

# Additional background and guidance for asking questions<sup>1</sup>

## 1. What is the legal framework for asking questions?

The legal basis for questions and answers (Q&A) is enshrined in Article 16(b) of the Regulation 1093/2010<sup>2</sup> (EBA's founding regulation) whereby stakeholders may submit questions to the European Banking Authority relating to the practical application or implementation of the provisions of legislative acts referred to in Article 1(2) of the EBA's founding Regulation, as well as associated Delegated and Implementing acts, RTS, ITS, Guidelines and Recommendations, adopted under these legislative acts.

Q&As on legislation of relevance to more than one ESA will be answered jointly and published under <https://www.eba.europa.eu/about-us/organisation/joint-committee/q-and-s>.

## 2. Who can ask questions?

Any individual or legal person, including financial institutions, consumer and industry associations, competent authorities and Union institutions and bodies.

To avoid duplication and help identify questions of broad relevance, institutions and other organisations are encouraged to submit questions via a central function or through a representative group of stakeholders.

## 3. What language can I use?

Questions can be submitted in any official EU language. As the EBA's working language, English is preferred to avoid delays in translating the question and answer.

## 4. What can I ask questions about?

Questions should relate to the practical application or implementation of provisions of:

- legislative acts referred to in Article 1(2) of the EBA's founding regulation;
- associated delegated and implementing acts including EBA regulatory technical standards and implementing technical standards that have been adopted by the European Commission;
- EBA guidelines and recommendations.

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<sup>1</sup> This guidance was updated over time to reflect changes and adjustments to the process. The last update was in February 2022 to reflect stricter criteria for the admissibility of questions.

<sup>2</sup> 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

Further, questions on the application and implementation of technical standards related to the legislative acts referred to in Article 1(2) of the EBA's founding Regulation can only be accepted once these are published in the Official Journal of the European Union. (An exception is made with respect to certain draft Implementing Technical Standards on Supervisory Reporting, as the EBA needs to address these on a timely basis in order to allow institutions and competent authorities to make the necessary preparations or changes to their reporting systems. The EBA may publish the provisional answers to questions in this instance; however, it is important to note that these should not be considered final until the Implementing Technical Standards on Supervisory Reporting to which they refer are endorsed by the European Commission and published in the Official Journal of the European Union.) Furthermore, questions related to guidelines under consultation or not yet in force will be rejected.

## 5. Are all questions answered?

To ensure that questions are answered quickly and are as useful as possible, the EBA focuses on questions which:

- **raise a material issue:** i.e. does it raise a prudential (in a wider sense), payments, consumer protection, resolution or other regulatory issue that is within the EBA's remit. These considerations could include aspects about regulatory (or, to a degree, supervisory practices);
- **are relevant for a broad set of stakeholders:** i.e. for a large number of stakeholders, for broad range of different stakeholders, or for a wide geographical distribution of stakeholders;
- **need guidance or clarification:** i.e. where diverse practices could be accepted without undermining policy objectives, or where provisions despite not being fully explicit are sufficiently clear or unambiguous, there is no need for further guidance or clarification.

Questions which do not fall within these priorities are likely to be rejected. Examples of questions which are likely not to be answered include those which would involve:

- providing bespoke advice specifically related to an individual submitter, or to a particular transaction;
- merely directing submitters to where they can find information on a given topic within the legislative text, or its associated delegated and implementing acts, guidelines and recommendations, adopted under these legislative acts;
- explaining the provisions of legislation, technical standards or guidelines which are considered already to be clear;
- repeating answers to questions previously asked;
- hypothetical questions such as "What would have been the consequence under provision xxx if yyy had happened?";
- amending, reinterpreting or calling into question a legislative or regulatory text;

- anticipating ongoing or expected changes to legislative or regulatory texts;
- legislation or regulatory products which are still in draft form or not yet in force;
- not meeting the formal criteria for submitting questions as set out in this document.

## 6. Why does the Commission answer some questions?

The European Commission is responsible for answering questions that require the interpretation of Union law. The EBA publishes the answers provided by the Commission. Please note that only the Court of Justice of the European Union can provide definitive interpretations of EU legislation.

## 7. How should I ask questions?

Questions should be as short and specific as possible, and not refer to individual institutions or transactions.

Questions should be sufficiently clear and should clearly identify a provision of the legislative acts referred to in Article 1(2) of the EBA's founding Regulation, as well as their associated delegated and implementing acts (including EBA Regulatory Technical Standards, EBA Implementing Technical Standards (adopted by the European Commission)), guidelines and recommendations, adopted under these legislative acts or within the scope of EBA's powers.

Further, questions should be clearly phrased, identify an issue of practical application or implementation, and respect the formal requirements for submitting questions set out below.

Questions, which do not fulfil these requirements, will be rejected.

**You should also check in the 'search' function that your question has not yet been covered before submitting it in order to avoid it being rejected due to duplication.**

## 8. What should I enter in the "Legal act" field?

In this field, please select the legal act your question is referring to, even if your question is directly related to a delegated or implementing act (including EBA regulatory technical standards and implementing technical standards adopted by the European Commission), or EBA guidelines or recommendations.

If a question is not related to any of the legal texts listed, but relates to a legislative act under the EBA's competence, please select 'other'. In this instance, please include a reference to the relevant legislative act under the 'Background' section.

If we cannot identify a legislative act with the EBA's competence from the information provided in your question, it is likely to be rejected.

## 9. What should I enter in the "Topic" field?

Please select one topic from the drop-down list. If the topic of the question is not listed, please select the one which is the most closely related, or else select 'other'.

In case the question relates to more than one topic, please choose the one that is at the heart of the question – also bearing in mind the article that you are referencing below.

## 10. What should I enter in the "Contact" field?

In the "Contact" field the name of the institution or entity the submitter represents should be entered. If a question is submitted in your personal capacity, please insert your surname and first name.

In addition to the name and country of incorporation / residence, you are requested to select from the drop-down list, the "type of submitter" that best describes you. If the type is not represented please select one which is the most closely related, or else select "other". We use this information to understand and provide transparency around the use of the Q&A process.

Please note that only the country and type of submitter will be published if the submitter requests to remain anonymous. However, it is necessary for the EBA<sup>3</sup> to have a name and contact address in the case where the question is not entirely clear or further information would be necessary or helpful.

## 11. What should be entered in the "Legal reference" field?

You should indicate only the article number(s) of the legal act to which you are referring, together with the relevant paragraph number (if applicable) and further subdivisions used in the legal act such as sub- paragraphs, letters, sub-letters and bullets, etc. Please do not add any text such as "art" or "article".

Questions on recitals – if any – should only be asked if they can be linked to a specific article of the legal act in question.

## 12. How should I complete the field the "COM Delegated or Implementing Acts /EBA RTS /EBA GLs/EBA Recommendations?"

If your question relates to a delegated or implementing act (including EBA regulatory technical standards or implementing technical standards adopted by the European Commission), EBA guidelines and / or recommendations, you should select the relevant act from the drop-down list and also complete the related 'Article' field. Otherwise, select "Not applicable".

Please note that "Article" field is mandatory. So you need to insert "Not applicable" in this field even if your question does not relate to any of these acts.

## 13. What should I enter in the "Subject matter" field?

Please provide in this field a short description of the question you are submitting to allow a user of this tool to understand what the issue is about. The subject matter description should not be longer than twenty words.

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<sup>3</sup> The EBA is highly committed to ensuring the protection of personal data, and it processes any personal data it collects in line with the EU Data Protection Regulation. See <https://www.eba.europa.eu/privacy-notice>

## 14. What should I enter in the “Question” field?

Please provide in this field the question you are submitting. The question should be as short and concise as possible and clearly identify specific provision(s) of the legislative instrument to which clarification is sought. The precise use of relevant legal or regulatory references is important in ensuring questions can be assessed as quickly as possible. Additional information should be provided in the ‘Background’ section and not together with the question.

Please note that questions should be limited to issues relating to the practical application or implementation of provisions of the legislative acts referred to in Article 1(2) of the EBA’s founding Regulation, as well as associated delegated and implementing acts, and guidelines and recommendations, adopted under these legislative acts.

As already mentioned under point [5] above, hypothetical questions (like: "What would happen if yyy happens?" or "What would have been the consequence under provision xxx if yyy had happened?") should, as much as possible, be avoided.

## 15. What should I enter in the “Background on the question” field?

Please provide in this field any relevant background information that is necessary to understand your question and the context in which it arises. Background information should also be short and concise, although practical examples to illustrate the question, without referring to individual institutions and/or transactions, can be helpful.

The background information should in particular explain why the question is relevant and how it raises either an issue of practical application or implementation, such as elaborating on the specificities of the legislative provision that requires clarification. Questions without clear background information, or without sufficiently clear background information, will be rejected.

## 16. What should I enter in the “Proposed answer” field?

Please provide in this field your view on what the answer to your question should look like and add arguments supporting this view, including providing references to specific aspects of relevant legislative instruments. This constitutes an essential part of the Q&A process and aims to ensure that submitters show they have duly considered relevant elements of the legal or regulatory requirements or guidelines before posting a question. Submitters should note that questions without a proposed answer will be rejected.

As indicated in point 2, where stakeholders act on behalf of institutions subject to the legislative acts referred to in Article 1(2) of the EBA’s founding Regulation they should indicate this as well as the identity of the client in question as part of the proposed answer (which is not published).

You may include different options for the answer. If so, please provide supportive reasoning for each alternative provided.

A draft answer(s) should not put into doubt or question the underlying legislative instrument.

## 17. Where can a submitted question be viewed?

Upon submission of a question to the tool, the submitter will receive a notification confirming receipt with the Q&A ID number.

However, questions will be published only after an assessment of their admissibility, which is typically completed within a month. Where, in accordance with Article 16b (3) of the ESAs founding Regulation, publication would conflict with the legitimate interest of the submitter or would involve risks to the stability of the financial system, publication will be delayed until the answer has been finalised.

In some cases questions of a similar nature and priority may be grouped together or merged.

Rejected questions will be available to view on the EBA's website for a period of at least 2 months.

Submitters are kindly requested to monitor the EBA website for updates on the status of their questions, rather than contacting the EBA separately.

## 18. How will my question be answered?

Once a question has been submitted, it will be subject to close analysis and review by the EBA or by the Commission.

It may be necessary for the EBA to request further information from you in order to obtain clarity on the question.

In some cases, in the interests of expedience, and efficiency and quality, questions of a similar nature and priority may be grouped together or merged. You will be informed if this is the case.

As stated above, the EBA can reject questions that do not meet the guidance set out in points 2 to 16.

## 19. When will I get an answer?

Due to the complexity of many issues and the large number of submissions, questions can take several months to be answered.

The EBA aims to respond to submitted questions within nine months from submission. If, this is unlikely to be met, you will be informed and additional steps taken to ensure prompt finalisation.

Please note that the need for translations can delay to the development and publication of a response and therefore we encourage you to submit your question in English which is the working language of the EBA.

## 20. Where will I find an answer?

Final answers will be published on Friday mornings, or the preceding working day where Friday is an EBA public holiday. You will receive a notification informing you that the answer to your question has been published.

Answers will be published in English and also in the language of the question if other than English.

Answers can be found via the 'Search for Q&A' ([here](#)) in the 'Final Q&As' tab, or via the Interactive Single Rulebook ([here](#)) where Q&As are linked to the relevant Articles of the respective level 1 texts. (Questions that are no longer relevant are moved to the 'Archive' tab.)<sup>4</sup>

## 21. How can questions and answers be searched?

Q&As are presented under 5 tabs: 'Final Q&As', 'Q&As under review' or 'Rejected Q&As', 'Archive' or grouped together 'All'.

The 'Final Q&As' tab comprises all Q&As whose answer has been published.

'Q&As under review' shows all Q&As which have been deemed admissible and their question is published, whilst their answer is being developed.

'Rejected Q&As' shows all Q&As which have been rejected. Rejected Q&As are shown under this tab for at least 2 months.

'Archive' contains Q&As that were published on legislative instruments that have been repealed or are no longer valid.

Searches can be narrowed down using any of the fields – in isolation or in combination - on the "Search for Q&A" tab. Whereas some of the fields are pre-defined (including legal act, topic, COM Delegated or Implementing Acts/ RTS/ ITS/ GLs /Recommendations, other fields (such as article, periods, keywords) are free and have to be completed manually.

Specific search terms or keywords (including legal references) can be used in order to narrow down your search. For phrases, please use quotation marks (e.g. "capital requirements"). The use of multiple terms will otherwise yield results with all the Q&As in which any of the terms were found.

The Q&As tool allows to distinguish questions of practical application or implementation, for which the answers are provided by the EBA, from those requiring interpretation of Union law, where the European Commission provides answers. This 'Answer prepared by' field is searchable.

## 22. How can Q&As be exported?

In the 'Search for Q&A' section users have the possibility to export search results. It is possible to 'Export all results' or a sub-set of Q&As ('Export selected results') into a PDF file with a view to facilitating the review of Q&As. In the latter case, selections are made by ticking the box next to the relevant Q&As. You can export any results produced by the search. By selecting specific 'tabs' (e.g. 'Final Q&A' or 'Rejected Q&A') or topics (e.g. 'Own Funds' or 'Supervisory Reporting') the search, and thereby the export, can be further refined and customised.

For example to export all the final published Q&As, select the 'Final Q&A tab' before choosing 'Export all results' at the bottom of the table. The resulting pdf file – to be downloaded and saved – will contain all final Q&As by date of publication (with the most recent first).

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<sup>4</sup> In March 2021, in the context of a review of final Q&As, a field has been added in the Q&A tool for individual Q&As after the 'EBA answer' field to provide information on how the review affected the Q&A. Going forward, other relevant information pertaining to a particular Q&A will also be reflected in this field where needed.

To export all the final published Q&As on a particular topic such as ‘Own Funds’ or ‘Supervisory Reporting’, select the respective topic and hit search. Ensure the ‘Final Q&A tab’ is active in order to limit the results to published Q&As, then choose ‘Export all results’ at the bottom of the table. The resulting pdf file – to be downloaded and saved – will contain all final Q&As on ‘Own Funds’ by date of publication (with the most recent first).

To obtain all Q&As (final and rejected ones) on a particular article, write the article in question in the ‘Article’ field and hit search. Ensure the ‘All’ tab is active to get results for both final and rejected Q&As, then choose ‘Export all results’ at the bottom of the table. The resulting pdf file – to be downloaded and saved – will contain all final Q&As on the chosen article regrouped first by status (final / rejected) and within status by date of publication. Similar searches and exports can be undertaken by using particular keywords.

You can export only selected Q&As by ticking the boxes in front of the relevant Q&As, and then choosing ‘Export selected results’.

If your search covers more than one legislative act, topic, technical standard, or set of guidelines, you can make multiple selections (for example by pressing ‘Ctrl’ on your keyboard, and then selecting the relevant ones from the drop-down lists by left mouse-click).