



EBA MB 2023 017 rev. 1

Management Board

23 January 2023 / 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. The Chairperson welcomed the Members. He reminded the Members of the conflict-of-interest policy requirements and asked them whether any of them considered themselves as being in a conflict. No Member declared a conflict of interest.
2. The Chairperson informed that the Minutes of the 15 November 2022 MB meeting were approved by the MB in the written procedure.
3. Finally, the Chairperson welcomed two recently elected MB Members – Ms Heather Gibson and Mr Angel Estrada. He also welcomed Mr Almoró Rubín De Cervin as a new European Commission (EC) representative.

Conclusion

4. The MB approved the Agenda of the meeting.

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

5. The Executive Director presented the Administrative and Operational Status Report. He noted that the tabled report covered the period from January to December 2022 like was customary at this time in the year. He noted that this was a year during which initiatives engaged in 2021 had been consolidated and where necessary complemented.
 6. With regard to Human Resources, the Executive Director informed that the 2022 Establishment Plan was filled at 98%. He reminded the MB of a swift adoption by analogy and
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implementation of EC Decision on working time and hybrid working. He also mentioned that the first comprehensive coaching programme for staff and team leaders was successfully delivered. He informed that a new Internal Mobility policy had been adopted on 07 November 2022 and used to temporarily replace the Head of ESGR (on leave for one year). Finally, he briefly mentioned favourable outcome of 2022 Staff Engagement Survey.

7. On the Finance and Procurement, the Executive Director noted that the 2022 budget execution was of 99.6 % and the execution on carry forward from 2021 was of 98.3 %, this despite unexpected increases in the coefficient correlation in the 2nd half of the year, which required a very close steering of commitments. He highlighted ever increasing inter-institutional cooperation and implementation of green procurement.
8. With regard to Information Technology, the Executive Director said the EBA successfully delivered and closed the Collaboration Platform program, launched the EuReCa platform for AML, launched the Investment Firms collection in EUCLID, continued the Digital Regulatory Reporting product implementation and finalised the Data Point Model Refit standard, which received strong interest and collaboration with ECB and constituency. The largest program for EBA in 2023 was the Cloud Transformation program, which consisted of a migration of the entire IT estate to Azure cloud and cloudification of existing products. The Program was on track, preparing for the first migrations in Q1 2023. Finally, he mentioned that 2022, 95.9% of the IT budget execution was achieved.
9. The Executive Director reminded the MB that Corporate Support has successfully led the project on EMAS certification and that the EBA became the first EMAS certified European agency in France in July 2022.
10. On Communication issues, the Executive Director noted that the communication team was developing a number of targeted communication campaigns with effective visuals, namely around the EBA's flagship products, such as the Risk Assessment Report and EU-wide transparency exercise. He also mentioned that the EBA developed a communication strategy to support the EMAS team in the internal awareness campaign and in the EMAS registration process. He briefly summarised preparations for the website revamp and refresh of the corporate visual identity.
11. With regard to the trainings to Competent Authorities (CAs), the Executive Director informed that there was a return to physical training sessions at the EBA premises following the COVID-19 pandemic. There were 2550 registered users on the EBA Learning Hub (+ 16% increase YoY) and that the EBA Learning Hub would be hosting the European Supervisory Digital Finance Academy.
12. On the colleges, the Executive Director said that in 2022, EBA staff has attended 42 supervisory and resolution college interactions and through its attendance EBA was in a position to identify and steer further improvement of college work (in total, 244 AML/CFT colleges have now been set up in the EU but more could be established).

13. With regard to the Legal and Compliance issues, the Executive Director referred to the dedicated annex which summarised key achievements, mentioning the validity of POG guidelines upheld in FBF vs ACPR; potential defamation claim which was defended, and a very large data subject access request and access to documents request addressed without challenge. He also noted that the peer review work plan was adopted by the BoS resulting in increasing the work to 3 peer reviews per year. First peer review was completed within eight months, with more focused findings and follow-up measures. The Executive Director informed about the implementation of a new enterprise risk management system, and the implementation of changes to the Q&A process and internal allocation of tasks, implementation of an internal workflow system (Socrates), with improvements to response times for new Q&As.
14. The Executive Director concluded on audits by saying that the IAS issued 37 recommendations in total since 2013, out of which 35 have been closed. The two remaining important recommendations would be submitted for closure by 04/023. He noted that the finalisation of the Audit on Internal Control Framework and Risk Management was pending with fieldwork on HR Management and Ethics to continue throughout 2023, followed by Multi-entity audit on coordination with DG FISMA. The ECA's statement of assurance provided to the European Parliament and the Council stipulated that the revenue, transactions and payment underlying the EBA accounts for the year ended 31 December 2021 were legal and regular in all material respects. Finally, self-assessment of Internal Control Systems for year 2021 was completed and reported on in May 2022.
15. The Members welcomed the report summarising the EBA's activities in 2022. One Member asked for clarification on national representation and whether the number included also SNEs. Other Member questioned whether there was a typo when referring to staff related expenses and whether the planned budget would sufficiently cover increase of the inflation and staff salaries.
16. The Executive Director clarified that the number of representatives per country covered only contract and temporary agents and not SNEs. He explained that the budget should cover expected expenses and the EBA Head of Finance and Procurement Unit confirmed that the EBA would cross-examine the questioned numbers.
17. The Chairperson concluded by noting the comments.

Conclusion

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

Agenda item 3: Update on MiCA – EBA implementation plan (for discussion)

19. The Chairperson introduced the item by informing the Members that the final text on MiCA was expected to enter into force in April/May 2023. In preparation, EBA staff have developed an implementation plan with the objective of identifying the necessary preparatory activities, including IT capabilities and human resources, required to ensure that the EBA would deliver the policy mandates and was operationally prepared to carry out its new supervision and other tasks under MiCA.
20. The EBA Director of Innovation, Conduct and Consumers Department (ICC) reminded the MB that MiCA set out a wide range of mandates and tasks mainly for EBA and ESMA. For the EBA these related to issuers of asset-referenced tokens (ARTs) and e-money tokens (EMTs) and would entail development of 20 policy mandates (out of which three were joint with one or more of the other ESAs), supervision of significant ARTs/EMTs; and other tasks (e.g., issuing Opinions to NCAs on the classification of crypto assets). ESMA's mandates related primarily to the issuance of other types of crypto-assets and crypto-asset service providers (CASPs) and would encompass development of 30 policy mandates and other tasks. EIOPA was mandated one joint policy mandate under MiCA plus (limited) other tasks. She noted that the EBA has also received from the EC on 03 January 2023 a Call for Advice relating to two EC delegated acts under MiCA on (i) supervisory fees, and (ii) significance criteria. The EBA was required to submit its response by 30 September 2023. The Director of ICC concluded by explaining that in order to ensure operational preparedness, EBA staff prepared an implementation plan to programme activities, IT capabilities and human resources.
21. The EBA Head of Digital Finance Unit (DF) summarised the main aspects of the implementation plan. With regard to internal and operational aspects, she said that the plan covered also aspects such as IT development, organisation of work, funding and allocation of resources for MICA preparations. For the policy development (12 months) of the mandates assigned to the EBA, the EBA was planning to use existing Task Forces, Sub-Groups and Standing Committees to leverage expertise on thematic areas relevant to the mandates. In the majority of cases, the EBA was required to act in 'close cooperation' with ESMA (and in a limited number of cases, the ECB in its capacity as a monetary authority). This would be satisfied by ESMA sitting as an observer on the workstreams (and, where appropriate, engaging more actively) on the relevant TFs, SGs, and SCs. ESMA was also required to act in close cooperation with the EBA and the EBA would also sit as an observer on ESMA's drafting teams. For the two joint EBA-ESMA mandates, relating to governance of ARTs and CASPs, EBA would lead the former and ESMA the latter. For the one joint-ESA mandate (GL on the classification of crypto-assets), ESA staff would lead the drafting in close coordination and consult each ESA's relevant SG/SC. As regards to supervision (starting at earliest 1 October 2024), the Head of DF clarified that the implementation plan foresaw three main components for the set-up of the EBA supervisory function, namely ongoing supervisory function, governance for supervisory tasks and establishment of investigation and enforcement functions. The EBA would only supervise issuers of significant ARTs and EMTs (if any tokens reach significance level by then). There were differences in the scope EBA direct supervision depending on the type of tokens. For issuers of significant ARTs, all MiCA requirements were to be under the scope of EBA supervision.

Whereas for the issuers of significant EMTs, (i) EBA direct supervision would relate only to issuers that are e-money institutions (EMIs) not to credit institutions, which would remain to be supervised by the relevant home competent authorities (CAs), and (ii) EBA would only be responsible for supervising a sub-set of MiCA requirements while the home CA would keep supervising the remaining requirements (dual supervision). As regards to other tasks, all of which were expected to apply from 18 months from entry into force, these included issuing Opinions to CAs, at their request, on the regulatory classification of crypto-assets; exercising (temporary) product intervention powers (ARTs and EMTs only); performing a facilitation and coordination role in relation to exercises by CAs of product intervention powers adopting opinions on whether the prohibition or restriction was justified and proportionate; providing inputs, as appropriate, to ESMA and EC reports mandated under MiCA on the latest developments on crypto-assets and on the application of MiCA; and market monitoring in relation to ARTs/EMTs. On IT development, the Head of DF said that the EBA was planning to develop a collaboration tool with CAs for exchange of information and a collaboration tool with issuers of significant ARTs/EMTs to upload and access information. Furthermore, the EBA planned to set up IT tool for supervisory colleges to exchange information for significant issuers of ARTs/EMTs with other authorities and conduct data collection from issuers of significant ARTs/EMTs. She concluded by outlining envisaged involvement of the CAs during the implementation of MiCA.

22. The MB welcomed the update. Some Members stressed that the EBA should ensure consistency between various level 2 policy mandates. They also noted possibility of a regulatory arbitrage given that there was a number of companies registering and applying for licenses and as result, putting pressure on competent authorities (CAs) in different countries. A number of Members stressed a need for a good preparatory work on investigation and enforcement, highlighting that many of the crypto asset providers did not have any experience with the financial regulation and/or supervision as well as the fact that the EBA did not have supervisory powers in the past. One Member questioned how the EBA was planning to prepare collaboration protocols between the CAs and the EBA. Other Member asked about the supervision governance and involvement of the Board of Supervisors (BoS). Two Members raised questions related to the existing crypto asset providers, their size and market presence. One Member pointed at requirements in various national legislations in respect to the investigation and enforcement and proposed setting up a team of experts to discuss related issues. With regard to the staffing, some Members asked for clarification on the number of experts to be working on policy development and on supervision. One Member noted that the staffing needs might be reconsidered in the future based on the development of the market.
23. The EC representative stressed continuous changes on the market and a high mobility of the crypto assets. He also said that the vote on the legislative proposal was expected in May.
24. In her response, the Director of ICC said that the EBA has not observed any significant crypto assets providers on the market but also mentioned that there were some candidates who could grow to become significant and as result, the EBA would have to start supervising them.

She stressed that qualification, skill set and trainings for staff were crucial. Depending on the market developments and the size of actual supervision, the EBA might need to make some organizational changes to reflect the needs of its supervisory powers. She also explained that there would be an investigation team which would cooperate with the CAs, but many details would still need to be discussed. The Director of ICC clarified that the work for all mandates in MICA would be fulfilled by the existing sub-groups and standing committees – mainly SCRePol with some of the mandates going to SCConFin, SUPRISC and SCREDAT and at the end, approved by the BoS. In the future, the EBA was mandated to set up a separate standing committee on crypto assets. Finally, on the staffing, the Director of ICC mentioned synergies with DORA and efficient use of around 15 staff members in total.

25. The Head of DF referred to a crypto asset network which has been discussing, as a main exchange body, how to address the interim period until MICA comes to effect. On the governance of the supervisory work, she explained that a separate standing committee on crypto assets was to be established to prepare decisions for the BoS on supervisory matters. On the set-up of investigation and enforcement function, the EBA would rely on ESMA's and SSM experience with direct supervision and later, also supervisory colleges would be an important tool to ensure consistency and convergence. The Head of DF also clarified that preparation of collaboration protocols between the CAs and the EBA was one of the priorities for the supervision set-up.
26. The Executive Director complemented by reminded that the establishment plan did not envisage any additional resources for the preparatory work on MiCA and therefore, the EBA had to use existing resources and prioritise very carefully (staff from the Digital Finance Unit who had been following the legislative negotiations moved to the policy mandates preparations with ad hoc support from 7 other units. However, for the supervisory work, the EBA would hire further staff with relevant experience.
27. The Chairperson concluded by noting the ongoing developments and unclear situation both with regards to the legislative text as well as actual market presence. Therefore, the EBA would continue monitoring these developments and adjust accordingly.

Conclusion

28. The MB took note of the of the update on MiCA.

Agenda item 4: IT Operational Plan and Strategic Roadmap (for discussion)

29. The Chairperson introduced the item by reminding the MB of the approved EBA IT Strategy for 2020 – 2025. He explained that the yearly IT Operational Plan provided a transparent view to the EBA and its stakeholders on proposed annual IT investments and it spelled out the key milestones, investments objectives and deliverables for IT Projects, Products and Security Initiatives, foreseen for 2023.

30. The EBA Head of Information Technology Unit (IT) continued by adding that in accordance with the IT Strategy provisions, the IT Strategic Roadmap has been updated by the EBA for the next three years. He listed the key priorities for IT in 2023, referring to continuous investing in data dissemination capabilities that bring business value and provide services to external stakeholders, in line with the goal of the EBA Data Strategy to “enable the EBA to share data and insights with internal and external stakeholders and whole data ecosystem”; completion of the implementation of the EBA Cloud transformation program to further increase EBA’s efficiency and resilience; initiating IT projects of strategic importance related to new EBA mandates under Digital Operational Resilience Act (DORA) and Pillar 3, and further enhancing existing EBA IT products and solutions to best support its everyday operations. He also mentioned that IT costs were expected to represent ca 21% of EBA’s overall budget in 2023, down from ca 24% in 2022 after two years of high investments driven by business and needs and operational reasons (including security). Approximately 33% of the overall IT budget was allocated to new initiatives (“IT change” which may have started before 2023), compared with the operating costs necessary to support and run the business and existing EBA products (“IT run”). Also, most of the budget was allocated to initiatives which contribute to the strategic objective of the EBA to provide banking and financial data (“Data Hub”).
31. One MB Member stressed that some of the IT projects would have direct impact on the cooperation with the CAs and ask whether the EBA had any back plans for situations when a CA would not fulfil technical requirements, such as in the case of the replacement of Extranet with MS Teams. Other Member questioned data protection in relation to the usage of cloud. Finally, one Member asked for clarification on the excess of IT costs and possibility to recover expenses related to EUREKA database when transferred to AMLA.
32. The Head of IT mentioned that the excess of IT costs was related to the commitments for 2023 and shared projects with EIOPA for which EBA recovered afterwards the costs from EIOPA. With regard to the MS Teams, he acknowledged that some CAs had informed the EBA about their technical constrains and they have been promptly discussed with the CAs to support them. For this exact purpose EBA has established a taskforce under the IT Sounding Board (ITSB) where CAs have technical experts for elimination of all interoperability challenges.
33. The Executive Director noted IT had been stabilized in 2022 after two years of increase due to necessary structural investments. With regard to the cloud, he explained that there were legal and technical provisions on data protection. On EUREKA, he said that when EBA’s AML-related activities would be moved to AMLA, the EBA would have to further discuss the costs imposed in relation to this database, but nothing had been envisaged in the legislation and accompanying financial statement so far.
34. The Chairperson concluded by welcoming the update and noting the comments.

Agenda item 5: Demo of the transparency exercise tool (for discussion)

35. The Chairperson introduced the item by reminding the Members that the latest annual EU-wide Transparency exercise was published on 09 December 2022.
36. The EBA Head of Statistics Unit (STAT) continued by acknowledging that the EBA has been conducting transparency exercises at the EU-wide level on an annual basis since 2011. Through the years, the data disclosure has been integrated and enhanced in the ongoing effort to maximize and actualize the information disclosed, while at the same time minimizing the burden on the banks. With the 2022 EU-wide transparency exercise the EBA has disclosed over 1.2 million data points, with on average more than 10,000 data points per bank (122 banks across 26 countries), covering several areas (capital, leverage ratio, risk exposure amounts, profit and losses, financial assets, market risk, securitisation, credit risk, sovereign, Pillar 3 disclosures, non-performing and forborne exposures, collateral valuation). In order to allow users to select, compare, visualise, and download data across time, the EBA provided a wide range of interactive tools. A presentation of one tool followed.
37. The MB welcomed the presentation of the tool and appreciated the EBA's work. They suggested giving more prominence to the work and consider activities to promote and increase the use of the tool even further. Some Members proposed renaming the exercise to better address its significance.
38. The EC representative supported the work and acknowledged its importance also for the credibility of the financial system. He asked if similar exercised were conducted in the USA, UK or Switzerland and proposed discussion on more global use of the data and international comparison.
39. The Head of STAT thanked for the support and said that there were no comparable exercises at the international level. He mentioned that some analysts were using the data also as part of their paid analysis. He agreed that further efforts could be put into promoting the usage of the interactive tool and renaming of the exercise.
40. The Executive Director complemented by referring to meetings with analysis and use of social media for promoting the work.
41. The Chairperson concluded by noting the MB's support for the work.

Agenda item 6: Terms of reference for the peer review on mortgage arrears handling (for discussion)

42. The Chairperson introduced the item by noting that following the approval by the BoS in October 2022 of the EBA's Peer review work plan 2023 – 2024 the first peer review to be performed under this work plan was a peer review on the supervision of creditor's treatment of mortgage borrowers in arrears. In accordance with Article 30 of the EBA Regulation and the EBA Decision on Peer Reviews, the MB should be consulted on the proposed Terms of Reference (ToR) of this peer review and seek the Board of Supervisors approval of the ToR.

43. The EBA Head of Legal and Compliance Unit (LC) explained that the objective of this peer review was to examine the effectiveness of, and degree of convergence reached in, supervision of Article 28 of the MCD requirements on arrears and foreclosure, and in particular whether steps taken by CAs effectively ensure that consumers in payment difficulties benefit from reasonable forbearance by credit. Given the subject matter, he clarified that this would be a targeted peer review with a challenging but necessary short turnaround commencing in January 2023 and to be completed by June 2023. This was pertinent due to the dynamic nature of the market and the changing interest rate environment leading to potential risks that mortgage holders could go into arrears. The peer review report was expected to be presented to the BoS for discussion in June. Although this was a targeted review, all measures of a general nature and best practices identified in the review would be applicable to all CAs. The six CAs proposed to be subject to this review were Cyprus, Greece, Lithuania, the Netherlands, Portugal, and Slovakia. These CAs have been selected on the basis of two objective criteria: 1) the importance of mortgages to the national financial system and society, measured by establishing the share of mortgage loans to total loans and advances, the share of mortgage loans to households and NFCs, the share of mortgage loans to banks' total assets, and/or the share of mortgage loans to populations size; 2) the likelihood with which the EBA Guidelines on arrears and foreclosure may be required to ensure consumers in arrears benefit from reasonable forbearance, measured by the share of the mortgage loan portfolio with variable rate, the loan-to-value ratios across all mortgages held, the ratio of mortgage loans with significant increases in credit risk since initial recognition, the ratio of non-performing mortgage loans to total mortgage loans, and/or the ratio of mortgage loans with forbearance measures. The Head of LC added that Hungary and Portugal both expressed their interest in being considered as targets of the peer review given their recent experiences and changes that had been made at local level. Portugal was already under consideration due to this CA hitting indicators under both criteria for selection. As only two nominations were received for the peer review committee, Hungary was invited to nominate a member to broaden the range of experience and expertise on the committee but declined. Therefore, the MB was asked to consider whether to include Hungary in the set of CAs targeted.
44. The MB supported the work. One Member acknowledged the short timeline and questioned the possibility of drafting best practices given the limited sample of the exercise. He also said that it was crucial to distinguish between individual situation per country and the overall systemic situation. Other Member noted challenges in assessing the extent to which specific issues of the peer review should be considered.
45. The EC representative supported the proposal but was of the view that the EBA should identify good practices rather than the best practices given the limited and specific sample.
46. In his response, the Head of LC explained that the timeline was a result of the process in which both the MB and the BoS had to discuss the final report and keen interest for EBA to publish the report as soon as possible given the already changing interest rates economic environment. However, the deadline may be extended until September/October 2023 should

the review bring to light issues requiring a more in-depth analysis. On the best practices and lessons learned comment, the Head of LC replied that the peer review committee would carefully assess whether the examples identified from the sample of CAs could be extended to the remaining EU Member States, including those not targeted.

47. The Chairperson concluded by noting the MB's support for the proposal.

Conclusion

48. The MB supported the terms of reference, including the CAs targeted together with Hungary and the committee composition, and to proceed for submission to BoS approval, by consensus.

Agenda item 7: Designation of reporting officers and MB member of the ACCI (for decision)

49. 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. According to the implementing rule, the MB shall designate at least two reporting officers from amongst its members for this purpose. Secondly, he invited the MB to nominate its member of the Advisory Committee on Conflicts of Interest. The ACCI's role was to take the Ethics Office role in advising the MB on potential conflicts of interest of the Chair and Executive Director and screening their annual declaration of interests.
50. The Head of LC continued by noting that the role of reporting officers was to hold a formal dialogue with the Chairperson/Executive Director regarding fulfilment of last year's objectives and implementation of the work programme. They draw up an appraisal report and set the objectives for 2023. The reporting officers have been appointed on an annual basis and therefore need to be appointed for the 2022 reference period. The MB would act as the appeal assessor if necessary. Finally, the Head of LC said that the MB could decide to designate the EC representative as an observer. With regard to the ACCI, he clarified that one member should be nominated by the BoS and one by the MB, and the Committee was chaired by an EBA staff member.
51. Karin Lundberg and Raimund Röseler offered to serve as the reporting officers for both the Chairperson and Executive Director.
52. Kamil Liberadzki volunteered for the ACCI position.
53. The EC representative confirmed his interest to act as an observer as per the implementing rule.
54. The Chairperson concluded by thanking volunteers for the proposed positions.

Conclusion

55. The MB designated Karin Lundberg and Raimund Röseler as the reporting officers for the appraisal of the Chairperson and the Executive Director.
56. The MB approved Kamil Liberadzki as the ACCI Member from the MB.
57. The MB designated the EC representative as an observer in the appraisal of the Chairperson and the Executive Director.

Agenda item 8: Provisional Agenda of the BoS meeting on 15 February 2023 (for discussion)

58. The Chairperson reminded the MB that the next BoS physical meeting was scheduled on 15 February 2023 at the EBA premises in Paris.
59. The MB did not raise any comments.

Conclusion

60. The MB took note of the draft Agenda of the 15 February 2023 physical meeting.

Agenda Item 9: AOB

61. One Member proposed that the MB discuss the use of artificial intelligence, RegTech and SupTech during one of its next meetings.
62. The Chairperson referred to the existing RegTech and SupTech sub-groups at the EBA and agreed that the experts would further discuss with national experts on these topics.
63. The EC representative welcomed future discussions on artificial intelligence.

Participants at the Management Board meeting

25 January 2023

Chairperson Jose Manuel Campa
EBA Vice-Chairperson Jo Swyngedouw

Member Heather Gibson
Member Kamil Liberadzki
Member Karin Lundberg
Member Angel Estrada
Member Helmut Ettl
Alternate Peter Lutz

European Commission representative Almore Rubin De Cervin

EBA Directors

Executive Director
Director of Operations
Director of Prudential Regulation and Supervisory Policy
Director of Innovation, Conduct and Consumers
Director of Data Analytics, Reporting and Transparency

Francois-Louis Michaud
Peter Mihalik
Isabelle Vaillant
Marilyn Pikaro
Meri Rimmanen

EBA Head of Units

Philippe Allard
Jonathan Overett Somnier
Fergus Power
Ruta Merkevičiute
Radu Burghelea

EBA Experts

Tea Eger
Margaux Morganti
Adrienne Coleton

For the Management Board,

Done at Paris on 08 March 2023

[signed]

José Manuel Campa

EBA Chairperson