

EBA/Op/2022/10

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12 September 2022

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PUBLIC

# Opinion of the European Banking Authority on the 2020 discharge report of the European Parliament

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## Introduction and legal basis

This opinion provides a formal response to the observations made by the Parliament during the 2020 discharge process. It was approved by the EBA Board of Supervisors on 12 September 2022, based on the following provisions:

- Article 64 of the European Banking Authority (EBA) Regulation<sup>1</sup>, 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 Regulation<sup>2</sup>, 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 2020 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.

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<sup>1</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 (OJ L 331, 15.12.2010, p. 12) <https://eur-lex.europa.eu/eli/reg/2010/1093/>

<sup>2</sup> <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 as an essential exercise for the evaluation of the Authority's performance. It 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 requested tabular format.

## EBA responses to the observations of the EP

	OBSERVATIONS OF DISCHARGE AUTHORITY (TEXTS ADOPTED AT 4 MAY EP PLENARY)	EBA RESPONSE AND MEASURES TAKEN BY EBA	STATUS / REFERENCE
Paragr.			Information on the action such as ongoing, implemented, partially implemented, not implemented and any other necessary information <sup>3</sup> .
Recitals			
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 2020 was EUR 46 715 822, representing an increase of 3,06 % compared to 2019; whereas the Authority is primarily financed by a contribution from the Union (EUR 17 660 140, representing 37,80 %), and contributions from national supervisory authorities of the Member States and observers (EUR 29 055 682 representing 62,20 %);	The EBA takes note of the recital.	Not applicable (N/A)
B	whereas in the context of the discharge procedure, the discharge authority wishes to stress the particular importance of further	The EBA takes note of the recital.	N/A

<sup>3</sup> The format of the table was adjusted to follow the guidance provided by CONT via the EU Agency Network. This led to the addition of a third column 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.

	OBSERVATIONS OF DISCHARGE AUTHORITY (TEXTS ADOPTED AT 4 MAY EP PLENARY)	EBA RESPONSE AND MEASURES TAKEN BY EBA	STATUS / REFERENCE
	strengthening the democratic legitimacy of the Union institutions by improving transparency and accountability, and implementing the concept of performance-based budgeting and good governance of human resources;		
C	whereas the Court of Auditors (the 'Court'), in its report on the annual accounts of the European Banking Authority for the financial year 2020 (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
<b>Budget and Financial Management</b>			
1	Notes with satisfaction that the budget monitoring efforts during the financial year 2020 resulted in a budget implementation rate of 99,17 %, representing an increase of 1,88 % compared to 2019; notes that the rate of execution of payment appropriations was 90,36 %, representing an increase of 4,48 % compared to the previous year;	The EBA appreciates the fact that the discharge authority recognises the very high implementation rates, which represent an improvement compared to previous years.	N/A
2	Notes that the Authority reported that 35 budget transfers were carried out in 2020, which included nine budget transfers between titles, with one transfer amounting to EUR 259 v500 between Title II and III requiring the approval of the management board; notes that the carry-forward to 2021 of 8.9 % is a reduction from the 11.7 % of the previous year, with the 2021 carry-forward comprising 95 commitment appropriations, compared to 149 in 2019;	The EBA appreciates the fact that the discharge authority recognises the improvements with regard to budget transfers and carry-forwards	N/A

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3	<p>Notes the finding of the Court that the Authority did not apply the interest rate specified in the Financial Regulation to payments of 2020 contributions received late from a number of Member States’ and EFTA countries’ national competent authorities (NCAs); notes that the Court calculated the amount of accrued interest for 2020 as EUR 25 103; notes that the Authority decided, after consulting the Commission, to apply the late payment interest as of 2021 and informed the NCAs about this in the letters it sent to them about their 2021 contributions;</p>	<p><b>The EBA confirms that the issue has been addressed.</b></p> <p>In 2021, the EBA recovered late payment interest in the case of one late payment and issued waivers for a few others, value of which was considered immaterial (the EBA having adopted a waiving decision on accrued late payment interest clarifying that, in accordance with best practices and the principle of proportionality, it will automatically be applied only when it amounts to more than EUR 200).</p>	<p>Observation implemented. (ECA has marked the status of the corrective action in response to their observation in an earlier report as “Completed” in its draft 2021 audit report.)</p>
4	<p>Welcomes that the Authority managed to definitively close its premises in the United Kingdom on 7 December 2020 complying with all legal obligations and that, as a consequence, the share of the related unused provisions active in the books at the reporting date have been reversed against revenue; reiterates its call for an audit on the move, both on the financial and operational aspects in order to draw lessons for improvement and identification of good practices that can be used across all Agencies in anticipation of making them more agile in order to respond to future challenges;</p>	<p>EBA’s closing of its London premises were closely scrutinised by the European Court of Auditors (ECA) which did not raise any criticisms. Experience and lessons learned were largely shared with other agencies.</p> <p>The ECA has carefully examined the way the EBA has managed its relocation as part of its annual audits for the years 2018, 2019 and 2020, including the procurement procedures and contract documents related to the move from UK to France and resulting financial transactions.</p> <p>The EBA has largely presented its experience, documentation and lessons learned as part of its engagement with other European agencies, including ESMA, SRB, EU-LISA, CPVO, and the Inter-Agency Procurement Officers Network (“NAPO”)</p> <p>In addition, the EBA provided the Committee on 29 March 2022 (letter ref. EBA/2022/D3888 and three</p>	<p>To be considered.</p>

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		<p>attachments) the documentation on the abovementioned points to provide full transparency of the process.</p>	
<b>Performance</b>			
5	<p>Notes that the Authority continues to use certain measures as key performance indicators (KPIs) to assess the added value provided by its activities and also uses other measures to improve its budget management; welcomes that the Authority has included the targets for the KPIs in the 2020 table; notes that the Authority has upgraded its KPI framework from 2021 onwards creating more sophisticated KPIs specific to each of the strategic and annual objectives;</p>	<p>The EBA appreciates the fact that the discharge authority welcomes the efforts in relation to targets and KPIs.</p>	N/A
6	<p>Welcomes the Authority’s efforts in response to the COVID-19 crisis, alongside NCAs, the European Central Bank and other European and international organisations, in coordinating a joint effort to alleviate the immediate operational burden for banks and to mitigate its long-term effects; such as issuing frequent statements to provide guidance to stakeholders, allow leeway to reporting dates and provide policy orientations such as the guidelines on management of non-performing and forborne exposures;</p>	<p>The EBA appreciates the fact that the discharge authority welcomes the EBA's effort in response to the COVID-19 crisis</p>	N/A

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7	<p>Welcomes the Authority’s preparation and monitoring of guidelines on legislative and non-legislative moratoria on loan repayments that provided guidance to banks in supporting ongoing liquidity challenges faced by the Union businesses during the COVID-19 pandemic, that clarified the application of the prudential requirements to payment moratoria and allowed banks, under certain conditions, to be able to grant payment holidays to their customers without having to reclassify, thus avoiding the classification of exposures as forborne under the definition of forbearance and or as defaulted due to distressed restructuring;</p>	<p>The EBA appreciates the fact that the discharge authority welcomes the EBA's preparation and monitoring of guidelines on legislative and non-legislative moratoria on loan repayments</p>	<p>N/A</p>
8	<p>Notes that the Authority has arrangements in place with the European Securities and Markets Authority (ESMA) for accounting services; calls on the Authority to continue to develop its synergies with other Union agencies, and to increase cooperation and exchange of good practices, with a view to improving efficiency in fields of human resources, building management, IT services and security;</p>	<p><b>The EBA is continuously striving to improve synergies with other agencies.</b></p> <p>In general, the EBA has continued to develop its synergies with other agencies.</p> <p>In addition to the aforementioned shared accounting office (with ESMA), evidence of these synergies include a shared Security function (with EIOPA since October 2021), common IT work on a Supervisory Reporting Datapoint model (with EIOPA from end of 2019),</p> <p>In addition the EBA has systematically participated and frequently lead in joint procurements.</p>	<p>Observation implemented, all the while it is recognised that constitutes an ongoing effort.</p>
9	<p>Emphasises the important role of the Authority in developing the Union’s regulatory and practical framework for sustainability to meet the political</p>	<p><b>The EBA is proceeding on all the aforementioned aspects, within its mandate and within the deadlines set and confirms that significant focus is placed on</b></p>	<p>Observation implemented / ongoing</p>

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	<p>ambition and pressing timetable of the European Green Deal; notes in that regard that the amendment introduced by Regulation (EU) 2019/2175 of the European Parliament and of the Council to Regulation (EU) No 1093/2010 that mandates the Authority to take into account sustainable business models and the integration of environmental, social and governance (ESG) related factors in the field of activities of credit institutions, financial conglomerates, investment firms, payment institutions and e-money institutions, to the extent necessary to ensure an effective and consistent application of its mandate applies from 1 January 2020; notes in that respect that the Authority has been mandated by the Commission to assess whether a dedicated prudential treatment of exposures related to assets and activities with environmental or social or both objectives would be justified, to issue guidelines for the management of ESG risks by banks, and to assess how green retail loans and green mortgages can be supported; calls upon the Authority to proceed swiftly on all the aforementioned aspects, within its mandate and within the deadlines set;</p>	<p>these topics. The area of ESG risks is included in the EBA’s work program as a horizontal priority.</p> <p>More specifically, with regard to the elements mentioned by the discharge authority:</p> <ul style="list-style-type: none"> <li>• The EBA has initiated the work on the assessment of whether a dedicated prudential treatment of exposures related to exposures with environmental or social or both objectives would be justified by issuing a Discussion Paper on the role of environmental risks in the prudential framework on 2 May 2022. While the current legal deadline for this work is June 2025, the EBA notes that the Commission proposes to anticipate this mandate by 2 years to June 2023. While the negotiations on the amendments to Capital Requirements Regulation, including this mandate, are still ongoing, the EBA is carrying out preparatory work to be able to provide the report within a shorter deadline if needed.</li> <li>• In anticipation of the mandate for the EBA, included in the Commission’s proposal for the amendments to Capital Requirements Directive, to issue guidelines for banks on the management of ESG risks, the EBA has started preparatory work in that regard, to be in a position to issue guidelines within the specified deadline after the amendments and the mandate are finally adopted.</li> <li>• Based on the Commission’s renewed sustainable finance strategy published in July 2021, the EBA expects to receive from the Commission a request to assess how green retail loans and green mortgages</li> </ul>	

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		can be supported. Once this request is submitted to the EBA specifying in more detail the expected scope of work and the deadline for the report, the EBA will immediately embark on this task in order to provide the results within the specified deadline.	
<b>Staff policy</b>			
10	Notes that, on 31 December 2020, the establishment plan was 97,42 % implemented, with 151 temporary agents appointed out of 155 temporary agent posts authorised under the Union budget (compared to 145 authorised posts in 2019); notes that, in addition, 47 contract agents (49 authorised) and 17 seconded national experts (17 authorised) were employed by the Authority in 2020; notes that staff turnover amongst temporary agents, contract agents and seconded national experts was stable at 9,0 %;	The EBA takes note of the observation of the discharge authority.	N/A
11	Notes with satisfaction that the Authority employed staff of 28 nationalities, of whom 48,8 % are women and 51,2 % are men; regrets that 83 % of senior management are men and only 17 % are women, identical to last year; underlines that this is a persistent issue and calls on the Authority to continue its efforts to achieve gender balance at all levels of hierarchy in the future; welcomes in that regard the requirement that both genders must be represented on selection panels, the active encouragement of female applicants for all managerial positions, specific training sessions for female staff who wish to prepare for a managerial career, and	<p><b>The EBA stressed that gender balance at management level has significantly improved.</b></p> <p>As of 1 June 2022 (based on EBA's organisation chart on <a href="https://www.eba.europa.eu/about-us/organisation/organisation-chart">https://www.eba.europa.eu/about-us/organisation/organisation-chart</a>):</p> <ul style="list-style-type: none"> <li>- <u>women account for 42.9%</u> (vs 16.7% in 2020) at senior management level (i.e. Directors, Executive Director and Chairperson)</li> <li>- women account for <u>60.0%</u> (3 of the 5) of the EBA's Directors (vs. 25% - 1 out of 4 - in 2020);</li> <li>- <u>women account for 41.7%</u> and men 58.3% of the entire management team, which includes senior</li> </ul>	Observation implemented.

	OBSERVATIONS OF DISCHARGE AUTHORITY (TEXTS ADOPTED AT 4 MAY EP PLENARY)	EBA RESPONSE AND MEASURES TAKEN BY EBA	STATUS / REFERENCE
	<p>more flexible working arrangements; reminds the Authority that in the selection of candidates, competences, knowledge and experience are important, as well as the geographical and gender balance among members of staff;</p>	<p>management and Heads of Unit (vs. 29% women and 71% men in 2020);                      - <i>new Team leader</i> roles were introduced in March 2021 to help prepare the next generation of leaders; <u>41.7 of these roles are held by women</u> .</p> <p>These changes were possible thanks to organisation adjustments and to a systematic action to promote gender equality introduced in September 2020 which focuses on: i) Promoting gender balance through adapted recruitment/HR policies; ii) Embedding gender balance in the authority's day-to-day work and organisation; iii) Fostering awareness about gender balance issues among the staff. This includes i.a. initiatives in the areas of the selection panels' compositions, prevention of sexual and psychological harassment, increasing awareness on unconscious bias and diversity and inclusion all the while considering competences, knowledge, experience, as well as gender and geographical balance.</p>	
12	<p>Welcomes the decision of the Authority to extend the deadline for staff to claim back costs and allowances related to their move from the United Kingdom to France, which was initially set at one year from when the Authority ceased its operations in London, due to the measures taken by many Member States in response to the COVID-19 pandemic, which significantly impacted citizens' mobility;</p>	<p>The EBA appreciates the fact that the Discharge authority welcomes the EBA's decision .</p>	<p>Observation implemented.</p>

	<b>OBSERVATIONS OF DISCHARGE AUTHORITY (TEXTS ADOPTED AT 4 MAY EP PLENARY)</b>	<b>EBA RESPONSE AND MEASURES TAKEN BY EBA</b>	<b>STATUS / REFERENCE</b>
13	Notes the observation from the Court’s 2019 report that the Authority has never adjusted estimation-based pension contributions to actual figures, or made plans to do so, and that NCAs’ contributions were never adjusted to match the actual figures; notes that the Authority has made plans to address that matter; notes the Court’s observation for the financial year 2020 that progress on that matter is ongoing; calls upon the Authority to proceed with that matter swiftly;	<p><b>The EBA takes note of the observation of the discharge authority and is pleased to inform that the matter was swiftly addressed.</b></p> <p>Indeed, the matter was resolved as follows: i) with the agreement of the EC, the distribution of the 2020 surplus was adjusted to return the surplus on pension to the NCAs only; ii) in 2021, the EBA amended its budget to adjust the estimated pension costs to actual figures and reflected this amendment in the NCA contributions figures, to ensure that there was no surplus on pension costs. This can be best seen in the EBA’s amending budget documents on the EBA website<sup>4</sup>.</p> <p>The EBA will apply the 2021 approach in all future years.</p>	Observation implemented. (ECA has marked the status of the corrective action in response to their observation in an earlier report as “Completed” in its draft 2021 audit report.)
14	Encourages the Authority to pursue the development of a long term Human Resources policy framework which addresses work-life balance, lifelong guidance and career development, gender balance, teleworking, geographical balance and the recruitment and integration of people with disabilities;	<p><b>The EBA takes note of the encouragement to pursue the development of a long term Human Resources policy framework and confirms working is ongoing to upgrade its HR strategy.</b></p> <p>In 2021, improvements were introduced via reviewed appraisal templates, appointment of team leaders, 360-degree evaluations for management and other transparency initiatives.</p> <p>The EBA is allocating its resources more dynamically and working towards further promoting internal</p>	Observation implemented

<sup>4</sup>[https://www.eba.europa.eu/sites/default/documents/files/document\\_library/About%20Us/Budget%20and%20Accounts/2021/1025904/EBA%20BS%202021%20791%20Annex%20%2028EBA%202021%20Amending%20budget%20detail%29.cleaned.pdf](https://www.eba.europa.eu/sites/default/documents/files/document_library/About%20Us/Budget%20and%20Accounts/2021/1025904/EBA%20BS%202021%20791%20Annex%20%2028EBA%202021%20Amending%20budget%20detail%29.cleaned.pdf)

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		<p>mobility. 4% of the staff force benefitted from internal mobility in 2021.</p> <p>As mentioned already in our response to observation 11, the EBA created a team leader role to empower/delegate responsibilities to staff members, thus enriching their development opportunities while preserving the flexibility and agility of the organisation. 25 team leaders were appointed in March 2021.</p> <p>Moreover, in the Training plan 2021 (implementation 01/07/2021 – 31/06/2022), the EBA added a training session on Unconscious bias via EU Learn mandatory to all managers. For staff, a course on selection and interviewing skills was developed in 2021 and part of the course was dedicated to unconscious bias.</p> <p>The course is taking place bi-monthly starting as of November 2021. In addition, a workbook (“Test your brain: unconscious bias workbook. Self-reflection exercises, activities and best practices to fight bias”) was developed in 2021 and made available to all staff in January 2022 on the EBA’s intranet. Staff and managers also undertook training on the prevention of sexual and psychological harassment.</p> <p>In relation to working arrangements and telework, these have been adapted according to the COVID-19 sanitary situation in France in the past few years. Whilst the EBA’s offices were closed, staff have been strongly encouraged to have a work/life balance whilst teleworking from home and not to work more than 10</p>	

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		<p>hours per day. Managers also gave staff more flexibility to work around having children at home. The Authority arranged various well-being sessions for staff and managers during this period as well to give them the tools to deal with his situation.</p> <p>More recently the EBA has adopted the EU Commission Decision on hybrid work by analogy. The EBA will [...] continue to take into account appropriate health and safety measures in the light of the protocols issued by the French authorities.</p> <p>The EBA is looking at how to develop further the recruitment and integration of people with disabilities.</p>	
<b>Procurement</b>			
15	Notes that the Authority completed six procurement procedures in 2020, two of which were tenders, with three other Agencies (ESMA, European Insurance and Occupational Pensions Authority and Single Resolution Board) participating alongside the Authority, and that the Authority cancelled one contract after award, due to the COVID-19 pandemic; further notes that the Authority participated in 33 inter-agency procurement procedures led by the Commission as well as other agencies;	The EBA takes note of the observation of the discharge authority.	N/A. (ECA has marked the status of the corrective action in response to their observation in an earlier report as “N/A” in its draft 2021 audit report.)
16	Notes with concern the observations of the Court that certain procurement procedures of the Authority contravened the Financial Regulation, in particular those related to the signing of a short-term banking agreement with a bank; notes that in that case, the Authority significantly	<b>The EBA considers it addressed the discharge authority’s concern in September 2020, with the move of the EBA’s banking services to the EC’s DG BUDG treasury services, which manage its banking services on its behalf, thus leaving the agency without direct</b>	Observation implemented. (ECA has marked the status of the corrective action in response to the observation in an earlier report as “N/A” in its draft 2021 audit report.)

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	<p>underestimated the contract’s value, resulting in the Authority using the wrong type of procurement procedure; further notes that the Authority initiated the procedure for signing a new contract for banking services only one week before the expiry of the previous one, exceptionally launching a negotiated procedure without prior publication with only one potential contractor, without providing justification for doing so; deplores the Court’s observation that the potential contractor’s offer did not meet the Authority’s expectations, resulting in the Authority requesting offers from other tenderers, without setting out any criteria for selecting the best offer, nor carrying out any proper evaluation of the offers it received, but accepting the original offer instead; notes that the signed contract included the charge of a negative interest rate on the Authority’s deposited funds with the amount paid from January to August 2020 being EUR 38 430, instead of the estimated EUR 11 808; notes the legal evaluation of the Court, concluding that under point 14 of Annex I to the Financial Regulation, based on the actual amount of negative interest paid, the tender procedure to apply should have been the one for low-value contracts, with a minimum of three offers that should have been sought from the outset and the Court’s subsequent conclusion that the procurement procedure and the associated payments are deemed irregular;</p>	<p><b>banking agreement with any bank, so this particular issue can no longer arise.</b></p> <p>It is further noted that the situation reported by the Court had been due to a succession of one-off adverse developments. In November 2019, the EBA had estimated the value of the banking contract to be less than 15K EUR. It requested offers from seven banks and it received and evaluated the four offers it received. The rates in the offer that was accepted resulted in a cost estimation that fell below the 15K EUR threshold, indicating that the EBA utilised the appropriate procedure at the time. The eventual negative interest charge was significantly impacted by reductions in 2020 spending (driven mainly by the COVID-19 pandemic) and by changes in the timing of 2020 spending (the most significant being that the process of paying the final costs to the London landlord took four months longer than had been expected). This led to higher cash reserves for a longer period than EBA had anticipated at the time of its initial estimation of the contract value.</p>	

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17	Notes the Court’s observation that in another procurement procedure for legal services, with a value of EUR 31 000, the Authority provided inadequate information to justify the reasons for which it chose to use a negotiated procedure without prior publication of a contract notice and that the documentation lacked an adequate audit trail; notes that the Authority did not properly substantiate the use of this exceptional procedure, either in advance or in the award notice itself as required under point 30.3 of Annex I to the Financial Regulation;	<p><b>The EBA points out that it has addressed this issue by introducing a specific procedure, which is fully operational.</b></p> <p>Under this procedure, for negotiated procedures without prior publication of a contract notice, the EBA has put in place a template note to the file to be completed and signed that addresses this finding. The EBA has been using this template since 24 February 2021.</p>	Observation implemented. (ECA has marked the status of the corrective action in response to the observation in an earlier report as “N/A” in its draft 2021 audit report.)
18	Is concerned about the number of irregularities, delayed and inadequate tender procedures and lack of diligence displayed by the Authority with regard to the procurement rules, which resulted in elevated costs borne by the Authority; calls on the Authority to improve the identified shortcomings and report to the discharge authority about any corrective actions undertaken;	<p><b>The EBA takes note of the concern of the discharge authority and of its call for improvements, however in its opinion the procurement issues identified did not result in elevated costs.</b></p> <p>The procurement issues identified above did not result in higher costs for the EBA, nor do they indicate any delays in actual tender procedures. As per the EBA response to point 16 above, the EBA has moved its treasury services to those provided by DG BUDG and so has no future need to procure such services from an external contractor. As per the EBA response to point 17 above, action has been taken to address the particular issue by introducing a specific procedure, which is fully operational since February 2021. The EBA trusts that the responses to observations 16 to 17 satisfy the discharge authority’s call for a report about corrective actions undertaken.</p>	Observation implemented.
<b>Prevention and management of conflicts of interest, and transparency</b>			

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19	<p>Regrets that in 2020, the Ombudsman had to open an inquiry into the Authority for a revolving-doors situation involving a senior official of the Authority, whereby maladministration was established; notes that, following the conclusion of that inquiry, the Authority has implemented all of the Ombudsman’s recommendations; calls on the Authority to adopt a robust ethical framework in order to prevent conflicts of interest, revolving doors or harassment;</p>	<p><b>The EBA takes note of the observations of the discharge authority and points out that it implemented all of the Ombudsman’s recommendations.</b></p> <p>The EBA shares the Ombudsman’s confidence that the wide range of measures introduced to strengthen the existing ethical framework will help avoid similar situations, notably by establishing clear guidance and communications for current and prospective staff which give ex ante indications of the kinds of situations which are likely to lead to prohibitions or restrictions being adopted, and increased transparency on the EBA’s website.</p> <p>The Ombudsman closed the inquiry after the EBA accepted her recommendations and adopted measures to implement them. Her published conclusions mentioned she was “confident that the policies the EBA has introduced will help it avoid damaging revolving door moves in the future”. The Ombudsman also “commended the EBA for agreeing to introduce far-reaching measures as regards risks of conflict of interest in postemployment activities and access to confidential information of staff that are leaving”.</p> <p>At the EBA, everyone is committed to ensure a work environment free from harassment where respect and dignity are valued through:</p> <ul style="list-style-type: none"> <li>- The adoption of the Commission decision on the prevention and fight against sexual and</li> </ul>	<p>Observation implemented.</p>

	OBSERVATIONS OF DISCHARGE AUTHORITY (TEXTS ADOPTED AT 4 MAY EP PLENARY)	EBA RESPONSE AND MEASURES TAKEN BY EBA	STATUS / REFERENCE
		<p>psychological harassment,</p> <ul style="list-style-type: none"> <li>- The induction of newcomers and information campaign for staff (communication message in the EBA Newsletter to staff, dedicated intranet page, etc),</li> <li>- The trainings on preventing harassment to staff and managers (e.g.: in 2020, the EBA organised a comprehensive awareness raising campaign with 6 sessions for managers and 9 sessions for all staff, including external staff and trainees. The overall attendance was around 88%) and the mandatory trainings on Unconscious bias to all managers. In addition, a workbook (“Test your brain: unconscious bias workbook. Self-reflection exercises, activities and best practices to fight bias”) was developed in 2021 and made available to all staff in January 2022 on the EBA’s intranet.</li> <li>- The systematic action to promote gender equality introduced in September 2020, including initiatives in the areas of the selection panels’ compositions, increasing awareness on unconscious bias and diversity and inclusion all the while considering competences, knowledge, experience, as well as gender and geographical balance,</li> <li>- The raise of awareness of Managers in detecting potential risky situations and prevent their escalation with the help of HR services,</li> <li>- The opportunity to use the confidential counsellor's network that is open to anyone regardless the contract and grade. They provide support and</li> </ul>	

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		<p>guidance in finding a solution through conciliation (an updated manual on informal procedure was adopted by the Executive Director and 4 confidential counsellors have been nominated following an internal open call),</p> <ul style="list-style-type: none"> <li>- The possibility for staff covered by the Staff Regulations to launch a formal request for assistance.</li> </ul>	
20	<p>Acknowledges 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; calls on the Authority to publish fortnightly all meetings of its staff with lobby organisations;</p>	<p><b>The EBA welcomes the acknowledgement of the conflicts of interest policies in place.</b></p> <p>The EBA continues to strengthen its implementation of the policies, extending them to certain Board committees and panels which prepare decisions for the Board of Supervisors, and ensuring a swift annual declaration process with actions taken in those cases where potential conflicts of interests are identified.</p> <p>Among the many improvements introduced in recent years, the EBA would like to point to the new Legal and compliance Unit which was set up in January 2021 as the first organizational change introduced by the new Executive Director, to consolidate and further strengthen the steps already taken, especially in Ethics matters.</p> <p>The EBA also took steps in June 2022 to strengthen the independence of members of its 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.</p>	Observation implemented

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		<p>Regarding the publication of meetings of staff with lobby organisations, it is noted that this information is published fortnightly both for the Chairperson and Executive Director  <a href="https://www.eba.europa.eu/about-us/organisation/top-management">https://www.eba.europa.eu/about-us/organisation/top-management</a>.</p> <p>For other staff this information is provided on quarterly basis <a href="https://www.eba.europa.eu/about-us/organisation/organisation-chart/eba-staff">https://www.eba.europa.eu/about-us/organisation/organisation-chart/eba-staff</a>.</p>	
<b>Internal control</b>			
21	<p>Notes that the Authority has performed an assessment of the internal control framework, though it does not report its conclusions per principle and per component in its annual report; notes that the assessment did reveal that a set of KPIs for internal control were missing within the Authority and that an internal control approach document is being developed that will cover the years 2021 to 2024; calls on the Authority to properly assess and report on the implementation of the internal control framework, and report to the discharge authority for 2021 as a minimum the state of internal control per component;</p>	<p><b>Thanks to a sustained effort on internal control in 2021, the report on Self-Assessment of Internal Control Framework for year 2020 was approved by the Executive Director in December 2021.</b></p> <p>The EBA has assessed the presence and functioning of each principle, aggregated all the results at the component level, and ultimately at the level of the internal control framework as a whole. The main results per principle have been communicated together with list of objectives for 2021 plus the roadmap for 2022. The EBA shared with the Court the full assessment report on 06/01/2022, whereby each principle was considered in light of the strengths and deficiencies identified in other principles within or outside the same component. The list of deficiencies identified was made available. The Excel template of EC’s DG BUDG to record and report deficiencies was used to facilitate the aggregation of information and was also made</p>	Implementation ongoing

	OBSERVATIONS OF DISCHARGE AUTHORITY (TEXTS ADOPTED AT 4 MAY EP PLENARY)	EBA RESPONSE AND MEASURES TAKEN BY EBA	STATUS / REFERENCE
		<p>available. These improvements will also greatly facilitate work on the 2021 assessment.</p> <p>With view to upholding and enhancing the internal controls as a whole, an enhancement in the compatibility of the EBA’s current risk management programme with the COSO Enterprise Risk Management Framework and intensification of the activities in the ethics area will be taken forward in 2022.</p> <p>In addition to above, following his taking of his duties in September 2020, the new Executive Director, requested Internal Audit Services to carry out in 2021 an assessment of the existing EBA internal control framework to give reasonable assurances about the internal controls in place and areas for improvement, with the objective of further strengthening these. The final report is expected in Q4 2022.</p> <p>The assessment report that was sent to the MB earlier this year is attached to the opinion.</p>	
22	<p>Notes the Court’s finding that the Authority has not formally updated its business continuity plan since 2017, with an updated draft plan ready in June 2019 when the Authority’s headquarters moved from London to Paris; notes however that this draft plan, though used for the Authority’s response to the COVID-19 pandemic, was not formally approved nor updated by the Authority’s senior management in order to address the move to the new headquarters, or the recent experience of the COVID-19</p>	<p><b>The EBA confirms that the Business Continuity Plan (BCP) has been updated and approved by the Executive Director in 2021, and then shared with the Court on 29/11/2021.</b></p> <p>As noted, the EBA’s BCP had last been approved in 2017 and not been updated since then due to the uncertainties resulting from the move from London to Paris in 2019 and the pandemic in 2020. And as acknowledged, the BCP included a specific scenario that covered unavailability of key members of staff -or</p>	<p>Observation implemented. (ECA has marked the status of the corrective action in response to their observation in an earlier report as “Completed” in its draft 2021 audit report.)</p>

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	<p>pandemic; notes the Court’s conclusion that this delay constitutes an internal weakness in the Authority’s procedures;</p>	<p>of a large number of staff- due to an incident of pandemic which could be used by the Authority for its immediate response to the pandemic and facilitated the creation of the EBA COVID–19 Readiness Plan. The Authority was fully operational from day 1 of the confinement and all the key internal management functions, as well as support functions operated as intended.</p> <p>As indicated above, the BCP has now been updated, approved by the Executive Director in 2021, and subsequently shared with the Court on 29/11/2021.</p>	
23	<p>Urges the Authority to undertake actions aiming to fix the identified shortcomings and weaknesses in the Authority's internal control systems; calls upon the Authority to keep the discharge authority informed about the progress made;</p>	<p><b>The EBA takes note of the observation of the discharge authority</b> and trusts that the responses to observations 21 to 23 satisfy the discharge authority’s call to keep them informed about progress made..</p> <p>In his efforts to strengthen its internal controls the Executive Director requested Internal Audit Services to carry out in 2021 an assessment of the existing EBA internal control framework to give reasonable assurances about the internal controls in place and areas for improvement, with the objective of further strengthening these. The final report is due in Q4 2022.</p>	Implementation ongoing
24	<p>Notes that the Authority has in place an up-to-date anti-fraud strategy that was adopted in January 2019; notes however that the Authority delayed its fraud risk assessment, in 2019 due to the move from London, and again in 2020 due to the COVID-19 pandemic, and that the fraud risk assessment was scheduled for the first quarter of</p>	<p><b>The EBA confirms that the Anti-Fraud-Risk-Assessment (AFRA) exercise was carried out in 2021. The related report was approved by the Executive Director and presented to the Management Board on 28 September 2021, where it did not raise any concerns.</b></p>	Observation implemented

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	<p>2021; calls on the Authority to perform the assessment and feed the results into the action plan of the anti-fraud strategy; calls on the Authority to report to the discharge authority on the results of the assessment and on how it has been taken into account;</p>	<p>The EBA carried out its 2021 anti-fraud risk assessment (AFRA) in June 2021. A total of 50 scenarios across 9 organisational areas were assessed by assessment teams, which considered each scenario (description and possible fraud examples) in conjunction with existing controls. For each scenario, the teams assessed the frequency of occurrence and the severity both in financial and reputational terms, considered the adequacy of existing controls, and suggested possible improvements as warranted. Out of the 50 scenarios assessed, 28 were assessed as having a low fraud risk; 16 a medium fraud risk; 6 a material fraud risk; none a significant fraud risk. Next steps include the implementation of actions to further mitigate material and medium risks.</p>	
<b>COVID response and Business Continuity</b>			
25	<p>Observes that the COVID-19 crisis led to a sudden reorganisation of the Authority’s working arrangements with the initial focus on maintaining business continuity in the short and medium term; notes that the Authority devised a COVID-19 readiness plan aimed at demonstrating the Authority’s active monitoring of the pandemic and its capability to provide clear guidance and measures aimed at protecting the wellbeing of its staff and the continuity of its operations, through, among other measures, the Crisis Response Team which supported the crisis management activities and the implementation of the plan; welcomes the Authority’s emphasis on ensuring the safety of staff, while limiting the impact of the COVID-19 crisis on its core mission</p>	<p><b>The EBA takes note of observations of the discharge authority and appreciates the fact that it welcomes the measures taken.</b></p> <p>For the past two years the EBA has been actively participating in the weekly meetings gathering representatives of all the EU Agencies (Heads of HR, Heads of Administration, Corporate Support).</p> <p>“Advisory Group for return to the office” recently renamed to “Advisory Group on new ways of working” is the platform for Agencies to exchange, share and discuss various aspects relating to reorganisation, crisis management, business continuity through COVID 19, wellbeing etc.</p>	<p>Observation implemented</p>

	OBSERVATIONS OF DISCHARGE AUTHORITY (TEXTS ADOPTED AT 4 MAY EP PLENARY)	EBA RESPONSE AND MEASURES TAKEN BY EBA	STATUS / REFERENCE
	and activities; notes that the Authority has assessed the measures taken through an audit carried out by an external audit company and calls on the Authority to share the insights gained and the lessons learned with other Union agencies through the EU Agencies Network;	<p>During these weekly meetings the EBA shared with the group the insights gained throughout the crisis including the external audit report itself to help the participants with their management of activities and implementation plans.</p> <p>The EBA will actively continue promoting exchange of information and best practices between the Agencies and endeavour to further improve the collaboration.</p>	
26	Notes that the Authority, due to COVID-19 pandemic, revised its recruitment procedures to recruit and integrate new staff remotely; notes that the Authority organised a large number of wellbeing sessions to support staff and managers during the pandemic and that also language training and other training was organised online;	<b>The EBA takes note of observations of the discharge authority.</b>	N/A
<b>Other comments</b>			
27	Welcomes the actions taken in the framework of the Authority's application of the Eco-Management and Audit Scheme (EMAS) and encourages the Authority to finalise the EMAS project and report to the discharge authority on the EMAS registration of the Authority; welcomes that the Authority has approved the scope of the scheme to include all of the Authority's products and activities;	<p><b>The EBA takes note of observations of the discharge authority, appreciates the fact that it welcomes the measures taken and is pleased to announce that the final EMAS registration decision was received on 11 August 2022.</b></p> <p>More specifically, in mid-March 2022, the EBA's first EMAS environmental statement was positively verified and validated by independent external verifiers. The auditors in their final report concluded that: <i>All normative requirements of the EMAS 2018-2026 are met. Areas of further improvement have been identified by the established EMS. The policy is sound and known to the employees. As a summary it can be said: The established EMS seems very mature and effective.</i></p>	Observation implemented.

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		<p>Following the successful verification, on 1 April 2022, the EBA applied for the EMAS registration to a French competent body - <i>Commissariat Général au Développement Durable, Ministère de la Transition écologique et solidaire</i> and received its EMAS registration decision on 11 August 2022. In line with the Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community Eco-Management and Audit Scheme (EMAS), the EBA is registered for the period of 3 years (article 6), namely until 1 June 2025, for its site in Courbevoie (92400).</p> <p>The EBA’s environmental statement is now published on the EBA’s website - <a href="https://www.europa.eu/sustainable-eba">Sustainable EBA   European Banking Authority (europa.eu)</a></p> <p>Following the findings of the EMAS internal audit, in November 2021, the EBA’s environmental policy was updated. It reaffirms the EBA’s commitment to obtaining and maintaining EMAS registration, as well as to continue improving its environmental performance. It also clarifies the current scope of the Environmental Management System, applicable to all the EBA’s activities and products. The scope of EMAS covers operational activities in Paris as well as core business activities and products, carried out with a view to maintain financial stability in the EU and to safeguard the integrity, efficiency and orderly functioning of the European banking sector.</p>	

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		See also documentation provided.	
28	Invites the Authority to continuously strengthen its efforts to reduce its environmental footprint, by stepping up its efforts to introduce a sustainable and paperless working environment, to consider more carbon-neutral sources of energy, including photovoltaic panels, and to modernise its office building to meet the zero emission standard;	<p><b>The EBA has stepped up its efforts and will reduce its environmental footprint.</b></p> <p>As part of its environmental efforts, the EBA procures electricity from renewable energy sources (RES) since 2021. 100% of electricity comes from solar and wind sources, confirmed by certificates of origin.</p> <p>The EBA also adjusted modus operandi, taking into account lessons learned from COVID-19 for the implementation of its EMAS-related greenhouse gas emissions reduction targets as per its EMAS registration. Compared to the 2019 situation, this ‘new normal’ assumes that the EBA will have 50% fewer meetings at the EBA premises (thus also benefiting its members’ own environmental footprints) and 50% fewer staff missions to external meetings from 2022 onwards. This 50% reduction will be maintained in subsequent years.</p> <p>In addition to minimising its impact on greenhouse gas emissions, with a special focus on travel, the EBA works</p>	Implementation ongoing

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		<p>with the landlord and building manager on improving its energy consumption performance as well as waste production, segregation and recycling as expected by its staff. Moreover, the EBA's maximises the use of electronic solutions and green public procurement to limit its material impact. Finally, the EBA implements environmental, social and governance (ESG) considerations in its policy making, risk assessment and supervisory convergence work in line with the EBA's tasks, the EBA's 2019 action plan on sustainable finance and additional mandates received from the European Commission since that time.</p>	
29	<p>Recalls the importance for the Authority to develop greater visibility in the media and on the Internet in order to raise awareness of its activities;</p>	<p><b>The EBA continued its efforts to develop greater visibility in the media and on the Internet in order to raise awareness of its activities.</b></p> <p>Ensuring a good understanding of its role and objectives as well as a good visibility of its achievements is crucial for the functioning of the EBA. In this regard, the communications team is always very keen to proactively engaging with the media across the EU to promote accurate and responsible reporting of its work. 2021 was a special year for the EBA as it marked its 10th anniversary. To celebrate this important milestone, the press activities carried out by the communications team aimed at promoting the 10 years of the EBA and setting the tone for future priorities; being present in and reaching out to as many EU countries as possible; publicising the EBA's work; expanding the EBA media contacts and exploiting new synergies. The media relations plan kicked-off in January 2021, with the first interview of the year targeting the German audience, with Jose-</p>	<p>Observation implemented</p>

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		Manuel Campa’s interview with Börsen-Zeitung. More interviews followed, involving well-known domestic newspapers across the EU, and the EBA top management and experts. In particular, the EBA managed to diversify and reach out to over 10 EU countries, including Germany, Greece, Slovenia, Finland, Cyprus, Denmark, the Czech Republic, the Netherlands, Portugal and more. The most reoccurring topics across all interviews were the EBA 10-year anniversary, the impact of Covid-19 in the banking sector and the EBA work on financial innovation (fintechs) and sustainable finance.	
30	Refers, for other observations of a cross-cutting nature accompanying its decision on discharge, to its resolution of 4 May 2022(2) on the performance, financial management and control of the agencies.	See below	
<b>Horizontal report - Discharge 2020: Performance, financial management and control of EU agencies</b>			
70	Welcomes the Court’s observation that the agencies activated business continuity plans in good time to ensure the continuation of key governance processes and the wellbeing of staff; regrets, however, that four agencies, the European Asylum Support Office (EASO), the European Banking Authority (EBA), the European Institute for Gender Equality (EIGE) and the European GNSS Agency (now the European Space Agency) did not have an approved business continuity and disaster recovery plan in place at the outset of the pandemic, and that three agencies, EFCA, the Agency for support for the Body of European Regulators for Electronic	<p><b>The EBA takes note of the observation of the discharge authority and confirms that the Business Continuity Plan (BCP) has been updated, approved by the Executive Director in 2021, and was then shared with the Court on 29/11/2021.</b></p> <p>As noted, the EBA’s BCP had last been approved in 2017 and not been updated since then due to the uncertainties resulting from the move from London to Paris in 2019 and the pandemic in 2020. And as acknowledged, the BCP included a specific scenario that covered unavailability of key members of staff -or of a large number of staff- due to an incident of pandemic which could be used by the Authority for its</p>	Observation implemented

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	<p>Communications (BEREC Office) and the Translation Centre, did not activate their plans as their initial response measures did not require it; notes that the agencies deployed response activities such as the designation of specific teams tasked with leading the organisation and management of the COVID-19 response by coordinating meetings, initially held daily, and later two to three times per week or as necessary;</p>	<p>immediate response to the pandemic and facilitated the creation of the EBA COVID–19 Readiness Plan. The Authority was fully operational from day 1 of the confinement and all the key internal management functions, as well as support functions operated as intended.</p> <p>As indicated above, the BCP has now been updated, approved by the Executive Director in 2021, and subsequently shared with the Court on 29/11/2021.</p> <p>See also response to observation 22.</p>	

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

Done at Paris, 12 September 2022

**[José Manuel Campa]**

Chairperson  
For the Board of Supervisors