

EBA/DC/2014/093

18 06 2014

Decision of the European Banking Authority adopting the Rules of Procedure for the non-binding mediation between competent authorities

The Board of Supervisors of the European Banking Authority

Having regard to 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/EC¹ (the ‘Regulation’ and ‘the EBA’), in particular Article 31 letter (c) thereof, according to which the EBA shall promote a coordinated Union response, inter alia, by carrying out non-binding mediation upon a request from the competent authorities or on its own initiative,

Having regard to Article 41(1) of the Regulation according to which the Board of Supervisors may establish internal committees or panels for specific tasks attributed to the Board of Supervisors, and may provide for the delegation of certain clearly defined tasks and decisions to internal committees or panels, to the Management Board or to the Chairperson,

Having regard to the Decision of the EBA adopting the Rules of procedure of the EBA’s Board of Supervisors (the “Rules of procedure of the Board of Supervisors”),

Whereas:

- (1) The settlement of disagreements between competent authorities by the EBA in the form of non-binding mediation may be initiated upon the request by one or more competent authorities in disagreement or on EBA’s own initiative,

1. OJ L331, 15.12.2010, p. 12.

- (2) The competent authorities should have recourse to the process of non-binding mediation carried out by the EBA at an early stage of the process in the event of a disagreement. Such early EBA involvement should facilitate finding a resolution to the disagreement.
- (3) Cases concerning the settlement of disagreements between competent authorities should be examined primarily by the EBA Chairperson and in the absence of a settlement between the competent authorities by a restricted, objective panel. This shall consist of the Chairperson of the EBA and members or substitutes of the panel responsible for binding mediation, who neither are representatives of the competent authorities which are party to the disagreement nor have any interest in the conflict or direct links to the competent authorities concerned. The composition of the panel should be appropriately balanced.

Has decided as follows:

Article 1 – Non-binding mediation

These Rules of Procedure regulate the impartial settlement of disagreements between competent authorities pursuant to Article 31 (c) of the Regulation.

Article 2 – Procedure for the non-binding mediation

- 2.1. The EBA may be asked to assist in the settlement of a disagreement pursuant to Article 31 (c) of the Regulation by a competent authority which is a party to the disagreement by filing a request with the EBA. The Chairperson of the EBA (the “Chairperson”) shall refuse requests which he/she considers are unsubstantiated, abusive or outside the scope of Article 31 (c) of the Regulation. The EBA shall inform the parties of its decision without delay.
- 2.2. Where the Chairperson on the EBA’s own initiative proposes to settle a disagreement pursuant to Article 31 (c) of the Regulation, the Chairperson shall inform the alternate Chairperson. The alternate Chairperson shall inform the Chairperson without delay of his/her objections for the involvement of the EBA in the settlement of a disagreement between competent authorities on EBA’s own initiative. Where the alternate Chairperson objects, the Chairperson shall consult the members of the panel referred to in paragraph 2.6 and consider their views before taking a decision.
- 2.3. The Chairperson shall set a time-limit for the settlement of a disagreement pursuant to Article 31 (c) taking into account any relevant time periods stipulated by Union acts referred to in Article 1(2) of the Regulation and the complexity and urgency of the matter.
- 2.4. The Chairperson shall act as a mediator and facilitate an agreement among the parties during the non-binding mediation. For this purpose the parties may be required to provide the relevant information and to participate in meetings. The Chairperson shall, with the

agreement of the parties, inform the Board of Supervisors and the panel referred to in paragraph 2.6 on developments during the non-binding mediation.

- 2.5. The Chairperson may on his/her own initiative or following a request by one of the parties, propose the appointment of another individuals to act as mediator in his/her place for the purpose of settling the dispute pursuant to paragraph 2.4. The appointment of such mediator, and the identity of that mediator, shall be subject to the agreement of the parties and of the Chairperson.
 - 2.6. In the absence of a settlement of the disagreement between the competent authorities the Chairperson shall involve the panel established pursuant to Decision of the European Banking Authority adopting the Rules of Procedure for the settlement of disagreements between competent authorities (EBA/DC/2014/91) ("the Panel") in the process of the non-binding mediation.
 - 2.7. The Panel may summon the parties and, when appropriate, other relevant experts, for their testimony.
 - 2.8. In the absence of a settlement of the disagreement between the competent authorities the Panel may provide the parties with its informal view on the case itself. If the parties to the disagreement fail to settle their disagreement following the informal view of the Panel, the Panel shall:
 - a) report back to the Board of Supervisors; and
 - b) consider whether to propose an opinion or recommendation to the Board of Supervisors.
 - 2.9. Before proposing the opinion or recommendation pursuant to Article 2.8 (b), the Panel shall inform the parties of its intention, setting a time limit within which the parties may express their views on the matter. The time limit shall take full account of the urgency, complexity and potential consequences of the matter.
 - 2.10. The Panel shall propose the opinion or recommendation for final adoption by the Board of Supervisors. The proposed opinion or recommendation shall include:
 - a) the identity of the addressees;
 - b) the opinion and the reasons on which it is based; and
 - c) where appropriate, the deadline by which the addressees should take, or cease taking, any action proposed.
 - 2.11. The proposed opinion or recommendation shall be accompanied by materials setting out the views expressed by the parties on the proposal, and by the Panel's opinion whether publication would be in conflict with the legitimate interests of financial institutions in the protection of their business secrets, or could seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system of the Union.
 - 2.12. The Panel may make such other recommendations to the Board of Supervisors as it considers appropriate.
 - 2.13. Decisions of the Panel shall be taken where at least four members of the Panel vote in favour of the proposed decision.
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Article 3 – Monitoring and compliance

The Chairperson shall take any necessary steps to monitor whether the parties comply with the agreements concluded during the non-binding mediation and report regularly to the Board of Supervisors.

Article 4 – Supplementary provisions

Articles 2, 6, 8, 9, 10.1 and 10.2 of the Decision of the European Banking Authority adopting the Rules of Procedure for the settlement of disagreements between competent authorities (EBA/DC/2014/91) shall apply in relation to the tasks of the EBA and of the Panel established by this Decision.

Article 5 – Entry into force

This decision shall enter into force the day following its adoption.

Done at London, 18 June 2014

[signed]

Andrea Enria

Chairperson
For the Board of Supervisors