



EBA MB 2021 116 rev. 1

Management Board

18 November 2021/09:30 – 13:00

Location: Teleconference

Management Board meeting – Final Minutes

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

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, in particular newly elected Members – Raimund Roeseler, Kamil Liberadzki, and the renewal of Maarten Gelderman.
3. None of the MB Members declared any conflict of interest regarding the agenda items.
4. The Chairperson informed that the EBA was planning to hold 50% of its meetings in 2022 as physical meetings and that the MB physical meetings were scheduled for March and November.
5. The Chairperson informed that the Minutes of the 28 September 2021 MB meeting were approved by the MB in the written procedure.

Conclusion

6. The MB approved the Agenda of the meeting.

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

7. The Executive Director presented the Administrative and Operational Status Report. He informed the MB that the EBA's 10th anniversary high level conference which took place on 26 October and was attended by around 150 invitees on-site and around 1000 connected
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virtually, had attracted very positive feedback from many stakeholders. He thanked the EBA's organising team for its excellent work under challenging and complicated circumstances related to COVID-19 restrictions.

8. On HR matters, the Executive Director informed that within the "phase 3" of its transition to the 'New Normal', the EBA introduced minimum mandatory office presence of two days per week as of November. This approach was aiming at preparing for the new European Commission (EC) staff rules which should be in force at some point in 2022. Paris being the place of employment the staff was asked to update their address records in this regard for the teleworking purposes. There were no missions unless considered "essential" and these had to be approved by the Executive Director. Similarly, all meetings have been held virtually. He also informed that a Head of ESG risks Unit had been appointed.
9. With regard to Finance issues, the Executive Director mentioned that execution of the current year budget was projected to be 98.8 %, with projected underspend on staff costs being utilised to cover increases in IT expenditure and administrative costs that were mainly associated with the return to the office. Execution on commitments carried forward was 98%. He also stressed that 90% of all EBA procurements were joint procurements with other agencies or institutions and said that the Paris Medical Services procurement procedure was waiting for evidence on exclusion and selection criteria from tenderers that submitted the first-ranked tenders.
10. On Legal and compliance, the Executive Director noted that an external contractor has been appointed to advise on implementing an enterprise risk management system at the EBA and enhancing the existing risk management framework. A risk assessment was planned to be carried out in Q4 with a view to the MB discussing the EBA's risk appetite and an initial risk assessment in Q1 2022. The risk register had been updated by end 2021 (Annex L of the Administrative report) pending a more comprehensive risk assessment in the course of 2022.
11. One MB Member asked about the new Head of ESG risks Unit, and the Executive Director informed that Dorota Siwek, a former EBA staff with ca 20 years of experience (including at two banks and the Polish FSA), has been appointed. Two Members asked about the delays mentioned in the report regarding the ongoing preparation of the AML/CFT Central database, in particular with regard to the recruitment and upload of information. One Member requested clarification on the unification of identities project and its next steps.
12. The EBA Director of Operations Department (Operations) informed that the AML database project encountered challenges in resourcing the development team, but this did not have any impact on the deadlines, simply there were no buffers anymore. He also said that in the survey with competent authorities (CAs), the majority of CAs preferred manual upload of relevant information rather than automatic which was the EBA's preferred option. On the unification of identities, the Director of Operations clarified that this project was a prerequisite and enabler for the strategic priority of the EBA to move to a modern, secure, virtualized, scalable, and cost-efficient cloud IT Infrastructure, aiming to create a cloud unified identity

management solution. The solution would be used for all EBA platform related systems and external applications (EUCLID, eGate, Colleges). All external CA active users have been migrated into the EBA Unified Identity and Access Management Service and the project would go live later in November. He explained that this system was separate for any ECB systems, i.e. it was the EBA's own system and the Executive Director clarified that the EBA was very closely cooperating with the ECB on data and that for the next MB meeting in January, the EBA staff was preparing a note on various data aspects.

13. The Chairperson concluded by noting the comments.

Conclusion

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

Agenda item 3: Annual appraisal of the Chairperson and Executive Director – Reporting officers (for decision)

15. The Chairperson introduced the item by reminding the MB that the Chairperson and the Executive Director were evaluated on an annual basis through an appraisal and that for this purpose, two reporting officers had to be designated.
16. The EBA's Head of the Human Resources Unit (HR) continued by mentioning that in accordance with the general implementing provisions on the appraisal for the Chairperson and the Executive Director adopted by the MB on 20 December 2011, the MB shall designate at least two reporting officers (appraisers) from among its members. Reporting officers could not be designated to any other functions within the appraisal process. The appeal assessor was the MB. She briefly summarised the main roles of the reporting officers and concluded by noting that the process has not been changed compared to the previous reporting period.
17. Maarten Gelderman and Raimund Roeseler volunteered as reporting officers. Other Members did not have any comments in this regard.

Conclusion

18. The MB designated Maarten Gelderman and Raimund Roeseler as reporting officers for the annual appraisal of the Chairperson and the Executive Director.

Agenda item 4: Proposal for the replacement of a member of the BSG (for decision)

19. The Chairperson informed the MB that one BSG member representing financial institutions' interests has resigned and therefore, the EBA was proposing Mr. Yuri Che Scarra as a replacement.

20. The EBA Head of Policy Coordination Unit (PAC) added that the BSG reserve list was short and that the EBA would need to consider how to extend it in case of further resignations from the BSG.
21. The MB did not raise any comments.

Conclusion

22. The MB agreed to submit, for the Board of Supervisors' (BoS) approval, the appointment of Mr. Yuri Che Scarra as BSG member in the category of 'financial institutions'.

Agenda item 5: Q&A action plan (for discussion)

23. The Chairperson introduced the item by clarifying that the purpose of this item was to seek the MB's view on the approach that EBA staff was proposing to address a backlog of Q&As that has built up. The proposals aim to make a fresh start, but also introduce tighter criteria for admitting questions and at the same time to use this opportunity to make some adjustments to the due process that is in place; with the aim to ensure a more effective handling of the questions received
24. The Head of PAC continued by clarifying that the need for action on the backlog and noted that in the past there has been targeted action in the area of Reporting Q&As, even though the situation this time is slightly different. The increase of the backlog was to a degree also related to the adjustments that took place in the context of the ESAs review, with the introduction of Article 16b on Questions and Answers in the EBA founding Regulation. The discussion of these necessary adjustments - on the categorisation criteria and the process for questions of interpretation - with the EC, led to a near freeze of the process. At the same, the volume of outstanding questions continued to grow, partially due to the expanding scope. Some measures have already been taken internally, in the form of the development of a dashboard for the monitoring of progress, and the development of a more automated workflow. In terms of resources, however, limits have been reached in terms of resources that can be assigned to this work. To address the backlog, the Head of PAC explained that the proposed action plan foresaw rejecting all questions submitted before 01 January 2020 but with possibility to resubmit – and in that case, Qs were to be prioritised. Remaining questions would be reviewed, with a focus on those that are in the process for more than 9 months. These questions would then be assessed to establish whether they were still relevant and relevant questions would be prioritized. The aim would be to have a 'clean sheet' by summer 2022. In terms of process adjustments, the EBA's proposal was to tighten the criteria for admitting questions, by assessing: - relevance of the question for a broad set of stakeholders; - materiality of the issue in question, - a need for EBA guidance or clarification. Furthermore, the review of Q&As, would be streamlined including the approval process, and introduce review time limit. Finally, he referred to communication aspects and mentioned that, if approved, the EBA would clarify: the possibility to resubmit (and prioritise) questions that would be eliminated, generally and to concerned submitters, as well as process adjustments.

If agreed, the action plan and process adjustments could be finalised in December, and implemented starting in Q1, with the mobilisation of necessary internal and CA resources.

25. The MB overall supported the EBA's proposal and welcomed the discussion. One Member questioned how the Board of Supervisors (BoS) would be informed about the progress with the backlog and of related actions. He welcomed the proposals for the process review but suggested a more structured, formal procedure, and also put forward a few specific questions on certain aspects of the note. Another Member welcomed that the EBA was not proposing to allocate more staff on the Q&As. He also referred to a backlog elimination of SCARA reporting Q&As in 2018 and suggested to look at that exercise for lessons learnt. He stressed that each time there was a regulatory change, the number of questions has increased and therefore, he proposed to carefully select which Q&As were to be cut given that many could be submitted again. Furthermore, the Member questioned whether there were any issues with submission of the Q&As to the BoS given that he was not aware of any particular challenges. On this, some comments were received suggesting that the approval process could benefit from clarification. One Member suggested to establish a taskforce that would consider whether older questions would still be relevant. A specific expert group could also be instrumental in assessing submitted questions before they reach the Q&A Networks in order to assess whether they should be prioritised and fast-tracked. The Member also suggested to regularly repeat the implementation survey (carried out in the 2018-2019). This Member also enquired about whether the proposals would apply to the Commission. One Member remarked that if there was an agreement at the Standing Committee level on the Q&A, that particular Q&A would not be submitted to the BoS. However, there was often a disagreement on details, and she stressed the importance of these details, and the need that Q&As can continue to be escalated to the BoS. A few Members enquired about the ownership of Q&As, and also asked about information on the sources of questions (i.e. whether they come primarily from CAs, or banks - or whether specific entities can be identified) with a view to clarifying with them the purpose [of the process?]. On the communication aspects, one Member stressed that any communication had to be worded carefully given that many stakeholders were involved and interested in the Q&As process. On the forward-looking proposals and process adjustments, one Member asked for a more structured proposal and for clarification on the treatment of reporting Q&As, with should be aligned with that retained for validation rules.
26. The EC representative recognized the importance of the topic, in particular from the perspective of various stakeholders. He highlighted that the EC and the EBA discussed the proposals in detail, and at the highest level, and that the EC was supportive of the proposal. He noted that any reputational risks should be addressed before the elimination of the backlog, stressing also the need to allow resubmissions, and subsequent prioritisation. He also had some reservations on the proposed deadlines, in that they might be too ambitious, in particular if delays are incurred early in the process, although the Commission would attempt to follow them as targets. He also questioned the proposal that the standing committee could decide which Q&As would not be answered, because of a deadlock, without consulting the BoS. Finally, while supportive of the proposal to adopt more restrictive criteria for accepting Q&As, he stressed the need to avoid that only a fraction of question would be answered.

27. In response to some of the comments, the Head of PAC explained that under the current process, the aim was to achieve unanimity at the standing committee level and to avoid submission of too many Q&As to the BoS, although the procedure – including the roles of the Standing Committee and the BoS - could be clarified. On the backlog and the automated elimination, he explained that there was a legal change as of 01 January 2020 based on which the EBA would be able to deal with the backlog by eliminating the questions submitted before this date. If all Q&As would have to be reviewed, the targeted review would significantly increase, with impacts on timelines and resources.
28. The Executive Director added that the EBA had developed a detailed dashboard to track processes and was discussing internal organizational changes to the ownership of the Q&A process in a way that business units would have more responsibility for delivery than is the case at present, where the ownership is shared between the PAC and these units. He stressed the importance of sticking to target deadlines, and of communicating as part of the action plan the possibility for eliminated questions to be resubmitted. He also thanked the EC for their cooperation on this issue and retained that the EBA should be undertaking implementation surveys in the future once the current situation has been resolved.
29. The Chairperson concluded by noting a broad support for the proposal to eliminate the backlog and to amend the processes, notwithstanding some concerns. On these, he stressed the importance of good communication, in particular to explain the re-submission possibility to the stakeholders. He also indicated that there should, in due time, be a review of whether the criteria for accepting question are appropriate. On the way forward, he acknowledged that some material Q&As would be submitted to the BoS but that in general, the process should be such that the Q&As were agreed at the standing committee level, and with a clear procedure at Standing Committee level, and criteria for escalation question to the BoS.

Conclusion

30. The MB supported the proposal on the elimination of the Q&A backlog and on the process adjustments.

Agenda item 6: Peer review on GLs ICT in SREP: Terms of reference (for decision)

31. The Chairperson reminded the MB that Article 30(1) of the EBA's founding regulation required that the EBA 'periodically conduct peer reviews of some or all of the activities of competent authorities, to further strengthen consistency and effectiveness in supervisory outcomes'. In this regard, the EBA was proposing to initiate, before the end of the year, the peer review on the EBA's Guidelines on ICT under SREP.
32. The Head of PAC continued by clarifying that the proposal was to focus on three key areas: (i) ICT internal governance, (ii) ICT risk management framework and (iii) ICT security. The first two were highlighted in the 2019 Convergence Report. However, due to COVID-19 restrictions

it was not possible to follow them up in 2020. The third one was identified as a key ICT risk in 2020 based on the outcomes of the 2020 supervisory assessment. Whilst there were more areas covered in the Convergence report, the EBA was proposing to focus on these noting the upcoming areas of focus of the DORA. He also noted that the EBA would like to launch this peer review to the BoS before the end of 2021 despite the challenging resource constraints and acknowledging it was a resource intensive exercise, both for the EBA staff and CAs. Finally, the Head of PAC updated the MB on the Peer Review work plan and said that in June 2020, following a proposal from the MB, the BoS approved its EBA's 2020-21 Peer Review Work Plan. This work plan included three peer reviews: (i) A peer review on the Joint ESAs Guidelines on the prudential assessment of the acquisition of qualifying holdings of 20 December 2016 (JC/GL/2016/01), which was completed in summer 2021; (ii) A peer review of supervision of management of non-performing exposures (NPEs), which started in June 2021; and (iii) A peer review on the Information and Communication Technology (ICT) risk assessment under Supervisory Review and Evaluation Process (SREP) (EBA/GL/2017/05).

33. The MB supported the draft Terms of Reference.
34. While also supporting the work, the EC representative noted that one of the expected deliverables of this peer review was to prepare an EBA opinion to the EC on future harmonisation of Union rules. In this regard, he said that the triologue on DORA was planned to start in January and to be finalised by mid-2022 and therefore, the EBA opinion, if delivered by mid-2022 only, might not be considered as planned. Also, he questioned the need for a follow-up report.
35. The Head of PAC clarified that the follow-up report was mandatory as per legislative changes introduced during the ESA's Review.
36. The Chairperson concluded by noting the broad support and acknowledged that the peer review should not interfere with the legislation process. Accordingly, the last sentence of the third bullet point in the section of "Expected deliverables" of the draft Terms of Reference would be deleted.

Conclusion

37. The MB supported the draft Terms of Reference for the peer review on the EBA Guidelines on ICT Risk Assessment under SREP.

Agenda Item 7: Monitoring of own funds instruments for investment firms (for discussion)

38. The Chairperson introduced the item by mentioning that under the Investment Firms Regulation (IFR) the EBA was mandated to establish a list of new type of investment firms' own funds instruments and funds and thus to assess such instruments' eligibility against the criteria set out in the IFR.

39. The EBA Head of Risk-based Metrics Unit (RBM) continued by noting that the introduction of a new investment firms regime has triggered a number of tasks given to EBA. A significant number of mandates has already been delivered under the EBA Investment Firm roadmap on implementing the Regulation (IFR) and Directive (IFD), but the mandates given continue to require allocation of a significant amount of resources. Beyond the regulatory tasks, which were progressing well, also other implementation issues must be considered. One of these related to the assessment of own funds instruments for investment firms, where the nature and scope of former instruments changed due to investment firm specific provisions in this area. Under the IFR, investment firms might use 'CRR' CET1 type of instruments as own funds. However, IFR also allowed smallest investment firms to use further instrument and funds. Under the IFR mandate, the EBA established a list of all such instruments or funds used by the investment firms for each Member State (so-called IFR list), in addition to the already well established list of CRR CET1 instruments (so-called CET1 list).
40. The EBA Head of Liquidity, Leverage, Loss Absorbency and Capital Unit (LILLAC) added that a comprehensive assessment was currently performed for instruments of CET1 list under the CRR. The assessment of CET1 instruments was a very demanding and labour-intensive task for the relevant subgroup and the EBA staff, extending this process to the investment firms was expected to lead to a high workload. She also explained that own funds instruments of investment firms were defined the same as own funds instruments of credit institutions, as the IFR directly cross-referenced to the CRR, thus ensuring that the same requirements were in place for capital instruments for both investment firms and credit institutions. However, Article 9(4) IFR also permitted investment firms which were 'not legal persons or joint-stock companies' or 'small and non-interconnected' (so-called Class 3 investment firms) to use further instruments or funds that would qualify as own funds subject to a permission by the CA. Considering the heavy workload, and the need to introduce some proportionality in particular for Class 3 investment firms the EBA was proposing a simplification of the process in three steps. Firstly, the EBA would promote the recommendation that new instruments by IFs were to be discouraged by CAs in order to instead incentivise the use of already existing instruments, to avoid a mushrooming of new types of instruments with potential unusual features. Secondly, the EBA's assessment of "IFR further instruments or funds" should be limited to the notification and confirmation by the CA submitted under Article 9(4) of the IFR. The EBA would continue to publish the IFR list without assessment of the instruments in this list. As the third step, for the CRR-CET1 list, new type of instruments issued by investment firms not yet included would be assessed, i.e the principles that have been applied to date for the elaboration of this list (notably systematic pre-assessment of instruments, instruments being effectively issued, no funds) would be maintained to ensure its reliability and credibility. However, due to resources constraints, only 2 or 3 types of instruments per year would be assessed. A caveat would be introduced in the list to specify that some instruments from investment firms might still be subject to an ongoing assessment and not yet included.
41. The MB supported the proposal. One Member stressed the potential risk of having some investment firms using instruments of the IFR list that were not assessed, creating a risk of regulatory arbitrage and was of the view that if not ex ante, at least ex post random evaluations

of instruments should be done in order to consider their eligibility. Other Member referred to consultations with the EBA.

42. In their response, the Head of RBM and the Head of LILLAC stressed that there were no criteria in IFR against which the EBA could assess the instruments contrary to the CRR CET1 list but that there would be a close scrutiny on the content of the list to ensure that the instruments included in the list stays confined to a very limited number over time, in order to limit the risks of the absence of assessment. A revision of the proposed approach might be triggered in the future if needed.
43. The Chairperson concluded by noting the MB's support and said that the EBA would closely monitor the IFR list to ensure that the number of instruments would not expand significantly.

Conclusion

44. The MB supported the proposal to limit the assessment of further instruments or funds (in the IFR-list) to the notification and confirmation by each CA.

Agenda Item 8: First draft SPD 2023 (for discussion)

45. The Chairperson introduced the item by reminding the MB that the Single Programming Document (SPD) is an annual exercise whose objective is to inform EU institutions on the EBA's mid-term planning including a first sketch of the EBA activities and resource needs. The draft SPD 2023 has been prepared on the basis of the Multi-annual Financial Framework (MFF) and the EC's work programme and its various initiatives and strategies, prominently the MiCA and DORA legislative financial statements (LFS).
46. The Executive Director presented two main aspects of the 2023 SPD – the EBA's multi-annual priorities at the 2025 horizon and the EBA's activities and resource needs in 2023. He briefly summarised the general context for preparing the SPD, including various legislative initiatives and noted that the draft benefited from discussions with the DG FISMA. He clarified that the multi-annual priorities identified last year by the 2024 horizon remained broadly valid with the main difference being that better than expected macroeconomic and financial conditions allowed to embed the COVID-19-response to day-to-day work. He then presented the five main priorities of the EBA – Single Rulebook, Risk assessment, Banking and financial data, FinTech and innovation, and AML/CFT, and the horizontal one on ESG. The Executive Director stressed that as the tasks and resources dedicated to DORA and MICA remained uncertain for 2023, the same approach as in the previous SPD had been followed, with three scenarios. With regard to resourcing, the Executive Director explained that the EBA had been optimizing its structure in the course of 2021 (new organization, introduction of team leader positions, joint procurements and operational synergies with the other ESAs). He mentioned that the EBA was planning to decrease mission costs but increase ICT/security expenses. In this regard, he said that the EBA was discussing additional posts for IT Unit with EC. He also noted that the current AMLA proposal foresaw a transfer of 8 posts by 2024 to the AMLA, which, if confirmed, will

require internal planning and organization, and discussions had started with EC on this. He concluded by summarising next steps which included the first discussion with the BoS during its meeting on 08 December, written procedure to the MB and BoS in January and the submission of the SPD to the EC, European Parliament, and the Council before 31 January 2021.

47. The MB supported the work. One Member was of the view that the Fintech and innovation priority should focus more on ICT risks given that these were growing concerns and noted that under the auspices of financial innovation, there was usually also a reference to digital finance strategy but that these should be separated. The presentation on IT risks from the BoS meeting in October had been useful in this regard and more IT related topics and risks should be discussed by the BoS and MB. Finally, consumer protection in credit area should become a higher priority at the EBA. Some Members were of the view that COVID should not be a priority given positive economic developments and the work in this regard should be deprioritized. One Member raised concerns on the level of ambition on stress test and noted that there was some uncertainty whether the EBA could develop the top-down approach in the timeframe envisaged, therefore suggesting not to set it as an objective in this regard.
48. The EC representative noted that the annex providing the allocation of resources to various workstreams would be closely looked at when available, together together with a note clarifying the need for more IT resources.
49. In his response, the Executive Director noted that the work on ICT risks is indeed foreseen but could benefit from more visibility in the SPD. He clarified that stress-test would inevitably be a priority for 2023 given the EU-wide stress-test scheduled. On the resources, the Executive Director insisted that the EBA had systematically reviewed its portfolio of activities and had been redeploying resources internally in 2021 but that further resources were needed, in the specific area of IT, also in the light of stakeholders expectations' that European agencies had a sufficient retained capacity and in the light of the cyber threats. In relation to consumer protection, he noted that the EBA might indeed be gradually shifting its focus from AML to consumer protection by 2025 given the EBA's evolving responsibilities by then.
50. The Chairperson concluded by mentioning that the three ESAs have reached a common consensus on assessing the tasks covered by MICA and DORA and that resources for the expected work were not sufficient. He agreed that ICT risk should be further elaborated for the next draft of the SPD that would be discussed during the next BoS meeting in December.

Agenda Item 9: Provisional Agenda BoS 08 December Meeting (B-Point)

51. The Chairperson reminded the MB that the next BoS meeting was scheduled for 08 December.
52. One Member requested to allocate more time for the discussion on the call for advice on digital finance given its importance. Other Member was of the view that the RTS on the calculation of the EUR 30 bn thresholds for an IF to apply for be a credit institution authorization might

need to be discussed rather than approved in written procedure given a particular legal uncertainty.

53. The Chairperson concluded by noting the comments and agreed to extend the time slot for the item on digital finance.

Conclusion

54. The MB took note of the draft Agenda of the 08 December 2021 BoS meeting.

Agenda Item 10: AOB

55. One Member updated the MB on national developments related to the SREP assessment process and one financial institution.

Participants at the Management Board conference call

18 November 2021

Chairperson Jose Manuel Campa
EBA Vice-Chairperson Jo Swyngedouw

Member Maarten Gelderman
Member Kamil Liberadzki
Member Raimund Roeseler
Member Karin Lundberg
Member Helmut Ettl
Alternate Emmanuelle Assouan

European Commission representative Dominique Thienpont

EBA Staff

Executive Director Francois-Louis Michaud
Director of Operations Peter Mihalik

Philippe Allard; Jonathan Overett Somnier; Tea Eger; Erika Sole; Fergus Power; Lucy Urbanowski;
Lars Overb; Delphine Reymondon; Guy Haas

For the Management Board,

Done at Paris on 05 January 2022

[signed]

José Manuel Campa

EBA Chairperson