

EBA MB 2020 040 rev. 1

Management Board

22 January 2020/10:00-15:30

Location: Paris

EBA – Regular Use

Management Board meeting – Final Minutes

Agenda item 1: Welcome and approval of agenda

1. The Chairperson welcomed the Members.
2. The Chairperson informed that Martina Drvar (Croatia) applied for a vacant position in the Advisory Committee on Conflict of Interest (ACCI) and that her application was accepted by the EBA.

Agenda item 2: Update on the Executive Director selection (A-Point)

3. The Chairperson briefly summarised his contact with members of the ECON committee in the European Parliament (EP) and the questions and comments raised by the MEPs related to the selection of the Executive Director (ED). He reminded the Members that the candidate selected by the Board of Supervisors (BoS) was having his hearing at ECON on 22 January followed by the vote on 23 January 2020.
 4. The EBA Head of Legal Services (Legal) continued by informing the Members that on 16 January, the EP adopted a resolution on post-public employment conflicts of interest, which questioned the decision to approve Adam Farkas's new occupational activity as CEO of AFME, called on the EBA to review this decision, and called on a number of Union institutions (Commission, Court of Auditors, Ombudsman, and itself) to revise the existing conflict of interest rules and take other actions. He also mentioned that on the same day, the European Ombudsman informed the EBA that she has opened an inquiry into the same matter and asked the EBA to answer a number of questions by 28 February 2020.
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5. On the Resolution and the request to review the decision, the Head of Legal referred to the legal framework and mentioned that while still analysing various legal interpretations, the EBA was currently of the view that the legal framework meant that the decision could not be changed given that there were no new facts or circumstances compared to those available to the EBA when the decision was taken. Members supported this view and noted that the Management Board (MB), BoS and the EBA itself acted within the legal framework. The EC representative stressed that it was also the EC's view that re-opening of the decision was not possible unless the circumstances of the case have changed. He also mentioned that given that the EP resolution was addressed to several bodies and dealt with a number of issues relating to the framework in general, the EBA answer should be drafted in close coordination with the EC.
6. With regard to the request by the Ombudsman, the EC representative referred to the framework, which has been audited by the European Ombudsman and the European Court of Auditors and except minor technical issues, the conclusions of the audit were satisfactory. The Head of Legal informed that the EBA has been summarising all relevant facts and documents and that it was planning to respond by the end of February deadline following discussions with the Management Board and Board of Supervisors. The Chairperson asked if any information and cooperation would be needed from the MB members and the Head of Legal confirmed that the Ombudsman's inquiry focused on the EBA internal procedures and therefore no information was expected to be needed from individual MB members.
7. Some Members asked for clarification of the enforcement of the decision and the Head of Legal explained that the EBA was planning to put in place a number of measures and engage with AFME and other stakeholders, to ensure awareness of the limitations established in the decision and facilitate their enforcement. In addition, if the prohibitions would not be followed by Adam Farkas, the EBA had a possibility to open a disciplinary hearing in appropriate cases, which could result in sanctions including reducing individual pension rights.
8. One Member suggested to analyse and summarise any potential post-employment limitations for the EBA senior management.
9. The Chairperson concluded by saying that the EBA would be fully transparent in its response to the European Ombudsman and responsive to the Resolution. In this regard, he concluded that the EBA was not minded to revise the decision but would further analyse how to enforce prohibitions, if needed.

Agenda item 3: Administrative and Operational Status Report (A-Point)

10. The Director of Operations presented the Administrative and Operational Status Report (document EBA MB 2020 120). He clarified that the objective of this report was to provide a summary overview of the main activities of the EBA's operations in year 2019.

11. With regard to Finance and Procurement, the Director of Operations informed that the budget execution rate for 2019 was 97.3 % on current year budget and execution of carry-forward from 2018 was 97.5 %. He also explained that while preparing the 2020 budget the EBA noticed that there had been a mistake in the calculation of the national contributions to the 2019 budget, which understated the value of the competent authorities (CAs) contributions by approximately seven hundred thousand euros. Given the timing of the discovery, in mid-December, the EBA concluded that it was too late in the budget year to address the mistake via an amending budget, which would have required the EBA to request payment from the CAs of the understated amount. Instead, the EBA proposed to address the matter via the return of the 2019 surplus in 2021. In response, the Members appreciated the transparent explanation and a prompt information on the issue.
12. The Director of Operations continued by informing on Human Resources matters. He noted that 144 out of 145 posts of the establishment plan were filled by the end of 2019. He also mentioned that the staff turnover was 9% and that the average number of sick leave days in 2019 has increased slightly compared to 2018. The EBA management was analysing this increasing trend and was preparing a plan how to improve working environment, efficiency and workload of the staff. In this regard, he referred to the Staff Engagement survey, which would be presented to the MB in detail during the next MB meeting in March. He concluded by mentioning that on average, an EBA staff member attended 1.2 training days in 2019 in comparison to 1.84 in 2018, which was significantly below expectations.
13. With regard to the IT, the Director of Operations reported that that the appointment of a new Head of Unit and reorganisation of the IT unit done two years ago, brought tangible benefits in 2019, which would be highly unlikely otherwise. He summarised that the Data Center migration project was completed successfully in March 2019, with a final acceptance in June 2019. The IT fit-out of Paris office was completed in June 2019, in time for receiving colleagues and starting office operations on 03 June 2019. This included IT Rooms, Networks, Conferencing solutions and meeting rooms, Unified Communications, Printing, Access Controls, and Security. He also mentioned that under the EUCLID project, PSD2 Register and Workstream 2 were released into production in March, respectively May 2019. Workstream 3 / Resolution EUCLID project was launched with the milestone of being ready for Regulatory Data Collection in May 2020. Finally, he informed that the EBA introduced for the first time a Cyber Awareness program, with training, certification and testing, including a phishing exercise in November 2019. The EBA adopted new policies and standards and some significant security improvements have been implemented.
14. The Director of Operations also informed that the EBA launched an environmental management system project across the EBA.
15. Finally, he referred to the EBA premises in London and mentioned that the EBA was in contact with the UK governmental agency, which was considering taking over the rent. In this regard, the MB and the EC representative were concerned that given the sensitivity of the topic and a

current stage of preparations for Brexit, any contacts with the UK government, without involving the Taskforce 50, might not be considered by external parties as appropriate.

16. One Member was of the view that the staff turnover was very low given the move from London to Paris. Other Members noted a limited time dedicated to trainings and suggested to discuss more staff related issues at the MB level.
17. One Member proposed to include short explanations of some technical issues, in particular related to financial terms, in the footnotes.
18. The EC representative also asked if the work programme progress update would be presented again and the Head of Policy Coordination Unit (PAC) explained that the EBA was planning to submit another progress report for the next meeting and then regularly but not for each meeting.
19. The Chairperson concluded by acknowledging a need to coordinate with the EU relevant bodies on the premises in London and to prepare a plan on staff working conditions, including training and internal rotations possibilities.

Conclusion

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

Agenda item 4: Interactive Single Rulebook – work plan for 2020 (B-Point)

21. The Head of PAC introduced the item by summarising three main updates to be brought to the EBA Interactive Single Rulebook in the coming months, and in particular (1) the introduction of a compliance/signposting tool as requested by article 519b of CRR 2, (2) the improvement of the Q&A tool and procedures and (3) introducing changes required by the ESAs review. He commented on the newly formulated requirement introduced in Article 16b of the reviewed EBA Regulation, according to which all questions that require the interpretation of Union law shall be forwarded by the EBA to the European Commission (EC). In this regard, he mentioned that the EBA and the other ESAs have been in contact with the EC Legal Services and DG FISMA in order to ensure that pragmatic and effective conditions would be agreed to ensure that the efficiency of the Q&A process is maintained whilst complying with the requirements of article 16b with regards to categorisation. Finally, he mentioned that the three ESAs are envisaging further work in order to converge towards a common or similar Q&A Tool.
22. The MB supported the work on Q&As in general and the intention to work closely with ESMA and EIOPA in particular. They supported the need to find a pragmatic solution to comply with the requirements of Article 16b and find a modus operandi with the European Commission that would not disrupt the existing process.

23. The EC representative clarified that the EC supported the Q&A process and would like to keep it operational and pragmatic, including involvement of the EC's College of Commissioners. He confirmed that further discussions with DG FISMA are scheduled to reach out that objective.
24. With regard to the signposting tool, one Member was concerned how the project would be organised and how many resources would be assigned to it. The Head of PAC explained that the EBA will dedicate resources to manage this project which may eventually require support from external providers.
25. The Chairperson concluded by mentioning that stakeholders valued the Q&A process and that the EBA should continue with its good work.

Conclusion

26. The MB supported the Q&A workplan.

Agenda Item 5: Pillar 2 reconsideration plans (A-Point)

27. The EBA Director of Prudential Regulation and Supervisory Policy Department (PRSP) reminded the MB that the EBA published its Pillar 2 Roadmap as part of a set of roadmaps outlining its approach and timelines and sequencing for delivering the mandates stemming from the Risk Reduction Measures Package. The Pillar 2 Roadmap provided a general overview of the main changes in the Pillar 2 framework stemming from the revised CRD V and the related EBA deliverables, such as the proportionality, inclusion of ESG risks, AML & conditions for applying Pillar 2 capital add-ons). She summarised the interactions with the new CRD-CRR proposals to come and the Advice Recommendations from the EBA highlighting the next steps, in particular completing the mapping of all prudential risks, adding to the recently approved Supervisory risk taxonomy the corresponding coverage in terms of own funds requirements and measures under Pillar 1 and Pillar 2; using qualitative measures under Pillar 2, where more appropriate than own funds requirements in view of the nature of the risk, and the better use of sanctions where more efficient; and enhancing accountability in the Pillar 2 setting framework as well as of a recalibration of Pillar 2 requirements linked to the forthcoming Basel III implementation.
28. The MB raised concerns related to sanctions and agreed that given the sensitivity of the topic, any work should be carefully considered. The Members supported the work on enhancing accountability and stressed that duplications should be avoided. One Member noted the need for the work but stressed that any harmonisation had to be analysed in detail. Another Member indicated that the purpose of recalibration should be to eliminate double counting and not to effectively undo other changes in regulation.
29. The EC representative noted that the proposal for the mapping exercise should not preclude new risks considerations. He stressed that sanctions are a tool outside the Pillar 2 framework. With regard to output floor, he recommended to not preempt the EC's proposal in order to ensure consistency.

30. The Director of PRSP acknowledged the challenging framework and noted that the work would need to be toned down regarding sanctions and focus, as a starting point, with the mapping of their current use by national supervisors.
31. The Chairperson concluded that the EBA's aim was to introduce a system that would ensure that banks fulfil all their requirements.

Conclusion

32. The MB supported the EBA's proposal on Pillar 2 reconsideration plans.

Agenda Item 6: Investment firms roadmap and early issues (A-Point)

33. The Director of PRSP introduced the item by referring to the Investment Firms Directive (IFD) and Regulation (IFR), which entered into force on 26 December 2019. In this regard, she summarised the IFs Roadmap that exposes the strategy and workplan concerning all the EBA mandates under IFR/IFD in the coming years, with the expectation to publish the first consultation papers (on capital requirements, reporting and remuneration) already in May 2020 as the first bulk of regulatory products should be submitted to the EC by December 2020. She stressed the need for joint contributions from policy experts and supervisors in many areas, challenging workload, and the need for coordination on some topics with other ESAs.
34. The MB acknowledged the challenges presented and agreed that a pragmatic approach and practical solutions should be considered by the EBA. The Members were of the view that the first main focus should be on new regulatory products affecting big firms. On the publication, one Member suggested to avoid any delays.

Conclusion

35. The MB supported the work under the Investment Firms framework.

Agenda Item 7: Peer reviews methodology (B-Point)

36. The Head of PAC updated the MB on the changes to the peer review methodology based on the ESAs' Review amendments. He summarised the main changes and mentioned that according to the reviewed legislation, a Review Committees for each Peer Review would be set up instead of a permanent Peer Review Panel; a two-year work plan outlining the planned Peer Reviews would be introduced; there would be six phases of the Peer Review in order to integrate the follow-up measures and follow-up report; the EBA Chairperson would be required to submit Peer Review reasoned findings to the Council, EU Parliament and EC unless in breach of professional secrecy requirements [unless the BoS objects due to financial stability risks], and where reasoned findings of the EBA would differ from those identified by the Review Committee, the EBA would be required to transmit, on confidential basis, to the European Parliament, Council and the EU Commission its findings. He also mentioned that in addition to the Peer Review Methodology, an EBA Decision concerning a framework for ad-

hoc Peer Review Committees would be put forward for BoS approval during the February BoS meeting. This Decision outlined the composition and working method of the Peer Review Committees and complemented this methodology. He concluded by referring to the upcoming launch of the peer reviews on qualifying holdings and DGS stress test according to the new framework to be adopted by the BoS in February. He underlined that for DGS stress test, the EBA would probably not be able to apply strictly the new framework since the peer review has started already and was due to end by June 2020. However, the qualifying holding peer review would follow the new framework.

37. While the MB supported the work, one Member suggested considering harmonisation of the processes with the other ESAs. He also pointed out the need to comply the hierarchy of various pieces of regulation and the Chairperson clarified that the methodology presented was aligned with legislative requirements. Other Member had minor drafting suggestions, which he shared with the EBA staff after the meeting.
38. The EC representative supported the changes introduced in the methodology and raised some drafting suggestions related to the consultation on the format and substance of the peer review report and the follow up report with the MB; work programme to be adopted by the MB, and exceptions mentioned in Article 70 of the EBA Regulation, in particular in relation to the submission of the findings of the Review Committee to the EU institutions.
39. The Chairperson concluded that an updated version of the methodology will be submitted for comments to the BoS in February.

Conclusion

40. The MB supported the peer review methodology.

Agenda Item: EBA Anti-fraud strategy (C-Point)

41. The Head of Legal informed that the proposed EBA decision would adopt an updated Anti-Fraud Strategy that implements the 2019 Commission's Anti-Fraud Strategy that replaces the 2015-2017 strategy. It should be implemented to complete the compliance framework set by the updated Ethics Guidelines (EBA DC 271) for the EBA staff, the EBA's Policy on Independence and Decision Making Processes for avoiding Conflicts of Interest (Conflict of Interest Policy) for Non-Staff and the EBA's Policy on Independence and Decision Making Processes for avoiding Conflicts of Interest (Conflict of Interest Policy) for Staff and other Contractual Parties (EBA DC104). The new updated decision perpetuated the same objectives, namely: (i) prevention; (ii) detection and investigation of frauds; (iii) recovery of finance and lost property; (iv) implementing lessons learnt and communicating the consequences of actual cases of fraud.
42. One Member suggested including in the Administrative and Operational Status report a reference to any identified fraud issues.

43. The EC representative raised comments related to the absence of an action plan, indicators and questioned whether the EBA consulted the OLAF when drafting the updated strategy.
44. In his response, the EBA policy expert from the EBA's Anti-Fraud Team explained that the EBA was in regular contact with the OLAF but did not specifically discuss the updated strategy with them as it was a mere transposition of the EC's policy. Since the creation of the EBA, there have not been any fraud cases that required the involvement of OLAF. One case of overpayments of allowances based on incorrectly submitted information has been resolved in 2016.. He also mentioned that a separate action plan was not needed as the necessary actions to implement Anti Fraud Measures have already been adopted within EBA's Anti Fraud Policy (attached for the information of the MB). Given the small size of EBA's budget no additional indicators for the monitoring of fraud risks have been implemented so far, but an annual fraud risk assessment has been performed in addition to the application of the usual control standards by the operations department.

Conclusion

45. The MB approved the updated Anti-Fraud Strategy.

Agenda Item 9: Provisional Agenda BoS 19 February 2020 Meeting (B-Point)

46. The Chairperson reminded the MB that the next BoS meeting was scheduled for 19 February in Paris. He highlighted that instead of a two-day meeting (19 – 20 February), the EBA was proposing to hold the meeting only on 19 February.
47. The Members agreed on their preference for a two-day meeting starting at noon on 19 February and finishing around noon on 20 February.

Conclusion

48. The MB took note of the draft Agenda.
49. The EBA staff to amend the timing of the meeting to a two-day meeting.

Agenda Item 12: AOB

A) Organisational Independence of the Internal Auditor

50. The Director of Operations informed about the letter on the Organisational Independence of the Internal Auditor, which would be submitted to the MB after the meeting for information.

B) BoS Away Day

51. The MB Member informed about the preparatory work for the BoS Away Day in Dubrovnik, Croatia. She mentioned that more information would be shared with the BoS in the coming weeks.

C) Union strategic supervisory priorities

52. The Director of PRSP informed that the ESA's review mandated the EBA to establish union strategic supervisory priorities. Based on internal discussions, the EBA was planning to submit a note specifying the priorities to the BoS meeting in February.
53. Two MB Members suggested discussing, potentially during the BoS Away Day, the complexity of the work and the structure and format of documents submitted to the BoS meetings.
54. The Chairperson concluded that the EBA would further analyse and discuss the content of its work, its format and how the outcomes of the work were presented to the MB and BoS.

Participants at the Management Board meeting

22 January 2020

Chairperson Jose Manuel Campa
Alternate Chairperson Jo Swyngedouw

Member Jesper Berg
Member Martina Drvar
Member Sissy Papagiannidi
Member Maarten Gelderman
Member Raimund Röseler
Alternate Alberto Rios

European Commission representative Dominique Thienpont

EBA Staff

Director of Operations	Peter Mihalik
Director of Economic Analysis and Statistics	Mario Quagliariello
Director of Prudential Regulation and Supervisory Policy	Isabelle Vaillant
Director of Banking Markets, Innovations and Consumers	Piers Haben

Philippe Allard; Jonathan Overett Somnier; Tea Eger; Bernd Rummel; Francesco Mauro

For the Management Board,

Done at Paris on 11 March 2020

[signed]

José Manuel Campa

EBA Chairperson