

EBA MB 2021 095 rev. 1

Management Board

28 September 2021/09:00-13:10

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.
3. None of the MB Members declared any conflict of interest regarding the agenda items.
4. The Chairperson informed that the Minutes of the 27 May 2021 MB meeting were approved by the MB in the written procedure.
5. The Chairperson reminded the MB that the end of the first term of Maarten Gelderman and the second term of Jesper Berg were due on 15 October 2021. Maarten confirmed his interest to continue as the MB Member. The EBA is planning to launch a call for applicants after the MB meeting to have a vote during the BoS meeting on 27 October.

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.
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8. On finance matters, the Executive Director said that the EBA was projecting 99.3 % execution on 2021 budget. To date, there had been twelve budget transfers, with one budget transfer in August for which it had not been adequately identified that an ex ante authorisation by the MB was required as it exceeded the 10% threshold for transfers between titles. A corrective ex post written procedure was therefore to be launched, and the validation process had been complemented to avoid any new such event.
9. On HR matters, the Executive Director informed that interviews with candidates were still conducted remotely, including for managerial positions. New staff was asked to come to the office and collect equipment.
10. The Executive Director briefly mentioned that the EMAS project was moving towards applying for its certification in Q4 2021.
11. Regarding internal audit, the Executive Director explained that following the risk assessment fieldwork, including meetings and interviews with EBA staff, carried out remotely in April 2021 by the Internal Audit Service of the Commission, the Strategic Internal Audit Plan 2022 – 2024 had been communicated. The plan summarised the results of the risk assessment, presented the key risks and proposed topics for future IAS audits. (1) Internal Control Framework and Strategic Risk Management (2021), which had been prioritised upon the EBA's request; (2) Human Resources and Ethics (2022); (3) IT Governance and portfolio management (2023 – 2024).
12. The Executive Director also updated the MB on the return to the office. As of 6 September until the end of October a weekly "shift" mode with ca. 50% occupancy at EBA premises had been implemented (one week in the premises followed by one week of teleworking). Staff members were divided into two groups (A and B) based on the seating arrangements in order to fully respect distancing rules from the French government Protocol. As of November, the EBA would enter into a new phase, preparing for the future Staff Rules as preliminary exposed by the European Commission (EC) and would require a minimum of two days at the premises each week.
13. One Member questioned why there was 50% presence in the office if the EC's planning required only 40%. Other Member asked about the future policy on teleworking. The Executive Director explained that the weekly shifts had been considered easier as a starting point to operate the return to the office after 18 months of telework. Moreover the EC's rules were not finalised yet, 40% was likely to be a minimum, and if all sanitary requirements were to be applied, the staff could be in the office even more than 40%. He also mentioned that the EBA was expecting to have the final proposal by the end of the year/early in 2022. The Director of Operations added that the EU agencies were asked by the EC to send their written comments earlier this year. The EBA Head of Human Resources (HR) concluded that these comments had addressed their specificities of the agencies and their wish to adapt some of the requirements accordingly. The Executive Director stressed that the EBA was expecting flexibility and commitment from staff on the return to the office.

14. One Member requested clarification on the budget transfer. The Executive Director explained that due to a failure of internal communications, one transfer was authorised without requesting MB approval as per Article 26 of the EBA financial regulation. To address this failing, an ex-post approval of the transfer would be requested by written procedure after the September MB meeting. To address the underlying issue, the Finance team was reviewing the budget transfer process, updating the associated templates and control files, and was planning to run training sessions on the changes.
15. One Member asked for a clarification on the medium-term strategy for the Board and committees' meetings, in particular whether they were planned to be held as physical, virtual, or hybrid meetings. The Executive Director noted that the EBA's 10th anniversary event would be a hybrid meeting but otherwise, the EBA was not planning to organise hybrid meetings but rather have 50% of meetings physical and 50% virtual. The EBA was planning to inform the BoS accordingly by the end of October. The Chairs of standing committee would be asked to follow the same approach and plan their committee meetings accordingly.
16. The Chairperson concluded by noting the comments.

Conclusion

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

Agenda item 2a: Lessons learnt from the cyber incident (for information)

18. The Executive Director introduced the item by highlighting the sensitivity of the issue.
19. The EBA Head of Information Technology (IT) summarised the cyber incident, actions done by the EBA in the aftermath of the incident and the lessons learnt. He noted that this type of incident required full shut down of all email systems and the EBA responded within 48 hours following its internal rules for cases of serious cyber incidents. One of the 35 follow-up action items was a need to consider other communication methods than emails with relevant parties, such as using apps like Signal for MB/BoS emergency communications.
20. The Members welcomed the update. One Member questioned what type of incident it was given that the only solution was to close down all email communication. Other Member asked what alternative communication tools could be used. The EC representative asked about the involvement of the EC services, in particular of relevant units in the DG FISMA.
21. The Head of IT said that the EBA was planning to use a separate communication channel based on Signal with a pre-defined groups, such as the MB and BoS. This could be operational in a couple of weeks. On the cooperation with the EC services, the Head of IT confirmed that the EBA was liaising with CERT-EU and ENISA as part of the collective EUIBA defences, to which the EC was part and a key stakeholder. On the type of incident, he explained that it was a state-sponsored zero-day exploit attack orchestrated by a highly sophisticated group, for which

there was no software fix (patching) available. Various institutions have been attacked and that a proportionate political response was necessary.

22. The Chairperson concluded by noting that the EBA would further consider necessary follow up steps, in particular related to alternative communication methods.

Conclusion

23. The MB took note of the lessons learnt from the cyber incident.

Agenda item 2b: Establishment plan follow up (for decision)

24. The Chairperson reminded the MB that at the previous meeting, the EC raised concerns regarding the modification to the EBA's Establishment plan (EP) which was approved by the MB.
25. The Executive Director continued by explaining that there was a legacy mismatch between the grades of the EBA staff and those on the EP which did not allow it to sit its staff adequately in 2021. Moreover, in the absence of a modification of the EP, no reclassification possibility would be possible at certain grades in 2021. The EBA had been working on improving and correcting the situation through recruiting staff in lower grades in 2021 and by having a slower reclassification rate in 2020. Whilst this has improved the situation slightly, the EBA was still not able to sit some staff correctly. Moreover the mitigation measures carried operational risk. He mentioned that the EBA had a number of meetings with EC services and that based on the transparency and commitments provided, could agree on a last-time modification of the EP in 2021 with DG-FISMA, DG-HR and DG-BUDG.
26. The EC representative thanked the EBA for a good cooperation with the EC's services on the issue. He mentioned that following the meetings with the EBA all misunderstandings had been cleared and that the EC supported the modification for 2021. He stressed that the EC considered this being a last-minutes modification.
27. None of the Members raised any comments.

Conclusion

28. The MB approved the adjusted proposal to modify the 2021 Establishment plan and its implementation.

Agenda item 3: Renewal of the Board of Appeal 2021: Selection of retained candidates (for discussion)

29. The Chairperson briefly summarised that the European Supervisory Authorities Regulations establish a Board of Appeal as a joint body of the ESAs, composed of six members and six alternates with a five-years term of office, which was renewable once. Each ESA assigned two

Members and two Alternates to the Board of Appeal. The EC launched the official call for candidates in January 2021 and submitted the shortlist to the EBA, EIOPA and ESMA on 28 June 2021. On this shortlist were overall 24 candidates and eight candidates were assigned to the EBA

30. The EBA Head of Policy Coordination Unit (PC) summarised the selection procedure and informed that the EBA selection was prepared in close coordination with ESMA and EIOPA. He noted that as a next step, the Board of Supervisors (BoS) would be informed about the proposed four candidates - Mr. Carsten Zatschler as a member, Ms. Geneviève Helleringer as a member, Ms. Marta Bozina Beros as an alternate; and Mr. David Ramos Munoz as an alternate - which will then be submitted to the approval of the MB by written procedure.
31. The MB did not raise any concerns regarding the proposed candidates. One Member asked how often the Board of Appeal met and took decisions. Other Member asked for a clarification on the process in case a member resigned during their term. He also questioned whether a member of the board of appeal could also be a member of the supervised authorities.
32. The Head of PC explained that the meetings of the Board of Appeal depended on the number of cases brought against the ESAs and that so far there had been few cases brought against EBA compared to the other ESAs. He also mentioned that each ESA had to have its own secretariat for the Board of Appeal and that each case required an extensive administrative procedure. On the replacement of the members, the Head of PC clarified that a reserve list would be used for this purpose and that potential conflicts of interest were scrutinized by ESAs staff during the selection procedure.
33. The Chairperson concluded by noting the support of the Members and said that the list of proposed candidates would be sent to the BoS for comments followed by a submission for final appointment to the MB.

Conclusion

34. The MB supported the presented list of candidates for the Board of Appeal.

Agenda item 4: EBA Anti-fraud update (for discussion)

35. The Chairperson introduced the item by informing the MB that the risk and compliance team within the Legal & Compliance Unit (LC), in charge of ethics and anti-fraud matters since January this year, has coordinated the 2021 Anti-Fraud Risk Assessment and that nine assessment teams have conducted the assessments during June 2021.
36. The Head of LC continued by noting that due to organisational changes and challenges caused by the pandemic, the EBA did not do the usual annual anti-fraud risk assessment in 2019 and 2020. He summarised the findings of the assessment and informed that 28 activities carried a low level of fraud risk, 16 a medium level of fraud risk, and six a material fraud risk level. That was a significant improvement compared to past exercises and showed that the measures in

place were effective. For activities that were of material fraud risk level, the EBA has adopted specific recommendations to decrease the risk of materialisation of fraud.

Conclusion

37. The MB took note of the anti-fraud update.

Agenda Item 5: Status of implementation of the ECA AML report recommendations (for discussion)

38. The Chairperson introduced the item by briefly summarising that in June 2020, the European Court of Auditors (ECA) issued a report on how the EC, EEAS, ECB and EBA have carried out our respective tasks relating to AML/CFT. The report contained a number of recommendations for the EBA to follow-up on with deadlines of the end of 2021 and Q1 2022.
39. The Head of LC summarised that the report made five recommendations. Three concerned adoption of guidelines, where ECA's deadlines were aligned with the EBA's planned timelines for consultation periods and BoS adoption. The EBA was progressing the implementation of these recommendations without any delays to the timelines. The recommendation regarding avoiding undue delays in decision making in breach of Union law (BUL) cases was largely to be delivered in practice, but the existing internal SLA for responding to BUL requests could be upgraded to include it within the BUL rules of procedure. However, there was a final recommendation which expected the EBA to "put in place rules to prevent other BoS members from seeking to influence panel members during their deliberations". The Head of LC explained that the EBA could either take a narrow approach to this recommendation and implement it word-for-word into rules of procedure, or it could take a broader approach to securing the independence of the panels, BoS and other committees that contribute to BUL decision-making. He explained that in the light of the ongoing Ombudsman inquiry which also touched on these BUL decision-making issues, the EBA was proposing the broader approach.
40. The MB supported the broader approach preferred by the EBA. One Member reflected on the administrative side of the BUL cases and highlighted that the authority involved in the case should have a right to present all relevant documents to the EBA, BUL panel and the BoS; should have a right to be heard and that the EBA staff dealing with the BUL cases should be independent. Another Member supported these views and added that while there was merit in not allowing the authority to vote in the case related to their activities, the authority must have a right to be heard and participate in all discussions. The Member also said that the EBA should emphasise that the authorities involved could present all facts as well as noted that the BoS Members kept contacts even outside the BoS meetings given their day-to-day tasks. Some Members questioned what options the Chairperson would have if he was informed that there was a pressure on the BUL panel members.
41. The EC representative supported the broader approach and stressed that the MB should focus on closing the case and should not re-open other possibly related issues. He also

acknowledged that all authorities had a right to speak at various stages of the procedure but that there were for the rest clear provisions on conflicts of interest in the EBA founding regulation.

42. The Head of LC clarified that the EBA's BUL Rules of Procedure already reflected the right to be heard and the BoS Rules of Procedure also provided an opportunity for the competent authority to present its position to the BoS prior to the discussion (which the EBA Regulation did not permit them to participate in). He mentioned that the Chairperson, if informed about any attempted influence, would be able to take measures such as reminding the panel members of their responsibilities, checking whether they can still work independently and informing the BoS about the attempts to influence the Panel.

Conclusion

43. The MB supported the EBA's work on addressing the ECA's recommendations and requested further development of the role of the Chairperson in managing attempts to influence decision-makers in BUL cases.

Agenda Item 6: EBA Standing Committees re-organisation (for discussion)

44. The Chairperson introduced the item by noting that despite the changes in the EBA internal organisation and the evolution of its mandates, the organisation of EBA standing committees has been relatively stable since 2011. He stressed the importance of these committees in the sense of being open to all competent authorities (CAs) to participate and provide input to the work. He also said that the committees should support the work of the EBA BoS in achieving its strategic priorities and were faced with two main challenges stemming from technology/innovation and sustainability issues and that they should focus on analysing risks, providing advice on how to address these risks, and developing level 2 and level 3 legislation.
45. The Head of PC continued by presenting an internal proposal aiming at improving efficiency, consistency and focus by re-organising the number and scope of the existing committees as well as improving the engagement with the members and better reflect the EBA internal organisation so that the committees are better designed to participate in the execution of the EBA work programme. He said that the key proposals were to create a new committee focusing on data, analysis, transparency and reporting and to consolidate most of the work related to innovation, risks and supervision in the scope of an "innovation, risks and supervision" committee. Finally, the standing committee on consumer protection and financial innovation should be focused on the work related to consumer protection. He concluded that the EBA could implement these changes at the beginning of 2022.
46. The MB welcomed the initiative and its timing. Some Members suggested to reconsider names and abbreviations of the new committees and to ensure a right balance of topics between committees and in particular between the two new committees on data and risks. One

Member also highlighted the importance of sub-structures, in particular regarding some topics that should be discussed in detail at working level rather than at the BoS level and noted that they might be re-organised as well. Several Members pointed that the level of seniority of members of the committees might be further discussed given that internal organisation of the CAs might be such that some committee members would be less senior than one level below the BoS members. One Member noted that the work on convergence and international policy was not mentioned in the scope of the new committees and that an option could be to establish a network in this area. Other Member noted that it may be beneficial to also implement some sort of body or forum with CAs' participation dealing with legal issues supporting EBA's legal department's work streams to foster legal streamlining and quality assurance similar to the SSM's LEGCO. One Member suggested to include more background information on the issues and problems that led to the proposal for the re-organisation of the committees to allow better discussion at the BoS level. Several Members noted that for some topics, the CAs would usually nominate technical experts rather than policy experts and that there might be a risk that some committees and/or their sub-structures would become too technical and some, mainly policy issues, would not be resolved at the working level.

47. The EC representative acknowledged the good timing for re-organisation given that the mandate of the EBA has evolved over the years. While the EC would not interfere with the EBA internal organisation, he stressed that the changes should remain within the remit of the EBA Regulation and noted that the EBA might reconsider the scope and set up of the standing committee on consumer protection and financial innovation (SCConFin) which was specifically mentioned in the EBA Regulation.
48. In his response, the Head of PC acknowledged the issue related to SCConFin which the EBA would further analyse. On the level of seniority of national representatives, he confirmed that the EBA would amend the wording to address comments raised by the MB.
49. The Chairperson concluded by noting the comments, in particular related to balanced distribution of work between the sub-structures and suggested to discuss further the re-organisation of the committees with some MB members interested. One Member expressed his availability to participate to this discussion.

Conclusion

50. The MB supported the work on the re-organisation of the EBA's standing committees.

Agenda Item 7: ESG Roadmap (for information)

51. The Chairperson introduced the item by noting that the ESG risk has become one of the top priorities on the EU policy agenda and this was also reflected in EBA's organisation and work programme. With the recent internal reorganisation, the EBA has now created a new dedicated ESG risk team. This team was going to work together closely with other units across

the EBA to deliver a large number of mandates the EBA has across various policy areas. Substantial collaboration with external stakeholders was also be essential.

52. The Director of ERA continued by updating the MB on ongoing and future ESG activities and mandates and planned organisation of work. In this regard, he also referred to the re-organisation of standing committees which might require some adjustments to sub-structures and networks.
53. The MB supported the work. One Member had technical comments related to Pillar 1 and concentration which the EBA could consider in its work going forward.
54. The Chairperson concluded by noting the MB's support.

Conclusion

55. The MB supported the work on ESG roadmap and envisaged approaches.

Agenda Item 8: Cloud Strategy follow-up (for discussion)

56. The Chairperson introduced the item by clarifying that the aim of the presentation was to provide the MB with an overview of the EBA Cloud Strategy.
57. The Executive Director added that the EBA had been discussing the issue with the other ESAs given that they were considering similar approaches to their Cloud Strategy. He also said that the decision to move to Cloud had already been supported by the MB in the first half of 2020, and that the draft cloud strategy presented now aimed to operationalise this move.
58. The Head of IT continued by explaining that the EBA approach to cloud was based on the simple observation that Cloud Computing and Data were separate domains that required separate approaches: public utility for computing and private/tailored protection for data. He mentioned that the EBA completed a separate assessment of risks in the Cloud to inform the EBA Cloud Strategy. This was a separate document that identified 9 core risks and made 17 distinct recommendations, which were all taken into account into the EBA Cloud Strategy. Furthermore, the EBA analysed and summarised benefits and value the Cloud could bring and how Cloud was both a foundational and a transformational paradigm.
59. The MB supported the work. One Member raised technical comments on technology lock-in risks. He also mentioned that the EBA Guidelines on outsourcing were no longer sufficiently developed to tackle new and complicated solutions and that there might be an opportunity to consider EBA's own work on Cloud to complement various policy issues as well. Other Member questioned potential conflict of interest between the EU data sovereignty and the US Cloud Act.
60. The Executive Director agreed that EBA now has significant own work on Cloud and Digital to inform policy making and was aiming at using it in the future. In his response, the Head of IT

acknowledged that avoiding technology lock-in (with vendor proprietary technology for example) required balancing usability and cloud efficiency versus resiliency and continuity requirements. He also acknowledged the risk of foreign cloud vendors (all major cloud vendors being US-based) being forced by their own government to seize and turn-in client data (EBA's in this case). He pointed out in the presentation on how the risk was addressed both at contractual and technical level, EBA essentially making use of the EC's contractual terms to establish immunity privileges in its usage of US Cloud services and – in parallel – using encryption to ensure that any data seized without its accord would be useless to the 3rd party in the absence of encryption keys.

61. The Chairperson concluded by noting the support for the work.

Conclusion

62. The MB supported the EBA's work on the Cloud Strategy.

Agenda Item 9: Draft response to the Ombudsman inquiry on vote disclosure (for decision)

63. The Chairperson reminded the MB of the discussion held at the BoS meeting on 16 September on the response to the Ombudsman's preliminary assessment on her inquiry into the non-disclosure of the Pilatus and Danske Bank BUL votes.
64. The Head of LC continued by summarising the two parts of the letter relating to the issue of disclosure and the issue of conflicts of interest, in line with the BoS discussion. He noted a need for balanced drafting.
65. The MB supported the draft letter in general but asked for several drafting changes. While some Members, even if not in full support of the approach taken by the BoS, agreed with the drafting as it reflected the BoS discussion, others suggested to shorten the response and focus only on the issues raised by the Ombudsman without adding further explanations or background information which could lead to further questions and inquiries. One Member questioned how strongly the EBA should present its arguments and proposed to include a more concise explanation in this regard. Another Member was of the view that the drafting should elaborate further on the independence of the decision-making and how full disclosure might impact it, suggesting to include a short reference to the discussions between the EBA and the Ombudsman and explain that the disclosure of the votes in these particular cases was the result of these discussions and that there was conflict with the rules applicable at the time of the voting. The Member did not consider the legal arguments that the public interest could override the applicable rules as fully satisfactory. One Member proposed to elaborate on the European Court of Auditors' report (ECA) and their recommendations.

66. The EC representative stressed that the EC would not interfere in discussions but said that the draft response was probably too detailed in some respects and therefore, the EBA might consider shortening it.
67. The Head of LC noted that some parts of the draft response could be deleted and that a further reference to the ECA's report could be added.
68. The Chairperson concluded by asking the MB to send their written comments by 30 September 2021.

Conclusion

69. The MB supported the draft response subject to further written comments. A revised version would be circulated to the MB before being proposed to the BoS.

Agenda Item 10: Provisional Agenda BoS 27 October Meeting (B-Point)

70. The Chairperson reminded the MB that the next BoS meeting was scheduled for 27 October.
71. One Member questioned the number of items planned for the meeting and stressed that there should be less items to allow fruitful discussions. He also asked for the Guidelines on IRRBB and CSRBB, currently envisaged for a written procedure, to be discussed at a BoS meeting given that there were different views on some parts of the Guidelines at the working level.
72. The Chairperson acknowledged the comment and clarified that the meeting had been initially planned to be one day and a half meeting and the proposal was to shorten it to a full day. He noted that a number of the items in the provisional agenda were still pending discussions in the standing committees and may be moved to written procedures if not significant issues remain to be discussed by the BoS. He agreed that a key value added of the BoS meetings were the discussions and therefore items in the agenda should be those requiring BoS input and discussion. He clarified that the joint BoS/BSG meeting was planned for 28 October (half day) and the BSG meeting on 29 October. The agendas would be circulated shortly.

Conclusion

73. The MB took note of the draft Agenda of the 27 October 2021 BoS meeting.

Agenda Item 10: AOB

74. Martina Drvar announced that she was stepping down from her MB position due to her taking a new role at the ECB.
75. The Chairperson thanked Martina, as well as Jesper and Maarten, for all their contributions to the MB.

Agenda item 10a: Advice of the Advisory Committee on Conflict of Interest (ACCI) on the Chairperson's annual declaration of interest

76. The item was discussed in a restricted set up without the presence of the Chairperson and Executive Director. The discussion was chaired by the EBA's Vice-Chairperson.
77. The Vice-Chairperson clarified that the Executive Director did not identify any relevant interests and therefore, the advice concerned the interests of the Chairperson only. The Chairperson declared a number of financial assets which were not new but were the shares which he was gradually disposing until year 2023. Given that there were no new interests, the ACCI considered the MB's 2020 decision on the Chairperson's conflict of interest to be sufficient to address the declared conflict of interest. Furthermore, the Vice-Chairperson mentioned that the preventive measure based on which the Chairperson was not allowed to have any professional contact with the staff from his previous employment in the context of lobbying and advocacy, expired in May 2021.
78. One Member questioned whether the drafting of the 2020 MB decision should be amended to address the fact that the Chairperson's ban to meet the staff from his previous employer has expired.
79. In his response, the Vice-Chairperson noted that in the decision of the MB should include a reference related to the expiry of the ban.
80. The EBA Head of Finance and Procurement informed that there would be two vacant positions in the ACCI and therefore, the EBA was planning to issue a call for interest.

Conclusion

81. The MB approved the ACCI advice and agreed to add a reference related to the expiration of the preventive measure on banning professional contacts with the representatives of the Chairperson's previous employer.

Participants at the Management Board conference call

28 September 2021

Chairperson Jose Manuel Campa
EBA Vice-Chairperson Jo Swyngedouw

Member Maarten Gelderman
Member Martina Drvar
Member Dominique Laboureix
Member Karin Lundberg
Member Jesper Berg
Member Helmut Ettl
Alternate Thomas Worm Andersen

European Commission representative Dominique Thienpont

EBA Staff

Executive Director Francois-Louis Michaud
Director of Operations Peter Mihalik
Director of Economic and Risk Analysis Jacob Gyntelberg

Philippe Allard; Jonathan Overett Somnier; Tea Eger; Erika Sole; Fergus Power; Lucy Urbanowski;
Anne Tiedemann; Radu Burghelea

For the Management Board,

Done at Paris on XX October 2021

[signed]

José Manuel Campa

EBA Chairperson