

EBA/Op/2023/10

6 September 2023

PUBLIC

Opinion of the European Banking Authority on the 2021 discharge report of the European Parliament

Introduction and legal basis

This opinion provides a formal response to the observations made by the Parliament during the 2021 discharge process. It was approved by the EBA Board of Supervisors on 6 September 2023, based on the following provisions:

- Article 64 of the European Banking Authority (EBA) Regulation¹, which sets out arrangements for the implementation and control of EBA's budget. Based on Article 64(11) EBA Regulation, the Authority shall provide a reasoned opinion on the position and on any other observations of the European Parliament (EP) during the discharge procedure.
- Article 105(1) of the EBA Financial Regulation², which states that the European Parliament (EP), upon recommendation from the Council, shall, before 15 May of year N+2 where otherwise provided in the constituent act, give a discharge to the Executive Director for the implementation of the budget for year N.
- Article 107 of the Financial Regulation, which states that the Executive Director shall take all appropriate steps to act on the observations accompanying the EP's discharge decision and, on the comments, accompanying the recommendation for discharge adopted by the Council.

General comments

The Authority welcomes the approval by the EP of the closure of EBA accounts for the financial year 2021 and the decision of the EP to grant EBA's Executive Director discharge in respect of the implementation of budget for the said financial year.

¹ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority) amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12) <https://eur-lex.europa.eu/eli/reg/2010/1093/>

² <https://eba.europa.eu/sites/default/documents/files/documents/10180/15784/fe13ff98-3990-42a7-84d1-9fd96e46144f/EBA%20Financial%20Regulation%202019.pdf>

Equally, the EBA welcomes the feedback received during the discharge process which is an essential exercise for the evaluation of the Authority's performance and provides an external point of view to the actions undertaken by the Authority during the year as well as current practices.

As requested by the Parliament, the EBA hereby provides its response to the observations received from the Parliament's resolution in the suggested tabular format. It also touches upon a number of observations from the Discharge 2021: Performance, financial management and control of EU agencies (hereinafter referred to as horizontal report).

EBA responses to the observations of the EP

Paragr. Recitals	OBSERVATIONS OF DISCHARGE AUTHORITY (REPORT ADOPTED ON 10 MAY 2023 EP PLENARY)	EBA RESPONSE AND MEASURES TAKEN BY EBA	STATUS / FOLLOW-UP ACTION ³
A	whereas, according to its statement of revenue and expenditure ¹ , the final budget of the European Banking Authority (the ‘Authority’) for the financial year 2021 was EUR 49 132 610; whereas the Authority is primarily financed by a contribution from the Union (EUR 18 506 940), and contributions from national supervisory authorities of the Member States and observers (EUR 30 625 670);	The EBA takes note of the recital.	Not applicable (N/A)
B	whereas the Court of Auditors (the ‘Court’), in its report on the annual accounts of the European Banking Authority for the financial year 2021 (the ‘Court’s report’), states that it has obtained reasonable assurance that the Authority’s annual accounts are reliable and that the underlying transactions are legal and regular;	The EBA takes note of the recital.	N/A

³ The format of the table follows the guidance provided by the European Parliament’s Budgetary Control Committee (CONT) via the EU Agency Network which suggests three columns, including one to indicate the status of a follow-up action. For the status column the guidance included the following:

- Ongoing: an action that has started and that has no end-date (e.g. is repeated annually, or for new staff). Example: awareness raising for fraud is an ongoing activity.
- Implemented: an action that has been implemented (e.g. the initial issue was that a certain IT-system (ARES) or procedure needed to be designed and implemented and that is now operational/ in use). The activity is finished.
- Partially implemented: an action that is started, but not yet finished (e.g. a procedure is developed but not yet adopted by the appropriate authorities). It would be good if there is some explanation as to what has been implemented and what is not in this case.
- Not implemented: an action that still needs to start. In this case, also an explanation is desirable as to why the implementation has not started yet.

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Budget and Financial Management			
1	Notes with satisfaction that the budget monitoring efforts during the financial year 2021 resulted in a budget implementation rate of current year commitment appropriations of 98,51 %, representing a decrease of 0,66 % compared to 2020; notes furthermore that the rate of execution of current year payment appropriation was 83,99 % representing a decrease of 6,37 % compared to 2020;	The EBA appreciates the fact that the discharge authority recognises the high budget implementation rate of current year commitment appropriations and rate of execution of current year payment appropriation, despite a slight decrease in the latter.	N/A
Performance			
2	Notes that the Authority continues to use certain measures as key performance indicators (KPIs) to assess the added value provided by its activities and other measures to improve its budget management; notes that Authority executed 91% of its work programme, which included 21% of additional tasks not initially foreseen in the planning;	The EBA takes note of the discharge authority's observations in relation to KPIs and the EBA's execution of its work programme.	N/A.
3	Welcomes that the Authority has continued in 2021 to develop its synergies with the European Securities and Markets Authority providing accounting staff and with the European Insurance and Occupational Pensions Authority by way of a shared IT security function; also notes that the Authority participates in many interinstitutional procedures, resulting in 2021, 90% of 143 framework contracts procured by other EU entities;	The EBA appreciates the discharge authority's recognition of its work to improve synergies with other European agencies and notes that this remains an ongoing consideration.	N/A

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4	Is aware that the Authority continued to monitor the implementation of the Basel III regulatory framework and decided to make the Basel III monitoring exercise mandatory as of December; notes that it carried out its biennial EU-wide stress test exercise, which was key in assessing the resilience of financial institutions to adverse market developments, particularly relevant in 2021 in the context of the COVID-19 crisis;	The EBA appreciates the discharge authority's observations regarding the monitoring of the implementation of the Basel III regulatory framework, and the value of the biennial EU-wide stress test exercise.	N/A
5	Underlines that the Authority finalised its resolvability guidelines; these guidelines represent a significant step in complementing the EU legal framework in the field of resolution based on international standards and leveraging on EU best practises;	The EBA appreciates the discharge authority's observation in relation to resolvability guidelines. These have since been complemented (in June 2023) by the guidelines on resolvability testing, which provide a framework to ensure that resolvability capabilities developed to comply with the resolvability and transferability guidelines are fit for purpose and effectively maintained. (The guidelines can be accessed under https://www.eba.europa.eu/eba-published-its-final-resolvability-testing-guidelines .)	N/A
6	Welcomes that in 2021, the Authority underwent meaningful organisational changes to reflect the shifting priorities of its mandate and work programme, with a new grouping of tasks and activities within core units and departments; notes that in particular, the reorganisation saw the creation of new Units to reflect the growing importance of topics such as digital finance, environmental, social and governance, reporting and transparency, and anti-money laundering;	The EBA appreciates the discharge authority's observation regarding the EBA's organisational changes made to reflect the shifting priorities of its mandate and work programme.	N/A

Paragr. Staff policy	OBSERVATIONS OF DISCHARGE AUTHORITY (REPORT ADOPTED ON 10 MAY 2023 EP PLENARY)	EBA RESPONSE AND MEASURES TAKEN BY EBA	STATUS / FOLLOW-UP ACTION ³
7	Notes that, on 31 December 2021, the establishment plan was 94,44% implemented, with 153 temporary agents appointed out of 162 temporary agent posts authorised under the Union budget (compared to 145 authorised posts in 2020); notes that, in addition, 49 contract agents (50 authorised) and 20 seconded national experts (19 authorised plus 7 cost-free SNEs) were employed by the Authority in 2021; notes that staff turnover amongst temporary agents, contract agents and seconded national experts has increased slightly to 12% due to a number of SNEs coming to the end of their secondments (9% in 2020);	<p>The EBA takes note of the discharge authority's observation regarding the establishment plan and staff turnover and notes additional measures taken.</p> <p>A new set of measures aiming at attracting and retaining SNEs is being implemented such as the launch of a permanent rolling call for multiple SNEs profiles, strengthening candidates' relationships, etc.</p>	N/A
8	Notes with satisfaction that the Authority employed staff of 28 nationalities, of whom 48,4% are women and 51,6% are men; is aware that at senior management level women accounted for 42.9% as of June 2022; welcomes this improvement in gender equality at senior management level; welcomes the introduction of new team leader roles to help prepare the next generation of leaders and notes that 41.7% of these roles are held by women;	<p>The EBA appreciates the discharge authority's observation recognising the EBA's efforts in promoting diversity and gender balance.</p>	N/A.
9	Is aware that the Authority has put in place a policy on protecting the dignity of the person and preventing psychological and sexual harassment; notes that staff and managers undertook training on the prevention of sexual and psychological harassment and that four new confidential counsellors were appointed in 2021; also notes that the confidential counsellors held two awareness sessions for staff in 2021 about their role and the	<p>The EBA takes note of the discharge authority's observation in relation to policies and efforts with a view to protecting the dignity of the person and preventing psychological and sexual harassment.</p>	N/A.

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	<p>Authority’s policy on prevention of harassment; takes note that following the investigation of one harassment case raised by a staff member in 2020, the case was closed in 2021 with no evidence supporting the allegation after independent assessment;</p>		
Procurement			
10	<p>Acknowledges that, in 2021, the Authority completed three procurement procedures above the directive threshold and four calls for tenders in the form of negotiated procedures above EUR 15 000; further notes that the Authority increased its cooperation on procurement with the other European Supervisory Authorities and with EU agencies located in France;</p>	<p>The EBA takes note of the discharge authority’s observation in relation to procurement procedures.</p>	N/A
11	<p>Is concerned about the Court’s observation that the Authority sought to obtain access to banks’ debt and capital market data and concluded that the services it required could only be provided by two specific economic operators; notes that the Authority therefore entered into two separate negotiated procedures, for contracts worth EUR 100 000 and EUR 43 800, without the prior publication of a contract notice in accordance with Point 11.1 (b) (ii) and (iii) of Annex I of the Financial Regulation; notes with concern that in both cases, the Authority failed to follow all the necessary procedural steps required by Point 16 of Annex I of the Financial Regulation, such as sending an invitation to tender and drawing up tender specifications; calls on the Authority to ensure that all procurement procedures follow the procedural steps set out in the Financial Regulation, including</p>	<p>The EBA takes note of the discharge authority’s concern and acknowledges its error in not following all the procedural steps required by Point 16 of Annex I of the Financial Regulation, where services can only be provided by a single economic operator and has taken necessary remedial follow-up actions.</p> <p>Since receiving this observation from ECA, the EBA has complemented its internal processes and followed all necessary procedural steps for these kinds of procedures. In its 2022 Audit, the ECA reviewed the two procurement procedures run according to the adjusted processes and had no remarks.</p>	<p>Observation implemented. (As part of the <i>Follow-up of previous years’ observations</i> included in the draft 2022 audit report, ECA marked the status of this observation as closed.)</p>

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	those where the services being procured can only be provided by a single, unique economic operator;		
12	Welcomes that the Authority has fully adopted and implemented e-procurement procedures; notes it is fully operating with the software suite made available by the European Commission: e-Notices, e-Tendering, e-Submission, MyWorkplace, and Public Procurement Management Tool; commends that the Procurement team has 100% paperless working processes and uses Advanced Qualified Signature and Qualified Electronic Signature software to obtain approvals and signatures from both internal and external counterparties in procurement and contractual documents;	The EBA appreciates the discharge authority's observation regarding the adoption and implementation of e-procurement procedures, and of the paperless working process the procurement team now uses.	N/A
Prevention and management of conflicts of interest, and transparency			
13	Underlines that under the Rules of Procedure of the Board of Supervisors, members of the Board who have a conflict of interest may not take part in the Board's discussions or vote on the matter in question; notes, however, that until June 2022 a member may remain present in the meeting if nobody objects; is concerned that this creates a risk to the Board's independence; calls on the Authority to take the necessary steps to avoid any suspicion of conflict of interest, and welcomes the steps taken by the Authority to strengthen the independence of members of the Board of Supervisors, Management Board and certain Board committees by ensuring that members with a conflict of interest do not attend discussions or voting on agenda items on which they are conflicted;	The EBA is happy to report that the Board of Supervisors adopted in its meeting of 21 June 2022 an amendment of its Rules of Procedure, as well as of the Management Board and the mandates of the Standing Committee on Resolution (ResCo) and of the Standing Committee on anti-money laundering and countering terrorist financing (AMLSC), whereby a member that has declared a conflict of interest is required in all cases to be absent from both the discussion itself and the vote. The EBA views that these actions address the concerns and the call for action of the discharge authority and the EBA will continue to be vigilant about this matter.	Observation implemented.

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14	<p>Notes with concern that in the ECA’s Special report 13/2021: “EU efforts to fight money laundering in the banking sector are fragmented and implementation is insufficient”, the Court found that Authority staff carried out thorough investigations of potential breaches of EU law, but the Court found written evidence of attempts to lobby panel members during the period when the panel was deliberating on a potential recommendation; also notes that in the end, the Board of Supervisors rejected the draft recommendation; reiterates its call on the Authority to reinforce the rules to guarantee the independence of panel members during their deliberations and report to the discharge authority on the actions taken on this matter;</p>	<p>The EBA takes note of the discharge authority’s concern regarding ECA’s finding about attempts to lobby to the panel deliberating on a case of potential breach of Union law, and has taken necessary follow-up actions.</p> <p>On 1 January 2020, the ESAs Review introduced additional conflict of interest requirements. The EBA extended those requirements to breach of Union law (BUL) panel members. At the time of the deliberative process in question, the EBA’s policies and procedures on conflicts of interest and BUL investigations did not make provision in relation to contact with BUL panel members. Nevertheless, when necessary, panel members had been advised against accepting attempts to influence them in their role as a panel member. Furthermore, in December 2021 the Board of Supervisors adopted revised rules of procedure for breach of Union law investigations which set out timeframes for investigating cases and put in place specific rules to ensure the independence of panels and of members of other decision-making bodies. The EBA views that these actions address the concerns and the call for action of the discharge authority and note that in its draft 2022 audit report that ECA marked the status of this observation as closed. This notwithstanding the EBA will continue to be vigilant in keeping its measures under review.</p>	<p>Observation implemented. (As part of the <i>Follow-up of previous years’ observations</i> included in the draft 2022 audit report, ECA marked the status of this observation as closed.)</p>
15	<p>Notes that the Authority discloses all staff meetings with external private sector stakeholders and it does it fortnightly for the Chairperson (as per Article 49a of the EBA founding Regulation) and this is applied in the same way to the Executive Director (whereas Article 52a requires meetings of the</p>	<p>The EBA takes note of the discharge authority’s observation regarding the disclosure of management and staff meetings with external private sector stakeholders.</p>	<p>N/A</p>

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	Executive Director to be made public but does not specify how soon after they are held); notes that in the meetings of other staff with private sector stakeholders, disclosure is done on a quarterly basis;		
16	Recalls that the Authority has a conflict of interest policy for staff, and a specific policy for members of the board of supervisors and the management board; notes that both policies require the annual declaration of any interest that creates a conflict with respect to activities falling under the Authority’s scope of action and that have been conducted during the previous two years (as regards the boards) or the previous five years (for all staff); welcomes that both policies impose an obligation to declare situations of conflicts of interest not covered by the annual declarations, as unaddressed conflict-of-interest situations may compromise the enforcement of high ethical standards;	The EBA appreciates the discharge authority’s recalling the existence of the conflict of interest policy for staff and for BoS members.	N/A
17	Acknowledges that on 29 September 2020, the European Ombudsman opened an inquiry concerning the refusal of the European Insurance and Occupational Pensions Authority to grant public access to the voting results and related reasoning concerning its Board of Supervisors’ decision on a draft regulatory technical standard on packaged retail and insurance-based investment products; underlines that the Authority also adopts such technical standards on the basis of the same procedures as European Insurance and	The EBA appreciates the discharge authority’s acknowledging the granting public access to the voting results and related reasoning of the Board of Supervisors.	N/A

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	Occupational Pensions Authority ; notes that the Authority’s Board of Supervisors decided on 29 May 2021 to adopt amendments to its own rules of procedure to provide for the inclusion of any vote on the adoption of draft regulatory or implementing standards in the record of Board of Supervisors meetings;		
18	Insists on the need to put in place systematic rules on transparency, incompatibilities, conflict of interests, illegal lobbying and revolving doors; calls on the Authority to strengthen its internal control mechanisms, including the setting up of an internal anticorruption mechanism;	<p>The EBA takes note of discharge authority’s observation and the call for action, and is happy to report that it has taken all necessary follow-up actions.</p> <p>In particular, in 2021 it:</p> <ul style="list-style-type: none"> - accepted and implemented the Ombudsman’s findings on revolving doors and conflicts of interest; - extended conflict of interest policies to certain Board committees and panels which prepare decisions for the BoS; - reorganised the Legal and Compliance unit to consolidate and further strengthen steps already taken; - published meetings of staff with lobby organisations (fortnightly for executive level, and quarterly for other staff), - subsequently, in 2022, the EBA also took steps to strengthen independence of BoS and MB members so those with conflicts cannot be present for discussions or voting. 	Observation implemented.
Internal control			
19	Notes with concern that ECA found internal control weaknesses affecting recruitment procedures, the Authority did not establish in one procedure the minimum number of points that the candidates had	<p>The EBA takes note of discharge authority’s concern and would like to reassure it regarding the ECA’s finding in relation to internal controls of recruitment procedures.</p>	Observation implemented. (As part of the <i>Follow-up of previous years’ observations</i> included in the draft

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	<p>to gain in order to be shortlisted before examining their applications, which undermined the principles of transparency and equal treatment; urges the Authority to correct this shortcoming and to improve its recruitment procedures;</p>	<p>As mentioned to ECA at the time, the EBA is committed to ensuring the principles of transparency and equal treatment in all selection procedures and furthermore stresses that it systematically establishes - but may not have published it in the vacancy notice for a senior position - the necessary scoring and threshold to pass for candidates to be shortlisted before examining their applications. The approach in that respect was modelled on that of the Commission and of other EU institutions. Furthermore, it systematically invites external members to its panels for managerial positions, both at pre-selection and selection stage, to ensure equal treatment.</p> <p>Following the audit, even closer attention has been paid to the talent selection process securing the principle of having the necessary scoring and threshold to pass for candidates to be shortlisted before assessing applications (with inter alia the mention in the Vacancy Notice).</p> <p>The EBA expects that these explanations address the concerns and the call for action of the discharge authority.</p>	<p>2022 audit report, ECA marked the status of this observation as closed.)</p>
20	<p>Is equally concerned that in another procedure the selection had been established by a series of e-mails rather than by a single nomination decision, so there was no complete audit trail for all the nominations; acknowledges, however, that following the audit, the Authority provided documentation to show that it had changed its processes;</p>	<p>The EBA takes note of discharge authority's concern regarding the incomplete audit trail in one selection procedure and has taken necessary follow-up actions.</p> <p>The EBA stresses that while emails had in one case been used to accelerate the start of a recruitment process before a seasonal break and avoid keeping a senior position vacant for too long, the Authority has since then systematically formalised nomination decisions, with also the introduction of the e-signature.</p> <p>The EBA views that these actions address the concerns and the call for action of the discharge authority.</p>	<p>Observation implemented. (As part of the <i>Follow-up of previous years' observations</i> included in the draft 2022 audit report, ECA marked the status of this observation as closed.)</p>

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21	<p>Welcomes the reinforcement of the legal unit in January 2021 expanding its scope to cover all Legal and Compliance matters, including ethics, data protection, anti-fraud, risk management, whistleblowing and access to documents in addition to its traditional support to policy work; also notes that in 2021, a fraud risk assessment was conducted and a implementation plan was put in place; calls on the Authority to keep the discharge authority informed on the follow-up on the implementation of actions to further mitigate fraud risks;</p>	<p>The EBA welcomes the discharge authority's observation regarding the reinforcement of the legal unit to extend its scope over all legal and compliance matters and has taken necessary follow-up actions.</p> <p>As regards further mitigation of fraud risk the EBA is happy to inform the discharge authority that its 2022 anti-fraud risk assessment showed further reductions in risk levels through continuous enhancement of measures taken to tackle risks identified in previous risk assessments, with over two-thirds of scenarios carrying a low level of fraud risk, no scenarios having a risk level above 'medium' (third of five levels) and scenarios carrying a 'medium' level of risk reduced from one-third of scenarios to just over one-fifth.</p>	<p>Observation implemented.</p>
22	<p>Notes that the report on Self-Assessment of Internal Control Framework for year 2020 was approved by the Executive Director in December 2021; also notes that in 2021, the Authority awarded a contract to Deloitte for support and advice in enhancing the compatibility of the Authority's current risk management programme with the COSO Enterprise Risk Management framework; furthermore the Internal Audit Service ran an in-depth risk assessment of the Authority in 2021, which resulted in a Strategic Internal Audit Plan covering the period 2022-2024; calls on the Authority to keep the discharge authority informed about the result of these external assessments and the progress made and the implementation of the internal control framework;</p>	<p>The EBA takes note of the discharge authority's mention regarding assessments of internal controls and of risks.</p> <p>As regards the results of the external assessments and the progress made and the implementation of the internal control framework the EBA notes the following:</p> <p>Regarding the COSO Enterprise Risk Management Framework, work started in 2021 with Deloitte to enhance the compatibility of the EBA's current risk management programme with the COSO Enterprise Risk Management (ERM) framework, and continued until November 2022. The following elements of the risk management framework were finalised:</p> <ul style="list-style-type: none"> • the risk register, including 15 strategic risks identified; • an ERM policy, defining the overall ERM practices, as well as a risk appetite / risk tolerance statement, summarising the EBA's appetite for risk in each of a 	<p>Observation implemented.</p>

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		<p>whole range of activities;</p> <ul style="list-style-type: none"> • an ERM lifecycle document explaining in detail the different steps/phases to be considered during the course of one year, including detailed indications of the different stakeholders and lines of defences involved in each step. The ERM lifecycle exists to generate and maintain a stream of data and information, recorded in the EBA’s risk register, upon which the EBA’s personnel can make risk-informed decisions; • awareness sessions for Directors and HoUs, as well as other staff; • finally, a Risk Toolkit as well as an ERM Power BI tool to centralise and manage the risks / progress made. Five out of the 15 risks were identified as needing extra mitigation measures, which are being developed beginning of 2023. In addition, the EBA intends in 2023 to: <ul style="list-style-type: none"> • develop an updated iteration of the risk register via application of the ERM lifecycle; • pilot integrating existing local risk registers into the ERM framework; • develop local risk assessments further. <p>Regarding the internal control systems, it is noted that the framework, adopted in 2019 and in line with the model of the European Commission and the Committee of Sponsoring Organisations (COSO), consists of 5 internal control components and 17 principles, further developed in 49 characteristics.</p> <p>The EBA has assessed the presence and proper functioning of each principle (17 principles) and aggregated all the results at the component level (5 components) and ultimately at the level of the Internal</p>	

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		<p>Control Framework as a whole. The assessment of each principle was also considered in the light of the strengths and deficiencies identified in other principles within or outside the same component.</p> <p>Following the assessment of internal controls, several principles were noted to benefit from some adjustments and improvements that would enhance the efficiency and effectiveness of the principle and its elements. While compliance remains an important requirement, the EBA will focus on assessment, monitoring of the activities and optimisation of controls.</p> <p>[The 2022 Self Assessment report submitted to the EBA’s Management Board is included for information.]</p> <p>With a view to upholding and enhancing the internal controls as a whole, an enhancement in the integration of the EBA’s current risk management programme with the COSO Enterprise Risk Management Framework, intensification of the activities in the ethics area and provision of tailored internal controls trainings will be taken forward in 2023.</p>	
Digitalisation and green transition			
23	Notes, the implementation of a collaboration platform has reduced email exchanges and created processes that are more efficient; is also aware of the implementation of an e-recruitment tool in 2022, automation of Interactive Single Rulebook and the use of electronic workflow tools in the area of Finance and HR are other ongoing initiatives;	The EBA welcomes the discharge authority’s observation regarding the implementation of more efficient work processes.	N/A
24	Notes with concern that in 2021, the Authority was one of thousands of organisations that were subjects of a state actor’s cyberattack exploring zero day vulnerability in Microsoft Exchange;	The EBA takes note of the discharge authority’s concern regarding the 2021 cyberattack and has taken necessary follow-up actions. In particular, the EBA took significant measures (aligned	Observation implemented.

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	<p>acknowledges the Authority’s reaction, stopping the breach, resecuring and fully restoring the service; encourages the Authority to work in close cooperation with ENISA (European Union Agency for Cybersecurity) and CERT-EU (Computer Emergency Response Team for the EU Institutions, bodies and agencies); suggests to offer regularly updated cybersecurity-related training programmes for all staff within the Authority;</p>	<p>and in close cooperation with CERT-EU, ENISA, DIGIT and the ESAs), to improve its security posture long-term, including its cybersecurity monitoring, risk assessment and management, cyber awareness and training, security-minded investments, and upgrades in its next-generation IT infrastructure hosting:</p> <ul style="list-style-type: none"> - In 2021: Security Operation Centre (SOC) implementation with subsequent (2022) testing and optimisation - Continuous risk assessment (yearly penetration testing, CERT-EU Red Team exercise (2022)) and management, for which EBA implemented an IT Security Risk Register process (2022) - Yearly cybersecurity training and testing with all staff at EBA - Strategic choice to transition to top-tier infrastructure service provider (Microsoft Azure) providing next-generation security capabilities integrated in its hosting services (2022-2023) 	
25	<p>Recalls the importance to increase the digitalisation of the Authority in terms of internal operation and management but also in order to speed up the digitalisation of procedures; stresses the need for the Authority to continue to be proactive in this regard in order to avoid a digital gap between the agencies at all costs; draws attention, however, to the need to take all the necessary security measures to avoid any risk to the online security of the information processed;</p>	<p>The EBA is fully engaged in increasing digitalisation in terms of internal operation and management and procedures and the need to remain proactive all the while taking the necessary security measures.</p> <p>It is happy to report that with the 2020-2025 “<i>Digital Agency</i>” IT Strategy of EBA, the EBA took a strong commitment to digitalise its infrastructure, its business products and services, its workplace environments and services with a core commitment to security and privacy. Via business-steered investments, the EBA now already executed large transformation programs of digitalisation, including deploying a new Collaboration</p>	Ongoing consideration

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		<p>Platform (2022), new workplace solutions (that also support hybrid and virtual ways of working) (2020-2022), new digital workflows and transformed business products, and is currently in the middle of a full migration and transformation of its infrastructure to Public Cloud (“Cloudification Program”).</p> <p>The EBA has forward plans to further the digitalisation of its estate of applications and services, including a new Enterprise Identity and Access Management, new business digital products and services, new Corporate solutions (SYSPER2, MIPS, ServiceNow, SUMMA) for which it also counts on the support of the Commission when they are providing/enabling these services.</p> <p>In its Cloudification program, EBA has diligently evaluated and managed risks associated with the transition to Public Cloud, starting with its Cloud Risk Assessment (part of the EBA Cloud Strategy), security by-design requirements incorporated into its Procurement for Cloud Services, and implemented a wide range of security solutions (including many referenced under our response to observation 24 before), such as SOC, Azure native cyber defences, EBA controlled HSM-appliances to encrypt and protect EBA Data according to its security needs, hardened and immutable infrastructure, a dedicated DPIA for Azure services, dedicated BCP/DRP capabilities, etc. EBA uses a risk assessment and mitigation stream in its Cloudification Program that does not raise concerns of the security of on-line operations at this moment.</p>	

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26	Highlights that the Authority set up key environmental indicators with concrete objectives to demonstrate the efficiency and effectiveness of its environmental management system; welcomes that in 2021 completed key milestones in its journey towards Eco-Management and Audit Scheme (EMAS) certification which was received in August 2022;	The EBA welcomes the discharge authority's observation regarding its environmental management system and is happy to report that it became EMAS certified in August 2022.	Ongoing consideration
27	Notes with appreciation from the follow-up to 2020 discharge that the Authority procures since 2021 all electricity from solar and wind sources; is aware of the Authority's goal to reduce meetings in its premises by 50% and to equally reduce staff missions to decrease its carbon footprint;	The EBA is pleased about the discharge authority's appreciation of its efforts to decrease its carbon footprint, which also played a key role in helping the EBA to become EMAS certified in August 2022.	Ongoing consideration.
Business continuity along crisis			
28	Notes that during Covid times the Authority supported teleworking through a wide range of measures (various trainings on self-management skills, mindfulness sessions, wellbeing and sense of belonging activities, respect of the right to disconnect, financial contribution in home offices, development of collaborative tools/social network so that everyone can express and keep informed, Staff survey, etc.) that contributed to develop staff autonomy, to increase productivity for certain type of work, to improve technology skills, to further tailor internal communication, to save commuting time, etc.; encourages the Authority to put the lessons learned regarding remote and hybrid working methods into practice, in order to better organise what meetings and tasks could be carried	The EBA appreciates the discharge authority's observation regarding the staff-related measures taken in response to the pandemic.	N/A

Paragr.	OBSERVATIONS OF DISCHARGE AUTHORITY (REPORT ADOPTED ON 10 MAY 2023 EP PLENARY)	EBA RESPONSE AND MEASURES TAKEN BY EBA	STATUS / FOLLOW-UP ACTION ³
	out more efficiently remotely than in-person in the future; recalls that the Authority achieved favourable results in terms of participation in hybrid events;		
Other comments			
29	Calls the Authority to continue to develop its synergies (for instance human resources, building management, IT services and security), cooperation and exchange of good practices with other Union agencies with a view to improving efficiency;	<p>The EBA welcomes the discharge authority’s call to develop its synergies, cooperation and exchange of good practices with other Union agencies with a view to improving efficiency, and notes that this is an ongoing consideration.</p> <p>The EBA is an active member of the EU Agencies Network. More particularly, synergies are constantly being developed with the other ESAs (such as shared of recruitment reserve lists between EBA-ESMA-EIOPA).</p>	Ongoing consideration
30	Refers, for other observations of a cross-cutting nature accompanying its decision on discharge, to its resolution of 10 May 2023(2) on the performance, financial management and control of the agencies.	See below.	N/A

EBA responses to select observations of the EP’s horizontal report

Paragr.	OBSERVATIONS OF DISCHARGE AUTHORITY	EBA RESPONSE AND MEASURES TAKEN BY EBA	STATUS / FOLLOW-UP ACTION
Observations where EBA is mentioned (or where EBA action should be highlighted)			
Staff Policy			
39	<p>Notes that, in 2021, the EUAN created a Working Group (WGDI) dedicated to issues in the area of Diversity and Inclusion (D&I) for all agencies; notes that a Charter on D&I was developed and endorsed by the WGDI, with five commitments, including to ensure diversity and inclusion throughout the career path, from recruitment to promotion and mobility, and to reach the target of 40% of underrepresented gender in middle management positions in all agencies; calls on all agencies to adopt and implement that Charter; welcomes the additional actions taken by the WGDI, such as the launch of a survey on D&I amongst the agencies’ staff, the establishment of contacts and cooperation agreements with the Commission and the European Parliament for the exchange of best practices and innovative ideas, and the development of an action plan for 2022 which proposes 29 actions for agencies to promote the principles of diversity and non-discrimination set out in the Union’s Staff Regulations in a harmonised manner across the network; calls on the EUAN to keep reporting to the discharge authority on the progress made in these matters;</p>	<p>The EBA welcomes the discharge authority’s observation regarding diversity and inclusion and is happy to report that it adopted (and published) the EUAN’s Charter on Diversity and Inclusion (D&I) on 12 April 2023 as part of its overall D&I multiyear programme launched in early 2021.</p>	<p>Observation implemented</p>

Paragr.	OBSERVATIONS OF DISCHARGE AUTHORITY	EBA RESPONSE AND MEASURES TAKEN BY EBA	STATUS / FOLLOW-UP ACTION
Procurement			
45	<p>Welcomes the increased use of e-procurement tools by Union agencies and the important role they have played in ensuring business continuity for procurement under teleworking conditions; notes that the most common e-PRIOR modules used by agencies are e-Tendering, e-Submission and e-Invoicing and that several agencies implemented the Public Procurement Management Tool in the course of 2021; commends the agencies (CdT, EBA, ENISA, ESMA) reporting to have fully digitalised their procurement processes;</p>	<p>The EBA welcomes the discharge authority's observation regarding the digitalisation of procurement processes.</p>	<p>Observation implemented</p>
Prevention and management of conflicts of interest, and transparency			
53	<p>Strongly deplores the inefficiency and insufficiency of the monitoring of compliance of current and former staff of agencies regarding the 'revolving door' requirements and restrictions; notes with concern that, in this context, undeclared 'revolving door' cases and breaches of restrictions imposed on departing staff in relation to their new jobs may remain undetected which can lead to unfair advantages for certain private-sector entities in terms of insider information or lobbying; acknowledges that these weakness and risks are owed to the limited obligations set out by the Union's legal framework in this field; commends BEREC Office, EBA and ESMA for having procedures in place for monitoring compliance with the applicable rules in the area of 'revolving door';</p>	<p>The EBA welcomes the discharge authority's observation regarding the 'revolving door' requirements and appreciates being commended on having procedures in place for monitoring compliance with the applicable rules in the area.</p>	<p>N/A</p>

Paragr.	OBSERVATIONS OF DISCHARGE AUTHORITY	EBA RESPONSE AND MEASURES TAKEN BY EBA	STATUS / FOLLOW-UP ACTION
54	<p>Acknowledges that the rules on handling potential ‘revolving door’ situations and the associated risk of conflicts of interest do not apply to the members of agencies’ boards, scientific committees, expert groups and other similar bodies; notes from the Court’s report that during the audited period (2019-2021), only four agencies assessed any cases related to members of their boards taking up a new job or an outside activity; deplores that only 25 cases (i.e. 3,8%) out of 659 departures related to members of agencies’ boards were assessed; commends EBA, EIOPA, the EIT, EMA, ESMA, Europol and FRA) for having specific provisions in place covering the risk of ‘revolving door’ situations in relation to members of their boards, despite the existing legal vacuum;</p>	<p>The EBA takes note the discharge authority’s observation regarding the rules of handling ‘revolving door’ situations and appreciates being commended on having procedures in place covering the risk of ‘revolving door’ situations in relation to members of their boards, despite the existing legal vacuum.</p>	N/A
57	<p>Notes that all agencies have a whistleblower policy in place, with some of them (EMA, EU-LISA) having updated it in 2021; calls on CEPOL to put specific, safe reporting channels in place in line with the relevant requirements of Directive (EU) 2019/1937 of 23 October 2019 on whistleblowing; observes that in 2021, whistleblowing cases were reported at the EBA (1 case closed), at Frontex (3 cases: one closed and notified to OLAF and two cases ongoing) and at the EUSPA (1 case ongoing); further notes that the EMA did not report any internal whistleblowing cases, however, 29 reports of external whistleblowing cases were received, of which 23 cases were closed and 6 cases are still ongoing; calls on the agencies concerned to report to the discharge authority on the progress made in</p>	<p>The EBA takes note the discharge authority’s observation regarding whistleblowing. In response to discharge authority’s call on agencies it is noted that information on whistleblowing – which includes a dedicated whistleblowing policy – is included on the EBA’s intranet, in the ‘Anti-fraud’ sections, and information is provided for new joiners as part of induction programmes on ethics, for all staff as part of annual ethics training, as well as through ongoing awareness activities.</p>	N/A

Paragr.	OBSERVATIONS OF DISCHARGE AUTHORITY	EBA RESPONSE AND MEASURES TAKEN BY EBA	STATUS / FOLLOW-UP ACTION
	the ongoing cases; calls on all agencies to offer regular refresher training courses on whistleblowing policy to all their staff, to include this topic in the induction programmes for newcomers and to publish information on whistleblowing on the agencies' intranet webpages;		

This opinion will be published on the EBA's website.

Done at Paris, 6 September 2023

[signed]

Jose Manuel Campa
 Chairperson
 For the Board of Supervisors