



Commission de Surveillance
du Secteur Financier

Circular CSSF 23/838

Application of the
Guidelines of the European
Banking Authority on the
benchmarking exercises on
remuneration practices and
the gender pay gap under
Directive (EU) 2019/2034
(EBA/GL/2022/07)

Circular CSSF 23/838

Re: Application of the Guidelines of the European Banking Authority (“EBA”) on the benchmarking exercises on remuneration practices and the gender pay gap under Directive (EU) 2019/2034 (EBA/GL/2022/07)

Luxembourg, 25 May 2023

To all non-SNI IFR investment firms, as defined in point (9a-2) of Article 1 of the amended Law of 5 April 1993 on the financial sector (“LFS”)

Ladies and Gentlemen,

The purpose of this circular is to inform you that the CSSF, in its capacity as competent authority, applies the EBA Guidelines on the benchmarking exercises on remuneration practices and the gender pay gap under Directive (EU) 2019/2034 (EBA/GL/2022/07) (the “Guidelines”), published on 30 June 2022. Consequently, the CSSF has integrated the Guidelines into its administrative practice and regulatory approach with a view to promoting supervisory convergence in this field at European level.

All non-SNI IFR investment firms, as defined in point (9a-2) of Article 1 of the amended Law of 5 April 1993 on the financial sector (“LFS”) shall duly comply with them.

1. The Guidelines

The Guidelines are issued by the EBA in accordance with Article 34 of Directive (EU) 2019/2034¹.

These Guidelines specify, for the purposes of the oversight of remuneration policies, the information to be provided by selected non-SNI IFR investment firms to the CSSF, namely:

- data for benchmarking remuneration trends and practices, including information disclosed in accordance with points (c) and (d) of the first subparagraph of Article 51 of Regulation (EU) 2019/2033² (“remuneration data”), to be provided annually;
- data for benchmarking the gender pay gap (“gender pay gap data”), to be provided every three years (starting from 2024 for the financial year 2023).

Institutions are selected by the CSSF based on the criteria specified in section 1 of the Guidelines for the remuneration data and section 2 for the gender pay gap data.

¹ Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (OJ L 314, 05.12.2019, p.64)

² Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014

The Guidelines also specify how the CSSF will collect the remuneration data and the gender pay gap data (collectively referred to as “benchmarking data”) from the non-SNI IFR investment firms, and how the CSSF will submit the benchmarking data to the EBA.

The Guidelines are attached to this circular and are available on the EBA’s website <https://www.eba.europa.eu/regulation-and-policy/remuneration/guidelines-remuneration-and-gender-pay-gap-benchmarking-exercises-under-ifd>

2. Scope of application

This circular shall apply to all non-SNI IFR investment firms, as defined in point (9a-2) of Article 1 of the LFS.

Gender pay gap data will be collected at the individual level.

Remuneration data will be collected at the individual level if Article 7 of Regulation (EU) 2019/2033 (IFR) does not apply. Where Article 7 of the IFR does apply, remuneration data will be collected at the level of consolidation set out in the article.

3. Date of application

This circular shall apply as from the date of its publication.

Claude WAMPACH
Director

Marco ZWICK
Director

Jean-Pierre FABER
Director

Françoise KAUTHEN
Director

Claude MARX
Director General

Annex: Guidelines on the remuneration and gender pay gap benchmarking exercises under IFD

EBA/GL/2022/07

30/06/2022

Final report on Guidelines

on the benchmarking exercises on remuneration practices and the gender pay gap under Directive (EU) 2019/2034

Contents

1. Executive summary	3
2. Background and rationale	4
3. Guidelines	6
4. Compliance and reporting obligations	7
Subject matter, scope and definitions	8
Implementation	9
Guidelines on the benchmarking exercises on remuneration practices and the gender pay gap under Directive (EU) 2019/2034	10
1. Scope of investment firms subject to the remuneration data collection exercise	10
2. Scope of investment firms subject to the gender pay gap data collection exercise	10
3. Submission of data to the competent authorities by investment firms	10
4. Submission of benchmarking data by competent authorities to the EBA	11
4.1. Preparation of the data submission to the EBA by competent authorities	11
4.2. Submission of data to the EBA	11
5. General specifications for all benchmarking data to be reported	12
6. Additional specifications for remuneration data	12
7. Additional specifications for the submission of information on derogations in Annex IV	15
8. Additional specifications for the submission of the gender pay gap in Annex V	15
9. Data quality	18
Annex I – General information and information on remuneration for all staff in investment firms	19
Annex II – Information on remuneration of identified staff in investment firms	20
Annex III – Information on remuneration of identified staff per business area	24
Annex IV – Derogations to the application of requirement to pay out a part of variable remuneration deferred and in instruments for investment firms	25
Annex V – Information on the gender pay gap	26
Annex VI – Data quality checks	27
5. Accompanying documents	30
5.1 Draft cost-benefit analysis / impact assessment	30
5.2 Feedback to the public consultation	34

1. Executive summary

The EBA is mandated under Article 34(2) of Directive (EU) 2019/2034 to benchmark remuneration trends and practices of investment firms at Union level. The Guidelines take into account the updated EBA Guidelines on the remuneration benchmarking exercise under Directive 2013/36/EU following the introduction of changes by Directive (EU) 2019/878.

The templates for the remuneration benchmarking data collection have been developed in a way that takes into account the specificities of investment firms and their remuneration framework as well as the disclosure requirements for investment firms under Regulation (EU) 2019/2033.

Specific guidelines have been provided to benchmark the gender pay gap. The principle of equal pay for equal work or work of equal value laid down in Article 157 of the Treaty on the Functioning of the European Union (TFEU) and measures to ensure equal opportunities have already been included in the EBA Guidelines on sound remuneration policies under Directive (EU) 2019/2034 and the EBA Guidelines on internal governance under Directive (EU) 2019/2034. The benchmarking of the gender pay gap will allow competent authorities to monitor the implementation of such measures and their development at different levels of pay and, in particular, the representation of staff of different genders.

Remuneration benchmarking data will be collected under the new Guidelines in 2023 for the financial year 2022. The first data on the gender pay gap will be collected in 2024 for the financial year 2023. Afterwards the EBA will continue the data collections on a regular basis as set out in the Guidelines.

2. Background and rationale

1. The EBA is mandated under Article 34(2) of Directive (EU) 2019/2034 to benchmark remuneration trends and practices of investment firms at Union level. The updated Guidelines are aligned as much as possible with the current EBA Guidelines on the remuneration benchmarking exercise under Directive 2013/36/EU following the changes introduced by Directive (EU) 2019/878 (CRD V).
2. Under Article 34(1) of Directive (EU) 2019/2034, *'Member States shall ensure that competent authorities collect the information disclosed in accordance with points (c) and (d) of the first subparagraph of Article 51 of Regulation (EU) 2019/2033 as well as the information provided by investment firms on the gender pay gap and use that information to benchmark remuneration trends and practices. Competent authorities shall provide that information to EBA.'* Paragraph (2) of this Article requires that *'EBA shall use information received from the competent authorities ... to benchmark remuneration trends and practices at Union level.'*
3. To account for proportionality, the EBA is streamlining the collection of data at the consolidated and the individual levels to ensure that double reporting is avoided, and the burden imposed on competent authorities and financial institutions remains commensurate to the objective pursued. To that end, gender pay gap data will be collected only at the individual level while remuneration data will be collected at the individual level only if Article 7 of Regulation (EU) 2019/2033 does not apply: when Article 7 of that Regulation does apply, remuneration data will only be collected at the level of consolidation set out in this Article.
4. The disclosure requirements for investment firms are specified under Articles 46 and 51 of Regulation (EU) 2019/2033. Investment firms that do not meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) of Regulation (EU) 2019/2033 shall disclose information regarding their remuneration policy and practices, including aspects related to gender neutrality and the gender pay gap of their identified staff under this Article. The benchmarking exercise is limited to investment firms that are subject to these disclosure requirements.
5. The Guidelines aim at ensuring that the benchmarking of the gender pay gap covers a representative sample of investment firms. The benchmarking of remuneration trends and practices is performed, as applicable, on the individual or consolidated situation.
6. The Guidelines specify the tables to be used for the collection of data. The remuneration benchmarking data collection is mainly based on the disclosed information on remuneration and the application of derogations under Article 32(4) of Directive (EU) 2019/2034 to the requirements to pay out a part of the variable remuneration in instruments and under deferral arrangements. Some limited additional information is requested on specific remuneration elements, which allows for a more detailed analysis of remuneration trends and practices. Moreover, some information on remuneration of all staff is needed to benchmark the impact that the remuneration practices for identified staff have on the investment firm.

7. The principle of equal pay for equal work or work of equal value laid down in Article 157 of the Treaty on the Functioning of the European Union (TFEU) and measures to ensure equal opportunities have already been included in the EBA Guidelines on sound remuneration policies under Directive (EU) 2019/2034 and the EBA Guidelines on internal governance under Directive (EU) 2019/2034. Under Article 26(1)(d) of Directive (EU) 2019/2034, remuneration policies and practices for all staff must be gender-neutral. The benchmarking of the gender pay gap will allow competent authorities to monitor the implementation of such policies and their impact on the development of the gender pay gap over time. The data is collected every three years as the gender composition of staff is not expected to change significantly in the short term, but should change in the longer term through taking appropriate measures within investment firms.
8. The gender pay gap is the difference expressed as a percentage between the average earnings of men and women across a workforce. The gender pay gap will not be adjusted for other factors that may have an impact on the remuneration of staff. The (unadjusted) gender pay gap is calculated independently, e.g. from the position of the staff members and their experience. Investment firms participating in the gender pay gap benchmarking exercise must have a certain number of staff, so that the results of the analysis are statistically sound. In line with the European Commission's recommendation¹, the sample of investment firms selected should only include investment firms that have at least 50 staff members, excluding the members of the management body in its supervisory function. In line with the principle of proportionality and to analyse the gender pay gap for different categories of staff and levels of payment, the gender pay gap should be calculated for investment firms with 250 or more staff or identified staff respectively for each quartile of payment levels as the mean and median for all staff and identified staff respectively. E.g. an investment firm with 300 staff, with 30 of them being identified staff, would calculate the pay gap for all staff based on quartiles and the total, and separately the total pay gap for identified staff.
9. Some additional instructions are provided to ensure that the data has the appropriate quality for deriving reliable benchmarks. To this end and to further harmonise the national implementation, the Guidelines are also addressed to investment firms.
10. The Guidelines should be read in conjunction with the EBA Guidelines on sound remuneration policies under Directive (EU) 2019/2034.
11. Competent authorities may perform additional benchmarking exercises and collect additional data for national benchmarking or supervisory purposes.
12. The Guidelines apply from 31 December 2022 for the data to be collected in 2023 for the financial year 2022 and in parallel with the updated remuneration benchmarking exercise for institutions under Directive (EU) 2013/36/EU.

¹ Commission recommendation on strengthening the principle of equal pay between men and women through transparency <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014H0124&from=EN>

3. Guidelines

EBA/GL/2022/07

30/06/2022

Guidelines

on the benchmarking exercises on remuneration practices and the gender pay gap under Directive (EU) 2019/2034

4. Compliance and reporting obligations

Status of these Guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010¹. 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 financial 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/2022/07'. 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 the EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

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 (OJ L 331, 15.12.2010, p.12).

Subject matter, scope and definitions

Subject matter

5. These Guidelines specify, for the purposes of the oversight of remuneration policies in accordance with Article 34 of Directive (EU) 2019/2034, the information to be provided by selected investment firms to competent authorities for benchmarking remuneration trends and practices, including information disclosed in accordance with points (c) and (d) of the first subparagraph of Article 51 of Regulation (EU) 2019/2033 ('remuneration data') and the information to be provided for benchmarking the gender pay gap ('gender pay gap data').
6. These Guidelines specify how competent authorities will collect from investment firms the remuneration and the gender pay gap data (collectively referred to as 'benchmarking data') and how they will then submit the benchmarking data to the EBA.

Scope of application

7. Without prejudice to paragraph 8, benchmarking data should be collected and submitted to the EBA at the individual level.
8. Where Article 7 of Regulation (EU) 2019/2034 applies, remuneration data should be collected and submitted to the EBA only at the level of consolidation set out therein.

Addressees

9. These Guidelines are addressed to competent authorities as defined in point (2) (and viii) of Article 4 of Regulation (EU) No 1093/2010 and to financial institutions as defined in point (1) of Article 4 of Regulation (EU) No 1093/2010 that are investment firms defined in point (1) of Article 4(1) of Directive 2014/65/EU and subject to Article 25 and Article 34 of Directive (EU) 2019/2034 ('investment firms').

Definitions

10. Unless otherwise specified, terms used and defined in Directive (EU) 2019/2034 and Regulation (EU) 2019/2033 as well as in the EBA Guidelines on sound remuneration policies under Directive (EU) 2019/2034 have the same meaning in these Guidelines.

Implementation

Date of application

11. These Guidelines apply from 31 December 2022.

Transitional arrangements

12. The benchmarking data for the financial year ending in 2022, excluding gender pay gap data, should be submitted by investment firms to competent authorities by 31 August 2023 and by competent authorities to the EBA by 31 October 2023. The first benchmarking exercise regarding the gender pay gap should concern the financial year 2023.

Guidelines on the benchmarking exercises on remuneration practices and the gender pay gap under Directive (EU) 2019/2034

1. Scope of investment firms subject to the remuneration data collection exercise

13. Competent authorities should collect and submit to the EBA remuneration data of at least the three largest investment firms in terms of asset volume in their Member State, ensuring where possible a coverage of at least 50% of the total asset volume of all investment firms in that Member State. This data should not include investment firms that are subsidiaries of investment firms for which data will be collected on the consolidated level.

2. Scope of investment firms subject to the gender pay gap data collection exercise

14. Competent authorities should collect and submit to the EBA gender pay gap data on an individual basis from investment firms from which these competent authorities collect remuneration data, i.e. the investment firms responsible for the consolidation of data under Article 7 of Regulation (EU) 2019/2033 or the individual investment firms included in the sample for remuneration benchmarking that are subject to Articles 30 and 32 of Directive (EU) 2019/2034.
15. Competent authorities should collect at an individual level gender pay gap data from investment firms which have at least 50 staff, excluding the members of the management body in its supervisory function. When applying this paragraph, competent authorities should endeavour to collect gender pay gap data from at least five investment firms to which Article 32(1), points (j) and (l), and Article 32(3), third subparagraph, of Directive (EU) 2019/2034 apply and at least five investment firms to which these provisions do not apply in accordance with the derogation in Article 32(4)(a) of that Directive.

3. Submission of data to the competent authorities by investment firms

16. To enable competent authorities to collect and submit to the EBA remuneration data in accordance with these Guidelines, investment firms referred to in Section 1 should, by 15 June of each calendar year, submit to the competent authorities:
 - a. information on remuneration of all staff as set out in Annex I;

- b. additional information on remuneration for identified staff as set out in Annex II and Annex III; and
- c. information on derogations as specified in Annex IV.

17. To enable competent authorities to collect and submit to the EBA gender pay gap data in accordance with these Guidelines, investment firms referred to in Section 2 should, by 15 June every three years, starting from 2024 with regard to the financial year 2023, submit on an individual basis, to competent authorities, the information set out in Annex V.

4. Submission of benchmarking data by competent authorities to the EBA

4.1. Preparation of the data submission to the EBA by competent authorities

18. Competent authorities should inform the EBA, by 31 March of the calendar year following the year for which data is to be collected, about the list of investment firms that should be included in:

- a. the remuneration benchmarking exercise; and
- b. the gender pay gap benchmarking exercise.

19. Changes to the sample of investment firms should be avoided as much as possible to ensure that the sample remains stable and that changes to investment firms' practices can be identified. For the purposes of paragraph 18 competent authorities should inform the EBA about any changes compared to the previous data collection, including with regard to changes of names of investment firms or their legal entity identifier. Competent authorities should inform investment firms that are selected to participate in the data collections in a timely manner.

20. Competent authorities should, following a communication from the EBA, remove from the list investment firms for remuneration benchmarking that are subsidiaries of Union parent undertakings established in another Member State and for which the relevant data will be submitted to the EBA by another competent authority at a higher level of consolidation.

4.2. Submission of data to the EBA

21. Competent authorities should submit the benchmarking data, after ensuring the completeness, accuracy and plausibility of the information in line with these Guidelines and any other technical specifications provided by the EBA, as follows:

- a. remuneration data, by 31 July every year;
- b. gender pay gap data by 31 July every three years, starting from 2024 with regard to the financial year 2023.

5. General specifications for all benchmarking data to be reported

22. When submitting benchmarking data in accordance with Sections 3 and 4, investment firms and competent authorities should apply the general and data quality specifications set out in this Section and in Section 9 and the additional specifications set out in Sections 6, 7 and 8.
23. Benchmarking data should be submitted using accounting year-end figures in EUR. Where remuneration is disclosed in a currency other than 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 consolidated figures to be reported².
24. Amounts should be reported as full amounts, i.e. not rounded amounts, in EUR (e.g. EUR 1 234 567 should be reported, instead of EUR 1.2 million).
25. Benchmarking data for the calendar year in which the financial year ended should be submitted in the following calendar year. E.g. for the benchmarking exercise for the financial year ending on any date in the year '20yy', data will be submitted in the year '20yy+1'. The allocation of amounts to the fixed and variable part of remuneration should be made in line with Section 7 of the EBA Guidelines on sound remuneration policies under Directive 2013/36/EU.

6. Additional specifications for remuneration data

26. The number of staff should be submitted as determined at the end of the financial year (i.e. staff that left during the financial year are not counted, while staff that were recruited within the financial year are counted, taking into account their contractual working time arrangements).
 - a. Where the number of staff is to be submitted in terms of the headcount, the number of natural persons should be entered, independently of the number of working hours on which their contract is based or changes in the number of staff during the year and taking into account the total amounts of remuneration awarded for the year.
 - b. Where the number of staff is to be submitted in terms of the full-time equivalent, the number should be based on the percentage of time that an individual staff member is employed compared to a full-time contract (e.g. 0.5 would be reported for a staff member who is working 50% of the time of full-time contract).
27. For the purposes of Annexes II and III, identified staff are the staff specified under point (a) where investment firms submit data on an individual basis, and under point (b) where investment firms submit data on a consolidated basis in accordance with Article 7 of Regulation (EU) 2019/2033, whereby the members of the management body of subsidiaries are reported under the business areas rather than under the function 'management body'.
 - a. Identified staff are the staff whose professional activities have a material impact on the investment firm's risk profile or on the assets that it manages on an individual basis.

² The EBA provides a link to the information on its website together with these Guidelines; the exchange rate can also be accessed under http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm.

- b. Identified staff are the aggregation of:
- i. identified staff in investment firms that are in the prudential scope of consolidation and are themselves subject to the remuneration provisions under Articles 30 and 32 of Directive (EU) 2019/2034, independent of the fact that the staff members are identified on an individual or a consolidated level, and
 - ii. identified staff in other entities to which Articles 30 and 32 of Directive (EU) 2019/2034 apply only on a consolidated basis, with regard to the staff members whose professional activities have a material impact on the investment firm's risk profile or on the assets that it manages on a consolidated basis.
28. Unless otherwise specified in the Annexes to these Guidelines, information on remuneration awarded for the financial year should comprise the fixed and variable gross remuneration awarded for that year, i.e. the financial year preceding the year of submission of the information.
29. The allocation of submitted amounts to the fixed and variable part of remuneration should be made in line with Section 7 of the EBA Guidelines on sound remuneration policies under Directive (EU) 2019/2034.³
30. Taxable non-monetary items of remuneration should be included with their monetary equivalent and be included as 'other forms' of remuneration.
31. Only the amounts of variable remuneration awarded for the reported financial year that have been deferred should be reported under the position 'of which: deferred' in Annex II. Deferred variable remuneration for previous periods should be submitted under the additional information in Annex II.
32. Severance payments, guaranteed variable remuneration and discretionary pension benefits should be included in the amount of total variable remuneration in Annex II and in the appropriate subcategory. The amounts should also be added to the specific rows in the section on additional information in Annex II.
33. Where identified staff left the investment firm before the end of the financial year, the remuneration awarded for the financial year, including severance payments and all other forms of remuneration, should be submitted, while the staff member should not be counted towards the number of identified staff submitted when the contract has already ended before the end of the financial year. Identified staff who joined the investment firm during the financial year should be included in the number of identified staff, taking into account their contractual working time arrangements (e.g. staff working on a full-time basis who joined during the financial year would always be counted with '1' at the end of the financial year), and all remuneration awarded to those identified staff for the financial year should be submitted.
34. For the purposes of the tables in Annex I and in Annex III, staff should be classified under the function or business area in which they carry out the predominant part of their business activities.

³ The Guidelines are published at: <https://www.eba.europa.eu/regulation-and-policy/investment-firms/guidelines-remuneration-policies-investment-firms>

The full amount of remuneration awarded to that staff member within the group or investment firm should be included under this function or business area.

35. For the allocation of staff to business areas and categories of staff, investment firms should consider their internal organisation and the following:

- a. 'Management body (MB) supervisory function' should encompass the members of the management body at the highest level of consolidation acting in the role of overseeing and monitoring management decision-making. Investment firms should allocate members of management bodies of subsidiaries in Annex II to the 'other identified staff' category and in Annex I and Annex III to the respective business areas.
- b. 'Management body (MB) management function' should encompass the members of the management body at the highest consolidated level who are responsible for its management functions (i.e. executive directors). Investment firms should allocate members of management bodies of subsidiaries in Annex II to the 'other senior management' category and in Annex I and III to the respective business areas.
- c. 'Other senior management' is the staff defined in point (27) of Article 3(1) of Directive (EU) 2019/2034 other than members of the management body at the highest consolidated level.
- d. Staff that are neither 'other senior management' nor a member of the management body should be reported under 'other identified staff'.
- e. 'Dealing on own account, underwriting and placing of instruments' should include the services and activities under points (3), (6) and (7) of Annex I, Section A of Directive 2014/65/EU⁴.
- f. 'Investment advice and order execution' should include the services and activities under points (1), (2) and (5) of Annex I, Section A of Directive 2014/65/EU.
- g. 'Portfolio management' should include the services and activities under point (4) of Annex I, Section A of Directive 2014/65/EU and the staff that manage assets in subsidiaries that are Undertakings for Collective Investments in Transferable Securities (UCITS) or Alternative Investment Fund Managers (AIFMs) that are subject to the application of Articles 30 and 32 of Directive (EU) 2019/2034 on a consolidated basis.
- h. 'Operation of MTF/OTF' should include the services and activities under points (8) and (9) of Annex I, Section A of Directive 2014/65/EU.
- i. 'Independent control functions' should include only staff active in the independent risk management, compliance and internal audit functions as described in the EBA's Guidelines on internal governance.⁵

⁴ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU

⁵ EBA GL on internal governance under Directive (EU) 2019/2024, Section 15

j. 'All other staff' should include staff that are not included in points (a) to (i).

36. Variable remuneration awarded based on multi-year accrual periods that do not revolve on an annual basis, i.e. where investment firms do not start a new multi-year accrual period every year, should be fully allocated, for the purposes of Annex II, to the total variable remuneration for the financial year in which it was awarded, without consideration of the point in time when the variable remuneration is effectively paid or the length of the performance period. The amount of that variable remuneration should also be included in the additional information in Annex II.
37. Investment firms not falling under Article 32(4)(a) of Directive (EU) 2019/2034 should submit in Annex II the fixed and variable remuneration of identified staff to which the derogation under Article 32(4)(b) of that Directive applies.

7. Additional specifications for the submission of information on derogations in Annex IV

38. Investment firms should specify in Annex IV whether they are subject to the derogations under Article 32(4) of Directive (EU) 2019/2034/EU regarding the requirement to pay out a part of variable remuneration in instruments and under deferral arrangements, and provide the information requested regarding the identified staff to whom the derogations are applied.
39. Derogations under Article 32(4) of Directive 2013/36/EU should be considered to be applied when the investment firm that is subject to the derogation decides not to apply the minimum requirements regarding the portion to be deferred or paid out in instruments under Article 32(1) of that Directive (e.g. a derogation is still applied if 30% of an executive director's variable remuneration is deferred, or if it is deferred for only three years, as the minimum requirements of 40% deferral for at least four years have not been met).

8. Additional specifications for the submission of the gender pay gap in Annex V

40. Investment firms that are participating in the gender pay gap benchmarking exercise should calculate the gender pay gap on their individual basis, considering all their staff, including staff working in branches in the same Member State, that are predominantly active in the Member State where the investment firm is established. Staff located predominantly in branches in another Member State or in a third country should not be included in the calculation.
41. Investment firms should establish a list of all staff and determine which staff should be included in the gender pay gap calculation, in line with the following criteria:
- The gender pay gap should be calculated for the staff that are staff at the end of the financial year, i.e. staff who have left the investment firm during the financial year are not considered in this exercise.
 - Staff who receive less than their regular total annual remuneration because they were at the end of the financial year on any form of parental leave, long-term sick leave or long-

term special leave should be excluded from the exercise; long-term leave should be understood as leave of at least a consecutive time period of three months.

- c. Staff who have been recruited during the last three months of the financial year should not be taken into account in this exercise.
 - d. Members of the management body in the management function should be treated as staff and identified staff.
 - e. Members of the management body in the supervisory function should not be included in the calculation, unless they are employee representatives.
 - f. Members of the management body in the supervisory function that are employee representatives should be taken into account in the calculation as staff and should only be taken into account in the calculation for identified staff when they are identified staff based on the function they have as a staff member.
42. The gender pay gap should be calculated as the difference between the average remuneration of men and women expressed as a percentage of the average remuneration of men. Investment firms should use for the calculation the annual gross remuneration of staff on a full-time equivalent basis. In accordance with the EBA Guidelines on sound remuneration policies, investment firms should consider the total remuneration awarded and also on a best effort basis the working time arrangements, annual leave periods and other financial and non-financial benefits when calculating the gender pay gap, taking into account the provisions of the following paragraph.
43. For each staff member that should be included in the gender pay gap calculation in accordance with paragraph 40, the investment firm should establish their total gross annual remuneration as the sum of fixed and variable remuneration 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 on which the calculation is based should be used, even if they concern performance periods longer than one year.
 - 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.
 - e. For staff who have been working part-time, including for parts of the financial year, or have not been employed for the full financial year or have been on other forms of leave during parts of the year (e.g. unpaid or parental leave), the full annual amount of variable and fixed remuneration should be established on a best effort basis that the staff would have

received if they had been paid for the whole financial year on a full-time basis. Investment firms might calculate the amounts by extrapolating the remuneration, e.g. awarded for part-time employment, to the total annual gross remuneration on a full-time annual basis (e.g. the remuneration of staff working on a 50% part-time contract would be multiplied by a factor of 2 to arrive at the annual full-time remuneration).

44. Investment firms should calculate the gender pay gap for all staff (including the identified staff, identified on an individual basis) and separately for their identified staff. Investment firms should, in accordance with national law and the GDPR, make every reasonable effort to determine the gender of its staff. Investment firms may omit staff members whose gender cannot be ascertained.
45. Investment firms that have 250 or more staff should calculate the gender pay gap for each quartile of their total remuneration and in total. Investment firms with fewer than 250 staff should only submit the gender pay gap based on the total figures for all staff. Investment firms that have 250 or more identified staff should calculate the gender pay gap for each quartile of their total remuneration and in total. Investment firms with fewer than 250 identified staff should only submit the gender pay gap based on the total figures for identified staff.
46. Investment firms should calculate the gender pay gap in terms of the representation of each gender as a percentage of male and female staff based on the number of all staff and all identified staff respectively – where applicable under paragraph 45, per quartile – whereby the percentages of the male and female representation together should result, where applicable, in 100.00% for each quartile calculated and for the total figures for all staff and for identified staff.
47. The gender pay gap based on gross remuneration should be expressed as the difference between the remuneration levels of male and female staff as the:
 - a. difference between the mean remuneration of men and the mean remuneration of women, expressed as a percentage of the mean remuneration of men; and
 - b. difference between the median remuneration of men and the median remuneration of women, expressed as a percentage of the median remuneration of men.⁶
48. Investment firms should comply with the following instructions in preparing the calculation:
 - a. The remuneration of staff members (irrespective of their gender) should be arranged by the amount beginning with the lowest amount. Each amount of remuneration for a staff member should be allocated to the male or female gender and it should be recorded whether or not the staff member is identified staff.
 - b. Staff members of a gender different from the male or female gender should be allocated to the gender they identify with or, if this is unknown or if it is different from the male or female gender, these staff members should be allocated to the male or female gender that in total has the lower number of staff members.

⁶ Gender pay gap in percent = (average remuneration of men – average remuneration of women)*100/ average remuneration of men

- c. The established list of staff should, where applicable under paragraph 45, be separated into quartiles.
 - d. The median and mean of the remuneration for all male and female staff, and separately for male and female identified staff should be calculated – in total and, where applicable under paragraph 45, for each quartile.
49. All figures should be expressed as percentages with two decimal places (e.g. '17.23%' or '- 17.23%' in the case of a negative value). Where the gender pay gap for one category cannot be calculated, as there are only female staff members, the data point in Annex V should be assigned the value 'N/A'; where there are only male staff members the result should show '100.00%'.

9. Data quality

50. Investment firms and competent authorities should check the completeness and plausibility of the benchmarking data reported, taking into account the specifications in Annex VI, before that data is reported to the competent authority and submitted to the EBA respectively.
51. Where there are strong fluctuations of benchmarking data over time, the investment firm and the competent authorities should be able to provide explanations.
52. Investment firms and competent authorities should ensure that the sum of sub-positions of the variable and fixed remuneration equals the total amounts.
53. When checking the plausibility of benchmarking data, competent authorities should take into account the size and number of employees of the investment firm and typical remuneration levels. Identified implausible data should be followed up and corrected before the submission of data.
54. Where benchmarking data appears to be implausible, but are in fact correct, competent authorities should inform the EBA of the underlying reasons.
55. Regarding submitted benchmarking data that shows potential data quality issues or is considered to be implausible, the EBA may ask competent authorities to review the data or to provide the information necessary for the correct interpretation of the data.
56. Competent authorities should provide as necessary corrected data or explanations for any implausible data as soon as possible. Competent authorities should closely cooperate with the EBA to ensure that the dataset for the analysis is stable and of good quality by at the latest 30 September of the year when data has been reported.
57. When submitting benchmarking data to the EBA in accordance with these Guidelines, competent authorities should ensure that they also comply with EBA/DC/335 of 5 June 2020 on EUCLID ('EUCLID Decision')⁷ as amended and that they provide investment firms with any technical specification necessary for the submission of benchmarking data in line with that decision.

⁷https://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 – General information and information on remuneration for all staff in investment firms

Name of the investment firm					Name			
Maximum ratio between the variable and fixed remuneration for identified staff set in the investment firm internal policy					Percentage			
Does the investment firm benefit from the waiver under Article 32(4)(a) IFD at an institutional level?					Yes/no			
The investment firm is a subsidiary of an EU parent institution that is subject to Directive 2013/36/EU					Yes/no			
Financial year for which the remuneration is awarded (year N)					Year			
	MB supervisory function	MB management function	Dealing on own account, underwriting and placing of instruments	Investment advice and order execution	Portfolio management	Operation of MTF/OTF	Independent control functions	All other staff
Number of members (headcount)	#	#						
Total number of staff in FTEs¹			#	#	#	#	#	#
Total net profit in year N (in EUR)²	Full amount in EUR (e.g. 123 456 789.00)							
Total dividends (or similar distributions) paid for year N (in EUR)								
Total remuneration (in EUR)								
Of which: variable remuneration (in EUR)								
Of which: fixed remuneration (in EUR)								

¹ The numbers of staff should be expressed as full-time equivalents (FTEs) and be based on year-end numbers of staff in accordance with their individual working time arrangements.

² Net profits should be based on the accounting system used for regulatory reporting. For groups, it is the profit (or loss) based on the consolidated accounts.

Annex II – Information on remuneration of identified staff in investment firms

	Name of the investment firm				Name
	Financial year for which the remuneration is awarded (year N)				Year
Row		MB supervisory function	MB management function	Other senior management	Other identified staff
1	Members (headcount)				
2	Number of identified staff in FTEs				
3	Total fixed remuneration (in EUR) in year N				
4	Of which: cash-based				
5	Of which: shares or equivalent ownership interests				
6	Of which: share-linked instruments or equivalent non-cash instruments				
7	Of which: other types of instruments under point (j)(iii) of Article 32(1) IFD				
8	Of which: non-cash instruments which reflect the instruments of the portfolios managed				
9	Of which: approved alternative arrangements				
10	Of which: other forms				
11	Total variable remuneration (in EUR) in year N				

12	Of which: cash-based				
13	Of which: deferred				
14	Of which: shares or equivalent ownership interests				
15	Of which: deferred				
16	Of which: share-linked instruments or equivalent non-cash instruments				
17	Of which: deferred				
18	Of which: other types of instruments under point (j)(iii) of Article 32(1) IFD				
19	Of which: deferred				
20	Of which: non-cash instruments which reflect the instruments of the portfolios managed				
21	Of which: deferred				
22	Of which: approved alternative arrangements				
23	Of which: deferred				
24	Of which: other forms				
25	Of which: deferred				
Additional information regarding the above positions (all the amounts below should be included also in total variable remuneration)					
26	Total amount of outstanding deferred variable remuneration awarded for previous performance periods and not in year N				

27	Of which: due to vest in the financial year				
28	Of which: vesting in subsequent financial years				
29	Total amount of explicit ex-post performance adjustment made in the financial year to deferred variable remuneration that was due to vest in the financial year, applied in year N to previously awarded remuneration				
30	Total amount of explicit ex-post performance adjustments made in the financial year to deferred variable remuneration that was due to vest in future financial years, applied in year N to previously awarded remuneration				
31	Guaranteed variable remuneration in year N – total amount				
32	Guaranteed variable remuneration in year N – total number of beneficiaries				
33	Severance payments awarded in previous periods, paid out during the financial year – total amount				
34	Severance payments awarded in year N – total amount				
35	Of which: deferred severance payments awarded in year N				
36	Severance payments awarded in year N – number of beneficiaries				
37	Highest amount of severance payments awarded in year N to a single person				
38	Number of beneficiaries of contributions to discretionary pension benefits in year N				

39	Total amount of contributions to discretionary pension benefits in year N (included in other forms of variable remuneration)				
40	Total amount of variable remuneration awarded for multi-year periods under programmes which are not revolved annually				
41	For investment firms that do not benefit from the derogation under Article 32(4)(a) at an institutional level Thereof: fixed remuneration of individual staff members benefitting from at least one of derogations under Article 32(4)(b)				
42	For investment firms that do not benefit from the derogation under Article 32(4)(a) at an institutional level Thereof: variable remuneration of individual staff members benefitting from at least one of derogations under Article 32(4)(b)				

Annex III – Information on remuneration of identified staff per business area

Name of the investment firm					Name			
Financial year for which the remuneration is awarded (year N)					Year			
	MB supervisory function	MB management function	Dealing on own account, underwriting and placing of instruments	Investment advice and order execution	Portfolio management	Operation of MTF/OTF	Independent control functions	All other staff
Number of identified staff (headcount)								
Number of identified staff (FTEs)								
Number of 'other senior management'								
Number of 'other identified staff'								
Total remuneration (in EUR)								
Of which: variable remuneration (in EUR)								
Of which: fixed remuneration (in EUR)								

Annex IV – Derogations from the application of requirement to pay out a part of variable remuneration deferred and in instruments for investment firms under Directive (EU) 2019/2034

Name of the investment firm	Name	
Financial year for which the remuneration is awarded (year N):	Year	
Information on the availability of waivers	Derogation on a firm-wide basis under Art. 34(4)(a) IFD	Derogation for staff under Art. 34(4)(b) IFD
Does the investment firm apply the derogations regarding the requirement to pay out a part of the variable remuneration deferred and in instruments under Article 34(4)(a) IFD to all its identified staff? If this has been answered with 'yes' the information below does not need to be provided.	Yes/no	
Does the investment firm apply the derogation from the requirement under Article 32 (1)(j) IFD (pay-out in instruments)?	Yes/no	Yes/no
Where the investment firm applies the above derogation, but with a lower threshold as implemented under national law, please indicate the threshold applied in EUR		Threshold
Number of identified staff benefitting from the above derogation	Headcount	Headcount
Percentage of identified staff benefitting from the above derogation	Percentage	Percentage
Total remuneration of identified staff benefitting from the above derogation	EUR	EUR
Of which: variable remuneration	EUR	EUR
Of which: fixed remuneration	EUR	EUR
Does the investment firm apply the derogation from the requirement under Article 32 (1)(l) IFD (pay-out under deferral arrangements)?	Yes/no	Yes/no
Where the investment firm applies the above derogation, but with a lower threshold as implemented under national law, please indicate the threshold applied in EUR		Threshold
Number of identified staff benefitting from the above derogation	Headcount	Headcount
Percentage of identified staff benefitting from the above derogation	Percentage	Percentage
Total remuneration of identified staff benefitting from the above derogation	EUR	EUR
Of which: variable remuneration	EUR	EUR
Of which: fixed remuneration	EUR	EUR
Does the investment firm apply the derogation from the requirement under Article 32 (1), third subparagraph of paragraph 3 (derogations with regard to the pay-out in instruments of discretionary pension benefits)?	Yes/no	Yes/no
Number of identified staff benefitting from the above derogation	Headcount	Headcount
Total remuneration of identified staff benefitting from the above derogation	EUR	EUR
Of which: variable remuneration	EUR	EUR
Of which: fixed remuneration	EUR	EUR

Annex V – Information on the gender pay gap

Investment firm (individual level)	Name
Legal entity identifier	Number
Member State	ISO code (e.g. AT, BE, CY)
Year	Year
Total number of staff	Headcount
Total number identified staff	Headcount

Representation of staff of different genders per quartile of remuneration level

Representation of male and female staff in each quartile of remuneration level	All male staff in per cent of all staff	All female staff in per cent of all staff	All male identified staff in per cent based on all identified staff	All female identified staff in per cent based on all identified staff
Quartile 1 (low)	Percentage (e.g. 42.43%)	Percentage	Percentage	Percentage
Quartile 2 (low to medium)	Percentage	Percentage	Percentage	Percentage
Quartile 3 (medium to high)	Percentage	Percentage	Percentage	Percentage
Quartile 4 (high)	Percentage	Percentage	Percentage	Percentage
Total staff/identified staff	Percentage	Percentage	Percentage	Percentage

Gender pay gap based on the total gross remuneration

Total gross annual remuneration level	Gender pay gap of all staff, based on median	Gender pay gap of all staff, based on mean	Gender pay gap of identified staff, based on median	Gender pay gap of identified staff, based on mean
Quartile 1 (low)	Percentage (e.g. 42.43%)	Percentage	Percentage	Percentage
Quartile 2 (low to medium)	Percentage	Percentage	Percentage	Percentage
Quartile 3 (medium to high)	Percentage	Percentage	Percentage	Percentage
Quartile 4 (high)	Percentage	Percentage	Percentage	Percentage
Total staff/identified staff	Percentage	Percentage	Percentage	Percentage

Annex VI – Data quality checks

Investment firms and competent authorities should apply the following data quality checks with regard to Annex II and Annex III.

Annex II:

Row	Data quality check
1	The number of staff reported under the management body columns should be integral numbers.
3	The total fixed remuneration should be the sum of rows 4 to 10; where identified staff are reported the amount should be > zero.
11	The total variable remuneration should be the sum of the rows 12, 14, 16, 18, 20, 22 and 24.
10	The total variable remuneration should not be lower than the sum of guaranteed variable remuneration and severance payments in rows 31 and 33.
-	The sum of deferred remuneration in rows 13, 15, 17, 19, 21, 23 and 25 should not be higher than the value in row 11.
	Ratio of deferred remuneration: the sum of deferred remuneration in rows 13, 15, 17, 19, 21, 23 and 25 should be higher than or equal to 0.4 times the value in row 11 after the deduction the values in rows 31, 34 and 42 ($\geq 0.4 \times \text{row11} - 31 - 34 - 42$).
-	Investment firms should consider that this simplified validation rule is for benchmarking purposes only and is not a validation of the compliance with the remuneration requirements regarding guaranteed variable remuneration and severance payments, i.e. while the full amounts are deducted, parts of the amounts are possibly subject to the requirement to pay out parts of the variable remuneration under deferral arrangements.
	This validation rule does not apply to investment firms where all identified staff benefit from the derogation to the requirement to pay out parts of the variable remuneration under deferral arrangements under Article 32(4)(a) of Directive (EU) 2019/2034.

Payout in instruments: the sum of rows 14, 16, 18, 2 and 22 should be higher than or equal to 0.5 times the value in row 11 after deducting the values in rows 31, 34 and 42 ($\geq 0.5 \times (\text{row } 11 - 31 - 34 - 42)$).

- Investment firms should bear in mind that this simplified validation rule is for benchmarking purposes only and is not a validation of compliance with the remuneration requirements regarding guaranteed variable remuneration and severance payments, i.e. while the full amounts are deducted, parts of the amounts are possibly subject to the requirement to pay out parts of the variable remuneration in instruments.

This validation rule does not apply to investment firms where all identified staff benefit from the derogation from the requirement to pay out parts of the variable remuneration in instruments under Article 32(4)(a) of Directive (EU) 2019/2034.

Annex III:

Data quality check

The number of members of the 'management body' should equal the number included in row 1 of Annex II.

The sum of staff reported under 'other senior management' should be equal to the number reported in row 2 in Annex II for this category.

The sum of staff reported under 'other identified staff' should be equal to the number reported in row 2 in Annex II for this category.

The number of identified staff for each business area should equal the sum of the number of 'other senior management' and the number of 'other identified staff'.

The sum of the total remuneration across all business areas should be equal to the sum of the values in row 3 and row 11 in Annex II across all categories of staff.

The sum of the variable remuneration across all business areas should be equal to the sum of the values in row 11 in Annex II across all categories of staff.

The sum of the fixed remuneration across all business areas should be equal to the sum of the values in row 3 of Annex II across all categories of staff.

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)¹¹ 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.

Compared to the previous Guidelines (that were addressed to both institutions and investment firms), this version includes specifications for remuneration benchmarking for investment firms, additional tables related to the benchmarking of the gender pay gap and tables related to derogations to the application of requirements to pay out parts of variable remuneration deferred and in instruments for investment firms. These specifications are related to requirements introduced by Article 34 of Directive (EU) 2019/2034 (IFD). Therefore, the impact of these additional requirements will not be assessed, as they stem directly from the Level 1 text, rather than from these Guidelines.

On the other hand, other aspects of procedural specifications within these Guidelines, as well as other changes implemented, will be assessed from the perspective of costs and benefits that they entail to investment firms and NCAs and their impact on financial stability. More generally, the Guidelines are not expected to create a significant burden on investment firms. The EBA is aware that not many investment firms participated in the EBA’s previous data collection exercises. For the data to be collected to fulfil the benchmarking mandates within the IFD the EBA minimised, to the extent possible, the amount of data to be provided, while ensuring that the overall objectives of the legislative mandates are fulfilled.

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

Data for remuneration benchmarking

Under Article 34 (1) IFD, Member States shall ensure that competent authorities collect the information disclosed in accordance with points (c) and (d) of the first subparagraph of Article 51 of Regulation (EU) 2019/2033 (IFR) as well as the information provided by investment firms on the gender pay gap and use that information to benchmark remuneration trends and practices. Competent authorities shall provide that information to the EBA.’

¹¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010R1093>

The EBA therefore used the disclosure requirements as a basis to design the tables for data collection. Only limited additional data is collected for remuneration benchmarking purposes.

The breakdown in business areas for the remuneration of all staff has been amended compared to previous guidelines to better reflect the business areas specific to investment firms. For this purpose, Annex 1 (Section A) of MIFID II was used. However, some business areas were also merged to ensure a more proportionate approach and avoid unnecessary granularity.

Overall, these changes are expected to lead to very limited costs for investment firms, first because the granularity for a material part of the benchmarking exercise is low (data by business area will be required only for the totals of fixed and variable remuneration) and, second, because both the tables and the instructions will be in line with disclosure requirements, which implies that the data can be reused by investment firms.

Data for the gender pay gap assessment

IFD explicitly introduced the requirement that institutions must apply gender-neutral remuneration policies to all staff and that the EBA should benchmark the gender pay gap. The monitoring of the gender pay gap is an element specified in the EBA Guidelines on internal governance and EBA Guidelines on sound remuneration policies.

However, the requirements that there must be equal treatment of men and women and that any form of discrimination is prohibited is not new and was already included in Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation¹², which were subsequently translated in various ways into rules for implementation at local level. To provide guidance on the way the gender pay gap is to be monitored, and to encourage harmonisation of the methodology across MSs, the European Commission published in 2014 the Pay Transparency Recommendation¹³, providing specific instruction to entities of 50 staff and above on how the gender pay gap should be calculated as one of the measures to monitor compliance with the above Directive.

While the Recommendation to monitor the gender pay gap is not new, it has now been specified in IFD that competent authorities should collect information on the gender pay gap and provide this to the EBA for benchmarking purposes. The EBA is aware that not all the MSs have translated these using the methodology proposed in the Recommendation.

The current Guidelines specify the data that investment firms should provide on the gender pay gap, and therefore, also need to provide a table and instructions on what figures to provide and how to calculate them. Not specifying any methodology would lead to incomparable data being provided, and inconclusive findings.

¹² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0054>

¹³ Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014H0124>

The updated Guidelines therefore specify how the investment firms calculate the gender pay gap using the methodology proposed by the European Commission in its 2014 Pay Transparency Recommendation and provide further specifications on the calculation in the context of the remuneration requirements under IFD and, in particular, that institutions must have gender-neutral remuneration policies for all staff and their identified staff.

Using this methodology has several benefits. It ensures that many pitfalls related to gender pay gap calculations are addressed to ensure relevance and comparability of the final figures (for example the adjustment of the time worked to consider part-time work, maternity/paternity-leave, partial work during the year, etc.).

The Guidelines foresee for institutions with 250 or more staff a more granular approach than for institutions with 50 to 249 staff. Such an approach is consistent with the principle of proportionality. However, the calculation proposed, once the annual remuneration for all staff is established, can be performed with standard calculation tools that are available in investment firms.

In addition, the methodology has been already published and is familiar at least to investment firms in the MSs that have implemented the Recommendations at national level. Consequently, while all the investment firms must monitor the gender pay gap in accordance with IFD and ensure that they comply with the Directive on Equal Opportunities, the costs that the investment firms will incur because of these Guidelines will mostly depend on the methodology they currently apply:

- If the monitoring is done using the methodology in accordance with the 2014 Pay Transparency Recommendation, then the additional costs will be minimal.
- If the monitoring is done in a different way, the costs may be substantial, as the implementation of the methodology may require adjustments to the HR systems that would allow the automatic identification of the gender of the employee, their identified staff status, their annual number of hours worked adjusted to consider part-time work, maternity/paternity leave, etc., or the same would need to be done manually. The costs would hence mainly be one-off implementation costs.

In addition to the methodology, the Guidelines specify that the data on the gender pay gap should be provided both for identified staff, as specified in the disclosure requirements in IFR, as well as all staff. Investment firms must disclose information on the gender pay gap for their identified staff. The provision regarding the benchmarking of the gender pay gap for all staff is necessary, in order to ensure a sufficiently wide basis for the calculation in investment firms and that data can be interpreted correctly. Moreover, the benchmarking of the gender pay gap will make transparent deficiencies in the fair gender representation for all staff, which will have a positive effect in the longer run on limiting the gender pay gap in general, but also at normally higher paid positions within the group of identified staff. Moreover, having only data on identified staff can provide a distorted picture of the gender pay gap due to the different distribution of the genders across identified vs all staff. The collection of gender pay gap data for all staff, in addition to identified

staff, may incur additional costs for the investment firms related to processing of data for a larger number of observations.

The costs for the data submission to competent authorities and from competent authorities to the EBA have not been assessed as they are borne by the requirement introduced within IFD.

Overall conclusion

Overall, the costs created by the Guidelines are minimal, and, in the case of the gender pay gap, depend on the current practices of the institutions in individual Member States. For individual institutions, the implementation costs for this specific aspect can be material, but those costs would mainly be one-off implementation costs. The requirement as such is created by IFD. Additional costs are expected from the need to submit data on the gender pay gap for all staff in addition to identified staff, a provision which the EBA finds necessary to have a meaningful assessment of the institutions' remuneration policy and which is consistent with the requirement that remuneration policies must be gender-neutral for all staff.

The Guidelines overall ensure that the benchmarking exercises can be conducted efficiently and that the derived information is relevant for reviewing the remuneration framework, including the application of derogations. While the Guidelines do not have a direct impact on financial stability, they allow monitoring of remuneration practices and whether they are aligned with the performance of investment firms and the risks they take. Overall, the increased transparency on remuneration practices should have a positive effect on financial stability as it provides indicators for the monitoring of long-term oriented behaviour.

5.2 Feedback to the public consultation

The EBA publicly consulted on the draft proposal contained in this paper.

The consultation period lasted for two months and ended on 21 March 2022. Seven responses were received, of which six were published on the EBA website; only one response was directed specifically to these Guidelines. The other responses were mainly directed towards the remuneration and gender pay gap benchmarking guidelines under Directive 2013/36/EU, but relevant comments have also been taken into account for the remuneration benchmarking guidelines under Directive (EU) 2019/2034. The EBA's Banking Stakeholder Group did not submit an opinion.

A summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments and the actions taken to address them if deemed necessary have been included in a feedback table that is published as part of the 'Final report on guidelines on the benchmarking exercises on the remuneration practices, on the gender pay gap and on approved higher ratios under Directive 2013/36/EU' on the EBA's website.

Changes to the draft Guidelines have been incorporated as a result of the responses received during the public consultation as stated in the feedback table. The amendments concern, in particular, the timelines for data collection, the specifications of which staff should be included in the identified staff category and additional clarifications in the context of the calculation of the gender pay gap.



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