



EBA BS 2018 233

Board of Supervisors

3 July 2018/10:30-11:30

Location: Teleconference

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BoS meeting – Draft Minutes

Agenda item 1.: Breach of Union law investigation against the Maltese Financial Intelligence Analysis Unit (FIAU)

1. The Chairperson welcomed BoS members. He apologised for the late transmission of documents, which was due to the tight timeframe set up for breach of Union Law (BUL) cases.
2. He clarified that this investigation was initiated upon the European Commission's request and letters received from members of the European Parliament. He informed that the EBA was examining separately, on one hand, the Financial Intelligence Analysis Unit (FIAU) from the AML/CFT supervision perspective and, on the other hand, the Maltese Financial Supervisory Authority (MFSA) from the prudential point of view. After a preliminary enquiry, he explained that the EBA launched a formal BUL investigation into the FIAU, while the EBA's preliminary enquiries in relation to the MFSA were still ongoing. He summarised the main findings of the investigation, which led the EBA to conclude that the manner in which the FIAU conducted its supervision and its structural failings in the organisation and processes for AML/CFT inspections constituted a breach of Union Law.
3. He also explained the next steps of the process. He noted that, following the Board discussion, the EBA would have to launch a written procedure for the adoption of the Recommendation.
4. The director of the FIAU and his deputy director raised procedural issues, considering that a face-to-face meeting, which they considered was provided for in the rules of procedure, would have given them a better opportunity to explain the case to the Panel and BoS members. They also flagged that the tight timeframe of the process made it difficult to address changes made in the draft recommendation after its most recent letter and to prepare the presentation to the BoS meeting. On substance, they considered the issuance of the proposed recommendation unfair as the FIAU demonstrated in many examples that its supervision was effective. They also

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considered that the recommendation did not take into account all the work done by the FIAU. In this regard, they also informed that they were implementing remedial actions through a comprehensive action plan, which covered the EBA's recommendations and went beyond its scope. They contradicted that the EBA could adopt such a recommendation based on the ineffectiveness of the case of Pilatus Bank only. They also noted that the action plan was being implemented before the case of Pilatus Bank. They viewed that the EBA's recommendation ignored the ongoing supervision, which was significantly improved since 2017. Lastly, they noted that paragraph 19 of the EBA's recommendation was unclear in referring to an implicit admission of BUL by the FIAU.

5. The Chairperson explained that it was not possible to set up a physical meeting due to the strict timeline in relation to BUL. However, the FIAU's written submission to the draft recommendation sent by the BUL Panel and its annex has been provided to the BoS members and the FIAU staff had the opportunity in this meeting of the BoS to explain their views to BoS members. With regard to the action plan, he confirmed that the remedial actions proposed went in the right direction, but were not enough to consider that the deficiencies having led to a breach of Union Law had been resolved. He noted that the EBA's recommendations had a broader scope than the actions planned by the FIAU, such as in the area of remedies to the imposition of sanctions, and implementation of a complete supervisory manual to guide on-site inspections.
6. The representative of the European Commission confirmed that the investigation carried out by the EBA was upon the request of the Commission. He deemed that the findings identified by the EBA appeared to be solid and serious. While he took note of the actions taken by the FIAU, he also viewed that the responses were not fully adequate and did not contain sufficient evidence to dismiss the concerns identified. He considered that further work should be done to be fully compliant with the AML/CFT framework. Consequently, he supported the wording of the EBA's recommendation. He also made clear that the European Commission might take stronger actions, should the FIAU not follow up to these recommendations.
7. While supporting the recommendation, one member suggested adding a paragraph highlighting the actions undertaken by the FIAU but also the work to be carried out to be fully compliant.
8. The director of the FIAU reiterated that the assessment done by the EBA was partial. He also viewed that a hearing should have been organised before the recommendation was circulated.
9. The Chairperson explained that the legislation stipulated that the authority under investigation must be given a period to express its views on the matter to provide explanations and the EBA gave the FIAU the opportunity to be heard, in writing, on the Panel's proposed recommendation. He recalled that a teleconference call of the BoS had the same legal validity as a physical meeting. He indicated that the EBA would launch a written procedure shortly after the meeting. He confirmed the introduction of two amendments, namely a clarification of paragraph 19 of the draft recommendation to reflect that it was an EBA assessment and not a recognition of

breach of Union Law by the FIAU and the addition of a paragraph covering the actions taken by the FIAU and their remaining weaknesses.

List of participants:

Chairperson: Andrea Enria

<u>Country</u>	<u>Voting Member/High-Level Alternate</u>
1. Austria	Helmut Ettl
2. Belgium	Jo Swyngedouw
3. Bulgaria	[to be confirmed]
4. Czech Republic	Marcela Gronychová
5. Denmark	Jesper Berg/ Carsten Kjær Joensen
6. France	Édouard Fernandez-Bollo
7. Germany	Raimund Roeseler
8. Greece	[to be confirmed]
9. Hungary	Csaba Kandrács
10. Ireland	Gerry Cross
11. Italy	Andrea Pilati
12. Luxembourg	Christiane Campill
13. Malta	Marianne Scicluna
14. Netherlands	Olaf Sleijpen
15. Poland	Mateusz Mokrogulski
16. Portugal	Pedro Duarte Neves
17. Romania	Nicolae Cinteza
18. Spain	Jesús Saurina Salas
19. Sweden	Martin Noréus

Other Non-voting Members

1. European Commission

Representative

Dominique Thienpont

EBA Staff

Executive Director

Adam Farkas

Philippe Allard, Jonathan Overett Somnier, Carolin Gardner, Endija Springe, Fernando Irurzun Montoro, Cédric Coraillon-Parquet