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**EBF RESPONSE TO EBA CONSULTATION ON THE Draft Implementing Technical Standards On public disclosures by institutions of the information referred to in Titles II and III of Part Eight of Regulation (EU) No 575/2013**

The European Banking Federation (EBF) welcomes the opportunity to express the views of the European banking industry on the consultation paper regarding the comprehensive draft ITS on institutions’ public disclosures (EBA-CP 2019-09).

We appreciate your consideration of our general remarks about the consultation and remain at your disposal to elaborate further on our views.

* **Timing of implementation**

The application date of the proposed changes is currently set for 28 June 2021. If banks are to report correctly in Q2 2021, this implies that they should already be able to collect data at least from Q1 2021. In our opinion, this timeline is not realistic given the fact that the proposed changes require the integration of 2 reporting processes which have until now been separated.

Moreover, further changes to COREP and Pillar 3 disclosure are expected when the finalised Basel III framework will be introduced, planned for Q1 2022. This will inevitably cause considerable changes to reporting tables, accompanying taxonomies, validations rules, etc. Making fundamental changes to the reporting and disclosure framework less than a year before this Basel-III overhaul would place a significant burden on institutions.

Therefore, we propose to split the timing of the implementation, whereby the changes due to CRR2 would continue to be applicable as of 28 June 2021, while the integration of Pillar 3 into COREP/FINREP is merged together with the expected changes due to the implementation of Basel III which gives somewhat more time to carefully prepare the implementation.

In any case, for banks to be able to deliver the proposed integration of Pillar 3, the reporting ITS must be finalised well in advance.

Furthermore, we are concerned about the simultaneous implementation of different disclosure practices, i.e. Shareholder Rights Directive II (SRD II) that also comes into effect. We ask that the disclosure practice and definitions across remuneration templates (REM1 - REM5) is aligned with SRD II to avoid overlapping reporting for the obvious confusion of any reader.

* **Harmonization of Pillar 3 and reporting**

In addition to the technical merging of information in an ITS and the implementation of CRR II changes, we consider that an essential conceptual focus of the consultation paper is the planned harmonization with reporting requirements. We generally rate such harmonization of disclosure and reporting as positive, provided that it eases the burden on the banks. For us, this means that the information on quantitative disclosure should be derived consistently from the registration forms. In addition, references to EBA guidelines should then be avoided.

With the inclusion of the disclosure forms in the regulatory reporting system or with the expectation that the later disclosure corresponds to the submitted reporting forms, however, a number of new questions or problems arise. In order to ensure that harmonization leads to the desired relief, adequate solutions still have to be implemented here.

In our view, the problem is the shortening of the time available for the creation of the templates. While some templates can be filled quite easily as part of the report creation, the requirements of other templates, such as templates C34.01 "*Size of derivative business"*, C08.04 *"RWEA flow statements"* and C08.05 *"IRB approach to capital" requirements: back-testing of pd”*, are significantly more complex and require a high level of coordination within the institutions.

The inclusion in the reporting system and the associated early submission and completion dates represent an additional burden. We would therefore welcome if the submission dates of the original registration templates and individual ones with regard to the disclosure of recorded registration forms could be corrected in time, e.g. the report templates in the narrower sense as well as some disclosure templates for the known dates of submission of the report, but other more complex templates for the disclosure would have to be submitted only around 4 weeks later.

Different deadlines are also required for the disclosure at the end of the year. It is not expedient to prepare the disclosure or the reporting forms that have been included in the regulatory reporting system for the purpose of disclosure, based on an unaudited annual financial statement. The associated double effort for the preparation first on the basis of the unaudited and provisional annual accounts and then again on the basis of the certified annual accounts should not be underestimated. We would therefore welcome if the reporting forms included for the purposes of disclosure were only to be submitted after the annual financial statements had been audited. Disclosure is not possible at an earlier date.

The consequences of submitting corrections to supervisory reports must also be carefully considered. These can be necessary for various reasons, which are not due to errors in the creation of the message. In addition to follow-up corrections from the final exams at the time of submission of the report (difference between unaudited versus audited annual accounts), subsequent submissions of corrections - sometimes retrospectively over several reporting deadlines - can also result from subsequent adjustments to supervisory validation rules. We understand that an adjustment to the disclosure may be necessary in the event of major adjustments to the regulatory reporting. However, we do not consider re-disclosure in the event of minor or insignificant corrections to be expedient since, in addition to the effort required to prepare new disclosure reports, this will also contribute to irritation among investors and will not be accompanied by a gain in knowledge or increased transparency for them. We therefore advocate the introduction of materiality limits, below which a new disclosure or a correction of the disclosure can be omitted.

As we also remarked in our response to the EBA consultation on supervisory reporting requirements, we note that Pillar 3 templates are becoming increasingly difficult to interpret for non-regulatory experts, which is in contrast with the original objectives of these disclosures. Therefore, we do not expect that the integration of Pillar 3 disclosure into supervisory disclosure will lead to a higher acceptance by investors. From our perspective, reasons for the weak acceptance is that the Pillar 3 disclosure is overloaded. Due to the enormous granularity of Pillar 3 data, only regulatory experts will be able to interpret the data in a proper manner. Against this background, we suggest a streamlining of information provided instead of more formalized templates and tables.

* **Disclosure of liquidity requirements** (Question 24)
* Further information is needed on LCR delta. It would be useful to have an indication of the criteria to determine the threshold above which an explanation of the delta is worth to be disclosed by the single bank.
* It is not clear the mapping between EU LIQ2 for disclosure on NSFR vs drafted templates C.80-C.81 for reporting on NSFR i.e. it looks like EU LIQ2 is based on NSFR QIS template. Specifically, the information in row 23 is already included in row 21. Should this be excluded it in order to avoid double counting?
* **Disclosure of use of standardize approach and internal model for market risk** (Question 62)

Regarding template EU MR2-B, we agree with the drivers included for the variation of the RWEA are a good reflection of the main factors driving these variations.

However, we do not agree with the explanation of row {1a/b} and {8a/b} of Template EU MR2-B in Annex 34. According to the instructions, in case of RWA/own funds requirements are calculated as 60-day average (VaR/SVaR)/12-week average or floor measure (IRC/CRM) and not as RWA/own funds requirement at the end of period. Rows 2,3,4,5,6,7 reconcile the value in row 1b and 8a, but – since RWA/own funds requirements are calculated as average over the time period – the reconciliation should be performed with the value in row 1 and 8.

* **Disclosure of remuneration policy**
* We ask for the Pilar III disclosure report to include only the information which is not already included in the documents on remunerations the subject entity is required to publish according to the regulations of the countries where it is present.
* Scope of application of the draft Commission Implementing Regulation laying down implementing technical standards.

As stated in the CP’s background and rationale, under article 434a of CRR II, the EBA has a mandate to develop draft implementing technical standards (ITS) specifying uniform disclosure formats in accordance with the disclosures required under Part VIII.

In accordance with Part VIII, and as established article 450 on disclosures of remuneration policy, the scope of application of said **disclosures is circumscribed to “risk takers” of an institution, i.e. categories of staff whose professional activities have a material impact on the institutions risk profile** (article 450(1) of CRR II).

In this sense, the CRR does not require institutions to disclose remuneration information on all employees within an institution; it seeks transparency regarding the remuneration of personnel which is deemed to have an impact on the risk profile.

In line with the CRR’s scope, the EBA’s draft ITS should not include disclosures of all employees within an institution, as appears to be expected from the instructions to Template REM5, which read:

| Row number | Explanation |
| --- | --- |
| 1 | **Total number of staff**  **All** employees of an institution and its subsidiaries, including subsidiaries not subject to the CRD and all members of their respective management bodies. It shall be calculated using the FTE (full time equivalent) method. |
| 5 | **Total remuneration**  The total amount of remuneration, means all forms of fixed and variable remuneration and includes payments and benefits, monetary or non-monetary, awarded directly to staff by or on behalf of institutions in exchange for professional services rendered by staff, carried interest payments within the meaning of Article 4(1)(d) of Directive 2011/61/EU, and other payments made via methods and vehicles which, if they were not considered as remuneration, would lead to a circumvention of the remuneration requirements of Directive 2013/36/EU. |

As established in article 15 of the EBA Regulation (Regulation (EU) No 1093/2010 of the European Parliament and of the Council), the EBA may develop implementing technical standards by means of implementing acts pursuant to Article 291 TFEU, “*which shall be technical, shall not imply strategic decisions or policy choices and their content shall be to determine the conditions of application of those acts. The Authority shall submit its draft implementing technical standards to the Commission for endorsement”.*

The main objective of implementing technical standards is thus to determine uniform conditions for the application of legally binding EU acts, which responsibility lies primarily with EU Member States but which the TFEU exceptionally empowers the EU Commission to adopt.

In light of the aforementioned legal framework, it is clear that implementing technical standards should not be a vehicle to expand the scope of the EU legally binding act (in this case, the CRR II), nor should they determine conditions of application of those acts, which would seem to exceed its competence and enter into the domain of the EU legislator (the European Parliament and the Council).

We thus advocate for the elimination of any references to “all employees” in the EBA’s tables, templates and corresponding instructions.

* Question 66

We see room for improvement as regards the necessary clarity of the instructions to the EBA tables and templates, in order for them to convey sufficiently comprehensible instructions for institutions and thus serve as a tool to assess comparable information for users, as explained below.

General comments (applicable to table REM A and templates REM 1-REM 5)

* *Legal references provided in the instructions*

Clarity is sought on why the instructions to the table and templates only occasionally include legal references. As regards remuneration templates (REM1-REM5), only some explanations to rows and columns refer to the corresponding CRR provision (subsections of article 450) and/or CRD provision (article 92; subsections of article 94(1)) when, in principle, all remuneration disclosures should be linked to their corresponding legal reference.

* *Awarded vs paid*

The draft ITS should include definitions of what is understood by these concepts or, alternatively, refer to definitions already in existence (e.g. EBA Guidelines on sound remuneration policies).

* *“During” the financial year; “for” the financial year: clarification regarding the remuneration expected to be disclosed*

It’s important that institutions adequately understand what exactly has to be reported in each template.

This is particularly important pertaining the information to be disclosed in template REM 1, which refers to the remuneration awarded **for** the financial year. In general, in this template institutions disclose the “annual bonus” accrued for the financial year, even if technically awarded once the financial year has ended (i.e., for 2019, disclosure is made of the bonus that would be linked to the performance over the 2019 financial year but which amount is technically granted in 2020, primarily because performance figures have to be final before the amount can be determined).

If annual bonuses **for the financial year-ended** are, indeed, what is expected to be disclosed, then instructions should better not refer to the term “during”.

Under this interpretation, the instructions to the ITS would likewise appear unclear as regards severance payment disclosure when, for instance, they expect “*guaranteed variable remuneration* ***awards for*** *the financial year*” and “*severance payments* ***awarded during*** *the year*” to be added (REM 1, row 10).

Severance payments tied to financial year 2019 - in their variable component - might not be awarded until 2020 for the same reasons as variable remuneration for said financial year (the institution needs certain information in order to calculate its share-component, for example). Therefore, if institutions were to take the wording literally, they might have to inform of severance payments corresponding to financial year 2018 that were awarded in 2019.

Interpretative issues would likewise arise with the following (non-exhaustive) instructions:

* “*amounts of variable remuneration* ***awarded for*** *the financial year*” (REM 1, row 15)
* “g*uaranteed variable remuneration* ***paid during*** *the financial year*” (REM 2, row 3)
* “*Severance payments* ***awarded in*** *previous periods, that have been* ***paid*** *out* ***during*** *the financial year*” (REM 2, row 5)
* *“Severance payments* ***awarded during*** *the financial year”* (REM 2, row 7)
* *Full time equivalent basis*

The ITS include reiterated references to the method by which the number of employees of the institution should be calculated (REM 1, rows 1 and 9; REM 2, rows 1, 4 and 6; REM 5, row 1). This requirement may result in complicated calculations for institutions, even more so when they have to disclose information of risk takers within a Group, given that labour conditions are not uniform and employees are subject to a wide array of regulations across different jurisdictions.

A full time equivalent calculation for all employees reported in Pillar III is thus a burdensome process that would be imposed if the ITS remained as they stand. We therefore advocate for the elimination of this requisite, in order for institutions to be able to report the total number of staff in accordance with their methodologies in place.

* Regarding the clarity of the instructions, tables and templates, we consider that for the purposes of correctly compiling the information, clarification is required concerning the placement of the staff working in Private Banking and Wealth Management within the following business areas of the model:
* Management body (MB) supervisory function
* Management body (MB) management function
* Investment banking
* Retail banking
* Asset management
* Corporate functions
* Independent internal control functions
* All other business areas that were not covered in the previous columns separately.

We further raise some clarification requests:

**Table REM A** (remuneration policy)

* *Fixed or flexible format of qualitative information*

Clarity is sought regarding whether how “tables” should be interpreted. As per section 3.4 of the Consultation Paper (Templates and tables. Use of fixed and flexible formats):

*15. Templates are developed to implement quantitative disclosure requirements while tables implement qualitative information.*

*[…]*

*17. As per the qualitative disclosures, the draft ITS provides* ***flexible tables with instructions on the type of information that institutions will have to explain****.*

However, Table REM A, pertaining remuneration policy, expressly states “**fixed format**” alongside it.

Although it is our view that the provisions of paragraph 17 should prevail, and that the purpose of the ITS is not to impose fixed formats for qualitative information, it would be useful to accommodate the wording of the tables to the aforementioned paragraphs.

* *Weak performance metrics (row e)*

As per Table REM A, institutions are expected to disclose:

|  |  |
| --- | --- |
| Row number | Explanation |
| e | *Description of the ways in which the institution seeks to link performance during a performance measurement period with levels of remuneration. Disclosures shall include:*  *Information of the measures the institution will implement to adjust variable remuneration in the event that performance metrics are weak,* ***including the institution’s criteria for determining “weak” performance metrics****.* |

This section includes no reference to the applicable CRR provision and the concept of “weak performance metrics” is not envisaged in either the CRD or the CRR. It is likewise not defined in the EBA Guidelines on sound remuneration policies. It appears to have been taken directly taken from the Basel Standards of Pillar 3 disclosure requirements (part 13 for remuneration), which likewise contain no instructions for qualitative information. Clarity is thus sought on what should be disclosed in accordance with the extract above.

* *Total remuneration for each member of the management body or senior management (row h)*

Firstly, and in line with the general comments regarding legal references, it would be useful that the ITS include a reference to article 450(1)(k) of the CRR, which originates the obligation.

Additionally, we believe that this information, if needed to disclose in accordance with specific Member States’ demands, should be relocated within template REM 1, where institutions disclose remuneration for the financial year.

Indeed, the information which is asked for under this row is not quantitative but qualitative in nature. It is not, strictly speaking, an explanation of an institution’s remuneration policy, but rather a result of its application, in the same way that the remaining data for template REM 1 is.

**Template REM 1**

* *“Other forms” of fixed remuneration (row 7)*

As per the instructions provided to complete the template, row 7 expects institutions to disclose “*The* ***amounts of fixed remuneration awarded*** *for the financial year that are other than disclosed in rows 3, EU-5a, EU-5b and EU-6x”*.

Clarity is sought on what is to be understood by “fixed remuneration awarded”, especially as regards pension commitments of institutions as well as what is included in the "other forms" with reference to the fixed and variable components (rows 7 and 16).

In accordance with the EBA Guidelines on sound remuneration policies, remuneration can only either be considered fixed or variable (the latter being any remuneration which is not fixed and complies with section 7), and yet they only define “awards” for variable remuneration. In accordance with the EBA Guidelines, pension contributions are likewise to be categorized into fixed or variable remuneration, yet there is no guidance as to when, if considered fixed remuneration, they should be understood as having been “awarded”.

Fixed pension contributions, generally, do not imply legal ownership of the contributions made by the institutions during the financial year. They are a right “to be expected”, i.e. remuneration to vest in the future if conditions are met as per applicable pension contribution plans, but not considered realised or consolidated pay for the financial year.

In light of the above, institutions are left with no clear guidance as to whether fixed pension contributions of risk takers are expected to be included in REM 1. Such interpretation (i.e. that they should be added to total fixed remuneration, as “other forms” of fixed remuneration) would appear to be contrary to the very nature of pension contributions, as explained.

* *Different types of component of variable remuneration (row 12, EU-14a, EU-14b)*

It would be useful to clarify whether there is any additional meaning to “different types of component” of variable remuneration, or if the reference should be understood as variable remuneration components, as per article 94 (i.e. there are variable of fixed components of remuneration, but not an “ad hoc” category of “types of component” within variable remuneration).

**Template REM 2** (special payments)

* *Number of identified staff (rows 4 and 6)*

Clarity is sought pertaining how rows 4 and 6 of the table are to be completed, given that both rows refer to “number of identified staff”.

As per article 450(1)( vi) and (vii), institutions must disclose severance payments paid out during the financial year and severance payments awarded during the financial year (split into paid and deferred), but the number of beneficiaries of severance payments is only requested for the latter. It is thus not clear the reason for requesting information referring to emoluments paid during the year due to severance payments awarded in previous years, since lines 7 to 9 show the composition of the severance awarded during the financial year specifying how much is paid during the financial year and how much is deferred.

The fact that the EBA has included separate rows to disclose the number of beneficiaries may imply that the number of beneficiaries of severance payments awarded in previous years but paid in the financial year might not coincide with the number of risk takers reported in the remaining tables for the current financial year.

It would thus be useful to understand the reasoning behind expressly including two sets of risk takers in REM 2 or, alternatively, that the EBA clarify what severance payments are expected to be disclosed under rows 5 and 7.

* *Highest severance payment to a single person (row 11)*

As per the template and its disclosures, it would appear that the institution would have to report, not only the highest payment, but also the “category” of the risk taker. This poses an important confidentiality problem should there only be one risk taker who was entitled to remuneration that year, especially if part of a smaller collective such as senior managers or directors. Consequently, we would advocate for the elimination of the obligation to categorize the highest severance payment.

**Template REM 3** (deferred remuneration)

* *Implicit adjustments (column f)*

In accordance with the EBA instructions, deferred amounts reported in column f should include, *inter alia*, changes in the value of shares occurred during the financial year, even if the variable remuneration has not been paid, i.e., even if the variable remuneration simply remained deferred during the financial year.

This has important implications for institutions which, at present, report variable remuneration in a two-fold way, that is, cash-portions in euros and share/instruments in number of shares/instruments, given that it would oblige institutions to perform yearly calculations of the changes experimented in the value of shares/other instruments. This would be an incredibly burdensome process for institutions.

Moreover, this calculation would not appear to be conceived in the CRR II, which, in subparagraphs (iii) and (iv) of article 450(1)(h) expects disclosure of:

1. Deferred remuneration, split into vested and unvested (these requisite would appear to be linked to columns a-c); and

2. Out of the vested deferred remuneration, the amount paid and affected by performance adjustments (these requisite would appear to be linked to columns d and g).

Taking into account that providing this information would prove very complicated for institutions, along with it not being a disclosure expected by the prevailing Regulation, we would advocate for the elimination of column f.

* *Column f (inconsistencies)*

Notwithstanding the comments above, it would appear that Annex 37 contains an error in this column (it should read “total amount of adjustment”, as the instruction does, instead of “amendment”).

Additionally, instructions first refer to changes in the price of instruments as the only thing that could lead to implicit adjustments but, right after, it would appear that changes in the price of instruments are only one example of implicit adjustments (“like changes of value…..”). Greater clarity in this respect would be welcome.

* *Others:*

We ask EBA to specify what is included in the “other forms” item referring to the remuneration of the Identified Staff disaggregated in the different business areas (rows 7, 12 and 24) as well as clarifying what should be indicated in the column e) Amount of performance adjustment to deferred remuneration that was due to vest in future performance years.

**Template REM 5** (information in remuneration for all staff)

* *Total number of staff (rows 1 and 5)*

Please see the initial general comment as regards the need to align the EBA’s draft ITS scope with that of the CRR II.

In accordance with Part VIII, and as established in article 450 on disclosures of remuneration policy, the scope of application of said **disclosures is circumscribed to “risk takers” of an institution, i.e. categories of staff whose professional activities have a material impact on the institutions risk profile** (article 450(1) of the CRR). In line with the CRR’s scope, the EBA’s draft ITS should not include disclosures of all employees within an institution.

Moreover, if the ITS remain as they stand, disclosures would now have to made for large workforces and a great number of group undertakings. In many undertakings, especially those outside the EU framework, these workforces are not categorized under the business areas that the EBA would expect to see reported (investment banking, retail banking, asset management, corporate functions, independent internal control functions, and all other). Adapting the entire workforce to this categorization would be a burdensome process no exempt from costs for reporting institutions and subsidiaries alike.

* Question 67

Concerning possible discrepancies between templates and instructions and the calculation of the requirements set out in the underlying regulation, we share the proposal of summary tables on remuneration policies, with a detail of the items to be indicated, in order to be able to achieve a homogeneous comparison at European level of qualitative and quantitative information on the topic.

However, bearing in mind that the consultation is aimed at clarifying the scope of the Article 450, in which it is envisaged that "*Institutions shall disclose the following information regarding their remuneration policy and practices for those categories of staff whose professional activities have a material impact on institutions' risk profile"*, table REM5 regarding *“Information on remuneration for all staff”* does not represent a fulfilment contained in the EU legislation, and as such an option should be considered regarding the disclosure of this information. Therefore, each company should be able to assess the appropriateness of such public disclosure.

As for the granularity of the proposed information, we share the disaggregation in the business areas currently used for the purposes of the benchmarking exercise carried out pursuant to the EBA 2014/08 *"Guidelines on the remuneration benchmarking exercise"*, although it is considered appropriate to provide for a proportionality in the application of the discipline according to the company size, to avoid that small companies, required to compile the REM5 Table, may have to face privacy problems due to the limited number of subjects in the individual business areas proposed.

In relation to the quantitative reporting tables of the identified staff (REM1 and REM2), it is requested to foresee the possibility of disaggregating the information based on the same areas of activity proposed in the REM5 table, where the companies deem it appropriate. Specifically, for banks in the scope of benchmarking at European and / or national level - which already fill in the tables relating to the identified staff the breakdown in the business areas proposed in table REM5 - we ask for the same accounting report, in order to avoid further management burdens and to provide a consistent market picture.

It is hoped that the existing information will be rationalized, limiting the already heavy reporting costs on credit companies.

* Question 68

We do not completely agree that the new draft ITS fits the purpose of the underlying regulation for the reasons indicated above.

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