



EBA MB 2020 118 rev. 1

Management Board

01 October 2020/09:30-14:00

Location: Teleconference

EBA – Regular Use

Management Board meeting – Final Minutes

Agenda item 1: Welcome and approval of the agenda and the Minutes

1. Given the EBA's restrictions related to physical meetings, the Management Board (MB) meeting was held as a videoconference.
2. The Chairperson welcomed the Members.
3. The Chairperson, the Executive Director and the EBA Director of Operations declared a conflict of interest with regard to item 11 – ACCI – advice and therefore, they did not participate in the discussion and left the videoconference. No other MB Members declared any conflict of interest regarding the agenda items.

Conclusion

4. The MB approved the Agenda of the meeting.

Agenda item 2: Administrative and Operational Status Report (A-Point)

5. The Executive Director presented the Administrative and Operational Status Report. With regard to financial and procurement issues, he explained that one impact of the Covid-19 crisis was that the EBA was spending less than expected for the 2020 budget, mainly due to limits imposed on staff missions, meetings, events and other staff-related expenses. To address this underspending, the EBA had to approach the Board of Supervisors (BoS) in July and September 2020 to approve two budget amendments.
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6. On the HR-related matters, the Executive Director informed that the recruitment procedures have restarted and that the performance assessment and reclassifications were on tracks. He also mentioned that special initiatives were implemented to support staff wellbeing. The EBA also maintained its provision of trainings to competent authorities (CAs) at a high level, which was praised by participants. He mentioned that the EBA would further consider a good balance between webinars and physical training (to take place in the future).
7. With regard to key IT project, the Executive Director stressed that the IT services have been enhanced to address the teleworking needs. He also mentioned that the EBA has decided to extend teleworking measures until further notice and that the management has been discussing various options for the staff return to the office.
8. The Executive Director noted that the EBA's external communication remained intense as a result of a robust regulatory production, ad-hoc contributions in light of the pandemic, and institutional announcements. In this regard, he mentioned that the EBA's response to the Ombudsman inquiry about the previous ED departure to the private sector was well received by the Ombudsman herself as well as in public. He also said that there were 14 conference calls in closely monitored colleges without any practical difficulties.
9. Finally, the Executive Director informed that no fraud cases have been reported in 2020 so far and that due to the pandemic, a new risk assessment could only be initiated in September 2020.
10. The Director of Operations elaborated on the budget issue and confirmed that the current budget, after the amendments, was sufficient. He continued by updating the MB on the UK premises project, which has been concluded on time and at a lower cost than anticipated even if the rent was increased by the landlord and that this was due to lower dilapidations costs. He also mentioned that the EBA had several outstanding UK VAT reclaims and that these have been raised with the Taskforce 50.
11. The MB took note of the Administrative and Operational Status report. Several Members consider the newly added Executive summary as helpful and beneficial for the purpose of the Report.
12. In relation to the procurement, two Members requested clarification whether the delays were caused by the Covid-19 crisis and what risks the EBA could face as a result. One Member asked about the procurement related to the stress test.
13. On the IT projects, some Members asked for clarification, in particular on the risks related to the delays of some of the initiatives.
14. With regard to the response to the Ombudsman, one Member asked about the feedback to the EBA's response.

15. The Executive Director explained that while some initiatives were postponed due to the Covid-19 crisis, others were only indirectly impacted, such as the signposting projects and that in these cases, the timing was the main issue. In particular, he referred to the AML database project for which some of the main features would be known only in the coming months based on the legislative developments. The EBA Director of Banking Markets, Innovation and Consumers Department (BMIC) added that the relevant RTS would be finalised by the end of the year and therefore, only very basic preparatory work has been done on the AML database. The Executive Director concluded that in preparation of the 2021 budget, all delays and postponements would be considered.
16. On the IT projects, the Director of Operations confirmed that some projects were still planned to be launched in 2020, such as DRR Tooling where the EBA was closely liaising with EIOPA.
17. With regard to the stress test procurement, the EBA Director of Economic Analysis and Statistics Department (EAS) clarified that one of the recommendations of the Court of Auditors report was for the EBA to develop and implement a top down approach in its stress test methodology.
18. Finally, on the response to the Ombudsman, the EBA Head of Legal Services Unit (Legal) explained that as a next step, the Ombudsman was to send a report to the European Parliament and we may see a reaction from the EP.
19. The Chairperson concluded by acknowledging a good execution and successful conclusion on the UK premises' project.

Conclusion

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

Agenda item 3: Update on potential new EBA tasks under the Digital Finance Strategy and associated tasks on Crypto assets and operational resilience (A-Point)

21. The Chairperson introduced the item by reminding the Members that on 24 September the European Commission (EC) published its Digital Finance Strategy accompanied by legislative proposals in relation to crypto-assets, blockchain experimentation and operational resilience.
22. The Director of BMIC continued by clarifying that the proposals built on the work carried out under the March 2018 FinTech Action Plan, the EBA's FinTech Roadmap, and advice of the EBA and other ESAs and that it aimed at facilitating the scaling up of technology-enabled financial services cross-border whilst ensuring effective risk mitigation for consumers and financial stability in line with the principle of technological neutrality. He then focused on an extensive range of new mandates and supervisory and oversight roles foreseen for the EBA, in particular related to the legislative proposal on Markets in Crypto-Assets (MiCAR) and on Digital

Operational Resilience Act (DORA). The Director of BMIC also mentioned tentative timelines and budget implications, including an issue related to required staff and concluded by presenting the EBA's preparatory plan, under which a project team for DORA and MiCA should be established in Q4 2020.

23. Some Members noted new supervisory powers which would need further analysis at the national level. One Member asked whether payment systems was a part of the DORA mandate and the Director of BMIC confirmed that payment systems were not covered.
24. One Member was of the view that it was crucial to have an overview of the third-party providers and that the work under DORA could be used for this purpose as well as for being ahead of some market developments.
25. One Member stressed that the proposal was at its initial phase and while supporting the proposed preparatory work, including setting up the project team, he was of the view that the EBA should closely monitor and work in parallel with the legislative developments in order to address any changes that might be introduced to the initial proposal. With regard to DORA, the Member highlighted the need to work with other ESAs under the Joint Committee (JC). Another Member was also of the view that the preparatory phase should be limited at this stage of the legislative process.
26. One Member observed that where the proposals assumed that EBA was able to levy fees from the industry, the EBA would need to have the legal powers and operational ability to do so. He also mentioned that the timing of preparation for the package and ability to levy fees was not synchronous and this imposed challenges for the budget and also could create some kind of first mover disadvantage for these market participants registering first (since they would end up paying the bill for the preparatory phase) or in the most extreme case confront use with a situation where had costs, but there was no industry.
27. The EC representative acknowledged that the proposal is at an early stage of legislative process, but highlighted that the EBA should be prepared to deliver on the proposed mandates on time and supported the proposed internal project.
28. The Director of BMIC noted the issues related to the initial legislative proposal recognising that the legislative text might be changed in the coming months and stressed the need to be flexible. With regard to DORA, he said that the EBA would further analyse how the cooperation between the ESAs could be formalised in this regard. Finally, he repeated the staffing issue and mentioned that the EBA and the CAs would need to be flexible.
29. The Chairperson concluded by saying that the EBA should be proactive, prepared and engage with the co-legislators, CAs as well as other ESAs on the new mandates and tasks.

Agenda item 4: Workprogramme progress report (A-Point)

30. The Chairperson introduced the progress report by reminding the MB that based on discussions at previous meetings, the EBA amended the report taking into account suggestions from the MB Members.
31. The EBA Head of Policy Coordination Unit (PAC) elaborated on the used colour coding and terminology. He also mentioned that a cover note providing details on delayed projects would be added to the next version of this report.
32. The Executive Director informed that the EBA staff was discussing amendments to the format and the content of the report in order to link the projects with the EBA strategic priorities and the resources allocated. He underlined the need to use this report as both an internal tool for prioritisation and to report on the execution of the work programme to the MB
33. Some Members asked for clarification on the used terminology related to deadlines. One Member questioned the postponement of the RTSs under Activity 2: Liquidity risk and interest rate risk in the banking book. Other Member asked how the EBA would communicate delays in general, in particular if there was a late finalisation of technical standards or guidelines.
34. The EC representative confirmed that it was agreed to postpone the set of RTSs on IRRBB until 2022 but was of the view that in the meantime, the EBA should deliver on this topic by other means, for example by issuing an opinion.
35. In his response, the Head of PAC explained that the colour code was triggered by the gap against the legal deadline set by the legislation and based on how delayed the finalisation of the product was, the colour changed. If there was a delay, the EBA informed the EC about a new possible deadline and if it is acknowledged by the EC, the so called revised legal deadline in the report was updated. He also mentioned that the future versions of the progress report would include an executive summary with a focus on the issues that needed further explanation or more attention.
36. One Member was of the view the term revised legal deadline was confusing and not correct as it did not indicate the legal deadline as prescribed in the legislation.
37. With regard to the RTS on IRRBB, the EBA Director of Prudential Regulation and Supervisory Policy Department (PRSP) pointed that there were existing guidelines in place and the relevant working groups were analysing next steps.
38. The Chairperson concluded by noting the comments and a need for amendments to the report related to the terminology used in the headings for the deadlines.

Conclusion

39. The MB supported the work and noted the progress on the ongoing projects.

Agenda Item 5: SPD 2022 priorities (C-Point)

40. The Chairperson reminded the MB that the EBA was required to submit each year by 31 January its Single Programming Document (SPD) for the following year. The first step towards the preparation of this document was agreeing on two sets of priorities: one set of multi-annual strategic objectives and one set of annual objectives, to be included in the multi-annual and annual work programmes respectively.
41. The Head of PAC continued by informing the MB that the EBA management identified six strategic priorities for the EBA and/or the EU financial services alongside two horizontal priorities. These priorities were a continuation of the priorities set in the 2021 SPD. In turn, the EBA management also agreed on six annual objectives alongside 2 horizontal/cross-cutting objectives for the 2022 annual work programme. These stemmed from the strategic objectives and should be understood as small-calculated steps towards the accomplishment of the multi-annual objectives.
42. One Member suggested to replace the term “leading” with “contributing to” for multi-annual work programme priorities 4 and 5; i.e. leading on technological innovation and building operationally resilient digital finance while delivering on new digital mandates; and leading the fight against financial crime, money laundering and terrorist financing across the EU. He was of the view that while the EBA’s mandates in these two areas were not clear in the legislation, the role of the EBA should be only to contribute. Other Members highlighted that regarding AML/CFT it was stated in the EBA Founding regulation that the EBA should lead, coordinate and monitor EU policy in this area.
43. Several Members stressed that more prominence should be given to the impact and recovery from the Covid-19 crisis. The EC representative also pointed that the follow up work on the Covid-19 measures should be stated more explicitly.
44. One Member commented on the 2022 Annual priorities, in particular on priority 2 (implementing the new-EU wide EBA stress testing framework and redesigning the methodology) and linked it with ongoing procurements mentioned under the Administrative and Operational Status report. He said that the EBA might want to consider developing a new strategy because many institutions had various tools that could be used and that the EBA could rather enhance cooperation with the CAs, ECB and international bodies in this regard and synergies from cooperation could be exploited. He also noted that involving an external party in the stress test exercise could raise various confidentiality issues. Other Member was of the view that the wording of the stress test priority should not pre-empt further BoS discussions on the changes to the methodology.
45. Few Members stressed a need to focus on pressing issues in the banking sector and some Members suggested the focus more on prudential issues. In this regard, one Member referred to the consumer protection objective and the horizontal priority 2 (Embedding governance and conduct standards so as to enhance consumer protection and contribute to aligning objectives between society and private finance), in relation to which the EBA should not give misleading signals regarding its role that should be primarily prudential.

46. The Director of EAS reminded the MB of the recommendations by the Court of Auditors related to the development of a top-down approach in the stress test methodology. He mentioned that the EBA has a limited budget and therefore, any cooperation, improvements and tools from the CAs would be welcomed.
47. The Head of PAC noted the comments and clarified that the horizontal priority 2 on governance was not focused on consumer's aspects but also embraced the prudential framework on governance.
48. The Chairperson concluded by mentioning that the draft SPD would be submitted for discussion to the next MB meeting.

Conclusion

49. The MB supported the work on the Single Programming Document.

Agenda Item 6: 2018 Discharge report: European Parliament's report, EBA Internal follow-up table and EBA opinion to the EP's observations to the 2018 Discharge Process (A-Point)

50. The Chairperson informed the MB that the European Parliament (EP) published on 14 May 2020 its resolution with observations that formed an integral part of the decision on discharge in respect of the implementation of the budget of the EBA for the financial year 2018.
51. The Head of PAC clarified that following the publication of the EP's resolution with the final observations to the EBA 2018 discharge process, the EBA prepared an internal follow-up table to take on board the feedback received by the EP. Based on this internal table, the EBA prepared an opinion on the observations made by the EP which was approved in September 2020 by the BoS and submitted to the EP. This submission of a formal opinion to EP was a new requirement stemming from ESAs review. He also mentioned that this procedure was not standard because usually, the opinion should first be submitted to the MB and only afterwards to the BoS but given the late transmission of the EP's report caused by the Covid-19 crisis and the fact that this was the first implementation of the new process, the draft Opinion was submitted directly to the BoS. However, the EBA aimed at following the correct procedure in the coming years and will discuss a first draft of such Opinion with the MB before submitting it to the approval of the BoS.
52. The MB did not raise any comments.

Conclusion

53. The MB took note of the 2018 Discharge report.

Agenda Item 7: IAS audit on Supervisory reporting – Data Quality in the EBA (A-Point)

54. The Director of Operations informed the MB that the performance audit on supervisory reporting - data quality was included in the 2019 Internal Audit Service (IAS) audit plan. This followed the audit risk assessment carried out in 2016 as part of the preparation of the IAS's strategic audit plan for 2017 – 2019. The objective of the audit was to assess the functioning of the system set up by EBA for collecting bank data from the Member States banking supervisors, with regard to its efficient and effective delivery, including ensuring the quality of the data. The Court of Auditors gave a very positive overall assessment and identified five areas in which they recommended improvements, related to the Q&A, communication, procedures, training and data integrity in the area of supervisory reporting. He concluded by summarising the proposed action plan in which the EBA was addressing all recommendations.
55. One Member suggested to add a reference to the Feasibility Study on Integrated Reporting with regard to actions under the recommendation 4 according to which the EBA should develop a more automatized process for development and maintenance of validation rules.
56. The Director of BMIC clarified that the Feasibility Study on Integrated Reporting focused on the reporting from banks only and therefore, a good balance would be needed in addressing the recommendation 4 and referring to this study.
57. The Chairperson concluded by mentioning that a list of pending recommendations from this audit, and from the outcome of any other audits, would be added to the Administrative and Operational Status report and that the EBA would consider how to address the recommendation 4 and link it with the Feasibility Study on Integrated Reporting

Conclusion

58. The MB supported the work on the Action plan.

Agenda Item 8: Data protection implementing rules and restrictions (C-Point)

59. The Chairperson acknowledged that the draft decisions to be discussed under this item aimed at the fulfilment of the EBA's duty to adopt implementing rules in accordance with Article 25 and 45 of the Data Protection Regulation that applies to EU institutions and bodies (EUDPR).
60. The Executive Director added that the decisions would be the basis for future internal rules with an aim of establishing better internal processes.
61. The EBA Legal Officer presented rules concerning the Data Protection Officer (DPO) and the application of Regulation (EU) 2018/1725 (EUDPR) and rules concerning restrictions of certain rights of data subjects in relation to processing of personal data in the framework of the

functioning of the EBA. He explained that while the decision on the Data Protection Officer was for the MB's approval, the second decision would be consulted with the European Data Protection Supervisor and subsequently would be submitted to the MB for their approval.

62. The MB supported the presented two decisions.
63. One Member questioned whether the MB was the decision-making body in this regard. The Legal Officer confirmed it and mentioned that the similar decisions have been already approved at ESMA and EIOPA by their MBs and that the European Data Protection Supervisor did not object it.
64. One Member asked if the register of personal data breaches would be published in the coming weeks. The Legal Officer clarified that the DPO has to collect information from all EBA Units on processing operations and was planning to publish the register by the end of the year.
65. The Chairperson concluded that the MB approved the Decision on implementing rules concerning the Data Protection Officer by consensus and agreed to start the consultation with the European Data Protection Supervisor on the draft Decision on restrictions pursuant to Article 25 of the EUDPR and to follow up with adoption by the MB by written procedure.

Conclusion

66. The MB approved the Decision on implementing rules concerning the Data Protection Officer.
67. The MB agreed that the EBA would start the consultation with the European Data Protection Supervisor on the draft Decision on restrictions pursuant to Article 25 of the EUDPR and subsequent adoption of the Decision by the MB in written procedure.

Agenda Item 9: Provisional Agenda BoS 28 – 29 October 2020 Meeting (B-Point)

68. The Chairperson reminded the MB that the next BoS meeting, including the joint BoS/BSG meeting was scheduled for 28 and 29 October 2020 and the format of a conference call rather than a physical meeting was to be used.
69. One Member asked for clarification on the scope of the discussion under the scheduled item 7 - Way forward and possible exit from COVID-19 measures.
70. The Chairperson indicated that this was a recurring item in BoS meetings since the outbreak of the pandemic to assure adequate and timely oversight from the BoS and indicated that the scope of the discussion would be further clarified in the preparation of the meeting documents.

Conclusion

71. The MB took note of the draft Agenda of the 28 and 29 October BoS conference call.

Agenda Item 10: AOB

72. None of the Members raised any other business comments.

Agenda Item 11: ACCI – advice (C-Point)

73. Given the conflict of interest declared by the Chairperson, this item was chaired by the Alternate Chairperson.

74. The Alternate Chairperson clarified that in accordance with the EBA policy on conflict of interest, the EBA's Advisory Committee on Conflict of Interest (ACCI) was required to provide advice, including any preventive measures, to the MB on actual or potential conflicts of interest identified by the Chairperson and the Executive Director. In that context, the ACCI has prepared the advice on the Chairperson annual declaration of interest; Executive Director (incoming) pre-employment declaration of interest; and Executive Director (acting) annual declaration of interest.

75. The Chair of the ACCI explained that the Executive Director (incoming) and Executive Director (acting) had not identified any conflicts of interest.

76. The Chair of the ACCI explained that compared to the previous version, the ACCI was proposing including in the decision related to the Chairperson's annual declaration of interest a broader wording regarding the period during which the Chairperson should divest himself of the shares that vest to him each year.

77. The MB supported the three advices.

78. One Member questioned the 30 day period, in particular given that the declared shares were listed, well known and easy to sell. He also asked if the 30 days were calendar days or working days.

79. The EC representative stressed that the reference to the EBA Regulation in the annex of the ACCI's advices was outdated.

80. The Chair of the ACCI was not aware of any limitation regarding the period for divesting of the shares. The Alternate Chairperson proposed to shorten the period to 15 calendar days under the condition that there were no technical or operational issues.

81. The MB supported the shorter period.

Conclusion

82. The MB approved the advice related to the incoming and acting Executive Directors.

83. The MB agreed with the proposed amendments to the decision related to the Chairperson's annual declaration of interest.

Participants at the Management Board conference call

01 October 2020

Chairperson Jose Manuel Campa

Alternate Chairperson Jo Swyngedouw

Member Sissy Papagiannidi

Member Maarten Gelderman

Member Martina Drvar

Member Jesper Berg

Member Dominique Laboureix

Alternate Peter Lutz

Alternate Thomas Worm Andersen

European Commission representative Dominique Thienpont

EBA Staff

Executive Director

Francois-Louis Michaud

Director of Operations

Peter Mihalik

Director of Banking Markets, Innovations and Consumers

Piers Haben

Director of Economic Analysis and Statistics

Mario Quagliariello

Director of Prudential Regulation and Supervisory Policy

Isabelle Vaillant

Philippe Allard; Jonathan Overett Somnier; Tea Eger; Erika Sole; Slavka Eley; Stefan Nebesky; Fergus Power; Gaetano Chionsini

For the Management Board,

Done at Paris on 10 November 2020

[signed]

José Manuel Campa

EBA Chairperson