annually as the composition of the management bodies is not expected to change significantly in the short term but should change in the longer term through taking appropriate measures within institutions and investment firms.

Next steps

The EBA is consulting on the draft guidelines for a period of three months. It is planned that the first data on the diversity practices under these guidelines should be reported in 2025 with a reference date of **31 December 2024**, including in situations where the financial year differs from the calendar year.

3. Background and rationale

1. The European Banking Authority (EBA) is issuing 'Guidelines on the benchmarking of diversity practices including diversity policies and gender pay gap under Directive 2013/36/EU and under Directive (EU) 2019/2034 (guidelines). In line with Article 1(3) of Regulation (EU) No 1093/2010¹ (EBA founding regulation), the EBA's scope of action includes investment firms. The guidelines have been developed in accordance with Article 16 of the EBA founding regulation and in close cooperation with ESMA.
2. So far, the EBA collected data by requesting information from competent authorities under Article 35 of the EBA founding Regulation. In this regard, the EBA published several benchmarking reports on diversity practices within the management body of institutions and investment firms and the gender pay-gap at the level of the management body every three years, since 2016 (based on data for 2015).
3. Under Article 91(10) Directive 2013/36/EU 'Member States or competent authorities should require institutions and their respective nomination committees to engage a broad set of qualities and competences when recruiting members to the management body and for that purpose to put in place a policy promoting diversity on the management body'. Article 91(11) of Directive 2013/36/EU requires that 'competent authorities shall collect the information disclosed in accordance with Article 435(2)(c) of Regulation (EU) No 575/2013 and shall use it to benchmark diversity practices. The competent authorities shall provide EBA with that information. EBA shall use that information to benchmark diversity practices at Union level.' Article 26 of Directive (EU) 2019/2034 requires investment firms, unless they are small and non-interconnected, to have robust governance arrangements. Investment firms, unless they are small and non-interconnected are subject to disclosure requirements regarding diversity policies and their implementation under Article 48 of Regulation (EU) 2019/2033.
4. Under Article 9(1) of Directive 2014/65/EU 'Competent authorities granting the authorisation in accordance with Article 5 shall ensure that investment firms and their management bodies comply with Article 88 and Article 91 of Directive 2013/36/EU. ESMA and EBA shall adopt, jointly, guidelines on the elements listed in Article 91(12) 2013/36/EU.' The present guidelines take into account the further specifications provided on the diversity requirements in this Article in joint ESMA and EBA guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU.²
5. Article 75(2) of Directive 2013/36/EU and Article 34(2) of Directive (EU) 2019/2034 (IFD) require EBA to benchmark the gender pay-gap. For this purpose, the EBA is collecting information for all staff and identified staff under the EBA Guidelines (EBA/GL/2022/06) from credit institutions and

¹ 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

² <https://www.eba.europa.eu/joint-esma-and-eba-guidelines-assessment-suitability-members-management-body-revised>

(EBA/GL/2022/07) from investment firms. The EBA is collecting separately information on the gender pay gap at the level of the management body and for this purpose EBA should collect data on the pay gap at the level of the management body, as part of these guidelines. A separate analysis for the management body who holds the ultimate responsibility for the entity and has therefore positions that are more comparable positions, can provide a clearer view on the pay gap at the top hierarchical level as an analysis based on information for all identified staff.

6. These guidelines harmonise the collection of data for diversity benchmarking and the benchmarking of the gender pay gap at the level of the management body.
7. The Guidelines set out the process on how a representative sample of institutions and investment firms should be formed by competent authorities. Further instructions will be provided to competent authorities before the data collection, ensuring that the sample is established in good time before the data submission. It is intended that the sample covers at least 10% of the institutions and investment firms and covers different types of institutions and investment firms according to their nature, governance system and their size. To ensure that institutions of different size are appropriately represented, it is appropriate to apply such a percentage to different size categories. The following categories for institutions size, based on the balance sheet total at the end of the financial year, have been used in previous exercises: < EUR 1 bn; EUR 1 bn to <10 bn; EUR 10 bn to <30 bn; EUR 30 bn and above and investment firms. Where there has been a high number of institutions, it has been considered proportionate to limit the sample size to 50 institutions per size category.
8. To ensure that the results are not based only on data from single institutions, but reflect the market practices, it is necessary that competent authorities collect information, where possible, of at least five entities for each defined size category of institutions and for investment firms. Where necessary, the EBA might ask additional information from competent authorities, e.g. to analyse additional qualitative aspects of diversity policies and practices that cannot be expressed by the data collected under these guidelines.
9. To identify trends in the longer term, it is necessary that changes to the sample are avoided as much as possible. However, to take into account changes to the size of institutions, mergers and other changes, smaller adjustments to the sample are necessary to maintain its size and statistical basis. The established sample will be communicated well in advance of the data collection and made publicly available.
10. Data on the diversity of the management body and the gender pay gap is collected separately for the members within the management function (executive directors) and supervisory function (non-executive directors) of the management body. This is not limited to the aspect of gender diversity, but extends to other aspects, including age, educational and professional background and the geographical provenance of directors (see recital 60 of Directive 2013/36/EU). A separate collection of information for employee representatives is needed as those non-executive directors are appointed by a different process and as the requirements on the selection of employee representatives differ materially between Member States. Under Article 91(10) of Directive 2013/36/EU, diversity should be taken into account when recruiting new members, which is a

different process as compared to the election of employee representatives. However, also the diversity within the staff representation is important.

11. The guidelines take into account that in some Member States genders different from the male or female gender exist and that persons may change their gender in line with the national law. Directors should be allocated as a general principle to their legal gender. As different national gender definitions exist, the guidelines follow the approach taken by Eurostat in some data collections to have three gender categories, namely male, female and non-binary.
12. Gender pay gap data for the management body is collected separately for the management function and for the supervisory function to analyse the composition of the different functions and to take into account differences in their remuneration level. Moreover, in some jurisdictions members of the supervisory function receive a fixed attendance fee only. Where this fee is not differentiated for individual members, remuneration is set in a gender-neutral way without the existence of a gender pay gap. The data collection needs to consider that many credit institutions and investment firms have only directors of one gender, so that a gender pay gap cannot be determined.
13. To ensure the protection of personal data, the gender pay gap will be calculated by institutions and investment firms and the resulting percentages will be submitted to the EBA. An example for the calculation is provided at the end of the background section.
14. Due to differences in company laws, it is necessary to provide clear and uniform definitions that specify the executive and non-executive directors that should be included in the data collection. This may include situations where the chief executive officer or other executive directors are themselves not members of the governance body of the institution or investment firm from a company law perspective. Different from national company law, it should be noted that the definition of management body within Directive 2013/36/EU includes always at least two persons that effectively direct the business of the institution. The same definition is also applicable to investment firms. However, Article 9(6) of Directive 2014/65/EU provides the possibility that the competent authority approves that investment firms may have only one executive director. In the latter case, such investment firms should not be included in the sample, as there is no diversity in a management body that consists of only one director. The same applies with regard to institutions where the competent authority has waived the individual application of certain requirements under Article 21 of Directive 2013/36/EU as for such subsidiaries the respective requirements do not apply on an individual level.
15. Some additional instructions are provided to ensure that the data on diversity practices, including the composition of the management body, diversity policies and the gender pay gap at the level of the management body of institutions and investment firms have the appropriate quality for deriving reliable benchmarks and results.
16. The data collection exercise will be implemented in the EBAs tool for data collections (EUCLID). The EBA will provide to competent authorities technical instructions for the processing and submission of the data outside of these guidelines. Additional data quality checks will be implemented in the IT systems used for the data collection.

Example for the calculation of the pay gap

Remuneration ordered by gender and amount for each of the categories defined in Annex XI:

Men:

Remuneration male director 1 = EUR 100 000

Remuneration male director 2 = EUR 108 000

Remuneration male director 3 = EUR 110 000

Mean= $(100\,000+108\,000+110\,000) / 3 = 106\,000$

Median= 108 000

Women:

Remuneration female director 1 = EUR 100 000

Remuneration female director 2 = EUR 102 000

Remuneration female director 3 = EUR 112 000

Remuneration female director 4 = EUR 140 000

Mean= $(100\,000 + 102\,000 + 112\,000 + 140\,000) / 4 = 113\,500$

Median = $(102\,000 + 112\,000) / 2 = 107\,000$

Pay Gap:

Mean: $100 \times (106\,000 - 113\,500) / 106\,000 = -7.08\%$ (rounded)

Median: $100 \times (108\,000 - 107\,000) / 108\,000 = 0.92\%$ (rounded)

EBA/GL/2023/XX

DD Month YYYY

Draft Guidelines

on the benchmarking of diversity practices including diversity policies and gender pay gap under Directive 2013/36/EU and 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 1093/2010³. 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 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/2023/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).

³ 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

5. These guidelines specify, for the purposes of the harmonised benchmarking of diversity practices in accordance with Article 91(11) of Directive 2013/36/EU and Article 26 of Directive (EU) 2019/2034, the information to be provided by institutions and investment firms unless they are small and non-interconnected, to competent authorities and from competent authorities to the European Banking Authority (EBA) for benchmarking diversity practices, including information disclosed in accordance with Article 435(2)(c) of Regulation (EU) No 575/2013 and under Article 48 of Regulation (EU) 2019/2033.
6. These guidelines also specify for the purposes of the harmonised benchmarking of the gender pay-gap at the level of the management body, the information to be provided by institutions and investment firms, unless they are small and non-interconnected, to competent authorities in accordance with Article 75(1) of Directive 2013/36/EU and Article 34(1) of Directive (EU) 2019/2034 and from competent authorities to the EBA.

Scope of application

7. The guidelines apply in relation to the information that competent authorities should collect from institutions and investment firms regarding diversity practices, including the composition of the management body, diversity policies and the gender pay gap at the level of the management body and submit to the EBA for the purposes of publishing that information at the Union level and country by country.
8. The guidelines apply on an individual basis as set out in Articles 6 to 10 of Regulation (EU) No 575/2013 and in Articles 5 and 6 of Regulation (EU) 2019/2033.

Addressees

9. These guidelines are addressed to competent authorities as referred to in Article 4(2), points (i) and (viii) of Regulation (EU) No 1093/2010 and to financial institutions as defined in Article 4(1) of Regulation (EU) No 1093/2010 that are institutions as defined in Article 4(1), point (3) of Regulation (EU) 575/2013, having regard to investment firms subject to Articles 1(2) or (5) of Regulation (EU) 2019/2033 (each reference to institutions should be understood as including such investment firms), and to investment firms as defined in point (1) of Article 4(1) of Directive (EU) 2014/65 that are subject to Articles 25 and 34 of Directive (EU) 2019/2034.

Definitions

10. Terms used and defined in Directive 2013/36/EU, Regulation (EU) No 575/2013 and Directive (EU) 2019/2034 and Regulation (EU) 2019/2033 and the 'Joint EBA-ESMA guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and under Directive 2014/65/EU'⁴, have the same meaning in these guidelines, unless it is provided otherwise in this section.

Chief executive officer (CEO).	means the person who is responsible for managing and steering the overall business activities of an institution or investment firm and should include, for the purpose of this exercise, the chair or president of the management body in its management function.
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Chairperson	means the chair of the management body in its supervisory function of an institution in accordance with Article 88 of Directive 2013/36/EU.
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Significant institution	means institutions referred to in Article 131 of Directive 2013/36/EU (global systemically important institutions (G-SIIs), and other systemically important institutions (O-SIIs)), and, as appropriate, other institutions determined by the competent authority or national law, based on an assessment of the institutions' size and, internal organisation, and the nature, scope and complexity of their activities.
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Geographical provenance	means the region where a person has gained a cultural, educational or professional background that spans a time period of at least three years.
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Professional background	means experience gathered by a member of the management body by conducting professional activities that span a time period of at least three years before taking up the current position.
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Implementation

Date of application

11. These guidelines apply from [3 month after the publication of translations in all official EU languages].

⁴ EBA/GL/2017/12

12. The first data collection from institutions and investment firms by competent authorities and submission to the EBA will be performed in 2025, with the reference date 31 December 2024.

Q1: Is the section on subject matter, scope, definitions, addressees, and implementation appropriate and sufficiently clear?

4. Guidelines

1. Sample of institutions and investment firms to be included in the diversity practices benchmarking

13. Competent authorities should collect and submit to the EBA data on diversity practices including on diversity policies and gender pay gap at the level of the management body for a representative sample of institutions and investment firms within the Member State at the individual level.
14. The sample should consist of institutions subject to Directive 2013/36/EU and investment firms that are either subject to the requirements on governance under Article 91 of Directive 2013/36/EU, in accordance with Article 1(2) or (5) of Regulation (EU) 2019/2033 (Class 1-), or subject to Article 26 of Directive (EU) 2019/2034 (Class 2). The sample may include on an individual basis more than one institution or investment firm within a group. Competent authorities should not add investment firms to the sample where they have approved that there is only one person directing the business under Article 9(6) of Directive 2014/65/EU.
15. The EBA will approach competent authorities in good time before each data collection and provide further information on how to establish the sample of institutions and investment firms for which data should be collected. Following the request competent authorities should inform the EBA about the list of institutions and investment firms that they intend to include in the diversity practices benchmarking exercise within the timeline provided by the EBA.
16. Competent authorities should inform institutions and investment firms that form part of the sample in good time of the data collection.

Q2: Is the section 1 on the sample of institutions and investment firms appropriate and sufficiently clear?

2. Submission of diversity practices benchmarking data

17. Institutions and investment firms should ensure that they are able to provide information on diversity policies, diversity practices and the gender pay gap at the level of the management body, as specified in these guidelines, to the competent authority.
18. Institutions and investment firms, that have been selected to form part of the sample, should by 15 June every three years, starting from 2025 with a reference date of 31 December 2024, submit the requested data on the individual level to the competent authority.

19. Competent authorities should provide to the institutions and investment firms the necessary additional technical instructions to submit the data set out in Annexes I to XI of these guidelines.
20. Competent authorities should submit to the EBA the data provided by institutions and investment firms in accordance with paragraph 18, by 31 July after ensuring the completeness, correctness and plausibility of the information. Technical information for competent authorities on the data submission, (e.g. the data format and data point model), will be provided separately by the EBA.

Q3: Are the section 2 on the procedural requirements appropriate and sufficiently clear?

3. General specifications for the submission of diversity practices benchmarking data

21. The reference date for data should be the end of the calendar year for which data has to be provided. The information provided on the composition of the management body and the implemented policies should reflect the situation at the reference date.
22. Financial data should be submitted using accounting year-end figures in EUR. Where such data is disclosed in a currency other than the EUR, the exchange rate used by the European Commission for financial programming and the budget for December of the reported year should be used for the conversion of the figures to be reported⁵.
23. In many cases, the possible range of input data are defined. Where the correct answer would not be within the defined range of defined values, the institution or investment firm should select the answer which best reflects the situation or where this is not possible leave the field empty, contact the competent authority and provide explanations. The competent authority should forward this information to the EBA.

4. Specification of the governance system to be provided

24. Institutions and investment firms should indicate their governance system. For the purpose of this exercise, the differentiation should be limited to either a unified board system (1-tier system) or a dual board system (2-tier system). Hybrid systems should be allocated to these systems as indicated in points (a) and (b) hereunder, independent of the existence of additional executive boards, audit, remuneration or nomination committees or the fact that certain decisions are directly taken by shareholders rather than the management body.
 - a. A 1-tier system should be understood as a system, where all members of the management body in its management function and all members of the management body in its supervisory function form one management body with the responsibility to set the institution's strategy, objectives and overall direction. Where there is, in addition to this unitary board, a mandatory executive board, institutions and investment firms should still be considered to have a 1-tier structure.

⁵ The EBA provides a link to the information on its website together with these guidelines; the exchange rate can also be accessed at http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm

- b. A 2-tier system should be understood as a system, where the management body in its management function (executive directors, including the CEO) forms a distinct body from the body that consists only of the members of the management body in their supervisory function (non-executive directors), i.e. a unitary board does not exist at all.

Q4: Are the general specifications for the data collection appropriate and sufficiently clear?

5. Specifications for the submission of data on members of the management body

25. Where data is requested regarding the CEO, only data for the CEO should be reported under this category, data on deputy or vice CEOs should be reported under the category 'executive directors'. Where none of the executive directors has a role as CEO, all data on executive directors should be reported under the category 'executive directors'.
26. Where data is to be provided for executive directors, this data should include information on:
- a. those members of the management body who have executive functions and that are responsible for the effective direction of the institution or the investment firm,
 - b. the persons who effectively direct the business in line with Article 13(1) of Directive 2013/36/EU, in the case of an institution, or in line with 9(6) of Directive 2014/65/EU, in the case of an investment firm, independent of the fact whether or not they are members of the governance body elected by shareholders.
27. Where data is requested regarding the Chairperson, only data for the Chairperson should be reported under this category, deputy or vice Chairpersons should be reported only under the category 'non-executive directors'. Where none of the non-executive directors has a role as Chairperson, all data should be reported under the category 'non-executive directors'.
28. Where data is to be provided for non-executive directors, this data should include separately information on:
- a. members of the management body who are responsible for overseeing and monitoring management decision-making without having executive duties,
 - b. where applicable, employee representatives that are members of the management body.
29. Members of the management body should be allocated to their legal gender. Genders that differ from the male or female gender form a third category of genders, referred to as non-binary.
30. Where the competent authority has approved that the CEO can also hold the position of the chairperson, the information on that director should only be provided under the category 'executive director', including for the calculation of the gender pay gap. [the provision will be removed in final GL when the combination of these mandates would be prohibited under CRD VI]

Q5: Are the specifications on the collection of data of members of the management body (read together with the definitions) appropriate and sufficiently clear?

6. Specifications for the calculation of the gender pay gap

31. Competent authorities should collect data on the gender pay gap expressed as percentages of the difference between the average pay of female and male members of the management body and the difference between non-binary and male members of the management body, based on the mean and the median remuneration of executive directors, non-executive directors and employee representatives.
32. For the purpose of paragraph 36, institutions and investment firms should establish the total gross annual remuneration as the sum of fixed and variable remuneration before tax, considering the following:
 - a. Non-monetary benefits (e.g. company car, interest-free loans, free company kindergarten etc.) should be taken into account at their taxed monetary equivalent.
 - b. Regular payments into the pension system and health insurance for all staff should not be considered. Discretionary pension benefits should be considered.
 - c. The full variable remuneration awarded for all performance periods that ended during the financial year should be used, even if they concern performance periods longer than one year. This should include variable remuneration based on non-revolving multiannual performance periods.
 - d. Guaranteed variable remuneration (sign-on bonus) and severance payments (e.g. where the contract of staff has not yet ended at the end of the financial year) should not be taken into account in the calculation.
33. Where a member of the management body was remunerated only for a part of the financial year, the remuneration received should be scaled up to the amount that would have been the total gross annual remuneration, if that member was remunerated for the complete year. Members who were not employed any longer at the end of the financial year and their remuneration should not be taken into account.
34. For employee representatives only the amounts awarded for their function as member of the management body should be considered.
35. Where non-executive directors or employee representatives receive remuneration for their function in the form of a fixed daily participation fee, the reported amount should be the participation fee for one day, independent of the number of days that have been remunerated.
36. Institutions and investment firms should comply with the following instructions when calculating the mean and median remuneration to be reported in Annex XI:
 - a. Separately for executive directors, non-executive directors and employee representatives, each director's remuneration should be allocated to the applicable gender.

- b. The remuneration of members separately for each gender should be arranged by the amount, beginning with the lowest amount.
 - c. The median and mean of the remuneration for male, female and non-binary executive directors, non-executive directors and employee representatives should be calculated.
37. The mean should be calculated as the sum of the remuneration divided by the number of directors in the relevant category specified under paragraph 36(c).
38. The median to be calculated under paragraph 36(c) is the middle value of the distribution of remuneration values established under paragraph 36(b). In the case of an even number of directors within a category, the median is the mean of the two middle numbers.
39. Institutions and investment firms should calculate for each of the categories provided in Annex XI the gender pay gap by calculating:
- a. The difference between the mean remuneration of men and women, divided by the mean remuneration of men.
 - b. The difference between the median remuneration of men and women, divided by the median remuneration of men.
 - c. The difference between the mean remuneration of men and non-binary members, divided by the mean remuneration of men.
 - d. The difference between the median remuneration of men and non-binary members, divided by the median remuneration of men.
40. When the gender pay gap between male and female members or the pay gap between male and non-binary members cannot be calculated as the category does not contain both of the respective genders, institutions and investment firms should provide the value 'n/a' (not-available) instead of calculating the percentage.

Q6: Is the section on the instructions for the calculation of the gender pay gap appropriate and sufficiently clear?
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7. Data quality

41. Before submitting data to their competent authorities, institutions and investment firms should check the completeness and plausibility of data and apply necessary corrections. The same should apply to competent authorities before they submit the data to the EBA.
42. The EBA will define additional data quality controls as part of their IT-system for the collection of data.
43. When requested by the EBA, competent authorities should provide as necessary corrected data or explanations to any implausible data as soon as possible.
44. For the purpose of the data quality checks, competent authorities should verify:

- a. that the templates are filled in completely and on an individual basis,
 - b. the correct indication of the governance structure,
 - c. the correct selection of the size category by the institution,
 - d. the correct selection if an institution is categorized as significant or non-significant, and
 - e. the plausibility of the number of directors, considering that data should be provided on an individual basis.
45. When submitting diversity practices benchmarking data to the EBA, competent authorities should ensure that they also comply with EBA/DC/335 of 5 June 2020 on EUCLID (“EUCLID Decision”)⁶ as amended and that they provide institutions and investment firms with any technical specification necessary for the continuous compliance with the EUCLID Decision.

Q7: Is the section on data quality appropriate and sufficiently clear?

Q8: Are the Annexes on the data collection appropriate and sufficiently clear?

⁶https://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: Questionnaire on diversity benchmarking set out in Annex 1;

Fact sheet		
Corporate name	[insert corporate name]	
LEI	[insert LEI]	
Contact person:	[insert]	
Contact details - telephone	+[ME prefix] [insert telephone]	
Contact details - email	[insert e-mail]	
Member State:		
Number of executive directors (including the CEO):		
Has the national competent authority approved exceptionally that the positions of CEO and Chairperson are held by the same person? ¹ (data field will be removed depending on the adoption of the CRD VI proposal)		
Number of non-executive directors (including the chairperson, excluding employee representatives):		
Employee representatives that are members of the management body:		
Balance sheet total in Euro (individual basis):		
Total own funds in Euro (individual basis) ² :		
Profit or (-) loss before tax from continuing operations in EUR (individual basis):		
1-Tier/2-Tier structure (please select):		
Category of the institution/investment firm (please select):		
Is the institution significant (yes/no)?:		
Is the institution a listed company (yes/no)?:		

¹ If the competent authority has approved that the positions of CEO and Chairperson are held by the same person, the CEO/Chairperson should only be reported as executive director in Q1.

² Please include the COREP figure as provided in Annex I to Commission Implementing Regulation (EU) 2021/451 of 17 December 2020, template, Own funds (CA1), Row 0010 for the institution on the individual basis.

Annex II – Executive directors’ age and gender

Gender	Age						Total number of executive directors by gender
	<30	30-40	41-50	51-60	61-70	>70	
CEO, male:							0
CEO, female:							0
CEO, non-binary:							0
Executive directors (excluding CEO), male:							0
Executive directors (excluding CEO), female:							0
Executive directors (excluding CEO), non-binary:							0
Total number of executive directors per age category:	0	0	0	0	0	0	0

Annex III – Composition of committees

Where committees are in place, please indicate the number of members and their gender. Where committees are combined committees, as indicated below, the numbers should be provided for the combined committee only.			
Category/gender	Male	Female	Non-binary
Chair of risk committee			
Other members of the risk committee			
Chair of audit committee			
Other members of audit committee			
Chair of combined audit and risk committee			
Other members of combined audit and risk committee			
Chair of nomination committee			
Other members of the nomination committee			
Chair of remuneration committee			
Other members of remuneration committee			
Chair of the combined nomination and remuneration committee			
Other members of the combined nomination and remuneration committee			

Annex IV – Non-executive directors’ age and gender

Gender/age	<30	30-40	41-50	51-60	61-70	>70	Total number of non-executive directors by gender
Chairperson, male:							0
Chairperson, female:							0
Chairperson, non-binary:							0
Non-executive directors, male ¹ :							0
Non-executive directors, female ² :							0
Non-executive directors, non- binary ³ :							0
Employee representatives, male:							0
Employee representatives, female:							0
Employee representatives, non-binary:							0
Total number of non-executive directors by age category	0						

¹ Please do not include the chairperson or employee representatives.

² See footnote 1.

³ See footnote 1.

Annex V – Newly appointed executive directors

	Number of executive directors ([REFERENCE PERIOD])¹
Male:	
Female:	
Non-binary:	
Total	0

¹ The reference period encompasses the three years before the reference data for which data is submitted on the composition of the management body, newly appointed directors within this period should be included. Directors that have been reappointed to the same position should not be included.

Annex VI: Newly appointed non-executive directors:

	Number of non-executive directors ([REFERENCE PERIOD])¹
Male (excluding employee representatives):	
Female (excluding employee representatives):	
Non-Binary (excluding employee representatives):	
Male employee representatives:	
Female employee representatives:	
Non-binary employee representatives:	
Total	0

¹ The reference period encompasses the three years before the reference data for which data is submitted on the composition of the management body, newly appointed directors within this period should be included. Directors that have been reappointed to the same position should not be included.

Annex VII – Business Regions/Geographical provenance

The regions where the institution or investment firm is active (subsidiary/branch/cross-border basis with material business activities) should be selected (Yes/No). For the categories of executive or non-executive directors it should be indicated (yes/no/non-applicable) if at least one director has a geographical provenance, that spans at least a period of three years, from the corresponding region. Non applicable should only be selected, where there are no non-executive directors in the case of investment firms or employee representatives.

	EU/EEA (including the Member State where the institution has its seat)	Europe (non EU/EEA)	Africa	North America	South America	Asia	Australia
Institution/Investment Firm active in							
Executive directors with background in:							
Non-executive directors (excluding employee representatives) with background in:							
Where applicable, employee representatives with background in:							

Annex VIII – Educational Background

Please provide the number of directors for each educational background (multiple degrees per director are possible).			
Subjects of tertiary education ¹ :	Executive directors	Non-executive directors (excluding employee representatives)	Employee representatives
Law			
Business administration or Economics:			
Mathematics, Physics, Engineering, other natural science:			
Information technology:			
University degrees in other than the above subjects:			
Tertiary education in banking or finance: ²			
Other tertiary education:			
None of the above tertiary educations:			
Total:	0	0	0

¹ Tertiary education includes completed post-secondary educations and degrees (PhD, Master, Bachelor or comparable) from universities as well as trade schools and colleges.

² E.g. a certified 2 to 3 year traineeship in banking with an exam completed at a trade school.

Annex IX – Professional Background

Professional Background:			
Please provide the number of directors for each sector (multiple sectors per director are possible).			
Sector	Executive directors	Non-executive directors (excluding employee representatives)	Employee representatives
Banking			
Investment firms, UCITS, AIFs			
Payment institutions			
Insurance, occupational pension schemes			
Information and communication technology			
Energy			
Environment ¹			
HR, Sociology, Psychology			
Legal services			
Consulting, Auditing, Tax advice			
Marketing			
Public service (financial supervisor)			
Public service (other)			
Industrial production			
Agriculture			
Medical services			
Other			
Total	0	0	0

¹ This comprises e.g. urban planning, ecologist, meteorologist, forestry, coastal preservation, sustainability management.

Annex X – Diversity Policy

a) Nomination Committee and diversity policy	
Does the institution/investment firm have a nomination committee?	Yes/No
Does the institution/investment firm have a diversity policy?	Yes/No
Does the diversity policy include a target for the representation of the underrepresented male or female gender?	Quantitative target set as percentage: (yes/no)
	Quantitative target set as headcount: (yes/no)
	Qualitative target (e.g. aiming at an appropriate gender balance): (yes/no)
Diversity policy on non-binary members: Does the policy explicitly consider non-binary directors (please select the option that best describes your policy)?	<ul style="list-style-type: none"> • Non-discrimination is ensured within the policy • Policy aims at the representation of non-binary directors • The aspect has not yet been considered in the policy • Not applicable-does legally not exist in the Member State • Other
b) Diversity in the recruitment process of the members of the management body:	
Are the following aspects considered in the recruitment process as required under Article 91 (10) Directive 2013/36/EU and the Joint EBA and ESMA guidelines on the assessment of the suitability of members of the management body?	
Gender diversity:	Yes/No
Age:	Yes/No
Educational background:	Yes/No
Professional background:	Yes/No

Geographical provenance: (please select)	<ul style="list-style-type: none"> • Cultural immersion (including gained by educational or professional background) • Ethnic diversity • Cultural immersion and Ethnic diversity • Not applicable
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c) Gender diversity:
Please provide the indicated details regarding the diversity policy and its implementation.

SCOPE: For which scope of members of the management body are gender diversity targets set? (please select from drop down menu)	<ul style="list-style-type: none"> • Target set for the management body, as a whole • Different targets set for the management and supervisory function of the management body • Targets set only for the management body in the supervisory function (non-executive directors) • Targets set only for the management body in its management function (executive directors) • No targets for gender diversity set.
Are employee representatives included in the target set for the supervisory function?	<ul style="list-style-type: none"> • Yes • No, a separate target is set • No, no target is set

Please provide information on quantitative targets set within the diversity policy

Percentage:	Percentage for executive directors	Percentage for non-executive directors	Percentage for management body (only if a target is set for the management body, as a whole)	Percentage employee representatives (only if a separate target is set)
Target: %set in percentage (two digits e.g. 33.33%) in the diversity policy, including in cases where this is applicable under national law				

Target expressed as minimum headcount	Executive directors	Non-executive directors	Management body (only if a target is set for the management body, as a whole)	Employee representatives (only if a separate target is set)
Target minimum headcount in the diversity policy (number of members):				
Compliance with the internal policy				
Has the target been met at the reference date?	Yes/no			

d) Other aspects than gender included in the diversity policy¹⁷		
	Is this feature considered in the diversity policy? please select ('yes') or ('no')	Has the policy target been met at the reference date? please select ('yes') or ('no')
Age		
Educational background		
Professional background		
Geographical provenance		

¹⁷ See also paragraph 103 of the Joint EBA and ESMA Guidelines on the assessment of the suitability of members of the management body and key function holders

Annex XI – Gender Pay Gap Benchmarking¹⁸.

category	Gender pay gap between the remuneration of men and women in percentage of the remuneration of men, based on the median remuneration of members, or if it cannot be calculated, as the below category does not comprise male and female directors, please indicate not-available (n/a)	Gender pay gap between the remuneration of men and women in percentage of the remuneration of men, based on the mean remuneration of members, or if it cannot be calculated, as the below category does not comprise male and female directors, please indicate not-available (n/a).	Gender pay gap between the remuneration of men and non-binary members in percentage of the remuneration of men, based on the median remuneration of members, or if it cannot be calculated, as the below category does not comprise male and non-binary directors, please indicate not- available (n/a).	Gender pay gap between the remuneration of men and non-binary members in percentage of the remuneration of men, based on the mean remuneration of members, or if it cannot be calculated, as the below category does not comprise male and non-binary directors, please indicate not- available (n/a).
Executive directors (including CEO)				
executive directors (excluding CEO)				
Non-executive directors (including Chairperson, without employee representatives)				
Non-executive directors (excluding Chairperson and employee representatives)				
non-executive directors (employee representatives only)				

¹⁸ Please refer to the further guidelines in section 6 and paragraph 40.

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.

In this section we look at specific issues where various options were weighed, and choices made. The section explains the costs of benefits of each of these options and the preferred option.

Data for diversity benchmarking

Problem identification:

Article 91 (10) requires that institutions “...engage a broad set of qualities and competences when recruiting members to the management body and for that purpose to put in place a policy promoting diversity on the management body.” Under paragraph (11) of this Article 11, “competent authorities shall collect the information disclosed in accordance with Article 435(2)(c) of Regulation (EU) No 575/2013 and shall use it to benchmark diversity practices. The competent authorities shall provide EBA with that information. EBA shall use that information to benchmark diversity practices at Union level.”

The same requirements apply to investment firms under Article 9(1) of Directive 2014/65/EU (MiFID).

Article 435(2)(c) of Regulation (EU) No 575/2013 requires institutions and Article 48(b) of Regulation (EU) 2019/2033 requires investment firms to disclose “the policy on diversity with regard to selection of members of the management body, its objectives and any relevant targets set out in that policy, and the extent to which those objectives and targets have been achieved”.

Article 75(1) of Directive 2014/36/EU requires the collection of data on the gender pay gap and Regulation (EU) 2019/2033 requires the disclosure of data on the gender pay gap for identified staff, including for members of the management body that are identified staff in line with the RTS on identified staff²⁰. The EBA is mandated to benchmark these information as part of their benchmarking of remuneration practices.

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

²⁰ Commission Delegated Regulation 2021/923 and 2021/2154

For the disclosure of data that are to be benchmarked no harmonised templates exist. To derive and present comparable information and present trends over time, it is necessary to provide for clear templates for the data collection and for a clear definition of the datapoints to be submitted.

Options:

Approach to the data collection

A: collection of data under an information request

B collection of data under EBA guidelines

In previous exercises data has been collected by competent authorities based on an information request. Data has been collected with Excel sheets and submitted to the EBA in a secured way. The manual processes caused proved to be quite burdensome and time intensive.

Institutions received instructions and tables and had a sufficient time period to prepare the data collection. While the data has a low complexity, it involves contacting the management body who has scarce availability.

After executing three data collection exercises, the information to be collected and analysis performed reached a steady state and therefore the EBA will implement the data collection in its data collection tool (EUCLID). At the same time the templates are considered stable enough to allow to issue a guideline. Guidelines are publicly available and therefore institutions are aware of the data that will be collected from them, if they are placed in the sample by competent authorities.

Having Guidelines and regular report increases the transparency on diversity practices and reduces the workload for issuing information requests. In addition, they will be translated which should lead to a full and clear understanding of the data to be collected. Option B has been retained with regard to the templates and high level guidelines on the sample composition and data collection processes, while the sample of institutions and technical implementation will be further specified outside these guidelines under respective EBA decisions.

Collection of data on the gender pay gap separately for the management body as part of the diversity benchmarking exercise

As part of the Guidelines on remuneration benchmarking exercises the EBA collects already data on the gender pay gap for all staff and identified staff.

Option A: No further data collection is needed for the benchmarking of the gender pay gap of members of the management body.

Option B: Collection of data on the gender pay gap at the level of the management body

While the group of identified staff includes the members of the management body, it also includes other staff. The responsibilities of the members of the management body are comparable. Therefore, the pay-gap is subject to less other factors that drive differences in pay. Hence, it is seen beneficial to perform a separate analysis.

The parallel collection of diversity data, including the gender of members and remuneration data for the management body allows a more in-depth analysis of trends at the highest hierarchical level, it is more effective to collect all the required data together.

Option B has been retained,

Collection of remuneration data or collection of percentual differences of the remuneration between members of different gender

Option A: Collection of remuneration data

Option B: Collection directly of the percentages of the gender pay gap.

The collection of remuneration data would be possible as Member States and Competent authorities can require that institutions publish the individual remuneration data of board members as part of the disclosure requirements. In addition, there is a clear mandate for EBA under CRD and IFD to benchmark the pay gap. However, the EBA is aware that the collection of such data is linked to additional administrative burden under applicable data protection laws.

While the collection of remuneration data would ensure a high level of data quality and the possibility to calculate pay gaps also on a country by country basis, it has been seen sufficient to receive the pay gap data already calculated by institutions and investment firms as a percentage of the pay gap as also other European bodies, e.g. EUROSTAT, perform similar analysis by other means.

To allow for this process it is important that all participants in the data collection ensure the correct calculation of the data. For this reason the EBA provided detailed instruction on the calculation, including on statistical concepts that should be well known to institutions and investment firms.

Option B has been retained.

Collection of data at the individual level or consolidated level

Option A: Data should be collected on the individual level

Option B: data should be collected at the consolidated level

The analysis of data on a consolidated level (including all group entities) would not be efficient as the composition of each board would not be visible. While such data would cover more institutions and could help to determine overall results in terms of gender representation at boards in the

financial sector, the purpose of the exercise is also to analyse the diversity practices at each individual board level. This is only possible if individual institutions data is collected.

Option A has been retained

Data should be collected annually or at a longer time period

Option A: annual data collection

Option B: Data collection only after sufficiently long time periods

The sample covers nearly 800 institutions, the composition of the management body does normally not change a lot within one year, hence an annual data collection would have very little advantage, but create more burden.

Option B has been retained

Sample of institutions

Option A : Definition of the sample as part of the guidelines

Option B: Providing high level principle for the formation of a sample

Option C: collecting information from all institutions and investment firms

Collecting data from all institutions and investment firms would be legally possible. A complete data collection would derive the most reliable results. Considering the burden it appeared so far possible to derive reliable benchmarks and to monitor the situation in institutions based on a representative sample. As market structures change the sample also will change slightly over time, but should be kept stable as much as possible. To this end high level principles to define the sample would be sufficient. Defining all criteria for the sample in the guidelines would not provide for the sufficient flexibility to make adjustments to the sample, where they are needed, without changing the guidelines.

Option B has been retained

Data on diversity policies and practices to be collected.

The data defined within the information request has proven to be sufficient for the analysis. Therefore it is feasible to continue with a stable set of information. A few minor adjustments have been applied to reflect the experiences gathered during the last exercise , aiming at a higher level of clarity in particular of instructions on the calculation of the pay gap.

No other option.

Overall conclusion

The GL are necessary to harmonise the collection of data. Ad hoc data collections have proven to be burdensome for competent authorities and the EBA. A more harmonized approach should lead to more efficient processes.

While the Guidelines do not aim at specifying the templates for the purpose of disclosures of institutions and investment firms, they might contribute to a higher level of transparency regarding the diversity of the management body, firstly because the EBA will publish its benchmarking results, but secondly also because institutions and investment firms may find it convenient to use some of the templates for the disclosure of data on their management body as part of their compliance with disclosure requirements.

5.2 Overview of questions for consultation

Q1: Is the section on subject matter, scope, definitions, addressees, and implementation appropriate and sufficiently clear?

Q2: Is the section 1 on the sample of institutions and investment firms appropriate and sufficiently clear?

Q3: Are the section 2 on the procedural requirements appropriate and sufficiently clear?

Q4: Are the general specifications for the data collection appropriate and sufficiently clear?

Q5: Are the specifications on the collection of data of members of the management body (read together with the definitions) appropriate and sufficiently clear?

Q6: Is the section on the instructions for the calculation of the gender pay gap appropriate and sufficiently clear?

Q7: Is the section on data quality appropriate and sufficiently clear?

Q8: Are the Annexes on the data collection appropriate and sufficiently clear?