

EBA MB 2023 013 rev. 1

Management Board

18 January 2024 / 09:30 – 13:30

Location: teleconference

Management Board meeting – Final Minutes

Agenda item 1: Welcome and approval of the agenda and the Minutes (for decision)

1. The Chairperson welcomed the Members of the Management Board (MB). He reminded the Members of the conflict-of-interest policy requirements and asked them whether any of them considered themselves as being in a conflict. No Member declared a conflict of interest.
2. The Chairperson informed that the Minutes of the 23 November 2023 MB meeting were approved by the MB in the written procedure.
3. The Members did not raise any comments on the Agenda.

Conclusion

4. The MB approved the Agenda of the meeting.

Agenda item 2: Administrative and Operational Status Report (for information)

5. The Executive Director presented the Administrative and Operational Status Report. He noted that the tabled report covered the period from January to December 2023 and it would be a key input to other documents, such as the EBA Annual report and the Consolidated Annual Activity Report. He also stressed that the execution in all monitored areas was close to 100%.
 6. The Executive Director summarised the EBA's main activities in 2023 in three buckets – 1) High level of execution of plans; 2) Further important catch-ups or improvements, and 3) Important projects launched. Under the first block, the Executive Director mentioned HR matters and
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informed that the Establishment Plan (TA posts) was filled at 99% and time to hire was at 3.4 months. He also referred to Finance and Procurement and noted that execution was at 98.1% on voted budget and 98.9 % on carry-forward from 2022. There was a significant decrease in carry forward, in line with the ECA recommended thresholds. On IT, the Executive Director said that IT Budget costs kept within budget (97.1%). Cloudification program was completed and the EBA was entirely running using public cloud services. He also mentioned that no significant security incidents were reported and security posture significantly improved following adoption of new cloud security solutions. On Communication matters, he reminded the Members of the new EBA website launched on 13 December 2023 and said that there was an intense media activity, with prominence given to EBA work through interviews, background briefings, outreach initiatives in Member States, including an active internal communication. The Executive Director concluded this block of activities by saying that in the area of Corporate Support, the objective of reducing the number of missions by 50% compared to 2019 was achieved in 2023. EMAS registration (environmental label) was maintained.

7. Within the second block, the Executive Director referred to areas where the EBA observed some difficulties in previous years, such as in the area of Legal's work programme where the EBA had only limited resources. However, the situation improved in 2023 and the Legal and Compliance Unit fulfilled its work plan by increasing activity on peer reviews and Q&A. With regard to IT projects, he updated the Members on the progress of IT developments for EBA Strategic projects: Data Access Portal was ready to disseminate EBA Data, DPM Studio has been launched with an aim to critically support EBA Data Lifecycle. On Audits, the Executive Director said that overall, IAS issued 41 recommendations in total since 2013, out of which 35 have been closed. There were four recommendations submitted to the IAS for closure with the two remaining recommendations due to be submitted by 30 April 2024. He also mentioned limited resources for the Finance Unit but higher level of procurement procedures than in any previous years (29 completed, and seven ongoing) and improved numbers of mandatory HR internal trainings (especially for Ethics).
8. Under the third block, the Executive Director informed that the HR transformation strategy (which included 10 complementary modules) was well on track on its various aspects, such as Internal Mobility calls for acting Head of Units positions; new SNE rolling call; set up of team leaders' positions; mentoring pilot as permanent staff career development programme, wellbeing measures (e.g. Social and Sports Club policy and Team building events guidelines), or Diversity & Inclusion activities. He also referred to DORA IT projects which should be implement in 2024 but the development has started already in 2023 to support business mandates.
9. The EBA Director of Operations Department presented the IT Operational Plan for 2024. He listed the main IT achievements in 2023 referring to the cloudification, improved IT security using EC's cloud security encryption standards, Azure SOC, high-availability services protected by new Disaster Recovery capabilities, and the launch of the EBA Dissemination platform. In terms of priorities for 2024, he mentioned that the improved IT security would be embedded

in all major projects, such as the Pillar 3 Hub, Identity Access management, Extranet replacement, Document management system, and DORA projects. He concluded by stressing that the EBA was aiming at continuous stabilisation of the IT budget and expenditures.

10. The Members welcomed the Report, including its readability. One Member asked how the EBA was dealing with cyber-attacks. Other Member informed that at their CA level, they have set up a working group on AI and would be interested at sharing their findings with the EBA.
11. In his response, the Executive Director also highlighted that the EBA has been, for the second year in a row, stabilizing its IT expenses. He also welcomed the initiative on AI as this was a topic which the EBA Management considered as key for 2024 and proposed to organise a meeting between the experts.
12. The Director of Operations stressed that the EBA was closely liaising with respective authorities in the area of cyber-attacks. No attacks have been successful since 2020.
13. The Chairperson concluded by noting the comments.

Conclusion

14. The MB took note of the Administrative and Operational Status Report.

Agenda item 3: EBA Training programme update 2023/24 (for discussion)

15. The Chairperson introduced the item by noting that external training for CAs was another area where the EBA has been shifting towards more digitalisation, with most of its training being delivered online. It was also an area where synergies with the other ESAs were explored and in particular with ESMA (which would benefit from the EBA platform) recently.
16. The EBA Head of Governance and External Affairs Unit (GEA) continued by reminding the Members that according to Article 29 of the EBA founding Regulation, and to promote a common Supervisory Culture, the EBA “shall carry out, at a minimum, the following activities: [...] establishing sectoral and cross-sectoral training programmes [...]”. For that purpose, the EBA has been offering training to competent and resolution authorities since its inception. Those trainings were initially delivered on site but have progressively evolved into an offer split between physical training, online seminars (i.e., virtual training delivered on Teams or Webex) and fully fledged and self-paced eLearning modules which were accessible on the EBA e-learning platform (EBA Learning Hub). He explained that the EBA Learning Hub was the EBA’s centralised online learning platform and its latest version went live on 15 June 2023. The EBA Learning Hub has welcomed more than 3,000 cumulative users from more than 159 authorities and public bodies. The Head of GEA also mentioned that the EBA learning hub was also used for the EBA collaboration with the European University Institute (EUI), ESMA, EIOPA and DG Reform on the Supervisory Digital Finance Academy (SDFA), initiative to strengthen the

participating member states' supervisory capacity in the area of innovative digital finance in line with the EU Digital Finance Strategy adopted by the EU Commission in 2020. He continued by elaborating on the cooperation between the EBA and ESMA which resulted in an ESMA designated space on the EBA platform. The Head of GEA concluded by summarising the list of trainings delivered in 2023 and said that the EBA facilitated 24 trainings for 4033 participants in total, of which five were SDFA trainings hosted on the EBA's learning hub. He also referred to the draft EBA Training Programme 2024 which reflected feedback from CAs as well as internal proposals and discussing with the other ESAs.

17. The Members welcomed the work and provided positive feedback on the training for CAs. Some Members proposed additional areas where the EBA could deliver future trainings, mainly ESG, governance, DGS, crypto-assets supervision, or lessons learnt from the 2023 market turmoil. One Member questioned whether the EBA has considered the possibility that the CAs could contribute to the trainings also through the development and delivery. Another Member acknowledged the good balance between online and physical trainings.
18. The Head of GEA noted the proposals for additional training areas and explained that as some topics were evolving rapidly, such as ESG, the EBA preferred to organise interactive live conferences and workshops on these topics rather than self-paced training courses, where content would only be relevant for a limited period. On the other hand, topics such as governance were well established and the EBA has experts who could share their knowledge as part of the training programme. He also said that the EBA would further explore the option on CAs' involvement in the trainings.
19. The Chairperson concluded by noting the MB's support and proposals for additional areas for future trainings.

Agenda item 4: EBA work on equivalence (for discussion)

20. The Chairperson reminded the Members of the MB discussion in November 2022 during which the MB approved the EBA Roadmap on Equivalence. The rollout of the Roadmap started in January 2023.
21. The EBA Senior Policy Expert summarised the status of equivalence assessments. She highlighted main adjustments to the EBA Equivalence Roadmap, which occurred during the last 12 months of execution and updated the Members on the status of ongoing confidentiality and professional secrecy as well as regulatory and supervisory equivalence assessments. Beyond this, the Senior Expert mentioned that the workstream of equivalence monitoring would be a priority for the next year. She then continued by informing about new guiding principles for the EBA monitoring work which built on a more comprehensive approach with a less granular set of questions and more interaction between the EBA and third country during the review and analysis phase. She concluded by outlining the main challenges and priorities for the short and medium-term, including the launch of the equivalence monitoring exercise and the finalisation of relevant assessments.

22. The Members supported the work and the launch of the EBA equivalence monitoring exercise based on the new methodology. One Member welcomed the updated methodology as well as use of EU Survey tool as a positive technical improvement.
23. The EC representative updated on their priorities for regulatory and supervisory assessments. He also supported the new monitoring methodology.
24. In her response, the EBA Senior Policy Expert confirmed that the EBA was actively considering the referred EC's priorities and that upcoming assessments would be included in the next Roadmap accordingly.
25. The Chairperson concluded by noting the comments and the MB's support.

Conclusion

26. The MB agreed with the current sequencing and execution of the EBA Equivalence Roadmap as well as with the launch of the EBA equivalence monitoring exercise based on the new methodology.

Agenda item 5: Terms of reference of the peer review on Tax integrity and dividend arbitrage trading schemes ("Cum-Ex") (for discussion)

27. The Chairperson introduced the item by noting that at its meeting in October 2022, the BoS approved the EBA's Peer Review Work Plan 2023/24, including a peer review to be conducted on Tax integrity and dividend arbitrage trading schemes ("Cum-Ex"). The tabled Terms of Reference included, for the MB's discussion, the scope and benchmarks to be assessed and the proposed CAs to be peer reviewed. The Chairperson also added that there was a need to make a change in the composition of the peer review committee for the Peer review on the EBA Guidelines on the application of the definition of default and asked the Members for their views on the change.
28. The EBA Head of Legal and Compliance Unit (LCU) continued by explaining that the Cum-Ex peer review was based on Article 9a of the EBA Regulation and the main objective was to assess the effectiveness and degree of convergence in the integration into supervision of issues relating to tax integrity and dividend arbitrage trading schemes as the last step in the implementation of the EBA's 2020 Action plan on dividend arbitrage trading schemes, in particular the steps CAs took to integrate tax integrity (inc. dividend arbitrage trading schemes) into their AML/CFT and prudential supervisory work and how CAs verify the compliance by institutions with the specific rules and other elements of the Action Plan. The peer review would in addition focus on the provisions relating to tax integrity referred to in the EBA Guidelines on risk-based supervision and the ML/TF Risk Factors Guidelines as well as some other guidelines specified in the Terms of Reference ToR. It would be a targeted review, with

the CAs selected on the basis of two criteria: CAs in member states whereby cum-ex trading schemes were qualified/defined as “tax crime” or “tax fraud” in national legislation; and CAs in member states where EBA received confirmation that cum-ex cases have already been investigated by national authorities, such as public prosecutors or tax authorities. With regards to the change in the composition of the peer review committee for the Peer review on the EBA Guidelines on the application of the definition of default, the Head of LC informed that the current member has joined the EBA as a seconded national expert and therefore, the respective CA nominated a replacement.

29. The Members supported the work. One Member stressed that banks and CAs in various countries were affected by Cum-Ex cases differently (e.g. through solvency problems) and that consequently explained that in their jurisdictions, a few banks had to be closed down as result of Cum-Ex cases. He was also of the view that the focus on the peer review should be wider than only AML issues and suggested including reference to legal acts beyond AML Guidelines. Other Member questioned the selection criteria and asked why countries with no confirmed Cum-Ex cases were not selected for the reviewed sample. The Members did not raise any comments on the changes in the composition of the peer review committee for the Peer review on the EBA Guidelines on the application of the definition of default.
30. The Head of LC clarified that the focus on the peer review was indeed broader than on AML-related Guidelines and that this would be made clearer in the Terms of Reference before their submission to the BoS for approval. He also said that the composition of the reviewed countries was open to include other jurisdictions which could help in looking at home State responsibilities where Cum-Ex cases arose in host States, and also to look at how CAs were looking at tax integrity generally rather than just focusing on Cum-Ex.
31. The Chairperson concluded by noting the MB’s support and added that the EBA would broaden the scope of the peer review by amending the scope to include also other references than to the AML-related Guidelines. He also acknowledged the support for the change in the composition of the peer review committee for the Peer review on the EBA Guidelines on the application of the definition of default which would be submitted to the BoS for approval.

Conclusion

32. The MB supported the terms of reference, including the committee composition, and proposed extending the CAs reviewed to broaden the list beyond CAs from member states with a history of Cum-Ex cases.
33. The MB supported the proposed changes in the composition of the peer review committee for the Peer review on the EBA Guidelines on the application of the definition of default.

Agenda item 6: Provisional Agenda of the BoS meeting on 15 February 2024 (for discussion)

34. The Chairperson reminded the MB that the next BoS meeting was scheduled to take place on 15 February 2024 at the EBA premises in Paris. He noted that following several standing committee meetings in the last weeks, there would be additional items on the agenda.
35. The Head of GEA added that items on priority areas on innovative applications and on business indicator related mandates (Operational Risk) would be included on the agenda with a potentially further item related to the EU Banking Package. The Members did not raise any comments.
36. The Chairperson concluded by noting the MB's support for the agenda of the upcoming BoS meeting.

Conclusion

37. The MB took note of the draft Agenda of the 15 February 2024 BoS meeting.

Agenda item 7: AOB (for information)

38. The Members did not raise any comments.

Participants at the Management Board conference call

18 January 2024

Chairperson
Vice-Chairperson

Jose Manuel Campa
Helmut Ettl

Member
Member
Member
Member
Member
Alternate

Kamil Liberadzki
Angel Estrada
Heather Gibson
Kristine Cernaja-Mezmale
Csaba Kandracz
Adam Ketessidis

European Commission representative

Almoro Rubin De Cervin

EBA Directors

Executive Director
Director of Operations
Director of Innovation, Conduct and
Consumers

Francois-Louis Michaud
Peter Mihalik
Marilyn Pikaro

EBA Head of Units

Philippe Allard
Jonathan Overett Somnier

EBA Experts

Tea Eger
Anne Tiedemann
Alex Herr

For the Management Board,

Done at Paris on 12 February 2024

[signed]

José Manuel Campa

EBA Chairperson