



Deadline: 24 July 2023

**FIA EPTA response to the European Banking Authority [Consultation Paper](#) on Draft Guidelines on the benchmarking of diversity practices including diversity policies and gender pay gap under Directive 2013/36/EU and under Directive (EU) 2019/2034**

<b>Introduction</b>	<p>The FIA European Principal Traders Association (FIA EPTA) represents Europe’s leading Principal Trading Firms. Our members are independent market makers and providers of liquidity and risk-transfer for markets and end-investors across Europe. FIA EPTA works constructively with policy-makers, regulators and other market stakeholders to ensure efficient, resilient and trusted financial markets in Europe.</p> <p>FIA EPTA members welcome the opportunity to respond to the EBA CP on Draft Guidelines on the benchmarking of diversity practices including diversity policies and gender pay gap under Directive 2013/36/EU and under Directive (EU) 2019/2034.</p> <p>Although FIA EPTA members agree that transparency in general, and more specifically benchmarking, will contribute to achieving these objectives, we are of the opinion that especially the level of detail of the questions regarding the diversity policies are not appropriate in the light of these objectives and/ or need further clarifications.</p> <p>We note, generally, a few particular concerns, including firstly that we think some of the data requested may be more difficult to provide in light of GDPR implementation in various member states and limitations on some of the data that firms collect.</p> <p>FIA EPTA members appreciate EBA’s consideration of our comments herein and welcome the opportunity to discuss further and provide additional input as required.</p>
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### 3. Background and rationale

Question	FIA EPTA Response
<p>Q1: Is the section on subject matter, scope, definitions, addressees, and implementation appropriate and sufficiently clear?</p>	<p>FIA EPTA members welcome the objective of the EBA to achieve greater diversity within management bodies and believe that diversity of views, opinions, experiences, perceptions, values and backgrounds can help to improve collective decision-making.</p> <p>Although FIA EPTA members agree that transparency in general, and more specifically benchmarking, will contribute to achieving these objectives, we are of the opinion that especially the level of detail of the questions regarding the diversity policies are not appropriate in the light of these objectives and/ or need further clarifications.</p> <p>We note, generally, a few particular concerns, including firstly that we think some of the data requested may be more difficult to provide in light of GDPR implementation in various member states and limitations on some of the data that firms collect.</p> <p>FIA EPTA members believe the EBA should make sure that the data requested can be asked in the same way in every member state and is treated equally in all member states so that the results are comparable and clear.</p> <p>FIA EPTA members believe that the definitions of geographical provenance are not clear (<i>the region where a person has gained a cultural, educational or professional background that spans a time period of at least three years</i>) and professional background (<i>experience gathered by a member of the management body by conducting professional activities that span a time period of at least three years before taking up the current position</i>). We also would like to better understand the basis for the 3-year time span, it is not clear where this specific period comes from, and if there is any legal basis for this.</p>

## 4. Guidelines

Question	FIA EPTA Response
Q2: Is section 1 on the sample of institutions and investment firms appropriate and sufficiently clear?	<p>No, FIA EPTA members believe that the current wording does not provide enough detail on the actual sampling methodology for the entities to be included in the benchmarking. The reference to “The EBA will (...) provide further information on how to establish the sample (...)” is therefore not clear. FIA EPTA members suggest that the guidelines should clarify which firms would be part of this benchmarking exercise before the data collection starts.</p> <p>In addition, FIA EPTA members believe that small firms should be exempt from this benchmarking exercise as many smaller investment firms would have issues with gathering this information on an anonymised basis</p> <p>In addition, we note paragraph 16 which states that “Competent authorities should inform institutions and investment firms that form part of the sample in good time of the data collection”. We believe it would be useful to include a minimum notice period that competent authorities must give firms.</p>
Q3: Are section 2 on the procedural requirements appropriate and sufficiently clear?	<p>FIA EPTA members would like to suggest having a clear and transparent timeline for this benchmarking exercise so that firms can prepare.</p> <p>Institutions and investment firms that have been selected to form part of the sample, should by 15 June every three years, starting from 2025 with a reference date of 31 December 2024, submit the requested data on the individual level to the competent authority. The deadline of 15 June has, from a practical view, some limitations. In some jurisdictions (e.g. NL) institutions need to submit their annual statements (including disclosures) on 30 June at the latest. FIA EPTA members would suggest aligning the deadline for submission on a Member State level or a date that is somewhat later in the year so that firms can take up this exercise jointly with other statements.</p>
Q4: Are the general specifications for the data collection appropriate and sufficiently clear?	<p>No, FIA EPTA members believe the general specifications as currently drafted are not sufficiently clear. As highlighted in our responses to the other questions in this Consultation Paper, we believe additional clarity and clarifications are needed before this Benchmarking exercise could be properly executed. FIA EPTA members believe that the data requested by the EBA should comply with GDPR and other legal requirements in all EU Members States.</p>

	<p>In addition, many EU Member States don't have a common definition or legal basis for the data asked by the EBA. Gender is one of them; e.g. for non-binary is not have an EU-wide, accepted definition or legal basis. FIA EPTA members suggest only ask data that have a common understanding and basis in all EU Member States, working with an EU-wide approach, with data and definitions that work for all Member States.</p> <p>Similarly to this, in many EU Member States, there is no legal basis to ask about cultural background, FIA EPTA members would suggest limiting this part of the request to details on individuals' nationality.</p>
<p>Q5: Are the specifications on the collection of data of members of the management body (read together with the definitions) appropriate and sufficiently clear?</p>	<p>FIA EPTA members have decided not to respond to this question.</p>
<p>Q6: Are the specifications on the collection of data of members of the management body (read together with the definitions) appropriate and sufficiently clear?</p>	<p>FIA EPTA has concerns about the value and appropriateness of the proposed gender pay gap reporting at the management body level, given the management body of many investment firms is relatively small and in the context of executive directors usually includes a limited number of individuals in non-comparable roles. We also question the logic of excluding members of the management body who were not employed at the end of the financial year, which may include useful and relevant data. In addition, as noted in other responses, for very small firms with a limited number of executive directors, there are potential GDPR concerns with producing this data.</p>
<p>Q7: Is the section on the instructions for the calculation of the gender pay gap appropriate and sufficiently clear?</p>	<p>FIA EPTA members note that the guidelines do not include clarity on the treatment of members of the management body that may be part-time employees or otherwise working reduced hours. We would suggest that clarity is provided on how their remuneration should be calculated, and some consideration should be given to whether they should be calculated on a full-time equivalent basis.</p> <p>In addition, FIA EPTA members would welcome more clarity on how institutions and investment firms should establish the total gross annual remuneration as the sum of gross fixed and variable remuneration, considering the following non-monetary benefits (e.g. company car, interest-free loans, childcare etc.) which should be taken into account at their taxed monetary equivalent.</p>
<p>Q8: Is the section on data quality appropriate and sufficiently clear?</p>	<p>We note the following comments on the Annexes.</p>

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

**Annex I:**

We believe it would be useful if Annex I also included a field for the number of total staff on a consolidated and unconsolidated basis as this may help competent authorities consider the context of the diversity data they receive.

**Annex VII Business Regions/Geographical Provenance:**

The regions mentioned in the annexe (EU/EEA, Europe non-EU/EEA, Africa, North America, South America, Asia and Australia) are not mutually exclusively defined which could cause confusion. For example, would Turkey and Russia be considered as Asia or Europe non-EU/EEA, and Mexico and Central American and the Caribbean countries be North or South America? FIA EPTA members would welcome additional clarity here.

**Annex IX – Professional Background:**

In Annex IX the number of directors for each sector must be filled out. FIA EPTA members would welcome more details and examples on this format on what information exactly needs to be provided. For example, what would firms need to fill out for every director with 3 or more years of professional background in a certain sector? Further clarification here would be helpful.

In addition, the only example that is given in the footnote is for the sector *environment*. FIA EPTA members would find it helpful if the EBA would provide more examples of different sectors.

**Annex X – Diversity Policy:**

FIA EPTA members believe that the level of detail of the requested information especially regarding the nomination committee and the scope sector (c) seems inappropriate for the more general objective of monitoring diversity trends over time, including the identification of common practices for diversity policies. The lack of free-form fields also limits the ability of firms to explain the approaches taken on these issues, which may or may not fit into the limited fields provided. For example, boards that are already gender balanced may form the view that there is no need to set an explicit target, given the board is already gender balanced. A field that permits that point to be specified would be helpful. We also note that much of the data requested is more qualitative than quantitative and so question whether this is an appropriate area for data benchmarking.