

# Additional background and guidance for asking questions<sup>1</sup>

## 1. Legal framework for asking questions?

The legal basis for questions and answers (Q&A) is enshrined in Article 16(b) of the Regulation 1093/2010<sup>2</sup> (EBA's founding regulation) whereby stakeholders are enabled to submit questions to the European Banking Authority relating to the practical application or implementation of the provisions of legislative acts referred to in Article 1(2) of the EBAs founding Regulation, as well as the associated delegated and implementing acts, and guidelines and recommendations, adopted under these legislative acts.

Article 16(b)(2) of the EBA's founding Regulation states that Answers to Q&As have no binding force in law. Although Q&As are not subject to "comply or explain", their application is scrutinised and challenged by the EBA and national supervisory authorities given their practical significance to achieve a level-playing field. Peer pressure and market discipline are expected also to play a driving force in ensuring adherence to and compliance with the answers provided in the Q&A process.

Depending on the observation of regulatory implementation across the EU, evolution of banking operations or supervisory practices, the Q&A could inform the review of the legislative act, as well as its associated delegated and implementing acts, and guidelines and recommendations, adopted under these legislative acts, and if necessary lead to the extension or issuance of own initiative guidelines or recommendations.

For questions that require the interpretation of Union law, the European Banking Authority shall forward the question to the Commission to prepare answers, albeit that only the Court of Justice of the European Union can provide definitive interpretations of EU legislation.

## 2. Who can ask questions?

Any natural or legal person, including competent authorities and Union institutions and bodies.

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<sup>1</sup> This guidance was updated over time to reflect changes and adjustments to the process:

- June 2014 to reflect the changes to the Q&A tool and the adoption of stricter criteria;
- January 2015 to include the BRRD in the scope of the tool;
- July 2016 to include the DGSD in the scope of the tool;
- April 2018 to address improvements at the level of the web tool, and to improve the structure of the document;
- May 2018 to include the PSD2 in the scope of the tool;
- April 2019 to include the MCD in the scope of the tool;
- August 2019 to include the CRD5/CRR2/BRRD2 into the scope of the tool;
- September 2019 to include the SecReg in the scope of the tool; and
- June 2020 to reflect the changes to the EBA's founding Regulation (1093/2010) – including related scope extensions.

<sup>2</sup> 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

Where possible, institutions and other organisations are encouraged to submit questions via a central function to avoid duplication and to ensure that several aspects of an issue are considered prior to submission.

### 3. Do I have to use a certain language?

Questions can be submitted in any official EU language. English is preferred to avoid the likely delay involved in translating the question.

### 4. What questions can I ask?

Any question relating to the practical application or implementation of provisions of legislative acts referred to in Article 1(2) of the EBA's founding Regulation, as well as the associated delegated and implementing acts (including EBA Regulatory Technical Standards, EBA Implementing Technical Standards (adopted by the European Commission), and guidelines and recommendations, adopted under these legislative acts or within the scope of EBA's powers.

Users should note that questions perceived as having a high impact on the single market and a level playing field, in addition to those questions from institutions, industry associations and competent authorities will be prioritised over others. Questions from other stakeholders will be considered with lower priority unless they are raising a high impact issue or it is demonstrated (as part of the information submitted) that these stakeholders are acting on behalf of institutions that are subject to the legislative acts referred to in Article 1(2) of the EBA's founding Regulation. Although the EBA will do its utmost to process questions as quickly as possible, given the numbers and the complexity of the questions that are being submitted, this different prioritisation will necessarily impact upon the time taken for the EBA to provide a response.

REMINDER: The EBA only starts accepting questions on the application and implementation of technical standards related to the legislative acts referred to in Article 1(2) of the EBA's founding Regulation once these are published in the Official Journal of the European Union. An exception is made with respect to certain draft Implementing Technical Standards on Supervisory Reporting, as the EBA needs to address these on a timely basis in order to allow institutions and competent authorities to make the necessary preparations or changes to their reporting systems. The EBA may publish the provisional answers to questions in this instance; however, it is important to note that these should not be considered final until the Implementing Technical Standards on Supervisory Reporting to which they refer are endorsed by the European Commission and published in the Official Journal of the European Union.

### 5. How should I ask questions?

Questions should be as specific as possible and practical examples are always helpful. Hypothetical questions (like: "What would happen if yyy happens?" or "What would have been the consequence under provision xxx if yyy had happened?") should as much as possible be avoided.

Questions should be sufficiently clear and should clearly identify a provision of the legislative acts referred to in Article 1(2) of the EBA's founding Regulation, as well as their associated delegated and implementing acts (including EBA Regulatory Technical Standards, EBA Implementing Technical Standards (adopted by the European Commission)), guidelines and recommendations, adopted under these legislative acts or within the scope of EBA's powers. Questions that seek to reinterpret or call into question the level 1 text cannot be accepted.

Please note that the purpose of the tool is not to provide bespoke advice specifically related to an individual submitter, or a particular transaction, nor is its purpose to direct submitters to where they can find information on a given topic within the level 1 text, or its associated delegated and implementing acts, guidelines and recommendations, adopted under these legislative acts, or to explain the provisions that are already clearly set out therein. In addition, questions should be clearly phrased, identify an issue of practical application or implementation, and respect the formal requirements for submitting questions set out below.

**Potential submitters are strongly encouraged to check in the 'search' function that the question they have has not yet been covered before submitting it to the tool.**

Questions, which do not fulfil these requirements, shall be rejected.

## 6. What should I enter in the field "Legal act"?

You should insert the legal act to which the question is referring. You should indicate the legal act, and complete the related legal references, even if your question is directly related to a delegated or implementing act (including EBA Regulatory Technical Standards, EBA Implementing Technical Standards (adopted by the European Commission)), EBA guideline or recommendation.

You should note that if a question you submit is not related to any of the legal texts listed, but related to a legislative act under the EBA's competence, please select 'other'. In this instance, please include a reference to this legislative act to which you are enquiring under the 'Background' section too. However, if the question is not related to any of the legislative acts under the EBA's competence it is possible that the question is not admissible in the context of this process and, thus, likely to be rejected.

## 7. What should I enter in the field "Topic"?

Please select one topic from the drop-down list. If the topic of your question is not listed, select the one which is the most closely related, or else select 'other'.

In case the question relates to more than one topic, please choose the one that is at the heart of the question – also bearing in mind the article that you are referencing below.

For certain technical standards, the topic box will automatically be populated.

## 8. What should I enter in the "Contact" fields?

Please enter the name of the institution or entity that you represent. If you submit your question in your personal capacity, please insert your surname and first name.

In addition to the name and country of incorporation / residence, you are requested to select from the drop-down list, a "type of submitter" that best describes your situation or that of the entity that you represent. If the type is not represented please select one which is the most closely related, or else select "other". Please note that this information will be published even if you select to not to disclose the name of your institution or of the submitter.

Please note that the data in this box will not be published if you request to remain anonymous. However, it is necessary for the EBA to have a contact address in cases where the question is not entirely clear or further information would be necessary or helpful.

## 9. What should I enter in the "Legal reference" fields?

You should indicate only the article number of the legal act to which you are referring, together with the relevant paragraph number (if applicable) and further subdivisions used in the legal act such as sub- paragraphs, letters, sub-letters and bullets, etc. Please do not add any text such as "art" or "article".

Questions on recitals – if any – should only be asked if they can be linked to a specific article of the legal act in question.

## 10. How should I complete the field "COM Delegated or Implementing Acts /EBA RTS /EBA GLs/EBA Recommendations?"

Should your question be related to a delegated or implementing acts(including EBA Regulatory Technical Standards, EBA Implementing Technical Standards (adopted by the European Commission)), EBA guideline and / or EBA recommendation, you should select the relevant act from the drop-down list and also complete the related 'Article' field. In case your question does not relate to any of these acts, please select "Not applicable".

Please note that "Article" field is mandatory. Consequently, you need to insert "Not applicable" in this field even in case your question does not relate to any of these acts.

## 11. What should I enter in the field "Subject matter"?

Please provide in this field a short description of the question you are submitting to allow a user of this tool to understand what the issue is about. The description should not be longer than the box provided.

## 12. What should I enter in the field “Question”?

Please provide in this field the question you are submitting. The questions should be as short and concise as possible. Further, questions should be to the point and clearly identify specific provision(s) of the legislative instrument to which clarification is sought. You may include the legal text as long as it is not overly long, otherwise the use of precise references is recommended. Additional information should be provided in the ‘Background’ section and not in the question.

Please note that questions should be limited to issues relating to the practical application or implementation of provisions of the legislative acts referred to in Article 1(2) of the EBA’s founding Regulation, as well as associated delegated and implementing acts, and guidelines and recommendations, adopted under these legislative acts.

As already mentioned under point 5 above, hypothetical questions (like: "What would happen if yyy happens?" or "What would have been the consequence under provision xxx if yyy had happened?") should, as much as possible, be avoided.

## 13. What should I enter in the field “Background on the question”?

Please provide in this field any relevant background information that is necessary for the understanding of the question you are submitting and the context in which this arises. Background information should also be short and concise, although practical examples can be helpful.

The background information should in particular explain why the question is relevant and how it raises either an issue of practical application or implementation, such as elaborating on the specificities of the legislative provision that requires enhanced clarification. Submitters should note that questions without appropriate background information cannot be accepted.

## 14. What should I enter in the field “Proposed answer”?

Please provide in this field your view on what the answer to your question should look like and add arguments supporting this view, including providing references to specific aspects of relevant legislative instruments. This constitutes an essential part of the Q&A process and aims to ensure that submitters duly consider relevant elements of the legal or regulatory requirements or guidelines before posting a question. Submitters should note that questions without a proposed answer cannot be accepted.

As indicated in point 2, where stakeholders act on behalf of institutions subject to the legislative acts referred to in Article 1(2) of the EBA’s founding Regulation they should indicate this as well as the identity of the client in question as part of the proposed answer (which is not published). Unless this is the case, or the question raises a high impact issue, it will not be possible to treat it as a high priority issue.

If you are not sure about the answer, you can provide different options, provided that you include some supportive reasoning for each alternative provided.

A draft answer(s) should not put into doubt or question the underlying legislative instrument.

## 15. Where can I view my question?

Questions will be published shortly after an assessment of their admissibility, unless as per Article 16b (3) of the ESAs founding Regulation, such publication is in conflict with the legitimate interest of those persons or would involve risks to the stability of the financial system, and updated, once the answer has been finalised.

In order to ensure that questions arising for a given topic are answered in the most comprehensive manner possible, questions of a similar nature and priority may be grouped together, and in some cases merged, to provide a coherent and consistent answer. Due to this possible grouping, answers to questions will only be published on the tool once there is a final and agreed answer.

Upon submission of a question to the tool, the submitter will receive a notification confirming receipt. Submitters will also receive a notification once the question has been finalised and the answer published (or rejected).

Rejected questions will be available to view on the EBA's website for a period of 2 months prior to being removed from the tool.

Submitters are kindly requested not to seek updates on the status of their questions.

## 16. How will my question be treated?

Once you have submitted your question, it will be subject to close analysis and review by EBA staff. It may be necessary for the EBA to request further information from submitters in order to obtain further clarity. In some cases, in the interests of expedience, and efficiency and quality, the EBA may need to merge your question with one or several other more Q&As on a similar topic. Submitters will be informed if this is the case.

It should also be noted that the EBA is applying a strict approach to accepting / rejecting questions which do not meet the guidance set out in points 2 to 14.

## 17. When will I get an answer?

Due to the complexity of many issues, and given the large number of submissions, questions can take several months to provide. Please also keep in mind that translations are likely to cause a delay to the development and publication of the response.

## 18. Where will I find an answer?

Final answers will be published on Fridays between 1pm and 2pm Central European Time (CET) - adjusted for summer time as appropriate, except if this coincides with an EBA public holiday. In this instance, answers will be published on the preceding working day.

Answers will be published in English and also in the language of the question if other than English. As noted directly above, translations are likely to cause delay.

Answers can be found via the 'Search for Q&A' tab ([here](#)), in the 'Final Q&As' tab, or via the Interactive Single Rulebook ([here](#)) where Q&As are linked to the relevant Articles of the respective level 1 texts.

## 19. How can I search for questions?

Q&As are presented depending on their status, namely there are 4 tabs: 'Final Q&As' 'Q&As under review' or 'Rejected Q&As' and 'Archive'. The 'Final Q&As' tab comprises all Q&As whose answer has been published; 'Q&As under review' denotes all Q&As which have been deemed admissible and their question is published, whilst their answer is being developed; the 'Rejected Q&As' tab denotes all Q&As which have been rejected. Further, 'Rejected Q&As' contains only those Q&As which have been rejected in the last 2 months. Finally the 'Archive' tab contains Q&As that were published on legislative instruments that have been repealed or are not longer valid, e.g. on CRR.

Searches can be narrowed down using any of the fields – in isolation or in combination - on the "Search for Q&A" tab. Whereas some of the fields are pre-defined (including legal act, topic, COM Delegated or Implementing Acts/ RTS/ ITS/ GLs /Recommendations, other fields (such as article, periods, keywords) are free and have to be completed manually.

Specific search terms or keywords (including legal references) can be used in order to narrow down your search. For phrases, please use quotation marks (e.g. "capital requirements"). The use of multiple terms will otherwise yield results will all the Q&As in which any of the terms were found.

In the 'Search for Q&A' section users have the possibility to export search results. It is possible to 'Export all results' or a sub-set of Q&As ('Export selected results') into a PDF file with a view to facilitating the review of Q&As. In the latter case, selections are made by ticking the box next to the relevant Q&As. Users will be able to export any results that will be produced by the search. By selecting specific 'tabs' (e.g. 'Final Q&A' or 'Rejected Q&A') or topics (e.g. 'Own Funds' or 'Supervisory Reporting') the search, and thereby the export, can be further refined and customised.

For example to export all the final published Q&As, a user should select the 'Final Q&A tab' before choosing 'Export all results' at the bottom of the table. The resulting pdf file – to be downloaded and saved – will contain all final Q&As by date of publication (with the most recent upfront).

To export all the final published Q&As on a particular topic such as 'Own Funds' or 'Supervisory Reporting', a user should select the respective topic and hit search. They should ensure the 'Final

Q&A tab' is active in order to limit the results to published Q&As, then choose 'Export all results' at the bottom of the table. The resulting pdf file – to be downloaded and saved – will contain all final Q&As on 'Own Funds' by date of publication (with the most recent upfront).

To obtain all Q&As (final and rejected ones) on a particular article, a user should write the article in question in the 'Article' field and hit search. In this case they need to ensure the 'All' tab is active to get results for both final and rejected Q&As, then choose 'Export all results' at the bottom of the table. The resulting pdf file – to be downloaded and saved – will contain all final Q&As on the chosen article regrouped first by status (final / rejected) and within status by date of publication. Similar searches and exports can be undertaken by using particular keywords.

Among the search results users also have the possibility to export only selected Q&As by ticking the boxes in front of the relevant Q&As, and then choosing 'Export selected results'.

If your search covers more than one legal act, topic, technical standard or guidelines, you can make multiple selections (by pressing 'Ctrl' on your keyboard, and then selecting the relevant ones from the drop-down lists by left mouse-click).