

EBA MB 2022 059 rev. 1

Management Board

25 May 2022/09:30 – 12:30

Location: teleconference

Management Board meeting – Final Minutes

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

1. The Chairperson welcomed the Members. None of the MB Members declared any conflict of interest regarding the agenda items.
2. The Chairperson informed that the Minutes of the 22 March 2022 MB meeting were approved by the MB in the written procedure.

Conclusion

3. The MB approved the Agenda of the meeting.

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

4. The Executive Director presented the Administrative and Operational Status Report. He noted that the EBA has been using the Report not only to update the MB but also internally for management purposes.
 5. On HR matters, the Executive Director informed that following the appraisal exercise, the reclassification exercise had been launched and was almost completed, following the same careful and fair approach as for the two previous exercises and having in mind the constraints of the Establishment Plan. A new Head of HR Unit was appointed with a starting date in mid-June. He also referred to hybrid working and salary indexation on which he further elaborated later in his update.
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6. With regard to the IT, he said that the EBA was progressing on various projects and that no major issues had to be reported.
7. The Executive Director reminded the MB that the EBA published the updated EBA Risk Dashboard, which included a special feature on the Russian invasion of Ukraine on the banking sector which had received a lot of attention and interest in the press.
8. On audit issues, the Executive Director informed that the EBA has finalized its 2021 Self-assessment on internal control and that more work would be done in this area in 2022. He also referred to the Court of Auditors' 2021 audit visit and informed that it had just one preliminary finding, which related to conflicts of interest of BoS members. The Court's view was that the BoS rules of procedure did not adequately prevent conflicts of interest from affecting the decision-making process, because although the founding regulation prevented conflicted Members from 'participating' in discussions and voting, the rules of procedure enabled Members to attend the discussion while not participating. The BoS was informed about the finding at its last meeting in April and the follow up work would be discussed during the next BoS conference call in June.
9. The Executive Director concluded by summarising in detail three issues – hybrid working, salaries, and EMAS. On hybrid working, he reminded the MB that the EBA has introduced various phases of hybrid working depending on Covid-19 restrictions. As informed at the last meeting, the European Commission (EC) adopted its rules on teleworking and had informed the agencies that it would prepare a model decision for them. The EBA was carefully assessing, liaising with the other ESAs and EU agencies, whether it should adopt the EC decision by analogy (simplest approach), or opt-out of it and then either revert to its pre-Covid telework regime (in which telework was much more constrained than what would apply in future and what had been practiced during Covid) or request new temporary rules from the MB and Commission (which may not be likely to be adopted given the now available EC decision). The EBA was assessing things with three objectives in mind: Ensuring maximum continuity, legal soundness, and reputation for the organization. MB would be approached with a proposal on the hybrid working by their next meeting in September. On salaries, the Executive Director said that in late April 2022, the EBA was informed by DG BUDG that they planned three salary indexations for all EU institutions this year. In a normal year there was only one indexation (usually announced in November and retroactive from 1 July). On 12 May, the EBA was further informed about these additional two indexations this year: one arises from a 2020 correction (applicable from 1 July, but to be paid with the December salaries) and the other one from the high inflation of the second semester of 2021 (applicable from 1 January – to be paid with the June salaries). These were partially offset by a small reduction in the correction coefficient for Paris (for the first six months of 2022, also reflected in the June salaries). While the EBA was still estimating the impact, it expected a significant overall salary cost increase for the full year (also taking into account a best estimate for the still to come third indexation). At this stage, 78.6% of the EBA's budget has already been committed. Since no additional funding has been foreseen for EU institutions in 2022, the EBA was now carefully reviewing all its planned commitments for the rest of the year to ensure that it remained within its budgetary envelope.

This was likely to result in delays for some EBA's core and non-core business activities. A second consequence of the salary indexation was that it also increased the pension costs. This meant that the EBA would need to ask for a higher contribution from competent authorities (CAs) and amend its budget. While the actual impact would only be known in late November, the EBA would need to launch an amending budget in July to be able to include this increased contribution in the second call for CA contributions in September 2022. As in 2021, any surplus arising at the year-end from this increased contribution would be returned to the CAs. Finally, the Executive Director informed that on 18 March 2022, the EBA's environmental statement was positively verified and validated by independent external verifiers. Following the successful verification, the EBA applied for the EMAS registration to a French competent body. The registration may take up to 3 months. Once registered in the European EMAS Register, the EBA would become an EMAS-registered agency and would be able to use the EMAS logo.

10. The MB took note of the Administrative and Operational Status Report. One Member asked for clarification on the salary indexation and amending budget, in particular in relation to the pension costs. He also asked for explanation on the reclassification and the recent potential litigation. Other Member questioned the prospect of future work for the EBA staff once the AMLA was established. One Member noted that changes to the budget caused issues at the national level and asked how the EBA could avoid amendments of the budget in the middle of the year.
11. In his response, the Executive Director clarified that the EBA was supposed to transfer eight posts to AMLA as of January 2024 and that the EBA have been discussing with the EC, rapporteur and the presidency how this could be done in practice. There was a fast-track process for experts already hired by an EU agency, but the EC was not very supportive to use this procedure in this case. With regard to the reclassification, the Executive Director explained that for three years in a row, the number of promoted experts has been decreasing and as a result, no changes to the establishment plan would be needed.
12. With regard to the budget, the EBA Head of Finance and Procurement Unit explained that the amendments were not predictable. He also noted that pensions costs were funded only by the CAs and therefore, the amendments were, in this case, necessary. He clarified that the salary indexation was based on the Staff Regulation's rules. He concluded by mentioning the EC's proposal to increase their subsidy to cover for expenses in 2023.
13. On the potential litigation EBA Head of Legal and Compliance (LC) said that two of the requests had been responded to largely negatively by the EBA and its response to a third request was still ongoing.
14. The EC representative requested clarification on the recent referral to the Board of Appeal. On the hybrid working, he referred to feedback he had received from DDG HR and advised the EBA to liaise with the other ESAs and the EC without further delays given that the EC's view was that when the EC adopted new rules, the agencies have nine months to adopt a decision whether they would apply the rules by analogy, or they opt out and wait for the model

decision. In the second case, the EC rules would not apply and the transition regime adopted in December 2021, in this particular case, which was based on the specific situation of ongoing sanitary measures, could no longer apply, so that agencies would automatically fall back to their pre-Covid rules. Therefore, the EC representative was of the view that, if the EBA did not want to come back to its pre-Covid rules, the MB should adopt a decision adopting the EC rules from April by analogy, to ensure that hybrid working was established on a strong legal footing. This should be done as soon as possible, and preferably not waiting until the next MB meeting in September. He also added that the model decision would not be significantly different in substance from the EC rules and would focus mainly on procedural issues to adapt to agencies' governance and therefore, for example the rule of maximum 10 days of telework from abroad would not be changed.

15. One Member supported the fast-track procedure in the case of AMLA and the EBA's posts. Another Member explained that when the SRB was established, no fast-track procedure was followed.
16. With regard to the breach of Union law case, the Head of LC explained that there was an appeal to the Board of Appeal made in relation to a rejected request for a breach of Union law investigation by an individual who has had multiple bank accounts closed. During the preliminary enquiries the EBA concluded that the reasons for the closure did not disclose a potential breach by the competent authority. He also added that there was a case law based on which an individual did not have a right to challenge a decision not to open a breach of Union law case.
17. The Executive Director welcomed the EC's feedback on the hybrid working and would prepare a decision for the MB as soon as possible.
18. The Chairperson concluded by noting the comments and stressed that the EBA would be losing eight posts that were to be moved to AMLA and therefore, it was necessary to discuss what would happen with the experts. He also said that the EBA would organise in the coming weeks an exceptional MB conference call to decide on the issue of working conditions.

Conclusion

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

Agenda item 3: Presentation and discussion on the 2021 Annual Accounts (for discussion)

20. The Chairperson introduced the item by reminding the MB that Article 102(3) of the EBA Financial Regulation required the MB to give an opinion on the annual accounts.
21. The Executive Director continued by noting that the year 2021 was the first year of a joint accounting office of ESMA and EBA. He also mentioned that the EBA has received a clean opinion from the independent auditor on the 2021 provisional accounts. This was seen as a

first indication that the joint accounting function for EBA and ESMA was working well but nevertheless, the EBA and ESMA have been preparing a lessons learnt document to summarise their cooperation.

22. The EBA Accounting Officer summarised the annual accounts comprising the financial statements and the reports on implementation of the budget and focused on three main areas – a) costs of EBA’s move to Paris where he said that the last provision stemming from the move from London to Paris (cost for the removal of staff) has been completely cleared, therefore closing the move in Accounting; b) Covid-19 disclosures and measures which have meant a reduction in certain kinds of expenses (missions, utilities, meetings), however they did not pose a threat to the EBA’s going concern principle; c) Russia-Ukraine conflict which could potentially impact the financial statements of the EBA in the future (e.g. the inflation increase resulting from the disruption of the supply chains caused by the ongoing conflict in Ukraine could have an impact in the accounts via the salary indexation). For this case, a standard disclosure on the issue has been agreed with DG BUDG for entities not directly exposed to Russian/Ukrainian conflict based on which no adjustments to the figures reported in the financial statements on 31 December 2021 were required. He concluded by clarifying that the EBA has not received the official European Court of Auditors (ECA) opinion on the annual reports and therefore, the presented documents could be considered as drafts and a written procedure would follow once the EBA received the official opinion.
23. The MB supported the work. One Member questioned whether the ECA’s opinion would be circulated to the MB. Another Member asked for more transparency on the IT expenses.
24. In his response, the Accounting Officer confirmed that the ECA’s opinion would be sent to the MB as part of the documentations for the written procedure. On the IT expenses, he agreed to elaborate on individual cases and the Executive Director added that the MB was informed about these increased expenses during its meeting in January 2022.
25. The Chairperson concluded by noting the comments and the MB’s support for the work.

Agenda item 4: 2022 Work programme progress report (for discussion)

26. The Chairperson gave the floor to the Executive Director for the update on the 2022 Work programme progress report.
27. The Executive Director introduced the progress report by noting that work on the work programme monitoring has continued, and by clarifying some of the methodological and presentational changes, indicating that as a result the report was not entirely comparable to the January update. Among the changes he mentioned were: the efforts to ensure the database being developed is comprehensive – to capture ongoing, recurring and support work -, but also useful not only for updating the MB but also for internal purposes. He noted the inclusion of a new ‘at risk’ status in order to better identify tasks that may give rise to

challenges, and the identification of newly added and of newly delayed tasks. He presented the current state of play and said that there were 140 tasks of the EBA's work programme to be delivered in 2022. Of these, 125 (89%) were expected before year-end - mostly in line with set or planned deadlines; and 15 might be delivered after 2022 – mostly tasks without set or legal deadlines. He mentioned that the aim was to stabilise and finalise the developments on the database by the end of the year to ensure it served as a communication tool both internally but also for the purposes of the governing bodies. A move from excel to another solution could then be considered.

28. The MB generally appreciated the progress report and the efforts of the EBA to inform the MB, and noted the challenges faced to deliver all the mandated work. Some Members suggested that going forward the 'at risk' items could be complemented by an assessment (by staff) for MB consideration, with a view to determining the issues that i) were of greater concern, also from the perspective of the public / stakeholders, ii) may need specific attention or action. A few Members questioned the use and purpose of the new 'at risk' status and the follow-up they would require, the reference point for measuring delays and the related level of detail, and whether the colour coding could /should be simplified.
29. The EC representative pointed at some tasks where delays were not matching the explanations of the categories.
30. The Executive Director clarified that the at-risk category should prompt a discussion whether a potential delay would be acceptable, or whether some of the tasks should be re-prioritised as a result. In addition, he clarified that the use of the at risk category was aimed to support the identification of challenges on a more forward-looking basis. He also noted that the categories and colour-coding could be further simplified.
31. The EBA Head of Governance and External Affairs Unit (GEA) noted that the EBA will review the categories and colour coding used for the progress reports with a view to simplifying. With regard to the delays, he clarified that these were determined at the cut-off date by comparing this to the legal deadline or revised deadline, if there was one. For one of the examples given, the revised deadline had unfortunately been missed out in the report.
32. The Chairperson concluded by noting that, going forward the suggestion to facilitate a discussion on 'at risk items' should be taken on board. At the same time, further efforts could be made to tweak the progress report to reflect the comments and to include further improvements, such as simplified colour-coding.

Agenda item 5: Annual work programme 2023: Priorities (for discussion)

33. The Executive Director introduced the discussion by noting that the 2023 priorities followed from those identified in the 2023-2025 SPD, which were adopted in January 2022. These priorities had now been reviewed in the light of legislative discussions and broader

developments such as the war in Ukraine. Based on internal discussions, the EBA proposed to make some targeted adjustments rather than fundamental changes. More specifically: to address the war in Ukraine under vertical priority (VP) 2 (Run an enhanced EU-wide stress test); to better reflect the work on the EBAs data strategy under VP3 (Data at the service of stakeholders); to stress the work on building the ESG risk monitoring framework under horizontal priority (HP)1 (ESG: Execution of the ESG roadmap); and to develop the KPIs under VPs 4 (Digital finance and delivery of MiCA/DORA mandates) and 5 (Contributing to the EU ML/FT fight) .

34. The MB supported the work and the adjustments, including the proposal to cover the war in Ukraine under stress testing, as this could be instrumental to assess second- and third round risks (e.g. on bond pricing). One Member questioned the stress testing work and, in particular, the development of the top-down stress-testing methodology, which albeit not directly related to the priorities, should be further considered by the MB at some stage. Another Member suggested ensuring that the ESG work was carefully planned, so that the outcomes could be applied consistently. Several Members commented on the work on MICA and DORA and asked whether it would require a more formal institutional framing in the form of a standing committee or a taskforce. In this regard, one Member referred to the work on innovation and said that there was no sufficient ownership of this work and no focused subgroup. Some Members enquired about the consistency of KPIs' time horizon between VP1 and VP3; possible overlaps (for KPIs under VP2); the nature of the output that was listed under one of the KPIs (for VP3).
35. The EC representative proposed to revise two KPIs under data strategy priority as they might be overlapping.
36. In his response, the Executive Director said that the KPIs would be revised to ensure the underlying horizons were not mismatched or did not overlap. Where needed, e.g. for the data strategy, clarifications would be also added.
37. The EBA Director of Innovation, Conduct and Consumers Department (ICC) provided a clarification about the nature of the output under VP3 where the format would in fact be considered later and noted the still moving target date for discussions on the MiCA legislative framework. With regard to DORA, she mentioned that the EBA was planning to deliver two mandates in 2023.
38. The Chairperson concluded by noting the comments and said that during the June BoS conference call, the BoS would be discussing 2023 stress test methodology. He noted that the first expectations for the top-down stress test were high and that there were many delays during the preparations for the exercise. On the priorities, the Chairperson noted the MB's support, with a few adjustments to be made for KPIs.

Agenda item 6: State of play on MICA and DORA (for discussion)

39. The Chairperson introduced the item by informing the MB that a provisional political agreement on DORA has been reached on 10 May 2022 and technical discussions continued to polish the final text. As for MICA, trilogues continued with no substantive discussion as yet regarding the allocation of supervision tasks at the EU level. He also noted that there was a lot of interaction between the three ESAs on the preparation for the implementation of all the mandates, budget and coordination.
40. The EBA Director of Innovation, Conduct and Consumers Department (ICC) and two senior policy experts continued by updating the MB on the preparatory work on the DORA and MICA implementation. With regard to DORA, the Director of ICC noted that the expected publication of the final text in the Official Journal was Q4 2022 and that DORA was set to be implemented two years after it entered into force. The provisional text envisaged 13 policy mandates (all joint-ESAs) that need to be delivered within 24 months after DORA enters into force. She mentioned that the most significant challenge for the EBA (and the ESAs) was the insufficient funding and resources for the period 2023-2025 where one-off (Union-CA) funding of 1.65M EUR was provided (along with 1 AST for 21 months) only for IT development purposes in 2024-2025. This meant no funding/resources for policy development and preparation for oversight and other tasks before the receipt of oversight fees, which were not expected before 2026. On MICA, the Director of ICC reminded the MB that the Council supported the EC's original proposal of allocating the supervision of issuers of significant asset-referenced and e-money tokens to the EBA, whereas the European Parliament proposed ESMA as the supervisor of issuers of significant ARTs and also proposed to elevate to EU-level (ESMA) supervision significant crypto-asset service providers. In terms of resource planning, EBA staff have taken into account both positions. In terms of the number of staff allocated for supervision, based on the assumptions set out in the Legislative Financial Statement, the EBA did not have any concerns. However, there was a shortfall in resource for IT and supporting functions. Critically, absent exceptional budgetary support for set-up, the EBA would not be able to take the necessary steps to build internal capacity (both supervision and technical infrastructure) for supervision, nor to undertake market monitoring and analysis ahead of the application date for supervision tasks and income via the levying of fees on supervised entities. The experts concluded by noting that the EBA was preparing a draft implementation plan for operational readiness covering both DORA and MICA to be presented to the MB in November 2022.
41. Before opening the floor for comments, the Chairperson noted three challenges on DORA implementation: i) the need for significant interaction with the other ESAs which could bring some complexities, ii) the challenge of communicating to the industry that status quo will continue until 2025 (once DORA will become applicable and oversight from 2026 onwards) and iii) limited capacity and pressure to deliver before receiving oversight fees. The MB supported the work. All Members noted the need for close coordination and cooperation among the ESAs. One Member noted that the cooperation between the ESAs would be challenging and therefore, a sub-committee at the Joint Committee (JC) level should be set up without further delays and define scope of activities. He also questioned whether the EBA would be operationally prepared to collect fees from third-party providers as it would be a brand new task for EBA. Two Members questioned whether the current EBA governance structure and

procedures were fit for the upcoming oversight framework. In this regard, one Member noted that while all CAs had their supervision procedures and governance well established, it would have to be built up at the ESAs level and that the preparatory work was crucial to start building capacity, also proposing the recruitment of legal counsel/director. One Member asked if there would be any additional budget and/or resources for the implementation period and noted it would be challenging to set expectations to the industry without the necessary funding to perform DORA tasks. Two Members highlighted the gap between the industry's expectations from DORA and reality, noting a potential reputation risk.

42. In her response, the Director of ICC clarified that there were currently 10 experts working on the Digital Finance unit (which essentially covered DORA, MICA and innovation monitoring) at the EBA and that no additional budget was expected.
43. The Executive Director added that the EBA and ESMA have been preparing a note on MICA and related issues.
44. The EC representative noted that additional resources were included in the revised LFS for the oversight activities and explained that requests for additional funding/resources are becoming very challenging during the trilogue discussions.
45. The Chairperson concluded by noting the comments and stressed that the EBA should be well prepared for a direct supervision and oversight and that the next update for the MB would be presented by the EBA staff in autumn.

Agenda Item 7: Provisional Agenda BoS 21 June conference call (for discussion)

46. The Chairperson reminded the MB that the next BoS conference call was scheduled for 21 June 2022. He informed that item 6 on the EBA report on EU dependence on non-EU banks and on funding in foreign currency would require further internal discussions and therefore, would not be discussed in June but later in the year.
47. One Member asked for rescheduling of the item on the First draft annual work programme 2023 given that he had a scheduling conflict.
48. The Chairperson concluded by noting the comments and agreed to schedule the item on the First draft annual work programme 2023 earlier on the agenda.

Conclusion

49. The MB took note of the draft Agenda of the 21 June BoS conference call.

Agenda Item 8: AOB

50. The Members did not raise any other business issues.

Participants at the Management Board conference call

25 May 2022

Chairperson Jose Manuel Campa
EBA Vice-Chairperson Jo Swyngedouw

Member Maarten Gelderman
Member Kamil Liberadzki
Member Karin Lundberg
Member Dominique Laboureix
Member Helmut Ettl
Alternate Peter Lutz

European Commission representative Dominique Thienpont

EBA Directors

Executive Director Francois-Louis Michaud
Director of Operations Peter Mihalik
Director of Innovation, Conduct and Consumers Marilyn Pikaro

EBA Head of Units

Philippe Allard; Jonathan Overett Somnier; Jordi Climent-Campins; Fergus Power

EBA Experts

Tea Eger; Guy Haas; Elisabeth Noble; Andreas Papaetis; Erika Sole

For the Management Board,

Done at Paris on 11 July 2022

[signed]

José Manuel Campa

EBA Chairperson