



Circular CSSF 24/858

Application of the Guidelines of the European Banking Authority ("EBA") on benchmarking of diversity practices, including diversity policies and gender pay gap, under Directive 2013/36/EU and Directive (EU) 2019/2034 (EBA/GL/2023/08)

Circular CSSF 24/858

Application of the Guidelines of the European Banking Authority (“EBA”) on benchmarking of diversity practices, including diversity policies and gender pay gap, under Directive 2013/36/EU and Directive (EU) 2019/2034 (EBA/GL/2023/08)

To all credit institutions, as defined in point (12) of Article 1 of the amended Law of 5 April 1993 on the financial sector (“LFS”), all CRR investment firms, as defined in point (9a) of Article 1 of the LFS, and all non-SNI IFR investment firms, as defined in point (9a-2) of Article 1 of the LFS

Luxembourg, 27 June 2024

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 benchmarking of diversity practices, including diversity policies and gender pay gap, under Directive 2013/36/EU and Directive (EU) 2019/2034 (EBA/GL/2023/08) (the “Guidelines”), published on 18 December 2023. 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 credit institutions, as defined in point (12) of Article 1 of the amended Law of 5 April 1993 on the financial sector (“LFS”), all CRR investment firms, as defined in point (9a) of Article 1 of the LFS, and all non-SNI IFR investment firms, as defined in point (9a-2) of Article 1 of the LFS (hereafter collectively referred to as “relevant institutions”) shall duly comply with the Guidelines.

1. The Guidelines

The Guidelines are issued by the EBA for the purposes of the harmonised benchmarking of diversity practices in accordance with Article 91(11) of the amended Directive 2013/36/EU¹ and Article 26 of Directive 2019/2034². Additionally, for the purposes of the harmonised benchmarking of the gender pay gap at the level of the management body, the Guidelines are issued by the EBA in accordance with Article 75(1) of Directive 2013/36/EU and Article 34(1) of Directive 2019/2034.

The Guidelines apply as from 27 June 2024.

The Guidelines specify the information to be provided every three years by a representative sample of relevant institutions on diversity practices, including on diversity policies and gender pay gap at the level of the management body (“diversity benchmarking”).

The Guidelines also specify how the CSSF will collect the diversity benchmarking data from relevant institutions, and how the CSSF will submit the data to the EBA.

¹ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338)

² 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)

The Guidelines are attached to this circular and are available on EBA's website: <https://www.eba.europa.eu/activities/single-rulebook/regulatory-activities/internal-governance/guidelines-benchmarking-diversity-practices-including-diversity-policies-and-gender-pay-gap?version=2023#activity-versions>

2. Scope of application

This circular shall apply to:

- all credit institutions, as defined in point (12) of Article 1 of the LFS;
- all CRR investment firms, as defined in point (9) of Article 1 of the LFS;
- all non-SNI IFR investment firms, as defined in point (9a-2) of Article 1 of the LFS.

The Guidelines are applicable on an individual basis in accordance with paragraphs 7 and 8 of the Guidelines.

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

EBA/GL/2023/08

18 December 2023

Final Report

on the Guidelines on benchmarking of diversity practices, including diversity policies and gender pay gap, under Directive 2013/36/EU and Directive (EU) 2019/2034

Contents

1. Executive summary	3
2. Background and rationale	4
3. Compliance and reporting obligations	9
Status of these Guidelines	9
Reporting requirements	9
Subject matter, scope and definitions	10
Subject matter	10
Scope of application	10
Addressees	10
Definitions	11
Implementation	12
Date of application	12
4. Guidelines	12
1. Sample of institutions and investment firms to be included in the diversity benchmarking exercise	12
2. Submission of diversity practices benchmarking data	13
3. Requirements for reporting of diversity benchmarking	13
4. General specifications for the submission of diversity practices benchmarking data	14
5. Specification of the governance system to be provided	14
6. Specifications for the submission of data on members of the management body	15
7. Specifications for the calculation of the gender pay gap	15
8. Data quality	18
5. Accompanying documents	19
5.1 Draft cost-benefit analysis / impact assessment	19
5.2 Feedback on the public consultation and on the opinion of the Banking Stakeholder Group	23

1. Executive summary

The European Banking Authority (EBA) is issuing ‘Guidelines on the benchmarking of diversity practices including diversity policies and gender pay gap under Directive 2013/36/EU and Directive (EU) 2019/2034’. The Guidelines are necessary to ensure harmonised benchmarking of diversity practices, including the composition of the management body, diversity policies and the gender pay gap at the level of the management body of institutions and investment firms.

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

Templates for data collection are included in the Guidelines. Data will be collected via the EBA’s data-collection platform (EUCLID) and additional technical information for competent authorities on the submission of data will be provided separately. Competent authorities will inform the participants of the data collection exercise accordingly.

The EBA will analyse the diversity practices, including diversity policies and the gender pay gap at the level of the management body and publish a benchmarking report at the Union level, including a country-by-country analysis every 3 years. The data are not collected annually as the composition of the management bodies is not expected to change significantly in the short term but should change in the medium to long term through appropriate measures taken within institutions and investment firms.

Next steps

The Guidelines will be implemented by the EBA within their reporting platform in EUCLID. The first data collection under these Guidelines will be conducted in 2025 with a reference date of 31 December 2024.

2. Background and rationale

1. The EBA is issuing 'Guidelines on the benchmarking of diversity practices, including diversity policies and gender pay gap under Directive 2013/36/EU and Directive (EU) 2019/2034' (Guidelines). In line with Article 1(3) of Regulation (EU) No 1093/2010¹ (EBA founding regulation), the EBA's scope of action includes investment firms. The Guidelines have been developed in accordance with Article 16 of the EBA founding regulation and in close cooperation with European Securities and Markets Authority (ESMA).
2. Under Article 91(10) Directive 2013/36/EU 'Member States or competent authorities should require institutions and their respective nomination committees to engage a broad set of qualities and competences when recruiting members to the management body and for that purpose to put in place a policy promoting diversity on the management body'. Article 91(11) of Directive 2013/36/EU requires that 'competent authorities shall collect the information disclosed in accordance with Article 435(2)(c) of Regulation (EU) No 575/2013 and shall use it to benchmark diversity practices. The competent authorities shall provide EBA with that information. The EBA shall use that information to benchmark diversity practices at Union level.' Article 26 of Directive (EU) 2019/2034 requires investment firms, unless they are small and non-interconnected, to have robust governance arrangements. Investment firms, unless they are small and non-interconnected are subject to disclosure requirements on diversity policies and their implementation under Article 48 of Regulation (EU) 2019/2033. Some other aspects of the data collection on diversity practices are based on Article 16 of the EBA founding regulation, as additional data are necessary to monitor market practices.
3. Under Article 9(1) of Directive 2014/65/EU 'Competent authorities granting the authorisation in accordance with Article 5 shall ensure that investment firms and their management bodies comply with Article 88 and Article 91 of Directive 2013/36/EU. ESMA and EBA shall adopt, jointly, guidelines on the elements listed in Article 91(12) 2013/36/EU.' These Guidelines take into account the further specifications provided on the diversity requirements in this Article in joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU².
4. Article 75(2) of Directive 2013/36/EU and Article 34(2) of Directive (EU) 2019/2034 require the EBA to benchmark the gender pay gap. For this purpose, the EBA is collecting information for all staff and identified staff under the EBA Guidelines (EBA/GL/2022/06) from credit institutions and EBA/GL/2022/07 from investment firms. The EBA is collecting information separately on the gender pay gap at the level of the management body and for this purpose the EBA should collect data on the pay gap at the level of the management body as part of these Guidelines.

¹ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC.

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

5. These Guidelines harmonise the collection of data for diversity benchmarking and the benchmarking of the gender pay gap at the level of the management body.
6. On the basis of high-level principles the Guidelines set out the process on how a representative sample of institutions and investment firms should be formed by competent authorities. Further instructions will be provided to competent authorities before the data collection, ensuring that a representative sample is determined in good time before the data submission. Institutions and investment firms that are required to submit data will be informed by competent authorities of their inclusion in the sample at least 3 months before they have to submit data.
7. To reduce the burden for the industry and competent authorities, the analysis will be based on a representative sample of institutions and investment firms of different natures and sizes, rather than regular reporting by all institutions and investment firms. Data will be collected on an individual basis by national competent authorities and the European Central Bank (ECB). Collecting data on a consolidated basis would not be meaningful, as it would not provide insights into the composition and diversity of the individual management bodies.
8. The EBA's Board of Supervisors will adopt a decision on the sample. To be representative the initial sample should cover at least 10% of institutions and investment firms per category in each Member State, but a minimum of 5 and a maximum of 50 institutions or investment firms per category in each Member State. The following categories, based on the balance sheet total at the end of the financial year, have been used in previous exercises: institutions per size of < EUR 1 bn; EUR 1 bn to <10 bn; EUR 10 bn to <30 bn; EUR 30 bn and above, and investment firms.
9. To identify trends in the longer term, it is necessary that changes to the sample are avoided as much as possible and to maintain a sample that allows for analysing diversity with a low margin of error. However, to take into account changes to the size of institutions, mergers and other changes, smaller adjustments to the sample are necessary to maintain its size and statistical basis. The sample determined will be communicated well in advance of the data collection and made publicly available.
10. Data on the diversity of the management body and the gender pay gap is collected separately for the members within the management function (executive directors) and supervisory function (non-executive directors) of the management body. This is not limited to the aspect of gender diversity, but extends to other aspects, including age, educational and professional background and the geographical provenance of directors (see recital 60 of Directive 2013/36/EU). Where applicable, a separate collection of information for employee representatives in the management body is needed as those non-executive directors are appointed under some national laws by a different process and as the requirements on the selection of employee representatives differ materially between Member States. Under Article 91(10) of Directive 2013/36/EU, diversity should be taken into account when recruiting new members, which is a different process as compared to the election of employee representatives. However, diversity within the staff representation is also important.
11. The Guidelines take into account that in some Member States genders different from the male or female gender are recognised and that persons may change their gender in line with national law.

While some Member States do not envisage genders other than the female or male gender, people within the European Union have the right to work in each Member State without restrictions based on the gender of the persons concerned. As different national gender definitions exist, the Guidelines follow the approach taken by other EU bodies³ in other data collection exercises and differentiates between three gender categories, namely male, female and non-binary. For this data collection exercise, members of the management body should be allocated to the gender category with which they associate themselves; the information provided by the member should be reported; no validation is required. The reported gender may differ from the gender assigned under the national law at birth or afterwards.

12. Gender pay gap data for the management body is collected separately for the management function (executive directors) and for the supervisory function (non-executive directors) to analyse the composition of the different functions and to take into account differences in their remuneration level. The data collection needs to consider that many institutions and investment firms have only directors of one gender, so that a gender pay gap cannot be determined. Moreover, in some jurisdictions, members of the supervisory function receive only a fixed attendance fee for meetings of the management body. Where this fee is not differentiated for individual members participating in the meeting of the management body, remuneration is set in a gender-neutral way without the existence of a gender pay gap. Additional fees for being a member of a committee are not taken into account in this case.
13. To ensure the protection of personal data, the gender pay gap will be calculated by institutions and investment firms and the resulting percentages will be submitted to competent authorities and the EBA. An example for the calculation of the gender pay gap is provided at the end of the background section.
14. Due to differences in company laws, it is necessary to provide clear and uniform definitions that specify the executive and non-executive directors that should be included in the data collection. This may include situations where the chief executive officer or other executive directors are themselves not members of the management or administrative organ of the institution or investment firm from a company law perspective. It should be noted that the definition of management body within Directive 2013/36/EU may differ from national company laws; it always includes the – at least two – persons who effectively direct the business of the institution. The same definition is also applicable to investment firms.
15. Article 9(6) of Directive 2014/65/EU provides the possibility that the competent authority approves that investment firms may have only one executive director. In the latter case, such investment firms should not be included in the sample, as there is no diversity in a management body that consists of only one director. The same applies for institutions where the competent authority has waived the individual application of certain requirements under Article 21 of Directive 2013/36/EU, as for such subsidiaries, the respective requirements do not apply on an individual basis.
16. Some additional instructions are provided to ensure that the data on diversity practices, including the composition of the management body, diversity policies and the gender pay gap at the level of

³ E.g. EUROSTAT, EIGE

the management body of institutions and investment firms have the appropriate quality for deriving reliable benchmarks and results.

17. The data collection exercise will be implemented in the EBA's tool for data collection (EUCLID). Instructions for institutions and investment firms on how to report the data are included in the Guidelines. The EBA will provide to competent authorities technical instructions for the processing and submission of the data outside of these Guidelines. The EUCLID Decision (EBA/DC/2020/335 of 5 June 2020) is available on the EBA's website. Additional data quality checks will be implemented in the information technology (IT) systems used for the data collection.

Example for the calculation of the pay gap

Remuneration sorted by gender and amount for each of the categories defined in Annex XI⁴:

Men:

Remuneration male director 1 = EUR 100 000

Remuneration male director 2 = EUR 108 000

Remuneration male director 3 = EUR 110 000

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

Median = 108 000

Women:

Remuneration female director 1 = EUR 100 000

Remuneration female director 2 = EUR 102 000

Remuneration female director 3 = EUR 112 000

Remuneration female director 4 = EUR 140 000

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

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

Pay Gap: (Figures for males are used as a reference point)

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

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

⁴ Annexes are published separately on the EBA's website.

EBA/GL/2023/08

18 December 2023

Guidelines

on the benchmarking of diversity practices, including diversity policies and gender pay gap, under Directive 2013/36/EU and Directive (EU) 2019/2034

3. Compliance and reporting obligations

Status of these Guidelines

1. This document contains Guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010⁵. 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 out the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how EU 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 (GL) apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where GL are directed primarily at institutions.

Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these Guidelines, or otherwise with reasons for non-compliance, by 27.05.2024. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website with the reference 'EBA/GL/2023/08'. 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).

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

Scope of application

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

Addressees

9. These GL are addressed to competent authorities as referred to in Article 4(2), points (i) and (viii) of Regulation (EU) No 1093/2010 and to financial institutions as defined in Article 4(1) of Regulation (EU) No 1093/2010 that are institutions as defined in Article 4(1) (3) of Regulation (EU) 575/2013, having regard to investment firms subject to Articles 1(2) or (5) of Regulation (EU) 2019/2033 (each reference to institutions should be understood as including such investment firms), and to investment firms as defined in point (1) of Article 4(1) of Directive (EU) 2014/65, unless they are small and non-interconnected as specified in Article 12(1) of Regulation (EU) 2019/2033 and are therefore subject to the provisions on internal governance, transparency, treatment of risks and remuneration under Chapter 2, Section 2 of Directive (EU) 2019/2034 and in particular Articles 25 and 34 thereof.

Definitions

10. Terms used and defined in Directive 2013/36/EU, Regulation (EU) No 575/2013 and Directive (EU) 2019/2034 and Regulation (EU) 2019/2033 and the 'Joint EBA-ESMA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and under Directive 2014/65/EU'⁶, have the same meaning in these GL, unless specific definitions are provided for these GL in this section.

Chief executive officer (CEO).	means the person who is responsible for managing and steering the overall business activities of an institution or investment firm and should include, for this exercise, the chair or president of the management body in its management function.
Chairperson	means the chair of the management body in its supervisory function of an institution in accordance with Article 88 of Directive 2013/36/EU, who does not perform any executive function in the institution or investment firm concerned.
Executive Director	means member of the management body in its management function and includes the persons who effectively direct the business of the institution or investment firm.
Non-executive director	means a position as a member of the management body in the supervisory function in which a person is responsible for overseeing and monitoring management decision-making without having executive duties within the management body.
Employee representative	means member of the management body in its supervisory function who is elected by staff of the institution or investment firm under applicable national law.
Significant institution	means institutions referred to in Article 131 of Directive 2013/36/EU (global systemically important institutions (G-SIIs), and other systemically important institutions (O-SIIs)), and, as appropriate, other institutions determined by the competent authority or national law, based on an assessment of the institutions' size and, internal organisation, and the nature, scope and complexity of their activities who have to implement a nomination committee under Article 88(2) or a remuneration committee under Article 95 of this Directive as implemented by national law.

⁶ EBA/GL/2017/12.

Geographical provenance means, for this exercise, regions where a person has lived or gained an educational or professional background that spans in total a time period of at least 3 years.

Professional background means experience gathered by a member of the management body by conducting occupational activities, whether they are gainful or not, that span a time period of at least 3 years before taking up the current position.

Non-binary means, for the gender of a person, any gender identity that is not male or female.

Implementation

Date of application

11. These GL apply from 27.06.2024.

4. Guidelines

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

12. Competent authorities should collect and submit to the EBA data on diversity practices, including on diversity policies and gender pay gap at the level of the management body for a representative sample of institutions and investment firms within the Member State on an individual basis as specified in the annexes published separately.
13. The sample should consist of institutions subject to Directive 2013/36/EU and investment firms that are either subject to the requirements on governance under Article 91 of Directive 2013/36/EU, in accordance with Article 1(2) or (5) of Regulation (EU) 2019/2033 (Class 1), or subject to Article 26 of Directive (EU) 2019/2034 (Class 2). The sample may include more than one institution or investment firm within a group, in particular, when they are located in different Member States. Competent authorities should not add investment firms to the sample where they have provided authorisation to the investment firm managed by a single natural person under Article 9(6) of Directive 2014/65/EU.
14. The EBA will approach competent authorities in good time before each data collection exercise and provide further information on how to determine the sample of institutions and investment

firms for which data should be collected. Following the request, competent authorities should inform the EBA about the list of institutions and investment firms that they intend to include in the diversity practices benchmarking exercise, within the timeline provided by the EBA.

15. Competent authorities should inform institutions and investment firms that form part of the sample in good time before the data collection, and at least 3 months before the submission of data is requested.

2. Submission of diversity practices benchmarking data

16. Institutions and investment firms should ensure that they are able to provide information on diversity practices, including diversity policies and the gender pay gap at the level of the management body, as specified in these GL, to the competent authority.
17. Institutions and investment firms that have been selected to form part of the sample should submit the requested data on an individual basis to the competent authority by 30 April every 3 years, starting from 2025 with a reference date of 31 December 2024.
18. Competent authorities should submit to the EBA the data provided by institutions and investment firms in accordance with paragraph 17, by 15 June after ensuring the completeness, correctness and plausibility of the information.

3. Requirements for reporting of diversity benchmarking

19. Credit institutions and investment firms should submit the information referred to in these GL in the data exchange formats and representations specified by competent authorities, respecting the data point definition included in the data point model, as well as the following specifications:
 - a. information that is not required or not applicable should not be included in a data submission;
 - b. numerical values should be submitted as facts according to the following:
 - i. data points with the data type 'monetary' should be reported using a minimum precision equivalent to millions of units;
 - ii. data points with the data type 'percentage' should be expressed as per unit with a minimum precision equivalent to four decimals;
 - iii. data points with the data type 'integer' should be reported using no decimals and a precision equivalent to units.
20. The data submitted by the credit institutions and investment firms should be associated with the following information:
 - a. reporting reference date and reference period;
 - b. reporting currency; and

- c. identifier of the reporting institution.

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

21. The reference date for data on diversity practices, including the diversity policy should be the end of the calendar year for which data has to be provided. The information provided on the composition of the management body and the implemented policies should reflect the situation at the reference date.
22. Financial information should be submitted using accounting year-end figures in EUR. Where credit institutions or investment firms are permitted by national laws to report their financial information based on their accounting year end, which deviates from the calendar year end, the latest available accounting year end should be considered as the reference date for the financial information to be provided, including the information on the gender pay gap. Where such data are 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 figures to be reported⁷.
23. In many cases, the possible range of input data is defined. Where the correct answer would not be within the defined range of defined values, the institution or investment firm should select the answer which best reflects the situation or where this is not possible, leave the field empty, contact the competent authority and provide explanations. The competent authority should forward this information to the EBA.

5. Specification of the governance system to be provided

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

⁷ The EBA provides a link to the information on its website together with these guidelines; the exchange rate can also be accessed at http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm

the body that consists only of the members of the management body in their supervisory function (non-executive directors), i.e. a unitary board does not exist at all.

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

25. Where data are requested about the CEO, only data for the CEO should be reported under this category. Data on deputy or vice CEOs should be reported under the category 'executive directors'. Where none of the executive directors has a role as CEO, all data on executive directors should be reported under the category 'executive directors'.
26. Where data are to be provided for executive directors, this data should include information on:
 - a. those members of the management body who have executive functions and who are responsible for the effective direction of the institution or the investment firm;
 - b. the persons who effectively direct the business in line with Article 13(1) of Directive 2013/36/EU, in the case of an institution, or in line with 9(6) of Directive 2014/65/EU, in the case of an investment firm, irrespective of whether or not they are members of the management or administrative organ appointed in accordance with national company law.
27. Where data are requested about the chairperson, only data for the chairperson should be reported under this category if the chair belongs to the supervisory function of the management body, deputy or vice chairpersons should be reported only under the category 'non-executive directors'. Where none of the non-executive directors has a role as chairperson, all data should be reported under the category 'non-executive directors'. A chairperson of the management body that also has executive functions should be reported only under the category of executive directors.
28. Where data are to be provided for non-executive directors, this data should include separately information on:
 - a. members of the management body who are responsible for overseeing and monitoring management decision-making without having executive duties;
 - b. where applicable, employee representatives who are members of the management body.
29. Members of the management body should be allocated to the gender with which they associate themselves. For this exercise, all genders that differ from the male or female gender form a third category of genders, referred to as non-binary.
30. Where an executive director holds the position of the chairperson of a unitary board, the information on that director should only be provided under the category 'executive director', including for the calculation of the gender pay gap.

7. Specifications for the calculation of the gender pay gap

31. Competent authorities should collect data on the gender pay gap from institutions and investment firms on an individual basis expressed as percentages of the difference between the average pay

of female and male members of the management body and the difference between non-binary and male members of the management body, based on the mean and the median remuneration of executive directors, non-executive directors and employee representatives.

32. To calculate the gender pay gap, institutions and investment firms should determine the total gross annual remuneration as the sum of fixed and variable remuneration before tax, considering the following:
- a. The full variable remuneration awarded for all performance periods that ended during the financial year should be used. This should include variable remuneration based on non-revolving multiannual performance periods. Amounts paid out in the financial year (e.g. on a pro rata basis) that have been awarded in preceding financial years should not be taken into account.
 - b. Guaranteed variable remuneration (e.g. sign-on bonus), remuneration packages awarded for the buy out from previous contracts 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.
 - c. Non-monetary benefits (e.g. company car, interest-free loans, free company kindergarten etc.) should be taken into account at their taxed monetary equivalent.
 - d. Regular payments into the pension system and health insurance for all staff should not be considered. Discretionary pension benefits should be considered.
 - e. Fees for the participation in meetings of the management body should be taken into account, limited to members of the management body in the supervisory function where they also receive elements listed under points (a) to (d) of this paragraph. Where no other payments are made paragraph 33 applies. Participation fees for the participation in committees of the management body should not be taken into account.
33. Where non-executive directors or employee representatives receive remuneration only for their function in the form of a fixed daily participation fee, the amount to be considered for the calculation of the gender pay gap should be the participation fee for **1** day, independent of the number of days that have been remunerated during the financial year, instead of calculating the remuneration as specified in paragraph 32.
34. For employee representatives only the amounts awarded for their function as member of the management body should be considered.
35. Where a member of the management body was remunerated only for a part of the financial year, the remuneration received should be scaled up to the amount that would have been the total gross annual remuneration, if that member had been remunerated for the complete year. The same should apply for members that work part time.

36. Members who were no longer a member of the management body at the end of the financial year should not be included in the calculation and their remuneration should not be taken into account in the calculation.
37. Institutions and investment firms should comply with the following instructions when calculating the mean and median remuneration to be reported in Annex XI:
 - a. Separately for executive directors, non-executive directors and employee representatives, each director's remuneration should be allocated to the applicable gender.
 - b. The remuneration of members separately for each gender should be arranged by the amount, beginning with the lowest amount.
 - c. The median and mean of the remuneration for male, female and non-binary executive directors, non-executive directors and employee representatives should be calculated.
38. The mean should be calculated as the sum of the remuneration divided by the number of directors in the relevant category specified under paragraph 37(c).
39. The median to be calculated under paragraph 37(c) is the middle value of the distribution of remuneration values set out under paragraph 37(b). In the case of an even number of directors within a category, the median is the mean of the two middle numbers.
40. Institutions and investment firms should calculate for each of the categories provided in Annex XI the gender pay gap by calculating:
 - a. The difference between the mean remuneration of men and women, divided by the mean remuneration of men.
 - b. The difference between the median remuneration of men and women, divided by the median remuneration of men.
 - c. The difference between the mean remuneration of men and non-binary members, divided by the mean remuneration of men.
 - d. The difference between the median remuneration of men and non-binary members, divided by the median remuneration of men.
41. When the gender pay gap between male and female members or the pay gap between male and non-binary members cannot be calculated as the category does not contain both of the respective genders, institutions and investment firms should provide the value 'n/a' (not available) instead of calculating the percentage.
42. Where the remuneration for the reference data has not yet been approved, institutions and investment firms should report the gender pay gap on a best effort basis, taking into account the proposed variable remuneration.

8. Data quality

43. Before submitting data to their competent authorities, institutions and investment firms should check the completeness and plausibility of data and apply necessary corrections. The same should apply to competent authorities before they submit the data to the EBA.
44. When requested by the EBA, competent authorities should provide as necessary corrected data or explanations to any implausible data as soon as possible.
45. For the data quality checks, competent authorities should verify:
 - a. that the templates are filled in completely and on an individual basis;
 - b. the correct indication of the governance structure;
 - c. the correct selection of the size category by the institution;
 - d. the correct selection if an institution is categorised as significant or non-significant; and
 - e. the plausibility of the number of directors, considering that data should be provided on an individual basis.
46. When submitting diversity practices benchmarking data to the EBA, competent authorities should ensure that they also comply with EBA/DC/335 of 5 June 2020 on EUCLID (EUCLID Decision)⁸ as amended and that they provide institutions and investment firms with any technical specifications necessary for continuous compliance with the EUCLID Decision.

⁸https://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

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)⁹ provides that the EBA should carry out an analysis of ‘the potential related costs and benefits’ of any GL it develops. Such analyses shall be proportionate in relation to the scope, nature and impact of the GL. This analysis should provide an overview of the findings on the problem to be dealt with, the solutions proposed and the potential impact of these options.

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

Data for diversity benchmarking

Problem identification:

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

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

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

Article 75(1) of Directive 2014/36/EU requires the collection of data on the gender pay gap and Regulation (EU) 2019/2033 requires the disclosure of data on the gender pay gap for identified staff, including for members of the management body that are identified staff in line with the Regulatory Technical Standards on identified staff¹⁰. The EBA is mandated to benchmark this information as part of its benchmarking of remuneration practices.

⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010R1093>

¹⁰ Commission Delegated Regulation 2021/923 and 2021/2154

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

Options:

Approach to the data collection

A: collection of data under an information request

B: collection of data under EBA GL

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

Institutions received instructions and tables and had a sufficient time period to prepare the data collection. While the data are not complex, it involves contacting the management body which has limited availability.

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

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

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

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

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

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

While the group of identified staff includes the members of the management body, it also includes other staff. The responsibilities of the members of the management body are comparable.

Therefore, the pay gap is subject to less other factors that drive differences in pay. Hence, it is seen beneficial to perform a separate analysis.

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

Option B has been retained.

Collection of remuneration data or collection of percentage differences of the remuneration between members of different genders

Option A: Collection of remuneration data.

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

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

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

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

Option B has been retained.

Collection of data on an individual or consolidated basis

Option A: Data should be collected on an individual basis

Option B: data should be collected on a consolidated basis

The analysis of data on a consolidated level (including all group entities) would not be efficient as the composition of each board would not be visible. Therefore, data will not be collected on a consolidated basis. While such data would cover more institutions and could help to determine overall results in terms of gender representation at boards in the financial sector, the purpose of the exercise is also to analyse the diversity practices at each individual board level. This is only possible if individual institutional data are collected.

Option A has been retained.

Data should be collected annually or over a longer time period.

Option A: Annual data collection.

Option B: Data collection only after sufficiently long time periods.

The sample covers nearly 800 institutions, the composition of the management body does not normally change a lot within 1 year, hence, annual data collection would have very little advantage, but create more burden.

Option B has been retained.

Sample of institutions

Option A: Definition of the sample as part of the GL.

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

Option C: Collecting information from all institutions and investment firms.

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

Option B has been retained.

Data on diversity policies and practices to be collected.

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

No other option.

Overall conclusion

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

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

5.2 Feedback on the public consultation and on the opinion of the Banking Stakeholder Group

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

The consultation period lasted for 3 months and ended on 24 July 2023; seven responses were received; all were published on the EBA website.

This paper presents 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.

In many cases several industry bodies made similar comments or the same body repeated its comments in the response to different questions. In such cases, the comments, and EBA analysis are included in the section of this paper where the EBA considers them most appropriate.

Changes to the draft Guidelines have been incorporated as a result of the responses received during the public consultation as explained below.

Summary of responses to the consultation and the EBA's analysis

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
General comments			
Implementation period	One respondent suggests performing the next data collection in 2026 only, to allow for sufficient time for implementing the GL.	The data will not be collected at the beginning of the year; institutions in the sample will have 1 year to implement the Guidelines and have been subject in the past to similar data collection on diversity. An implementation period of approximately 1 year is deemed to be sufficient.	No change
Level of detail	One respondent finds that the Guidelines contain too much detail about the aspects of diversity.	The aspects of diversity are set out in the recitals to CRD; the EBA benchmarks only the aspects listed there. A split between the management and supervisory function is needed to consider their roles and the differences in appointment/selection processes.	No change
General Protection Regulation (GDPR)	Data A particular GDPR concern has been expressed about the remuneration data to be reported under Annex XI.	Remuneration data are not reported, but the difference between male and female pay in percentages is reported. The monitoring and therefore the supervision of the gender pay gap is mandated by CRD.	No change
Significant institutions	To avoid misunderstandings the definition should only refer to Other systemically important institutions and Global systemically important institutions. The addition '[...] or national law, based on the assessment of the institutions' size and, internal organisations, and the nature, scope and complexity of their activities' should be deleted.	The definition proposed has been retained in line with other EBA GL, as it is relevant for the formation of committees, but further specifications were added.	GL amended
Efficiency of data collection	Considering that there are several data collection systems in the EU, one respondent suggests rationalising the data collection systems in use to avoid the double collection of information.	The EBA aims to collect data via its EUCLID platform and cross references existing data via the Legal Entity Identifier (LEI). Different EU and national bodies collect different data for different purposes. Having one system for all different	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		data collection exercises that complies with data protection requirements would require a specific legal basis.	
Gender pay gap	One respondent comments that the data collection on the gender pay gap at the level of the management body overlaps with the data collection on the unadjusted gender pay gap for staff and identified staff and that existing overlapping GL should be amended rather than the aspect being included in a different set of GL.	<p>The EBA collects data on the unadjusted gender pay gap for staff and identified staff under the GL on remuneration benchmarking, which is not linked to the different positions of staff, but is necessary to comply with the legal mandates under Directives 2013/36/EU and (EU) 2019/2034, as well as to monitor compliance with Article 157 of the Treaty on the Functioning of the European Union (TFEU).</p> <p>Alternatively, the data collection for the gender pay gap at the level of the management body allows for analysis of the pay gap for persons who hold comparable positions. Given the importance of the aspect of gender-neutral remuneration policies and the aspect of equal pay for equal work or work of equal value encoded in the TFEU, the EBA is of the view that the specific collection of data at the level of the management body is of significant importance and justifies the cost for the limited reporting burden caused.</p> <p>As the data can best be interpreted in the context of other data on the composition of the management body, the data collection will remain under the consulted GL.</p>	No change
Proportionality	One respondent asks for more proportionality on the collection of data.	To have a full understanding of diversity and gender pay gap aspects in the EU, it is necessary to collect a comparable dataset from all institutions and investment firms subject to the exercise. Considering that the number of members of the management body is limited and that diversity policies have to be adopted by all institutions, the volume of data and the burden for its reporting is rather limited.	No change
Legal basis	One respondent is required to provide a clearer basis for collecting data for members of the management body in its supervisory function, as they are not staff in their view. In addition, the	<p>The Guidelines specify the benchmarking of diversity practices at the level of the management body.</p> <p>Members of the management body in the supervisory function are identified staff in accordance with the Commissions Delegated Regulations on the</p>	No change



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	respondent comments on the lack of a legal basis for the collection of data for all staff.	<p>identification of staff who have a material impact on the risk profile of the institution/investment firm.</p> <p>The GL on remuneration benchmarking for the collection of information for all staff are based on Article 16 of the EBA founding regulation. This data collection is needed to benchmark market practices on gender-neutral remuneration policies required under Directive 2013/36/EU and Directive (EU) 2019/2034.</p>	
Definition of Genders	It is suggested to provide a clear definition of the different genders.	The EBA assumes that there is no need to define male or female gender. Non-binary is a term that refers to any gender identity that is not male or female.	Definition added
Appointment of members	One respondent points to the fact that sometimes institutions do not have an influence on the appointment of members of the management body in its supervisory function by shareholders, trustees, public bodies, etc. and therefore not to hold diversity GL for these members.	<p>Article 91 CRD requires that Member States or competent authorities shall require institutions and their respective nomination committees to engage a broad set of qualities and competences when recruiting members to the management body and for that purpose to put in place a policy promoting diversity on the management body. The term management body comprises both the management and the supervisory function.</p> <p>While the appointment for the supervisory function is made by shareholders or other bodies, institutions should be able to find ways to ensure that the appointing bodies are aware of this provision and institutions' policies also for the supervisory function. Owners should have an interest in ensuring that the management body in the supervisory function is composed appropriately.</p> <p>Independently of this, it is still possible to benchmark policies and the composition of the management body and Annex X(c) provides for the possibility to select that there is a policy in place only for the members of the management body in its management function.</p>	No change
Responses to questions in Consultation Paper EBA/CP/2023/08			
Question 1.			



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Addressees	<p>A respondent wondered why there is a difference between the addressees between the consulted GL and the Joint GL on the suitability of members of the management body and key function holders and suggests that the reference to Article 25 and 34 of Directive (EU) 2019/2034 (IFD) would not be sufficiently clear and that firms that are supervised as part of a group subject to Directive 2013/36/EU should not be covered by the GL.</p> <p>Moreover, clarification is sought on the application of the GL to subsidiaries located in third countries.</p>	<p>The diversity benchmarking Guidelines take into account the principle of proportionality and are therefore not addressed to investment firms to which Articles 25 (scope of application) and 34 (basis for calculating the gender pay gap) IFD do not apply.</p> <p>While such firms are not subject to the specific governance and remuneration requirements under IFD, they are subject to the suitability requirements as Article 9 MiFID applies to them.</p> <p>The requirements under CRD and IFD apply on a consolidated and individual basis, therefore investment firms that are part of a group are still subject to the requirements on diversity and on the monitoring of the gender pay gap and to the respective Guidelines.</p> <p>The Guidelines require the collection of data from institutions/investment firms on an individual basis only. Subsidiaries of EU parent undertakings that are not themselves established in the EU/EEA are not subject to the data collection. The same applies for other financial institutions that are subject to consolidation, but are not themselves subject to CRD or IFD.</p>	No change
Scope of Application	<p>One respondent asks for confirmation of their view that the GL should only be applied by institutions directly supervised by the ECB and not be applied to institutions that are subsidiaries of a parent undertaking.</p> <p>Another respondent asked to clarify that the GL apply only to institutions and investment firms subject to supervision by the ECB or the national competent authority.</p>	<p>The point clarifies the entities to which the Guidelines are addressed.</p> <p>Requirements on diversity apply to all institutions and investment firms. Likewise, the diversity benchmarking exercise, even if based on a sample of institutions, includes institutions and investment firms from all Member States (also MS that are not part of the banking Union) and all types of institutions and investment firms, independently of which competent authority supervises them. The GL do not contain any suggestion that the scope could be limited to firms supervised by the ECB or on a consolidated level.</p> <p>The requirements on diversity apply on an individual and consolidated basis, whereby the composition of the management body is a matter for the individual institution or investment firm. Firms other than institutions and investment</p>	No change



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		<p>firms that are within the scope of consolidation, e.g. payment institutions, are not covered in this exercise.</p> <p>The GL specifically allow for the inclusion of more than one subsidiary of a group. This is necessary e.g. to ensure that a representative sample can be collected for each Member State, including Member States where the financial market is dominated by subsidiaries of parent institutions located in another Member State.</p> <p>Monitoring the diversity at a consolidated level would not be effective as there would be no information on the composition of the individual management bodies. Therefore, the Guidelines apply only on an individual, but not on a consolidated basis.</p>	
Definitions	<p>The Guidelines refer in several places to ‘executive directors’ and ‘non-executive directors’. It would be clearer to use the existing terms on the management body in its supervisory and management functions.</p>	<p>The terms are commonly used terms and defined in the Guidelines, while legally the longer wording would be correct, the terms used are more practical in terms of using them in templates for the data collection and to avoid different interpretations of the term ‘management body’.</p> <p>Definitions have been added.</p>	GL amended
Definitions CEO and chairperson	<p>One respondent comments that the definition of CEO and chairperson are not clear, can be misleading and that in practice, there is a combination of those functions possible and that in a unitary board, the chair may also have some executive functions, without being the CEO.</p> <p>Suggestion to use the following:</p> <p>CEO: means the person who is responsible for managing and steering the overall business activities of an institution or investment firm and who is primarily responsible for carrying out the strategic plans and policies as determined by the</p>	<p>The definitions apply to the data collection. If a member of the management body is called ‘CEO’ or ‘chair’ in an institution or investment firm, but does not meet the criteria of the definition within the Guidelines, the person is to be reported either as executive or as non-executive director and in line with the definitions of the Guidelines.</p> <p>The Guidelines definition is in line with other EBA Guidelines and aims to also include in the definition the person in a 2-tier system that chairs the management function, while they are not considered to be the CEO, in the definition of CEO.</p>	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>management body where applicable under local law and should include, for the purpose of this exercise, the chair or president of the management body in its management function.</p> <p>Chairperson: means the chair of the management body in its supervisory function of an institution in accordance with Article 88 of Directive 2013/36/EU. In 1-tier systems, the chair of the management body shall be considered the chairperson for this exercise in all cases.</p>	<p>Where the chair also performs executive functions, the chair is not part of the supervisory function, but is an executive director, usually with a different remuneration scheme than directors that only have supervisory functions.</p> <p>This allocation method should help to avoid the identification of gender pay gaps that are in fact based on the role rather than the gender.</p> <p>The chair should be the non-executive director who is heading the supervisory function. If in a unitary board the chair is a member of the executive function, they should not be reported as a chair under these Guidelines, but as an executive director.</p> <p>The approach tries to single out the persons meeting this definition to analyse the diversity for the most senior positions on the board and to avoid a bias in the calculation of the gender pay gap.</p>	
Professional background	One respondent requests further clarification on the term.	In the context of the Guidelines, professional activities can be considered as being occupational activities that are performed on a regular basis.	GL clarified
Geographical provenance	<p>Respondents request further clarification on the term ‘geographical provenance’ as the concept is subjective.</p> <p>One respondent inquires if there is a legal basis for requiring a 3-year period.</p> <p>E.g. it is suggested that a Danish citizen takes a degree or work abroad in the US for 3 years or more. This person will have a geographical provenance from the US and not DK.</p> <p>It is not clear if more than one area can be listed under the answers for each member.</p> <p>The term ‘ethnic diversity’ is not commonly used in all Member States and not defined. In some</p>	<p>Geographical provenance is defined in the Guidelines. The possible answers to the question on geographical provenance have been simplified.</p> <p>The 3-year period is not prescribed in EU Directives, but it is obvious that it takes a certain period to acquire sufficient knowledge of a regional market to fully understand its culture and business behaviour, the EBA is mandated under Article 16 of the EBA founding regulation to specify the requirements of Directives within its scope of action. Diversity requirements fall within the scope of the EBA’s action, and it is necessary for statistical purposes to specify how geographical provenance should be assessed and reported.</p> <p>The GL allow for multiple geographical provenances. In the case of a person growing up in Region A and working in Region B, both locations shall be reported. Here, the word ‘person’ means ‘member of the management body’,</p>	The GL have been clarified

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>Member States, e.g. France, it is forbidden to collect data on ethnicity as it might conflict with the GDPR. It is recommended to change the term to 'nationality'.</p> <p>The wording should refer to the management body.</p>	<p>and also includes the CEO when appointed outside the board members elected by shareholders.</p> <p>The term geographical provenance is used in the recitals to CRD.</p> <p>The EBA is aware that in some Member States there are restrictions on the collection of data on ethnicity and acknowledges this in a footnote to the GL.</p>	
Definition	<p>One respondent suggests improving the distinction between the management body in its management function and in its supervisory function in the sections and paragraphs of the Guidelines.</p>	<p>As diversity concerns the management body in both functions for many aspects, no further differentiation is needed. The EBA assumes that the differentiation in the annexes is sufficiently clear.</p>	No change
Question 2.			
Sample	<p>Respondents request more transparency in the criteria used to determine the sample of institutions that will take part in the exercise and if the initial sample will determine the sample of future exercises. The GL should include the exact criteria for the composition of the sample to avoid uncertainty.</p> <p>It should be specified if the sample should include the same firms over time or if they will change.</p> <p>It was suggested to set out the number of institutions and investment firms for each Member State in the sample and to provide a detailed definition for the term 'sample of institutions'.</p> <p>Smaller institutions could find it difficult to gather the information on anonymously and should be excluded from the exercise.</p>	<p>While it would be possible to collect information from all institutions and investment firms, the EBA, to reduce the workload and costs of the exercise, will use a representative sample for the benchmarking exercise that should be composed considering the financial market in the Member State.</p> <p>To ensure that trends are visible and not caused by changes to the sample, it is important to maintain stability of the sample over time, notwithstanding the need to adjust the sample in cases of mergers or where institutions move to different size categories over time.</p> <p>The exact composition of the sample will be based on a decision of the EBA's Board of Supervisors to allow a more flexible approach, e.g. to deal with the limited adjustments that need to be made as explained above and the overall development of the financial market.</p> <p>A fixed number per Member State would make future changes to GL more difficult as they would require changes to the GL, which would create additional costs for e.g. the translation of amending GL.</p>	GL amended

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		<p>Institutions and investment firms will be informed about their inclusion in the sample. This approach ensures that there is no uncertainty. The same will apply where changes to the sample are necessary.</p> <p>‘Sample’ is a known statistical term e.g. defined as ‘a finite part of a statistical population whose properties are studied to gain information about the whole’. No definition of the term as such is needed in the GL.</p> <p>The requirement applies to all institutions, in order for the sample to be representative, it is necessary to also include small institutions and investment firms.</p> <p>No individual personal data will be published by the EBA in its benchmarking report.</p> <p>Further explanations have been added to the background of the GL.</p>	
Sample in a group context	Respondents ask for clarification on whether the sample could contain individual institutions from the same group only if they are in different Member States. The inclusion of multiple entities would increase the burden.	As specified in the GL, ‘the sample may include on an individual basis more than one institution or investment firm within a group.’ The GL have been clarified.	GL amended
Listed companies	One respondent recommends to not collect data from listed institutions as they are obliged to publish an annual remuneration report.	The GL collect details on the composition of the management body and are not limited to the gender pay gap reporting. For listed companies the ‘women on boards Directive’ contains additional requirements about the diversity of the management body. However, the diversity benchmarking is not limited to the aspect of gender. Therefore, it is important and proportionate to also collect additional information from listed companies.	No change
Par 13	Further clarity is asked what reporting ‘at the individual level’ means.	The term has been replaced by ‘individual basis’. It is used in the context of the requirements of CRD and Capital Requirements Regulation to specify that the individual legal entity is subject to the respective provisions and provides information on the legal entity only and not on a consolidated basis.	GL amended

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Par 14	<p>One respondent suggests redrafting this paragraph to improve its clarity:</p> <p>The sample may include on an individual basis more than one institution or investment firm within a group subject to Directive 2013/36/EU and investment firms that are either subject to the requirements on governance under Article 91 of Directive 2013/36/EU, in accordance with Article 1(2) or (5) of Regulation (EU) 2019/2033 (Class 1-), or subject to Article 26 of Directive (EU) 2019/2034 (Class 2).</p>	<p>The GL specify that data are collected from individual institutions and investment firms, rather than on a consolidated basis. The provisions on the addressees of the GL already contain the requested clarification.</p>	No change
Timeline, Par 15, 16	<p>The timeline for the creation of the sample should be clarified.</p> <p>Respondents ask to specify a timeline at least for the information of institutions that are subject to the data collection and to set it to 31 December of the preceding financial year, but to provide at least for a period of 3 months for preparing the report. Other respondents suggest a 3- or 6-month period.</p> <p>Another respondent suggests adding at least ‘in good time’, but adds that this is not a defined term and that more certainty would be preferred.</p> <p>It is requested to clarify that institutions be informed before each data collection.</p>	<p>The comment has been accommodated with a 3-month period.</p>	GL amended
Par 18 and 20	<p>One respondent suggests postponing the data submission from 15 June to 15 October and from 31 July to 30 November as the variable remuneration is paid out in the first half year. It would also</p>	<p>The reference date is kept, but the timeline for the data collection has been adjusted.</p>	GL amended



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	disentangle the report from other reports to be made at the beginning of the year.		
Question 4			
Duplication of data collected	One respondent notes that some of the data are already available to supervisors, e.g. in the context of ongoing supervision, fitness and propriety assessments, etc. and that data should rather be exchanged between competent authorities (CAs) than be collected from firms when they are already available.	While the EBA is aiming to reduce the amount of data to be collected and maps data available to the EBA via the LEI, the EBA has no available data from fitness and propriety assessments and for all investment firms subject to the data collection. The exercises include the collection of data that is mostly unavailable or unavailable in an exchangeable form. Considering the costs of implementation for data systems and that even then the data would not be complete and possibly for different firms, different data would be missing, it is more effective to collect the data from institutions and investment firms. In addition, one would also need to consider that IT implementation costs would be financed to some extent by industry via the cost allocation to supervised entities.	No change
Question 5:			
Par 25 and 26	A respondent wanted confirmation that the data collection only concerns the members of the management body.	The scope of application has been clarified. The data collection only concerns the members of the management body as defined within the CRD and IFD, i.e. the persons directing the business and in any case the CEO. This may include in some Member States members of the management body in the supervisory function that have been elected by the staff. Those staff representatives, while being members of the management body, are benchmarked separately, as diversity has to be taken into account by the institution or investment firm when recruiting members to the management body. This provision does not interfere with the right of staff to elect the staff representation that will be part of the management body.	GL amended

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Par 26 (b)	One respondent asks for a definition of governance body.	The term governance body represents the managerial or administrative body elected by shareholders or owners. However, for the data collection, the CRD definition applies, as specified in the Guidelines.	GL amended
Legal gender, par 29	<p>There is no definition of legal gender and therefore the term should be avoided.</p> <p>Some ID cards no longer provide the gender, e.g. in Germany.</p> <p>In some countries ‘non-binary’ is not legally recognised or different definitions for other genders are applicable.</p> <p>It should be clearly mentioned that according to some local laws, determination of a gender for a specific person is forbidden which would for example lead to the impossibility to answer the question of the gender for a chairperson.</p> <p>The same holds true for the geographical provenance in some Member States.</p> <p>The EBA should analyse all national restrictions that would prevent the collection and reporting of diversity data.</p> <p>Respondents are concerned about the costs for the related collection of data.</p>	<p>The GL have been amended; legal gender has been replaced – the concept used is the gender with which the person associates themselves.</p> <p>For the exercise it is not relevant that some ID cards do not show the gender. It is usually recorded in passports or birth certificates and known to the person concerned; whereby, in most cases, members of the management body are willing to share this information. GDPR also allows for the collection of the data as a clear legal basis is encoded in CRD. No controls of such information or related documents are required, i.e. the member should be able to provide the answer the member is most comfortable with.</p> <p>In addition, institutions and investment firms are required to take into account diversity, including gender diversity, when recruiting members of the management body and significant institutions need to take measures to improve the ratio of the underrepresented gender and to set a respective target. Listed entities will need to determine the gender of members of the management body to comply with the future mandatory gender ratios.</p> <p>Considering that there is a clear legal basis encoded in the EU Directives 2013/36/EU and (EU) 2019/2034 for collecting information on diversity, the GDPR or national restrictions would not prevent the collection of such data due to the higher rank of EU legislation.</p> <p>Institutions and investment firms should do their best to collect the information.</p> <p>The term ‘non-binary’ covers all genders that are neither female nor male. For this exercise, it does not matter if the Member State allows a gender change or different genders, considering that in the EU, a person is allowed to work in any Member State regardless of their gender. EU citizens, regardless of their gender, are allowed to perform occupational activities in all Member States. Not</p>	GL amended



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		<p>including 'non-binary' in the data collection would not respect that there are persons who do not consider themselves to be associated with the male or female gender.</p> <p>No information will be disclosed about the gender or other aspects of an individual member of the management body in the report.</p> <p>Institutions and investment firms should have available most of the information about the members of the management body from their own suitability assessments and remuneration reporting and disclosure. As data are collected on an individual basis and considering the limited number of board members, the data collection should not be too complex in terms of their technical conduct.</p>	
Term 'non-binary'	<p>Since 'non-binary' has a well understood and specific meaning, it is not appropriate to use this term to capture all individuals who do not identify themselves as either male or female. The EBA Final report on Guidelines on the benchmarking exercises on remuneration practices, the gender pay gap and approved higher ratios under Directive 2013/36/EU states in paragraph 58b that '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'. We suggest that the approach be harmonised with this existing EBA position.</p>	<p>The term 'non-binary' is the term commonly used by EU -bodies, e.g. the European Institute for Gender Equality. The same term is used by the EBA in the same meaning. A definition has been added to the Guidelines.</p>	
Par Background	10 The Guidelines should clarify that the election of staff representation is not prescribed in all Member	The collection of data does not create a legal obligation to create staff representation.	GL amended

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	States. The wording of the GL is not consistent, i.e. it is not always mentioned in the context of staff representation where applicable.		
Question 6			
Members that are no longer in charge at the end of the financial year	For the gender pay gap, clarification is sought on why members who are no longer appointed at the end of the financial year should not be considered.	The report analyses the situation that existed at the reference date. While additional information may be useful at an individual level, the analysis of a common point in time, considering the size of the sample, is deemed sufficient to identify the situation on the gender pay gap in the relevant financial sector.	No change
Definition of management body	Respondents asked to further specify the scope of the management body and if it should also include members of the executive committee.	The GL are sufficiently clear. Definitions within CRD and IFD apply. Members of the management body are all members that are appointed to this function as defined under Directive 2013/36/EU or Directive (EU) 2019/2034.	No change
Par 32 (a)	Interest-free loans should not be considered a monetary benefit. Another respondent suggests only adding other benefits that are relevant and if desired to specify a threshold for this purpose.	Even if based on a company-wide policy, interest-free or low-interest loans may lead to taxable income. The taxable amounts are considered remuneration in some Member States and should be reported according to national law.	No change
Par 32 (b)	Clarification is sought on which pension benefits are discretionary.	See Section 8.5 of the EBA Guidelines on sound remuneration policies.	No change
Par 32 (c)	Clarification is sought on the variable remuneration that is awarded for the relevant time period or if the remuneration actually paid should be used (including amounts that vest pro rata).	The remuneration awarded should be used. Paid-out amounts (e.g. on a pro rata basis) of awards in previous years should not be taken into account.	GL clarified
32	Persons on specific retirement plans should be excluded to avoid a distorted calculation of the gender pay gap by including part-time members.	In the rare case that members of the management body work part time, the calculation should be based on a FTE, i.e. the remuneration should be scaled up to a full annual salary.	GL clarified

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Par 34 and 35	For employee representatives participation fees and annual remuneration exist; respondents require further clarity on how the gender pay gap will be calculated.	The annual remuneration for roles other than being an employee representative should not be taken into account.	GL clarified
Par 35	<p>The GL should clarify that sometimes members are remunerated with a fixed fee and provide for guidance in line with the background (par 12) of the document on how to proceed.</p> <p>It should further be specified if an additional fixed fee for executive directors should be added to their total remuneration.</p> <p>In general, it is recommended that all fixed fees received should be reported as fixed remuneration and together with other fixed remuneration received.</p>	<p>The GL determine that the fee for 1 day should be taken into account. It has been clarified that this is only applicable where members of the management body serve in the supervisory function that do not receive other elements of remuneration. This approach ensures that there is no pay gap identified based on a different number of days participated. Fees for other committees are not considered.</p> <p>Fees received have been added to the remuneration components to be considered. However, this should only be applied to members of the management body in the supervisory function when they also receive other elements of remuneration. This approach reduces the reporting burden. Fees paid to members of the executive function are an exception and do not usually have a material impact on the remuneration of a member.</p>	GL amended.
Gender pay gap	There are situations where a gender pay gap is detected, where pay differences are not caused by the gender, but by other factors, e.g. the participation in committees.	<p>The EBA is aware of the limitations of the gender pay gap calculation, but continues to calculate the unadjusted gender pay gap and provide information on the item as part of its diversity benchmarking report.</p> <p>The data collected allows for sufficient interpretation of the results, which does not include an evaluation of compliance by individual institutions with the principle of equal pay for equal work.</p>	No change
Question 7			
Data quality	A respondent suggests clarifying what 'additional data quality controls' would entail.	The EBA collects several different data from competent authorities. Automated tools are used at the EBA to identify if data are complete and plausible. Depending on the validation rules, the system generates warnings where follow-up actions are needed or errors where data are obviously wrong. The validation	GL amended

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		rules are developed together with the competent authorities. The do not need to be set out in GL. The section has been streamlined in keeping with the necessary content.	
Annex I	One respondent suggests clarifying the reporting date.	The Guidelines specify the reference date. All data should refer to the situation that existed on that date as specified in the GL.	No change
Annex I	One respondent asked for clarification if only full members should be reported or if deputy members should also be considered as members.	Data are collected for all members of the management body. Persons who are not members, but participate in meetings of the management body should not be included. Please refer to the definition within CRD.	No change
Annex I	One respondent suggests adding the number of staff on a consolidated and unconsolidated level to better understand the context of the data.	The information is not necessary to analyse the diversity of the management board. Via the LEI the EBA may link the data to data already collected in other exercises.	No change
Annex II	A respondent considers that 3 new categories are needed: chairperson, male; chairperson, female; and chairperson, non-binary.	In line with the definitions provided we ask to allocate the chair who only has a supervisory function to the role of chair, if applicable; the addition is therefore not needed. If an executive director in a unitary board chairs the board, the member is reported in Annex II as executive director or as CEO.	No change
Annex III	The board committees to be reported should be specified. It is not clear if all committees should be reported. This might be needed to make it possible to add text to list the committees if all board committees should be reported. One respondent suggests only including the committees that are legally required.	To reduce the burden, the EBA has limited the list to selected committees that should be reported. The title of the Annex has been amended and it is moved behind Annex IV of the Consultation Paper (CP).	
Annex III	It should be specified if 'committees' is limited to committees of the supervisory function or would also include committees of the executive function.	Information is only collected for selected committees of the management body in its supervisory function.	GL clarified

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Annex III, IV, V and VI:	<p>Respondents are concerned that aspects of these reports could lead to the identification of individuals within the reports. For Annexes III and IV, the reporting of the gender of an individual chairperson would be unlawful in some Member States. For Annexes V and VI, it would be better for the report to focus on the composition of the management body after all appointments have been made to avoid the issue.</p>	<p>While data are collected on an individual basis by competent authorities who are informed of the names of members of the management body, which are also publicly disclosed in annual reports and available in corporate registers, the data will be submitted only to the CA and the EBA and be aggregated to ensure that no individuals can be identified within the published report. See also other comments already made about the GDPR.</p>	No change
Annex IV	<p>It should be clarified who the chairperson is (supervisory board – committees, both)</p>	<p>The chairperson is the chair of the management body (unitary board) or the chair of the supervisory function (2-tier system). The chair should only be considered as a chair if the person has only supervisory functions for this data collection. Chairs of committees are not considered separately in this data collection.</p>	GL amended
Annex V	<p>It should be specified if a newly appointed CEO should be reported along with the other newly recruited executive directors.</p>	<p>The CEO is also an executive director and should be reported in this table; the GL has been clarified.</p>	GL amended
Annex VII	<p>The definition of regions is not clearly defined as there are some countries that are located in more than one continent.</p>	<p>To allocate the members' geographical provenance in cases where the country of residence / experience is located in different continents, the actual location should determine the geographical provenance. If this is still not possible to allocate the geographical provenance, the member should select the region(s) where the member thinks the provenance would be more relevant.</p>	No change
Annex VII	<p>The origin should be linked to the nationality of the member. It is not clear how the 3-year period should be derived for the term 'geographical provenance'.</p>	<p>The nationality does not always reflects the geographical provenance of a person. The 3 years is a guide that members of the MBs should indicate based on their CV.</p>	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Annex VIII and IX	<p>A few respondents commented that the level of detail for the Annexes is too high and create additional reporting burden.</p> <p>With a low number of directors data protection requirements could also cause issues as data could be traced back. Another respondent asks to provide more examples.</p> <p>One respondent recommended deleting Annex VIII.</p>	<p>The Benchmarking of different educational and professional backgrounds is part of the legal mandate and should be known to the institution as part of the assessment of the fitness and propriety of a member.</p> <p>Even if the members were to provide the information, as the data collection is on an individual basis, the reporting burden is rather limited.</p>	No change
Annex IX	The term 'professional experience' should be clarified, experience in the context of secondary activities (memberships in supervisory bodies, other secondary activities) should be included.	The comment has been accommodated.	GL amended
Annex X (c) and (d)	It is recommended to add target dates.	Target dates have been collected in previous exercises and proved to be irrelevant and unreliable.	No change
Annex X (c)	For the question as to whether employee representatives are included in the targets, the distinction YES/NO is sufficient.	The comment has been accommodated.	
Annex X (d)	A few respondents point out that age discrimination is forbidden and that therefore data on age should not be collected; the same applies for other factors like geographical provenance; therefore these aspects are not part of the recruitment process.	<p>Article 91 CRD requires that diversity be taken into account when recruiting members of the management body. The recitals to the CRD list the different aspects to be taken into account, which are also included in the Joint EBA and ESMA GL on the assessment of the suitability of members of the management body and key function holders.</p> <p>While there cannot be discrimination, it is still possible to take those aspects into account, e.g. by aiming at a diverse pool for candidates and selecting the best suitable candidate that also improves the decision-making, which is considered to benefit from a diverse composition of the decision-making body.</p>	No change



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		The age is collected in brackets of 10 years, avoiding the collection of the precise age. Given that there is a specific legal basis for this exercise, the EBA views that the collection of diversity data for all the aspects included in the Guidelines is permissible under the GDPR.	
Annex X, point a) question 3	The GL should specify to which group of employees the question refers. It is not clear if it refers to the management body or to all staff.	The exercise and GL deals with the diversity of the management body. The Annex has been clarified.	GL amended
Annex XI, Par 6 of the GL	On 'Non-executive directors (including chairperson, without employee representatives)', it should be clarified that only the supervisory board remuneration in the institute is to be reported and that other salaries are not to be included (e.g. in other companies/bodies).	The GL have been clarified, data are collected on an individual basis anyway.	GL amended.
Annex XI	One respondent raises the concern that remuneration data on the pay gap could be traced back to individual members.	The data are collected as a percentage difference of the remuneration of board members. The publication of data is not linked to the individual person.	

