

*Launched in 1960, the European Banking Federation is the voice of the European banking sector from the European Union and European Free Trade Association countries. The EBF represents the interests of almost 5000 banks, large and small, wholesale and retail, local and cross-border financial institutions. Together, these banks account for over 80% of the total assets and deposits and some 80% of all bank loans in the EU only.*

## EBF Response to the EBA consultation Papers (CP46 and CP47) on guidelines for data collection on bank remuneration practices

### Key Points

- The markets in financial services are global. Therefore, the EU should push for global alignment.
- The guidelines seriously diverge/contradict with some texts currently in discussion in the EU (CRD IV) regarding for instance the geographical scope of institutions and the covered staff.
- Institutions will require reasonable time to collate the finalised requirements of both CPs. Some such information may not be readily to hand. Therefore, for data to be submitted by end October 2011, institutions would require at least a month lead in, i.e. end September 2011, to gather the required data. This will require clarity by then from both the EBA and national competent authorities, e.g. on the methodology used by national authorities to determine ‘significant institutions’ captured under the Article 1 Definitions in CP46. Until such clarity of inclusion / exclusion is confirmed banks cannot productively undertake such data analysis.
- EBA and the national authorities should reaffirm that disclosures will not identify (or enable the identification of) any one individual or institution. Equally, they should confirm that the principles of confidentiality of the individual be respected, as outlined in the CEBS guidelines of 10 December 2010, Section 5.1, Pillar 3 external disclosure.

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Related documents: CP46: <http://eba.europa.eu/cebs/media/Publications/Consultation%20Papers/2011/CP46/CP46-Draft-Guidelines-on-the-remuneration-benchmark-exercise.pdf>

CP47: <http://eba.europa.eu/cebs/media/Publications/Consultation%20Papers/2011/CP47/CP47-Draft-Guideline-on-data-collection-for-high-earners.pdf>

## **I. General remarks**

The EBF supports the publication of guidance so that all firms and Member States can apply the rulebook consistently. The markets in financial services, especially the activities that generate salaries of 1 Million EUR or above, are global. Therefore, the EU should push for global alignment.

Most importantly, the guidelines seriously diverge/contradict with some texts currently in discussion in the EU (CRD IV) regarding for instance the geographical scope of institutions and the covered staff. More details will be given hereunder.

Furthermore, it is not clear whether in the templates the data for one cell should be the result of adding other cells following it below, or whether the cells following it below are only designed to provide a breakdown of certain components of that cell.

### **Scope**

The EBF assumes “institutions” according to article 4(1) of Directive 2006/48 are being addressed in both CPs, although this is only mentioned for CP47.

### **Timing**

Institutions will require reasonable time to collate the finalised requirements of both CPs. Some such information may not be readily to hand, e.g. the net profits for different business areas. Therefore, for data to be submitted by end October 2011, institutions would require at least a month lead in, i.e. end September 2011, to gather the required data. This will require clarity by then from both the EBA and national competent authorities, e.g. on the methodology used by national authorities to determine ‘significant institutions’ captured under the Article 1 Definitions in CP46. Until such clarity of inclusion / exclusion is confirmed banks cannot productively undertake such data analysis.

### **Covered staff**

The definition of the covered staff is in contradiction with the current Article 435 of the CRD IV which addresses ‘staff whose professional activities have a material impact on the risk profile’. This definition could be taken on board in both guidelines for a consistency reason but also to have a better image regarding the impact of the studied remuneration on the capital and risk profile of institutions.

In addition, the EBF assumes that the returns submitted relate only to personnel in position as at 31 December (identified staff and high earners) and not any variation in personnel since then.

In order to ensure a consistent interpretation, please clarify whether the “number” of individuals should be provided as headcount or as full time equivalents.

## Disclosures

The relationship between this data and Pillar 3 disclosures by banks is unclear. It would appear as if this information will be aggregated nationally and forwarded to the EBA for high level disclosure, separately from individual banks' Pillar 3 disclosures. The EBF would appreciate confirmation of this.

The EBF would also like advance notice each year of how and where the EBA plans to disclose such information, as there will no doubt be considerable media attention on banks after the information is released. Banks and their industry bodies require time to anticipate such public attention.

Furthermore, EBA and the national authorities should reaffirm that such disclosures will not identify (or enable the identification of) any one individual or institution. Equally, they should confirm that the principles of confidentiality of the individual be respected, as outlined in the CEBS guidelines of 10 December 2010, Section 5.1, Pillar 3 external disclosure.

## II. Specific Remarks

### Guidelines on the remuneration benchmarking exercise (CP46)

In line with Article 22 paragraph 3, Article 72 and Article 145 CRD, the EBA guideline on the remuneration benchmarking exercise should state unequivocally that Annexes 1 and 2 shall be completed on a EU consolidated level only and be transmitted by the EU parent company to its national supervisory authority. Information should not be submitted by significant institutions, but by EU parent institutions, the ultimate EU consolidation level. Article 2 and Article 3 contradict each other as significant institutions exist below the level of EU parent institutions. Article 2 should be restricted to stand-alone significant institutions or significant institutions with a non-EU parent institution, while Article 3 should clearly state the EU parent institution as information provider.

### **Recital (4) in conjunction with Article 3**

Recital (4) is not in line with Article 3. Information should only be provided at the EU level of consolidation (i.e. by the EU parent institution). Recital (4) should be amended so as to align with Article 3 (e.g. by replacing "preferable" by "appropriate").

### **Article 1 - Definitions**

Banks require clarity on how "significant institutions" are to be determined locally as soon as possible, to give adequate time to prepare the required data. At present there is confusion with the use of "significant institutions" and "deemed to be significant" used as cross references within one paragraph.

The EBF notes that national competent authorities are to communicate their methodology to the EBA, which allows for many local variations. Banks which operate in a number of EU countries may therefore face many different local interpretations and so require clarity as soon as possible as to their inclusion or not. As already mentioned, clarity by end September is sought.

Furthermore, the concept of combined groups remains unclear. Will EU national competent authorities define a separate combined group consisting only of large, cross-border banking groups active in the EU (a) or will EU national competent authorities be entitled to combine institutions under (a) and (b) to build combined groups in their area of competence? If the latter is the case, a national competent authority other than the home supervisor will only include parts of an EU banking group. It should not be the national competent authorities, but the home supervisor to communicate to the EBA the methodology used for the selection. Otherwise, EBA would be provided with sub-consolidated data by the national competent authority (in charge of the parent institution in a Member State) and with the consolidated data by the home supervisor in charge of the EU parent institution. The 60% threshold should be applied at the EU consolidated level.

## **Article 2 - Information to be submitted**

Article 2 should be restricted to stand-alone significant institutions or to significant institutions with a non-EU parent institution.

## **Article 3 – Level of consolidation of the information provided**

The EBF assumes that the scope excludes all non-EU based personnel employed by an institution. A clarification would be appreciated.

Clarity is also necessary to ensure there is no duplication by a cross-border banking group in its home country and possibly also locally if “deemed to be significant” by its host authority. Potential double counting should be avoided.

Article 3 should - subject to Article 2 as modified above - clearly state the EU parent institution as information provider.

## **Article 4 - Frequency of reporting and remittance dates, and reference year**

The EBF assumes “during the year” in Article 4.2 refers to the calendar year, as distinct from the institution’s financial year.

## **Article 5 - Transitional arrangements**

The requirements read: *The first date for data submission shall be October 2011. It shall relate to remuneration awarded in 2011 relating to the 2010 performance year.*

The amounts awarded in 2011 are not by definition equal to the 2010 numbers as included in the 2010 financial statements. Actual variable compensation rewards (either paid out or payable) can be lower or higher than the accrued amounts as included in the financial statements.

It is not clear if the requirement is to report the actual variable compensation awarded or the amount per the preceding financial statements. The EBF recommends to clearly define the amounts to be reported.

## **Footnotes 4 and 10**

A clarification on whether the definition of ‘Investment Banking’ in these footnotes includes corporate banking activities is necessary.

## **Annex 1**

In annex 1 and 2 there is a division between Investment Banking, Retail Banking, Asset Management and All other. Not all financial institutions have the same division, since the organizational structure differs from institution to institution. For some institutions, it will be difficult to meet the requirements. Therefore, flexibility in the definition of each group is necessary. Another possibility could be to use a more appropriate distinction. In addition, there is no mention here that the information provided shall exclude non-EU branches and non-EU subsidiaries of EEA parent companies, as it is stated in Article 3.2 of CP 47.

Moreover, the EBF would appreciate clarification on what types of business should be included under Asset Management, as is provided for Investment Banking, to ensure consistent interpretation across institutions.

As already mentioned the information on the net profits by business area is not normally gathered separately nor disclosed for many institutions. Therefore it should be treated as highly confidential and competitively sensitive when provided and again only released in aggregate by country.

Under footnote 5, reference is made to “high earners”. As this template relates to all staff, we are unclear as to why only high earners should be mentioned here.

## Annex 2

In annex 2, the EBF would appreciate a clarification on how the number of employees is calculated. Is it the average number of identified staff during the year, or a number based on a certain date (i.e. at the end of the year like in annex 1 footnote 6)?

In addition, the EBF would recommend a clarification regarding the total amount of severance payments which should be exclusive severance according to collective agreements and national labour law. This is consistent with CRD III. In the first of the 2 rows that deal with Severance payments, a footnote should be included to Section 3.2.2. of the CEBS Guidelines on Remuneration Policies and Practices.

Moreover, it is not clear how to calculate the figures and the interplay between these 3 rows: **Total variable remuneration**, **Total amount of variable remuneration deferred** and **Total amount of discretionary pension benefits**. It is not clear what should be included or not in the row for **Total variable remuneration** (see comment on CP 47).

Furthermore, the distinction between ‘total deferred variable in equity’ and ‘total deferred in other instruments’ does not seem necessary. The distinction between cash and shares or equivalent instruments seems sufficient. Another unnecessary category appears with the pension benefits. For instance, an additional pension benefit has a different interpretation whether it is given to improve a very low basic regime or to maintain a high level of remuneration.

Footnote 12 ‘*Number of staff identified in senior management position*’ refers to paragraph 16 of the CEBS guidelines on Remuneration which comprise ‘other Risk takers’. In Annex 2, these numbers for ‘other Risk Takers’ are not separately disclosed. In footnote 12 in Annex 2, the ‘other risk takers’ are scoped out in the line ‘number of staff in senior management positions’, whilst in consideration 5 the ‘other risk takers’ are scoped in. The EBF would like to have a clarification on whether ‘other risk takers’ are in or out of the scope. Or is the number of staff ‘Other risk takers’ the net outcome of the total identified staff (line 1) less the staff reported lines 2 and 3?

Also, Annex 2 requires to be reported:

- Total Variable remuneration in Year N,
- Deferred variable remuneration in Year N,
- Guaranteed variable remuneration paid in year N,
- Severance payments paid in year N,
- Amount of discretionary pension benefits paid in year N.

It is not always clear at line item level if the figures to be reported equal the expenses per the financial statements or the actual amounts awarded. Due to retention periods the actual payment can be in later years.

The EBF would like a clarification on whether the category ‘Pension benefits’ means discretionary pension benefits as part of the variable compensation only as included in financial statements regarding performance year N; in other words it does not comprise the regular pension benefits for the year.

Finally, footnote 16 should read “Cf. section 3.2.1 instead of 3.1.2”

## **Guidelines on the remuneration data collection exercise regarding high earners (CP47)**

### **Article 1 – Definitions**

Clarity on what is included under “*total pay brackets*” of €1 million would be appreciated. We assume this incorporates fixed and variable pay, including “the main elements of salary, bonus, long term award and pension contribution”, as per Article 1, paragraph 3 (a) 5 of Directive 2010/76/EU (which amends Article 22 of Directive 2006/48/EC.). However the use of the word “*main*” allows different interpretative approaches and so greater clarity would be appreciated.

### **Article 3 - Scope of the information provided**

Article 3.2 should read: The information provided shall exclude non-EU branches and non-EU subsidiaries of Institutions according to Article 2 (not all submitting Institutions according to Article 2 are EEA parent companies).

### **Article 4 - Member State of the high earner**

There is some uncertainty around the use of the word “*awarded*” in 4.2. It could be that this *awarding* relates to being paid or to where the decision on payment is made. In order to avoid remuneration arbitrage, we consider a more appropriate wording would be:

4.2. High earners who undertake professional activities for different legal entities in different Member States (e.g. both at parent and at subsidiary level, where the subsidiary is incorporated in another Member State) or who undertake professional activities for a branch in a host Member State, shall be classified under the Member State where the highest proportion of their remuneration is awarded “*for work undertaken in the Member State and/ or paid in the Member State*”. To avoid potential ‘double counting’, we suggest that an institution files a return in their ‘Home’ country for all in scope employees.

### **Article 5 - Frequency of reporting and remittance dates, and reference year**

The EBF assumes that “during the year” refers to the calendar year, as distinct from the institution’s financial year.

## Annex 1

It is not clear what is to be included in the data for **Total variable remuneration**. It may be Total variable remuneration upfront + Total variable remuneration deferred + Total discretionary pension benefits, but the breakdown only refers to discretionary pension benefits and variable remuneration deferred. It should be clarified whether the figure for **Total variable remuneration** should also include the discretionary pension benefits.

Under consideration 2 is mentioned that numbers of staff and amounts are on an aggregate home Member State basis. In Article 4.2 it looks that the reporting entity needs to fill in the Annex per Member State. A Clarification is required regarding this issue.

Furthermore, footnote 8 refers to ‘including all costs for the institutions except etc’. Does this mean that the fully loaded cost of identified staff is reported here, including pension cost, secretarial support, lease car, cell phone and other fringe benefits? etc.

Do regular costs for pension benefits qualify as a mandatory contribution to comparable social security schemes?

More clarifications are required regarding these points.

