

EBA/DC/2020/326

EBA REGULAR USE

Decision of the European Banking Authority

of 28.04.2020

establishing a framework for Ad-Hoc Peer Review Committees

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/EC (the 'EBA Regulation' and 'the EBA'), in particular to Article 30 thereof,

Whereas:

- (1) Article 30 of the EBA Regulation provides that the EBA shall periodically conduct peer reviews of some or all of the activities of competent authorities, to further strengthen consistency and effectiveness in supervisory outcomes.
- (2) For that purpose, the Authority is required to establish ad-hoc peer review committees and rules of procedure should therefore be adopted to ensure consistency in how such committees operate, and so to contribute to the consistency of peer review reports.

Has decided as follows:

Title I - Purpose and scope of peer reviews

Article 1

An ad-hoc peer review committee shall be responsible for conducting a peer reviews of the activities of one or more competent authorities specified in the terms of reference of the peer review, to further strengthen consistency and effectiveness in supervisory outcomes.

Article 2

The peer review shall include an assessment of, but shall not be limited to:

- (a) the adequacy of resources, the degree of independence and governance arrangements of the competent authority, with particular regard to the effective application of specified Union acts referred to in Article 1(2) of the Regulation and the capacity to respond to market developments;
- (b) the effectiveness and the degree of convergence reached in the application of Union law and in supervisory practice, including regulatory technical standards and implementing technical standards, guidelines and recommendations adopted under Articles 10 to 16 of the Regulation, and the extent to which the supervisory practice achieves the objectives set out in Union law;
- (c) the application of best practices developed by some competent authorities which might be of benefit for other competent authorities to adopt;
- (d) the effectiveness and the degree of convergence reached with regard to the enforcement of the provisions adopted in the implementation of Union law, including the administrative measures and sanctions imposed against persons responsible where those provisions have not been complied with.

Title II - Chair, Composition and terms of reference of the review committees

Article 3

Review committees shall be chaired by an EBA staff member and shall be composed of EBA staff members and staff members of competent authorities which are responsible for carrying out the activities which are subject of the peer review.

Article 4

The EBA shall conduct an open call for participation for each review committee.

Article 5

In case of a conflict of interest (as defined in the Conflict of Interest Policy for Staff and other Contractual Parties¹) staff members shall abstain from participating in an open call for participation. A review committee member from a competent authority shall not participate in the review of that competent authority.

¹ Decision of the Executive Director on the EBA's Policy on Independence and Decision Making Processes for avoiding Conflicts of Interest (Conflict of Interest Policy) for Staff and other Contractual Parties

Article 6

Following the open call for participation the EBA Chairperson shall consult the Management Board on the composition of a review committee, preferably at the same time as the terms of reference of the peer review are proposed. The EBA Chairperson shall propose the Chair and the members of the review committee to the Board of Supervisors for approval in accordance with Article 44(3a) EBA Regulation.

Article 7

The Chair and the members of the review committees shall have the necessary independence and objectivity, seniority to fulfil their tasks and shall collectively have the necessary knowledge of the relevant Union law and decisions and acts adopted pursuant to the EBA Regulation and expertise in supervisory practices.

Article 8

Terms of reference of a review committee shall be proposed by the Management Board for approval by the Board of Supervisors. The terms of reference shall specify the scope of a peer review, the methodology to be applied in accordance with Title IV, cooperation arrangements in accordance with Title VI and VII, and any other details necessary to ensure the effectiveness of the peer review.

Title III - Obligations of the competent authorities

Article 9

Competent authorities shall participate in the work of the review committees and, in accordance with Article 35 of the Regulation, provide it with the necessary information and input. Competent authorities shall ensure the accuracy and completeness of the information provided.

Article 10

Existing information and evaluations already made with regard to the competent authority concerned unless assessed to be irrelevant for the purpose of Article 30 and any relevant information from stakeholders shall be taken into account.

Title IV - Methodology of the Review Committees

Article 11

Upon proposal from the Management Board, the Board of Supervisors of the EBA shall adopt methods to allow for the objective assessment and comparison between the competent authorities reviewed.

Article 12

Without prejudice to the methods referred to in Article 11, where appropriate and prior to each peer review, the terms of reference for a review committee may further specify procedures and tools, taking into account the nature of the issues under review.

Article 13

When drafting the peer review report and the follow-up report the chair of a review committee shall consult the Management Board in order to maintain consistency with other peer review reports and follow-up reports and to ensure a level playing field. The Management Board shall assess in particular whether the methodology has been applied in the same manner.

Title V - Work plan

Article 14

The Management Board shall submit a proposal for a two-year peer review work plan to the Board of Supervisors for adoption. The peer review work plan shall be proposed as part of the process for adopting the EBA's work programme and shall form a separate part of the annual and multiannual work programs. The peer review work plan shall reflect the lessons learnt from past peer review processes and discussions of coordination groups set up by the Management Board. The peer review work plan shall be made public.

Article 15

In case of urgency or unforeseen events additional peer reviews may be carried out.

Title VI - Cooperation with EBA committees and working groups

Article 16

Where appropriate, a review committee may ask EBA committees and working groups to cooperate in the peer reviews it conducts in accordance with its terms of reference.

Article 17

The Review Committee may seek clarifications on the subject under review from the relevant EBA committees and working groups through their Chairs.

Title VII - Cooperation with other peer review committees and external parties

Article 18

In accordance with its terms of reference, a review committee may cooperate with the review committee of the other European Supervisory Authorities, including though the conduct of joint peer reviews. Should the two-year work programs of European Supervisory Authorities contain a joint peer review specific rules for the joint peer review shall be adopted by the Joint Committee based on this decision.

Article 19

The review committee may seek information from external parties on specific issues, provided that the confidentiality of its work is appropriately safeguarded.

Title VIII - Outcome of the peer reviews

Article 20

The review committees shall regularly report to the Management Board on the progress of their work.

Article 21

Review committees shall, after consulting the competent authorities subject to the peer review identify the reasoned main findings of the peer review.

The review committee shall produce a peer review report setting out the results of the peer review and when drafting the peer review report shall consult the Management Board in order to maintain consistency with other peer review reports and to ensure a level playing field.

Where appropriate, and without prejudice to Article 2, review committees shall:

- (a) explain and indicate the follow-up measures that are deemed appropriate, proportionate and necessary as a result of the peer review;
- (b) signal the extent to which competent authorities apply specific supervisory provisions, achieve convergence in supervisory practices and consistency in supervisory outcomes;
- (c) present the measures that competent authorities not applying specific supervisory provisions and not achieving consistent supervisory outcomes, intend to take to correct the situation or to adopt a more convergent supervisory practice;

- (d) express views on specific problems encountered by individual competent authorities and recommend ways for achieving full implementation by the relevant jurisdictions, where necessary;
- (e) signal and identify the reasons for inconsistencies or general problems in the implementation of Union law, regulatory and implementing technical standards, guidelines or recommendations, and in the implementation of commonly agreed supervisory practices and the achievement of consistent of consistent supervisory outcomes;
- (f) recommend that work is undertaken to amend a specific supervisory provision or practice that raises significant problems in relation to the operation of the internal market;
- (g) describe possible best practices developed by some competent authorities which might be of benefit for other competent authorities to adopt.

The draft peer review report shall be presented to a meeting of the Board of Supervisors by the chair of the review committee for comments.

The review committee shall assess the comments received and may take any new information into account, before submitting the final report for adoption in accordance with Article 44 (3a) of the EBA Regulation to the Board of Supervisors.

Article 22

The review committee may propose follow up-measures in the form of guidelines and recommendations pursuant to Article 16 and opinions pursuant to Article 29(1)(a) of the EBA Regulation.

Title IX - Follow up report

Article 23

Two years after the publication of the peer review report the review committee shall prepare a follow up report and submit the follow up report for adoption in accordance with Article 44 (3a) of the EBA Regulation to the Board of Supervisors. The review committee shall, so far as possible, be composed of the same members of the peer review committee who prepared the peer review report.

Article 24

The follow-up report shall include an assessment of, but shall not be limited to, the adequacy and effectiveness of the actions undertaken by the competent authorities that are subject to the peer review in response to the follow-up measures of the peer review report.

Title X - Publication of the outcome of peer reviews

Article 25

The reasoned main findings of the peer review, as set out in the peer review report and of the follow-up report shall be published. Where a competent authority that is subject to the peer review is concerned that the publication of the EBA's reasoned main findings would pose a risk to the stability of the financial system, it can refer the matter to the Board of Supervisors. The Board of Supervisors may decide not to publish those extracts.

Article 26

Where the reasoned main findings, adopted following the process in Article 21 differ from those identified by the review committee, the committee's findings shall be transmitted, on a confidential basis, to the European Parliament, the Council and to the Commission unless to do so would breach Article 70 of the EBA Regulation (Obligation of Professional Secrecy).

Article 27

The peer review report and the follow up report may be disclosed publicly. Where a competent authority that is subject to the peer review is concerned that the publication of the peer review report and the follow-up report would pose a risk to the stability of the financial system or breach Article 70 of the EBA Regulation, it shall have the possibility to refer the matter to the Board of Supervisors. The Board of Supervisors may decide not to publish those extracts.

Title XI - Entry into force

Article 28

This decision shall enter into force with immediate effect.

Article 29

The Decision of the European Banking Authority establishing the Review Panel of the European Banking Authority, EBA DC 035, of 4th May 2011 is repealed and replaced by this decision.

Done at Paris, 28.04.2020

José Manuel Campa
José Manuel Campa (May 4, 2020)

José Manuel Campa

Chairperson

For the Board of Supervisors