



EBA MB 2020 136 rev. 1

Management Board

19 November 2020/09:30-12:45

Location: Teleconference

EBA – Regular Use

Management Board meeting – Final Minutes

Agenda item 1: Welcome and approval of the agenda and the Minutes

1. Given the EBA's restrictions related to physical meetings, the Management Board (MB) meeting was held as a videoconference.
2. The Chairperson welcomed the Members.
3. None of the MB Members declared any conflict of interest regarding the agenda items.
4. The Chairperson proposed to change the order of the agenda and to discuss item 5 as the last item. The Members agreed with the proposal.
5. The Chairperson informed the MB that the first term of Raimund Roeseler was due to expire on 31 December 2020 and that Raimund has expressed his interest to extend the mandate to the second term. Similarly, the first term of the EBA Vice-Chair, currently held by Jo Swyngedouw, was due to expire by the end of 2020 and Jo has also expressed his interest to extend the mandate. In this regards, the EBA was planning to launch a call for candidates for these two positions and hold an election at the next Board of Supervisors (BoS) meeting on 9 and 10 December 2020.
6. Finally, the Chairperson informed that on 18 November 2020, the EBA received a letter from the EU Ombudsman regarding her ongoing inquiry on the move of the previous Executive Director Adam Farkas to AFME. The Ombudsman informed the EBA that, based on the steps taken by the EBA to implement her recommendations, she has decided to close the case.

Conclusion

7. The MB approved the amended Agenda of the meeting.

Agenda item 2: Administrative and Operational Status Report (A-Point)

8. The Executive Director presented the Administrative and Operational Status Report. He informed that in response to the requirements by the French government, the EBA office has been closed and all staff have been teleworking until further notice. The Covid-19 case management and contact tracing procedure were in place and proved effective and the EBA had only a very few cases among its staff.
9. On the HR matters, the Executive Director mentioned that the EBA continued hiring new staff remotely and three recruitment procedures were completed between September-October. 13 new staff members (temporary agents, contract agents and SNEs) joined the EBA in September and October remotely, with six staff members due to join from November until year end. Furthermore, the annual reclassification exercises which was launched in September has been completed and the Executive Director briefly summarised changes introduced in this year's exercise.
10. The Executive Director also mentioned that the revised action plan on the Supervisory Reporting and Data Quality audit was sent to the IAS and that at the request from the European Commission (EC) the EBA, EIOPA and ESMA did a peer review on the risk assessment and identified three common risks: capacity to implement new tasks and powers; maintaining data security, availability and quality; and consequences of a prolonged COVID-19 crisis for the organisations.
11. The Director of Operations Department continued by updating the MB on the budget and said that the EC's draft amending budget was adopted in October, reducing the EU subsidy by EUR 1 416 000. This resulted in a total reduction of the EBA budget of EUR 3 666 000. He also informed that the MB approved in the written procedure the revised decision on prolonging assistance to staff for office equipment, related to the Covid-19 pandemic.
12. With regard to the IT matters, the Director of Operations mentioned that the EBA ran the second Spear Phishing Exercise for 2020. The exercise used real world templates of recent successful attacks. The results showed that only 10% of EBA users were phish-prone, which is substantially lower than the industry standard.
13. The Director of Operations informed the MB that the EDPS has asked all EU bodies to provide information concerning on-going processing operations and contracts involving transfers to third countries. This required a mapping exercise has been carried out together with a report on any identified risks and gaps based on that exercise were provided to the EDPS.
14. The Head of Legal Services Unit (Legal) noted that an oral hearing in the challenge to the EBA's Product Oversight and Governance Guidelines (POG) was held on 20 October 2020. The EBA

responded to a number of questions raised by the Court of Justice prior to and during the hearing concerning, in particular, the circumstances in which the validity of EBA guidelines can be reviewed by the Court, the nature of such a review, and whether all aspects of guidelines must necessarily be linked to provisions of sectoral legislation.

15. One Member requested if the EBA could share with the competent authorities (CAs) a preliminary list of national contributions for 2021 given that all CAs were in the process of preparing their budgets.
16. With regard to the reclassification, one Member questioned options for career progression within the EBA and stressed that if promotions were not possible, the horizontal mobility should be considered.
17. The EC representative noted that while the number of virtual events in the previous months increased, the number of participants was lower compared to physical events organised before the Covid-19 crisis and asked if the EBA has already identified any specific conclusions in this regard, in particular for its future events.
18. One Member suggested to add a reference to AML colleges under the chapter on Operational aspects of supervisory and resolution college activities and also asked for clarification on risks for the EBA with regard to the court hearing on POG.
19. On the budget, the Executive Director confirmed that the EBA was planning to share the national contributions for 2021 with the CAs in the coming days. With regard to the staff mobility, he noted that the options for staff progress were limited and therefore, the EBA set up a plan for internal and external mobility as well as encouraging staff to widen their education and allowing special leave for this purpose. He also added that based on legislative mandates to be given to the EBA, there might be further career opportunities for the staff. On the events, the Executive Director noted that there were several successful virtual events with a good number of participants and that the virtual trainings have been very well attended.
20. With regard to the colleges, the Director of Prudential Regulation and Supervisory Policy (PRSP) reminded the MB that two years ago, the EBA decided to limit the number of colleges to 12. The Director of Banking Markets, Innovation and Consumers Department (BMIC) informed that the EBA attended all AML colleges virtually and was drafting a report based on its experience.
21. On the POG, the Head of Legal explained that there was a risk the EBA could lose the case on the basis that the Court would not consider the legal hook in the CRD as a relevant one for consumer protection issues. The Advocate-General has indicated that he was planning to deliver his opinion on 19 January 2021. Judgment might therefore be expected to be delivered in Q2 2020

22. The Chairperson concluded by agreeing to add an update on AML colleges to the Administrative and Operational Status Report and confirmed that the EBA was planning to circulate the list of national contributions to the CAs in the coming days.

Conclusion

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

Agenda item 3: Single Programming Document (C-Point)

24. The Chairperson introduced the item by reminding the Members that the Single Programming Document (SPD) was an annual exercise whereby the EBA designed its multi-annual work programme, drafted the first version of its annual work programme (2022), programmed its financial and human resources to accomplish these and outlined EBA internal policies on several areas.
25. The Executive Director continued by clarifying that the draft SPD 2022 has been prepared on the basis of the multi-annual Financial Framework, EC's work programme and MiCA and DORA legislative financial statements. In his presentation, he focused on three main topics: the EBA priorities at the 2024 horizon and in 2022, key HR numbers and issues and key finance numbers and issues. He outlined the next steps which included a discussion at the next BoS meeting in December, written procedures with the MB and BoS in January and the transmission of the SPD to the EU institutions by 31 January 2021.
26. The MB supported the work and appreciated incorporation of their previous feedback.
27. One Member raised public expectations regarding the conduct of financial institutions and the robustness of the financial system. He noted that these were the EBA's core responsibilities and failure of their fulfilment would undermine the EBA's work also in other areas. The Member was of the view that a lot of resources would have to focus on topics like ESG, cyber risks and FinTech and therefore, he was sceptical on the issues of the EBA being a data hub. He concluded by stressing a need to review and simplify the single rulebook which was cumbersome and long. Other Members supported it.
28. Two Members highlighted an importance of realistic ambition in particular related to AML, given that the EBA would not be the only authority in this field, and the granular information in virtue of MiCA and DORA for which the legislative process are ongoing. They suggested to revisit the wording and to underscore further in the SPD that these were subject to co-legislators' decisions. Other Members, while agreeing that the outcome of the legislative process was uncertain, were of the view that the EBA should clearly outline its requirements so that sufficient resources are available to successfully deliver the said tasks.
29. One Member suggested to align the wording related to the Stress test with the latest discussions at the BoS level.

30. One Member was concerned that some topics would need further discussions, such as integrated reporting, data hub and ESG. Other Member highlighted the cost issue and the effects of the Covid-19 crisis which should be spread across the SPD in terms of impacting the banking sector and the EBA itself.
31. The EC representative noted that any request for additional resources were under close scrutiny and suggested that further details on the technical information used to prepare the SPD was shared with the EC ahead of deliberations. The reasoning should include activity based budgeting to justify the resources and their activities. He also stressed that the EBA must justify achieving synergies, internal mobility and cooperation with the other ESAs and CAs, prior to requesting additional resources.
32. In his response, the Executive Director said that the EBA would consider how to achieve balance between its core tasks and any new mandates and activities. In this regard, he mentioned that in the next version of the SPD, the topics of MiCA and DORA would be clearly displayed with a caveat but it would continue to alert on the significant lack of resources for one of these mandates. He also agreed to align the wording on the stress test, introduction of simplification of the single rulebook and initiation of more systematic work on digitalisation for supervisors.
33. The Chairperson noted the comments and stressed difficulties to pinpoint the legislative changes in progress. He invited the MB to send their written comments.

Agenda item 4: Update on the integrated reporting feasibility study (A-Point)

34. The Chairperson reminded the MB that Article 430c of the CRR 2 mandated the EBA to prepare a feasibility report for the development of a consistent and integrated system for collecting statistical, resolution and prudential data, as well as to involve the relevant authorities in the preparation of the report.
35. The EBA Head of Reporting, Loans Management, and Transparency Unit (RLMT) provided an update on the feasibility study, stressing that due to the nature of the project, the wide scope of data and the authorities to be involved, the project was rather complex and potentially resource intensive. She outlined a structure of the EU-Integrated Reporting System which aimed at streamlining the reporting process complexity by the creation of a common standard dictionary and a central data collection point. She added that to guarantee the system' sustainability and success over time, it should leverage on the state of the art of the technology developments. The Head of RLMT also presented the four key areas of the feasibility study – stock take, data dictionary, including data granularity, central data collection point with its traffic light system, and governance. She concluded by saying that the EBA was planning to provide the draft report on feasibility study by beginning 2021, and have discussions on the feedback with the industry on Q1 2021. The Final report is expected to be delivered on the H2 2021.

36. The MB supported the work. One Member highlighted a need for good and reliable data and mentioned, based on national experience, that the costs at the beginning were expected to be high for interested parties. She also asked for clarification on the interaction between the EBA feasibility study and a pilot study on reporting conducted by DG FISMA.
37. The Members stressed that the work should be well coordinated to avoid any risks of overlapping and that the CAs, ECB and SRB should be involved in the preparations. One Member raised concern related to the proposed centralised architecture. He also questioned whether the findings, as summarised in the EBA presentation, would be enough for the consultation and whether further cost-benefit analysis should be conducted. Several Members agreed with these open questions and said that the report should include a section on costs of various approaches. One Member said that the EBA should further analyse whether it would be more beneficial to completely change the whole reporting system or only to change the way how CAs provide data to the EBA.
38. The Members also pointed that any hoc data collections were challenging for the banks and that the report should address this issue as well but reminded of importance for CAs to have timely access to the necessary data, especially in crisis situations.
39. The EC representative noted the given the Covid-19 crisis the EBA had to postpone the finalisation of the report and stressed that the report should be precise on the costs of different options, benefits and objectives of this exercise as well as if there were legal obstacles to the implementation of any of the options. He added that on the DG FISMA pilot study, he would provide further clarifications after the meeting.
40. In her response, the Head of RLMT confirmed that the EBA was closely liaising with the ECB with regard to the reporting with an aim to build the system that would be common for the whole banking sector. She also agreed to add a more extensive cost and benefit analysis. On the DG FISMA study, she explained that it was a pilot study on the EMIR reporting machine readability and it involved all three sectors.
41. The Chairperson concluded by clarifying that the EBA's intention for the study was to provide options and alternatives and that it would be for the EC and the EU co-legislators to decide on the final outcome. He mentioned that the EBA was planning to have a discussion at the next BoS meeting in December and a follow up written procedure in January 2021.

Conclusion

42. The MB supported the work.

Agenda Item 5: Designation of Reporting Officers and Appeal Assessor for the Probationary Period, Management Probationary Period and annual appraisal of the newly nominated Executive Director (C-Point)

43. Given the content of this item, the Executive Director did not attend the discussion.
44. The Head of Human Resources Unit (HR) explained that the Executive Director should be evaluated through a probationary period, management probationary period and annual appraisal. The implementing rule stated that the MB should designate at least two reporting officers from amongst its members for this purpose. An appeal assessor also needed to be designated from among the members of the MB. The actors shall be the same for all three evaluations. The role of the reporting officers was to meet the Executive Director to discuss the job description and agree on objectives and how they would be achieved. The role of the appeal assessor was to make a final decision on the report after consultation of the members of the MB, not already involved in the process. She also clarified that on 1 April 2021, towards the end of the nine-month probationary and management probationary periods, the HR Unit would liaise with the reporting officers for the launch of the final probationary evaluations. A formal dialogue shall be held between the reporting officers and the Executive Director, following which a report containing the assessment of both the probationary period and management probationary period shall be drawn up. The Executive Director has ten working days to add comments and/or acknowledge the report. The Executive Director must receive the final report at least one month before the expiry of the probationary period, i.e. by 30 April 2021. She added that the EC representative could act as an observer.
45. The EC representative mentioned that the EC stood ready to join the process. He also mentioned that the applicable EBA decision was outdated and asked if there was any updated one.
46. The Head of HR confirmed that she would liaise with the DG HR in respect to the decision.

Conclusion

47. The MB nominated Maarten Gelderman and Martina Drvar as reporting officers and Raimund Roeseler as the appeal assessor on behalf of the MB, subject to his re-appointment as a MB Member later this year.

Agenda Item 6: Replacement of a BSG Member (C-Point)

48. The Chairperson informed the MB that there was a vacant position in the Banking Stakeholder Group (BSG) given that Mr Sergio Lugaresi, representing the Italian banking association (and member of the BSG since April 2016 and Vice-Chair of the BSG since 2019) left.
49. The EBA Head of Policy Coordination Unit (PAC) continued by mentioning that Mr Lugaresi was a representative of financial institutions and that according to the BSG Rules of Procedure, a new BSG member in the same category out of the reserve list that has been set up at the start of the new BSG term on 1 July 2020 must be appointed by the MB and BoS. The reserve list in the financial institutions category contained seven candidates of which the EBA staff analysed the CVs bearing in mind the geographical and gender balance as well as the balance between representatives of financial institutions and representatives of associations of financial

institutions. He concluded by saying that because Mr Lugaesi represented a banking association, the EBA staff preferred replacing him with another representative of a banking association. The EBA staff selected two candidates and deemed Mr Stodulka the most suitable candidate as he represents the European Savings and Retail Banks which could help feeding the EBA for its ongoing monitoring of risks and financial stability in the EU financial sector and for its mandates related to proportionality.

50. The MB supported the proposal. One Member was of the view that it would be beneficial to have more senior executives of the banking sector in the BSG.

51. The Chairperson concluded by noting the support of the MB for Mr Stodulka.

Conclusion

52. The MB agreed to propose Mr Sebastian Stodulka as a new BSG Member to the BoS.

Agenda Item 7: Provisional Agenda BoS 09 – 10 December 2020 Meeting (B-Point)

53. The Chairperson reminded the MB that the next BoS meeting was scheduled for 09 and 10 December 2020 and the format of a conference call rather than a physical meeting was to be used. He also mentioned that the EBA was planning to hold an extra BoS conference call on 26 November to discuss next steps regarding the Guidelines on payment moratoria and distribution policies.

54. One Member thanked the EBA for organising the extra BoS call on those two specific issues.

Conclusion

55. The MB took note of the draft Agenda of the 09 and 10 December BoS conference call.

Agenda Item 10: AOB

56. The Head of PAC updated the MB on the peer review on the Joint ESAs Guidelines on the prudential assessment of the acquisition of qualifying holdings. He mentioned that the EBA had to extend the deadline for a call for applications for the Ad Hoc Peer Review Committee for this Peer Review to 6 November, given the paucity of candidates we had received (at that time). As a result, the EBA received three nominations (in total) from the CAs for this Committee. In addition, the EBA was proposing to have three EBA senior policy experts on the Committee. Furthermore, he briefly summarised the Terms of reference for the work and noted that the EBA was proposing to limit the scope of the peer review to focus on the most critical areas of the Joint ESA Guidelines, such as, the notion of the determination of acquisitions of indirect qualifying holdings and specific aspects of the fifth assessment criterion relating to AML, as these Guidelines were fairly lengthy and apply to all 3 ESAs. Finally, he

stressed that given the Covid-19 crisis and its impacts, this peer review would focus on an assessment of how CAs comply with a selection of the most critical areas of the Guidelines.

57. The MB supported the composition of the peer review committee and the terms of reference. One Member was concerned that the reference period of three years could be too long.
58. The EBA senior expert clarified that the three-year period was aligned with the fact the CAs had three years to implement the Guidelines.
59. None of the Members raised any other business related comments.

Participants at the Management Board conference call

19 November 2020

Chairperson Jose Manuel Campa

Alternate Chairperson Jo Swyngedouw

Member Sissy Papagiannidi

Member Maarten Gelderman

Member Martina Drvar

Member Jesper Berg

Member Dominique Laboureix

Alternate Raimund Roeseler

Alternate Thomas Worm Andersen

European Commission representative Dominique Thienpont

EBA Staff

Executive Director

Francois-Louis Michaud

Director of Operations

Peter Mihalik

Director of Banking Markets, Innovations and Consumers

Piers Haben

Director of Economic Analysis and Statistics

Mario Quagliariello

Director of Prudential Regulation and Supervisory Policy

Isabelle Vaillant

Philippe Allard; Jonathan Overett Somnier; Tea Eger; Erika Sole; Lucy Urbanowski; Fergus Power; Meri Rimmanen; Diana Gaibor; Ine Vekeman; Corinne Kaufman

For the Management Board,

Done at Paris on 13 January 2021

[signed]

José Manuel Campa

EBA Chairperson