

EBA/DC/2020/313

EBA REGULAR USE

Decision of the European Banking Authority

of 22-01-2020

concerning rules of procedure for the settlement of disagreements between competent authorities

The Board of Supervisors

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”, respectively), in particular Article 41 (3) thereof, according to which the Board of Supervisors of the EBA shall adopt the Rules of Procedure of the panel that shall be convoked to facilitate an impartial settlement of disagreements between competent authorities in cross-border situations (the “Panel”) pursuant to Articles 19, 41(2) and 41(3) of the Regulation,

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”),

Having regard to the Decision of the European Banking Authority establishing the Standing Committee on Resolution,²

Having regard to the Decision of the EEA Joint Committee No 199/2016 of 30 September 2016 amending Annex IX (Financial services) to the EEA Agreement [2017/276],³

¹ OJ L331, 15.12.2010, p. 12.

² EBA/DC/2014/105rev1.

³ OJ L46, 23.02.2017, p.4.

Whereas:

- (1) The settlement of disagreements between competent authorities by the EBA may be initiated either on its own initiative, or upon request by one or more competent authorities in the event of a disagreement, where specifically provided for by Union acts.
- (2) The competent authorities should have recourse to the process of settlement of disagreements 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 by a restricted, objective panel, composed of members who neither are representatives of the competent authorities which are party to the disagreement nor have any interest in the conflict or current direct links to the competent authorities concerned. The composition of the panel should be appropriately balanced. The decision taken by the panel should be approved by the Board of Supervisors following, where applicable, the involvement of the Standing Committee on Resolution and the Anti-Money Laundering Standing Committee.
- (4) In view of the supervisory tasks conferred on the ECB by Regulation (EU) No 1024/2013⁴, the EBA should be able to carry out its tasks also in relation to the ECB in the same manner as in relation to the other competent authorities. As result of the establishment of the Single Supervisory Mechanism the existing mechanism for settlement of disagreements needs to be adjusted to the requirements stipulated by Regulation (EU) No 1022/2013⁵, to remain effective.
- (5) In cases where a disagreement involves a competent authority from an EFTA State, the process of settlement has to take into account the role of EFTA Surveillance Authority and EFTA States competent authorities as stipulated by Decision of the EEA Joint Committee No 199/2016.
- (6) The Regulation has been amended by Regulation (EU) 2175/2019⁶ in a number of respects relating to the settlement of disagreements and it is therefore necessary to update the EBA's framework in this area. The existing rules of procedure for settlement of disagreements should therefore be replaced by this decision which should take effect immediately.

Has decided as follows:

⁴ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

⁵ Regulation (EU) No 1022/2013 of the European Parliament and of the Council of 22 October 2013 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) as regards the conferral of specific tasks on the European Central Bank pursuant to Council Regulation (EU) No 1024/2013 (OJ L 287, 29.10.2013, p. 5).

⁶ OJ L 334, 27.12.2019, p. 1–145

Article 1 – The conciliation phase

1. The EBA may be asked to assist in the settlement of a disagreement pursuant to Article 19 of the Regulation by a competent authority which is a party to the disagreement by filing a request with the EBA. The Chairperson may in compliance with paragraph 2 launch the EBA's own initiative for settlement of a disagreement pursuant to Article 19 of the Regulation.
2. For the purposes of the assessment to be carried out by the Chairperson under Article 19(1b) of the Regulation in order to decide whether to provide the assistance referred to in Article 19(1) and (1a) of the Regulation in disagreements between competent authorities, the Chairperson shall establish whether the relevant legal requirements stipulated by Union acts referred to in Article 1(2) of the Regulation are met.

In cases where the Union acts provide for discretion for the involvement of the EBA in the settlement of a disagreement pursuant to Article 19 of the Regulation, the Chairperson shall inform the Vice-Chairperson about his intention that the EBA become involved. The Vice-Chairperson shall inform the Chairperson without delay of his/her objections for the involvement of the EBA, including in the settlement of a disagreement between competent authorities pursuant to Article 19 of the Regulation on EBA's own initiative. Where the Vice-Chairperson objects, the Chairperson shall review whether to proceed.

The Chairperson shall in particular refuse requests which he/she considers are unsubstantiated, abusive or outside the scope of Article 19 of the Regulation. The Chairperson shall inform the parties of his/her decision in accordance with Article 19(1b) of the Regulation without delay. The Chairperson shall set a time-limit for conciliation 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.

3. The Chairperson shall act as a mediator and facilitate an agreement among the parties during the conciliation phase. 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 Panel on developments during the conciliation phase.
4. In the absence of a settlement of the disagreement between the competent authorities the dispute shall enter into the decision phase pursuant to Article 19(3) of the Regulation.

Article 2 - Composition, appointment and convocation of the panel

The Chairperson may propose a decision to convene an independent panel to be adopted by the Board of Supervisors pursuant to Article 41(2) of the Regulation ("Panel"). Where necessary, the Chairperson shall propose replacement members for the Panel.

Article 3 – Decision phase

1. The Panel may summon the parties and, when appropriate, other relevant experts, for their testimony. Before proposing the decision for adoption, the Panel shall inform the parties of its

intention to propose the decision, setting a time limit and other terms, including as to the volume and format of written submissions, 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. In particular, the Chairperson shall ensure that the Panel has adequate time to review information and documents and to discuss them, where possible in person, taking into account the nature and complexity of the case as well as the applicable time limit for the EBA to reach a decision.

2. Either party may make a reasoned request to be heard in a teleconference or physical meeting with the Panel in relation to clearly specified elements of the case for which it considers that it cannot adequately make its case in writing. The Chairperson may grant that request on terms as to the timing, preparation and format of that meeting that take due account of the considerations referred to in paragraph 1.
3. The Panel shall adopt its decision and submit it without delay for final adoption by the Board of Supervisors. Any dissenting view by a member of the Panel shall be reported to the Board of Supervisors with the decision. If no decision is proposed the Panel shall report back to the Board of Supervisors in accordance with Article 6.

Any proposed decision shall:

- state the identity of the addressees;
 - state the reasons on which it is based;
 - require a party or parties to take specific action or to refrain from action in order to settle the disagreement;
 - inform the addressees of the legal remedies available under the Regulation;
 - set a deadline within which the addressees shall comply with it and report on compliance to the EBA;
 - set out concisely the views expressed by the parties on the proposed decision; and
 - state whether the Panel proposes to publish the decision in accordance with Article 39(5) and (6) of the Regulation.
4. Pursuant to Article 19(3) of the Regulation the Board of Supervisors shall take a final decision in accordance with the procedure set out in Article 19(3) of the Regulation and decide on its publication in accordance with Article 39(6) of the Regulation. The parties shall be notified of the outcome in accordance with Article 19(3a) of the Regulation.
 5. Where the Board of Supervisors has addressed a decision under Article 19(3) of the Regulation to a party and the Panel considers that the party is not complying with that decision, and thereby is failing to ensure that a financial institution or other financial sector operator complies with requirements directly applicable to it by virtue of the acts referred to in Article 1(2) of the

Regulation, the Panel where appropriate shall propose to the Board of Supervisors an individual decision addressed to that financial institution or other financial operator requiring the necessary action to comply with its obligations under Union law, including the cessation of any practice.

In matters concerning the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, the Board of Supervisors may also adopt a decision in accordance with the first subparagraph of Article 19(4) of the Regulation where the relevant requirements of the acts referred to in Article 1(2) of the Regulation are not directly applicable to financial sector operators. To that effect, the Board of Supervisors shall apply all relevant Union law, and where this Union law is composed of Directives, the national legislation to the extent that it transposes those Directives. Where the relevant Union law is composed of Regulations and where currently those Regulations explicitly grant options for Member States, the Board of Supervisors shall apply also the national legislation to the extent it is exercising those options. Paragraphs (1) to (3) shall apply mutatis mutandis for the purposes of this paragraph.

Article 4 – Confidentiality

1. The rules governing confidentiality in accordance with Article 70 of the Regulation and the EBA's Rules on Professional Secrecy and Confidentiality⁷ which lay down practical arrangements for the implementation of the Regulation, shall apply to any person involved in the proceedings of the Panel.
2. A request may be made to the EBA for the confidential treatment of a document or any information contained in a document to be filed in connection with a disagreement which is before the Panel.

In determining the request, the Panel shall have regard as appropriate to the relevant provisions of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

Article 5 – Monitoring and compliance

The Chairperson shall take any necessary steps to monitor whether:

- a) the parties comply with the agreements concluded during the conciliation phase; and
- b) whether addressees comply with decisions taken pursuant to Article 19(3) of the Regulation;

and report regularly to the Board of Supervisors.

⁷ Decision of the European Banking Authority adopting rules of Procedure on Professional Secrecy for Non-Staff, and repealing the Decision of the Management Board of 12 January 2011 on Professional Secrecy (EBA DC 004)

Article 6 – Reporting of the Panel’s activities

1. The Chairperson shall report periodically to the Board of Supervisors on successfully concluded conciliations and on activities of the Panel. Such reports concerning conciliations shall not identify the parties to disagreements unless the parties have consented.
2. The EBA annual report referred to in Article 53(7) of the Regulation shall state in a summary form the nature and types of disagreements brought before the EBA and the Panel, the Panel’s decisions, and the subsequent decisions of the Board of Supervisors pursuant to Articles 19(3).

Article 7 – Settlement of disagreements involving competent authorities of EFTA States

This decision shall apply for the settlement of a disagreement where at least one of the parties to the disagreement is a competent authority of an EFTA State, with the following modifications:

- a) a reference to Union acts shall apply to the extent that those acts are incorporated into the EEA Agreement and taking into account any adaptations made;
- b) a competent authority of an EFTA State shall submit a request for assistance to settle a disagreement to the EFTA Surveillance Authority, which shall without delay forward such request to the EBA accompanied by information regarding the relevant legal requirements of Union acts as incorporated into the EEA Agreement;
- c) the Chairperson shall inform the EFTA Surveillance Authority without delay on requests made by competent authorities of Member States which involve competent authorities of EFTA States;
- d) for the purposes of Article 2, the EFTA Surveillance Authority shall be an observer to the Panel;
- e) for the purposes of Article 3(1), the Chairperson shall:
 - (i) inform the EFTA Surveillance Authority that it intends to propose a draft;
 - (ii) set a time limit within which the EFTA Surveillance Authority may allow any natural or legal person, including a competent authority, which is the addressee of the decision to be taken to express its views on the matter. The time limit shall take full account of the urgency, complexity and potential consequences of the matter;
- f) for the purposes of Article 3(2), the Panel shall submit a draft for adoption by the Board of Supervisors. The EBA shall without undue delay submit the draft adopted by the Board of Supervisors to the EFTA Surveillance Authority or inform the EFTA Surveillance Authority if the draft could not be adopted;
- g) for the purposes Article 3(4), the EBA shall coordinate publication of any decision with the EFTA Surveillance Authority;
- h) Article 3(5) shall be replaced with the following: “Where a competent authority of an EFTA State does not comply with the decision of the EFTA Surveillance Authority, and thereby fails to ensure that a financial institution complies with requirements directly applicable to it by virtue of the acts referred to in Article 1(2) of the Regulation as incorporated into the EEA Agreement, the EFTA Surveillance Authority shall inform without undue delay the

EBA. The Panel shall, where appropriate, propose a draft requiring the necessary action to comply with obligations under the EEA Agreement, including the cessation of any practice. The EBA shall without undue delay submit a draft adopted by the Board of Supervisors to the EFTA Surveillance Authority”.

Article 8 – Communications

Competent authorities shall be invited to agree to written and oral communications being in the working language of the EBA for the purposes of the conciliation and decision-making phases under these Rules of Procedure where possible.

Article 9 – Supplementary rules

1. The Panel may adopt supplementary internal rules to regulate its proceedings and activities. In particular, the Panel may adopt standard timetables which may make provision for different types of disagreement. The timetables may be adjusted by the Panel to take into account, inter alia, the level of complexity and urgency of a particular disagreement.
2. The Panel may issue supplementary forms and guides.
3. Supplementary rules, forms and guides adopted by the Panel shall be reported to the Board of Supervisors.

Article 10 – Miscellaneous

1. This decision and any supplementary internal rules, forms and guides shall be published on EBA’s website.
2. The decision and any supplementary internal rules, forms and guides shall be communicated to the parties to the disagreement. This may be done by referring the parties to the place on EBA’s website where they are published.

Article 11 – Entry into force

Decision EBA/DC/2014/091 of 20 February 2014 adopting the rules of procedure for the settlement of disagreements between competent authorities is repealed and replaced by this decision.

This decision shall enter into force immediately.

Done at Paris, 22/01/2020

José Manuel Campa

Chairperson

For the Board of Supervisors