



EBA MB 2014 105rev1

EBA Staff

24 September 2014

Location: London

Management Board – Final Minutes

Agenda item 1.: Opening and Approval of Agenda and Minutes

1. The Chairperson welcomed the Management Board (MB) Members and opened the meeting by referring to the hearing of the ESAs' Chairs at the European Parliament's ECON Committee on Tuesday 23 September 2014, which showed a rather positive tone towards the work accomplished by the ESAs.
2. The agenda (document *EBA MB 2014 085rev3*) and the minutes of the MB meeting of 17 June 2014 (document *EBA MB 2014 082rev1*) were approved.

Agenda item 2.: Administrative and Operational Report

3. The EBA Director of Operations presented the latest administrative and operational report (document *EBA MB 2014 090*) covering supporting areas since the last MB meeting on 17 June 2014.
 4. He informed the MB of the execution level of the budget. He also submitted for approval to the MB two budget transfers. Regarding the need of additional funds for editing and translations, some MB Members inquired whether translations could be made at a lower cost and better quality, if necessary using other different services or relying on national authorities; it was explained however that the *Centre de Traduction* services had to be used mandatorily.
 5. Other aspects of the report mentioned were: a) the detailed budget for 2015 would be prepared in the coming months in line with the final budget as approved by the Budgetary Authority; b) the procurement plan for 2015 would be lighter than previously as the EBA would be by then beyond the peak of procurement launched in previous years; c) it was anticipated that the establishment plan would be fulfilled by December 2014 by filling the remaining 4 temporary agent positions; d) the EBA communications strategy would soon be submitted to the MB for approval; e) the European Supervisory Platform (ESP) phase 2 went live as planned on 15 July 2014, the ESP phase 3 was expected to go live by mid-October 2014, and the ESP phase 4 was expected to go live in February 2015; furthermore, phase 1 of the EBA Document Management System (DMS) project was underway; and f) on the platform for colleges, the migration to the EBA's own data centre would take place by end-2014.
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Conclusion

6. MB Members took note of the administrative and operational report. The two budget transfer requests were approved.

Agenda item 3.: Long-term Office Solution Implementation - Update

7. The Executive Director referred to the written procedure launched in August 2014 to approve an increase of the budget for fit-out works in the new EBA offices in One Canada Square; that increase would be financed from the existing EBA budget. He explained the implementation status of the project (document *EBA MB 2014 103*).

Conclusion

8. It was agreed that the EBA Executive Director would inform the budgetary authority, and that he would stand ready to provide more information should it be requested.

Agenda item 4.: Decision of the Management Board to request Commission's Agreement to Non-application and Derogation from GIPs

9. The EBA Director of Operations submitted to the decision of the MB a draft decision of the EBA Management Board (documents *EBA MB 2014 086*, *EBA MB 2014 086 Annex I* and *EBA MB 2014 087*) requesting the European Commission the derogation from, and the non-application of, several (1 and 5, respectively) general implementing provisions (GIPs) adopted by the Commission further to the entry into force of the new Staff Regulation on 01 January 2014. Should this not be requested to the Commission before 01 October 2014, these GIPs would automatically apply to the EBA. It was explained that the ESAs had aligned their position for this request to ensure a consistent approach to the maximum extent.

Conclusion

10. The MB adopted the draft decision.

Agenda item 5.: Conflicts of Interest Policy

11. The Chairperson presented for approval of the MB, and further information of the EBA Board of Supervisors (BoS), an amended version of the conflicts of interest policy (documents *EBA MB 2014 101*, *EBA MB 2014 101 Annex* and *EBA MB 2013 093rev2*) following the previous discussions held at the MB in November 2013 and June 2014 and a meeting amongst the Chairs of the ESAs to achieve convergence, as far as possible, and come to a single agreed draft text, noting requirements for EU Agencies to have a conflict of interest policy. The policy's objectives were to manage conflicts of interest, whether real or potential, i.e. their prevention,

identification and resolution in an appropriately transparent and timely manner. Furthermore, it would apply to all Members of the Boards of Supervisors and their alternates of the ESAs, with the exception of the ad-hoc alternates.

12. While MB Members welcomed the new draft presented, some concerns were voiced about its impact on employment contracts at national level of those subject to the policy, and the possible problems related to its actual enforcement.

Conclusion

13. The conflicts of interest policy was adopted by the MB. A survey among national competent authorities on conflicts of interest policies applicable to their respective BoS Members and their alternates would be conducted, to specifically ascertain what rules applied for post-employment/cooling-off periods. The misalignment between paragraphs 1.4 and 6.1 with regard to the alternates would be corrected.

Agenda item 6.: Conduct Risk

14. The Chairperson presented a note on conduct risk (document *EBA MB 2014 099*) further to the discussions at the away day in July 2014 in Krakow, Poland. The note introduced ways of capturing the prudential aspect of conduct risk as well as a possible common definition. Other aspects of the note on conduct risk were presented by the EBA Director of Regulation, notably how to deal with unexpected loss, inter alia, a) quantification as a part of operational risk capital requirements, under Pillar 1, irrespective of the quantification method used for such purposes; b) the risks of unexpected losses could also be part of the supervisory review and assessment of institutions, under Pillar 2; and c) within accounting considerations of the provisioning of the expected losses part. She also presented the current work in connection with conduct risk with regard to the CRD IV and the AMLD.
15. The Chairperson asked whether the current capital charges were set at a level sufficient so as to cover costs incurred by conduct risk, also whether the information held by regulators was of sufficient granularity as to assess the amount of losses caused by conduct risk.
16. MB Members welcomed the note, but raised several issues. While they agreed that measures to address conduct risk could indeed fall under Pillar 1 as operational risk, it was also mentioned that conduct risk goes somehow beyond and this should have an impact on the way that it is captured by operational risk, also bearing in mind that conduct risk is highly dependent on the culture and practices of each credit and financial institution. The SREP Guidelines (under Pillar 2) were also mentioned as a useful instrument to address conduct risk.
17. The possibility of capturing conduct risk in the stress test was also noted as an idea worth considering, however there was some concern as to whether the provisioning of capital for conduct risk could be regarded as an admission of wrongdoing and thus potentially lead to class actions.

18. The Commission representative inquired whether including “inappropriate supply” in the proposed definition of conduct risk could lead to misunderstandings; on the current work in connection with conduct risk, he asked whether the EBA was considering further involvement with the BCBS; in this regard, one MB Member suggested developing benchmarks for operational risk noting the BCBS had started work in this field.

Conclusion

19. The work on conduct risk perimeter/definition should be continued using the SGOR, also broadened in light of the Commission representative’s comments. It was also agreed to continue working on conduct risk with the involvement of the Banking Stakeholder Group (BSG); with SCARA with a view to defining some criteria for good approach to provisioning of conduct risk as well as with SCOP as regards the link with the SREP guidelines and possible Pillar 2 requirements.

Agenda item 7.: Cooperation Agreements with Third Countries under BRRD

20. The Chairperson presented a paper (document *EBA MB 2014 100*) with a view to concluding non-binding framework cooperation arrangements (FCAs) with relevant third country authorities for purposes related to bank resolution, as mandated under Directive 2014/59/EC (the BRRD). Noting the absence of a Union framework establishing common standards for information sharing and cooperation with third country authorities, and the likelihood of Member States authorities finalising different bilateral arrangements with third country authorities in this field, which could cause potential divergences of approach in their engagement with third countries, the MB was asked to support the EBA taking forward work on the FCAs, starting with Hong Kong, Japan, Switzerland and the US in a first phase, and Brazil, Canada, Mexico and Singapore in a second phase.

21. A MB Member questioned whether the granularity of the proposed FCA could impair the signing of specific arrangements with banks owing to the existing idiosyncrasies in each case.

Conclusion

22. The MB agreed for the EBA to start work on the FCAs, for which it would be presented with a project by end-2014 to facilitate that NCAs or resolution authorities, where appropriate, could start concluding non-binding cooperation arrangements in line with the EBA FCA.

Agenda item 8.: EBA Standing Committees’ and TFSB’s Mandates

23. An amended version of the mandates of the Standing Committees (SCs) (documents *EBA MB 2014 093*, *EBA MB 2014 094*, *EBA MB 2014 095* and *EBA MB 2014 096*) and of the successor of TCOR, the new Taskforce on Supervisory Benchmarking (document *EBA MB 2014 097*) was presented to the MB for discussion. The amendments aimed to harmonise the different

mandates and link them to the tasks as set out in the EBA Regulation. It was proposed that the SCs could be chaired by BoS members, or co-chaired by BoS Members and senior EBA Staff, with the exception of SCConFin, whose Chair would be open also to a member of a NCA with sufficient seniority, expertise and experience relevant to the tasks and deliverables of SCConFin.

24. MB Members requested that the chairing of SCs and the possibility of co-chairing should be aligned for all SC mandates; and that for SCConFin if no BoS Member candidates came forward, then the Chair candidacy could also be open to a member of the a NCA with sufficient seniority, expertise and experience relevant to the tasks and deliverables of the SCConFin; that the chairing of SCs should be open to voting and non-voting members and that the chairing of the SC substructures should also be open to NCAs; furthermore, that the task previously assigned to the SCs to follow up on the work of international fora should be retained in the new mandates. It was also noted that there was misalignment between the different SC mandates on the attendance of restricted sessions and non-restricted sessions; in this regard, and considering Article 44(4) EBA Regulation, it was proposed to consider the situation where a non-voting member chaired the SC however that Chair could attend a restricted session.
25. Particularly on SCARA, the lead SC should have overall responsibility in the area of reporting, both consistency and timing; in the area of accounting, it was requested to make sure that the general principles of the accounting framework remain applicable; and that a reference should be made, in Article 1(c), to the Auditing Regulation.
26. On TFSB, MB Members requested that the mandate should envisage two separate substructures for credit and market risk; and that the tasks and deliverables should be better aligned with the CRDIV/CRR and the RTS on benchmarking. On the chairing of the TFSB, the EBA Director of Oversight explained that considering that its work was very EBA resource-intensive and many of its tasks were to be performed by EBA staff, it was felt appropriate for the TFSB to be chaired by the EBA staff to ensure appropriate coordination. A clarification on the participation of the Commission would also be added to the mandate.
27. Some MB members voiced their concerns about reporting of some Task Forces, and the TFSB in particular, directly to BoS. They voiced a preference for the task forces reporting to SCs, in order to ‘filter’ the discussions on very technical issues at the BoS.

Conclusion

28. MB Members were invited to send their comments to the EBA in line with the discussions at the MB; the amended version of the mandates would be subsequently tidied up and circulated to the BoS for final approval, separating the SC mandates from the TFSB mandate.

Agenda item 9.: European Commission’s Report on the Operation of the European Supervisory Authorities (ESAs) and the European System of Financial Supervision (ESFS)

29. The Chairperson referred to the Commission's report on the review of the ESFS, published on 08 August 2014, and invited the Commission representative to present the main highlights.
30. The Commission representative pointed out that the report recognised the achievements by the ESAs since their establishment in 2011 and identified some areas for improvement, namely to increase the use of peer-reviews to foster supervisory convergence, which could be achieved within the current legal framework; and other improvements which would however require amendments to the ESAs Regulations. He noted that the Commission proposed further thinking on the funding of the ESAs as well as on their governance. He however noted that with the formation of the new College of Commissioners, any changes may likely only be proposed by the Commission by end-2015 at the earliest. Moreover, and given that the Commission would be reviewing the Single Supervisory Mechanism (SSM) by end-2015, it may consider changes to the ESAs Regulations at that time or later.
31. The Chairperson referred to the possibility that the EBA had a greater involvement in the design of level 1 legislation in regard to the EBA's specific role/mandates, as proposed in the EBA letter to Commissioner Barnier of 6 November 2013; an amendment to the EBA Regulation did not however appear necessary for this but merely practical improvements in the dialogue between the EU Institutions and the EBA. In addition, clarification was sought from the Commission on the legal scope of the binding mediation tool.

Conclusion

32. The MB welcomed the report and agreed that a continued engagement with the Commission was necessary to discuss the way forward to the findings in the report as well as the various issues discussed.

Agenda item 10.: Chair of the Taskforce on Payment Services

33. A proposal to nominate the EBA Head of the Consumer Protection and Financial Innovation Unit as Chair of the Taskforce on Payment Services (TFPS) (document *EBA MB 2014 091*) was submitted for approval of the MB.
34. MB Members considered that it would be appropriate to first seek nominations for Chair from BoS Members and Alternates for the appointment of the TFPS Chairperson and then decide on the final structure of chairing the TFPS.

Conclusion

35. A call for expression of interest for the TFPS Chair would be launched to the BoS and a decision proposal would be circulated for the upcoming BoS meeting.

Agenda item 11.: BoS October Meeting – Provisional Agenda

36.A provisional agenda for the BoS meeting of 28-29 October 2014 (document *EBA MB 2014 102*) was submitted to the MB for approval. Noting that it would take place after the publication of the 2014 stress tests results, it was proposed to hold a restricted session on the supervisory reaction to the results of the 2014 EU wide Stress Test exercise.

Conclusion

37.The provisional agenda was adopted. It would be finalised by the Chairperson and sent to the BoS for information within the coming five working days.

Agenda item 12.: AoB

a. Adoption of Rules for the Implementation of the Financial Regulation of the European Banking Authority

38.A draft decision on adoption of the rules for the implementation of the financial regulation of the EBA (documents *EBA MB 2014 092* and *EBA MB 2014 098*) was submitted for the approval of the MB.

Conclusion

39.The draft decision on adoption of the rules for the implementation of the financial regulation of the EBA was adopted.

Andrea Enria

Chairperson

**Participants at the Management Board meeting
24 September 2014**

Chairperson	Andrea Enria
<u>Country</u>	<u>Member/Alternate</u>
Germany	Peter Lutz
Italy	Andrea Pilati
Netherlands	Jan Sijbrand
Poland	Andrzej Reich
Spain	Fernando Vargas Bahamonde
United Kingdom	Andrew Bailey
<u>EU Institution</u>	<u>Representative</u>
European Commission	Dominique Thienpont
<u>EBA Staff</u>	
Executive Director	Adam Farkas
Director of Regulation	Isabelle Vaillant
Director of Operations	Peter Mihalik
Director of Oversight	Piers Haben

Mario Quagliariello; Corinne Kaufman; Jonathan Overett Somnier; Santiago Barón-Escámez