



EBA MB 2021 062

Management Board

27 May 2021

Location: teleconference

EBA-Regular Use

Minutes Management Board meeting – 27 May 2021

Agenda item 1: Welcome, approval of the agenda and Declaration of conflict of interest

1. The Chairperson welcomed the Members of the Management Board.
2. No Member declared a conflict of interest in relation to an item on the agenda.
3. The Chairperson informed the Members that the minutes of the MB meeting of 23 March 2021 had been approved.
4. The MB approved the agenda of the meeting.

Agenda item 2: Administrative and Operational Status Report

5. The EBA Executive Director updated the Members on the adjustments in EBA's internal organisation. These adjustments were needed to further increase i) synergies, especially in the areas of risk and data, to reap the benefits of EBA's data strategy; ii) focus, on key issues like digital finance, AML/CFT, ESG risk, and consumer protection and iii) staff development, to facilitate mobility, allow promotion, and acquire new talent. Against this background, a fifth EBA department was created: the Data Analytics, Reporting and Transparency (DART) Department. This fifth department would help the EBA in achieving its data hub strategy and to best serve the risk analysis and policy work carried out by the EBA, the competent authorities, and the broader public.
 6. The EBA Executive Director informed the Members that the candidates to fulfil these new tasks have been approached and they accepted the roles that were offered to them. Following the establishment of the new department, there were some movements within the organisation
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and within responsibilities of the different departments. The new organisation will enter into force on 1 June 2021.

7. He then updated the Members on the follow-up to the cyber security incident. Based on reports from EBA's external providers, there is no evidence that any data was extracted from EBA's systems. In the wake of the incident, EBA organised several sessions with lessons learnt, focusing on EBA's response and communication following the incident. Finally, the EBA Executive Director noted that a cyber security audit is being performed and that the EBA will present a full assessment of the cyber security incident in September.
8. The EBA Director of Operations updated the Members on the progress made with 360-degree assessment of management. This project was launched last year and was highly valued by colleagues that were subject to these assessments. Furthermore, he informed the Members that a survey was run with new employees who joined the EBA after the COVID lockdown took effect. The survey showed that the integration of these new employees within the organisation was successful.
9. Finally, the EBA Accounting Officer gave a presentation on the synergies that were achieved between EBA and ESMA with regard to the accounting function. As of April 2021, one of the EBA accounting assistants started working partially for ESMA. The EBA Accounting Officer has been appointed as the Accounting Officer of ESMA with effect from 1 July 2021. The shared accounting workforce has 2.5 FTE provided in full by the EBA. On top, an ESMA Finance staff Member will assist ad hoc during back-up periods. ESMA will contribute to 50% of the cost of the Accounting Officer and of one of the accounting assistants. A first assessment of the functioning of the arrangement will be made after 1 year (i.e. after the first closure) and any adjustment could also be considered in the meantime if warranted.
10. There was broad support for the Administrative and Operational Status Report, and the initiatives so seek more synergies with ESMA. Several Members noted that the migration of the EBA website to European Commission's DIGIT is a source of concern and asked the EBA whether a form of escalation was necessary. The EBA Executive Director acknowledged that the migration to DIGIT was a painful process. The purpose of the migration was to increase stability and to seek more synergies with other EU reorganizations. But the experience so far showed that the difficulties the website was facing did not always receive get the adequate level of priority. He noted that the EBA was currently on a crossroad and was reviewing the different options.
11. One Member informed the Management Board that his organization was likely to be sued by the national banking association on the legality of another recent set of Guidelines in addition to the outstanding court case pending decision. He noted that Guidelines were facing an increasing number of legal challenges and asked the EBA to redefine its approach to level 3 text. The EBA Head of Legal & Compliance commented that it was difficult to develop a concrete plan forward at his stage, but that as a first step, level 1 text needed to provide a clear legal framework for level 2 and level 3 text. Finally, he noted that initiatives to undermine

the legal framework of level 3 text could have broad implications for multiple competent authorities, including the SSM. The Chairperson of the EBA shared the concerns expressed by the Member and suggested to assess the possible implications of the Court decision in order to be better prepared.

12. Another Member asked the EBA what criteria it would use when determining what AML/CFT colleges to attend, since there will be more than 300 AML/CFT colleges established across different sectors by the end of 2021.

Agenda item 3: Adoption of the EBA accounts

13. The EBA Accounting Officer updated the Members on the 2020 annual accounts. First off, he noted that the Court of Auditors had not yet sent the EBA its preliminary observations, so as a result the MB could not approve the EBA accounts yet. He informed the Members that, following the observations from the Court of Auditors, the accounts would be sent to the MB for approval by means of a written procedure.
14. Among other things, he informed the Members of the main points that had an impact on the 2020 annual accounts. He noted that in 2018, the EBA accounted for many of the provisions related to the London premises, which had a significant negative impact in the expenditure recognised in 2018. A share of these provisions was already reversed in 2019. In 2020, most of the provisions were reversed in full against costs incurred and revenue, bringing the EBA net assets back into surplus. Furthermore, he informed the Members that the EUCLID Work Stream 3 went live which resulted in a significant recognition of internally generated intangible assets and the disposal of obsolete internally generated software.
15. The EBA Accounting Officer reminded the Members that at the end of 2019, the EBA had outstanding provisions for risks and charges amounting 13.5 million euro, mainly due to the break option exercised on the lease agreement for the premises in London. The UK is still liable for the paid VAT receivables open in the books. Finally, he noted that the COVID pandemic and subsequent measures have meant a reduction in certain kind of expenses (missions, utilities, meetings) but they do not pose a threat to the EBA's going concern principle.
16. The Management Board had no comments on the EBA accounts. The Chairperson suggested to launch the written procedure as soon as the Court of Auditors had send their observations.
17. Subsequently, the Chairperson briefly updated the Members on the finalisation of the EBA 2019 discharge report. On 29 April 2021 , the EP approved the EBA discharge report granting its Executive Director discharge in respect of the implementation of the Authority's budget for the financial year 2019. At the same time, it also approved the closure of the EBA's annual accounts and provided observations to the budget implementation of the said year. The Chairperson informed the Members that in view of the revised ESAs regulation, the EBA must reply to the EP observations by 1 September 2021 with an opinion.

Agenda item 4.1: EBA Work Programme Progress Report 2021

18. The Head of the EBA Policy, Analyses and Coordination (PAC) unit EBA presented to the Members the Work Programme Progress Report 2021. The Work Programme Progress Report is a list of EBA deliverables in the pipeline and expected finalisation. On the format of the Report, he pointed the Members to the updated terminology for 'technical deadline agreed with COM' as opposed to the previously used term 'Revised Legal deadline'. Most of the projects are on time, any delays that the EBA is facing were mainly due to the complexity of the underlying work and the impact of the COVID-pandemic.
19. Several Members suggested to postpone the work on the IRRBB projects by at least three months, to allow the results of the QIS exercise to be taken into account. The same Members noted that it was important to pursue a high level of quality for these projects. The representative of the Commission noted that the Report still left room to further improve the readability.
20. The Chairperson concluded that it indeed was important to aim for a high-quality level for the IRRBB projects and that this could take some more time.

Agenda item 4.2: EBA Annual Work Programme strategic priorities 2022

21. The EBA Executive Director updated the Members on the Annual Work Programme strategic priorities for 2022. Among other things, he informed the Members that the *multi-annual* priorities have not changed and that the *annual* priorities have been fine-tuned. He noted that the work on first vertical priority for 2022 (the prudential framework for supervision and resolution) had been strengthened and the EBA has given higher prominence to the Basel III preparations and has heightened the importance of the upcoming work on recovery and resolution matters. On the second vertical priority for 2022 (EU - wide stress testing framework) he noted that the plan is to keep the constrained bottom-up approach while centralising some risk areas by introducing top-down elements. On the third vertical priority for 2022 (Banking and financial data) reference was made to the work on EBAs data strategy which was expected to be concluded this summer.
22. There was general support for the Report. One Member suggested to give IT risk and cyber risk a more prominent place given the relevance of these risks for all institutions. In that context, the suggestion was made to build a proper risk assessment framework. Another Member, though agreeing with the previous speaker, asked the Members to reflect on the question what concrete steps could be taken and what EBA could bring to the table. The EBA Executive Director noted that cyber risk and IT risk could be flagged more appropriately in the Report to fully reflect the work the EBA has undertaken in this field.

Agenda item 5: Peer Review work programme 2022-2023

23. The EBA Peer Review project leader updated the Members on the progress with the Peer Review Work Plan 2020-21, including a proposed approach to organise the peer review on non-performing exposures (NPEs) management and supervision. It was proposed to obtain an overview and understanding of the current policy framework for NPE management available in Member States, including supervisory approaches to incorporating consumer protection objectives, which would be a proxy of the implementation of the EBA Guidelines on NPE and FBE management. Moreover this Peer Review could facilitate obtaining an understanding and comparing the readiness of the CAs for dealing with increased level of post-COVID NPEs (i.e. what preparations have been made by CAs). Further, in order to get an understanding of the institutions' readiness for dealing with increased level of NPEs, three options were presented to identify the sample of institutions to be assessed.
24. There was broad support for the proposed approach to organise the peer review on supervision by the competent authorities of the management of NPEs by institutions and readiness for dealing with post-COVID 19 NPE increases, but there were split views on the preferred option for the selection of the adequate sample of institutions with some Members supporting option 1 and other Members supporting a combination of option 2 and 3. EBA staff took note to consider a combination of all three options when finalising the Peer Review's Terms of Reference.
25. The EBA Peer Review project leader reminded the Members that the EBA's founding regulation requires that 'the Management Board shall make a proposal for a peer review work plan for the coming two years'. She then presented a methodology for the selection of topics from the list of EBA's final Regulatory products which could be subject to an EBA Peer Review, together with a proposal for the draft EBA 2022-23 Peer Review work plan, prepared using this methodology. Accordingly four topics were suggested: i) a peer review on EBA GLs of authorisation & registration under PSD2; ii) a peer review on RTS on the method for the identification of the geographical location of the relevant credit exposures for calculating institution-specific countercyclical capital buffer rates; iii) a peer review of RTS on exclusion from CVA of non-EU non-financial counterparties; and iv) a peer review on EBA GLs on application of the definition of default.
26. The Members welcomed and supported the use of this methodology for the selection of the topics with several Members suggesting incorporating an additional layer of judgement too, having regard to the feasibility and materiality of the topics, noting competing resource demands to support the work.
27. Several Members shared their doubts on the selection of topic (ii) given its technical nature and the materiality of its impact. One Member noted that a peer review on this topic could potentially feed into the Basel discussion. One Member suggested to provide more topics for the BoS to choose.

28. The Chairperson concluded that there was support for the methodology for the selection of topics, although some criteria needed to be tweaked so as to allow possible qualitative considerations. In that context, the criteria on political sensitivity and materiality could be reconsidered. He acknowledged that it was important to ensure that the selected topics do not drain on the same resources. Also, it would be good to provide the BoS some additional topics from which to choose. The Chairperson invited the Members to nominate additional projects for the BoS to choose from, and one Member responded suggesting EBA's RTS on methods of prudential consolidation.

Agenda item 6: EBA college monitoring approach for 2021-2023

29. The EBA Director of Prudential Regulation and Supervisory Policy (PRSP) updated the Members on the EBA college monitoring approach for the upcoming years. She reminded the MB that apart from supervisory and resolution colleges of banking groups, the EBA has a role to play in CCP¹ resolution colleges, as well as the colleges that are being established under the new IFD framework. In addition, the EBA has to participate and coordinate work in AML/CFT colleges. She noted that the AML/CFT approach is in the process of design. She reminded the Members that in March 2018 the MB approved the selection of colleges for a three-year period and the respective monitoring approach. Therefore, the time arrived for the EBA to review the college monitoring approach and devise the new initiative, including a more inclusive selection of closely monitored colleges for the next period (2021-2023).
30. The proposed approach, which is based on experiences the EBA has gathered over the years, aims to preserve the aspects of the 2018-2020 approach that gained merit, in particular the thematic approach, that follows the implementation of the annual convergence plans (ESEP, EREP) while enhancing the efficiency and effectiveness of the college monitoring activity by incorporating additional features. The new approach proposes i) a shift in the selection criteria of the closely monitored colleges and ii) the reinforcement of the supporting activities, as well as iii) the introduction of some qualitative KPIs.
31. There was general support for the proposed college monitoring approach. One Member noted the possibility to make meaningful comparisons with colleges of similar institutions and suggested to keep the capacity of peer colleges in mind. The same Member referred to an EBA letter recently sent to AML/CFT colleges and proposed a more consultative tone and role for the EBA. Furthermore, he reminded the Members that workshops were a crucial part of the EBA's interaction with colleges. In connection with the foreseen KPIs he asked the EBA to liaise with the MB.

¹ With banking licence

32. Another Member noted that the EBA is responsible for monitoring supervisory, resolution and AML/CFT colleges and encouraged the EBA to take advantage of this role, in particular to see what can be learnt from the monitoring of 'old' colleges. In the same vein, he reflected on the question whether the current framework for colleges was deemed sufficient and efficient and suggested to develop a holistic approach for both 'old' and 'new' colleges.
33. The representative of the EC sought clarity on the initial selection and number of closely monitored colleges and whether they cover both supervisory and resolution colleges. He suggested to maintain twelve closely monitored colleges for prudential and resolution colleges. The EBA Director of PRSP reassured that both the supervisory and the resolution colleges of the selected banking groups would be monitored and that the initial selection of nine colleges would allow the onboarding of other colleges that will be established. On a second point, the representative of the EC reminded the EBA to inform the BoS of the college monitoring approach for 2021-2023.
34. One Member noted that the transition period for AML colleges was nearing its end and reflected on the question whether the joint GLs on the AML/CFT colleges needed to be evaluated by the AML SC after the transitional phase. Another Member raised, in connection with the foreseen introduction of KPIs, that CA's staff managing colleges are overloaded and noted that the design of the KPIs and any connecting process should not become an administrative burden.
35. The Chairperson concluded that there was broad support for the EBA college monitoring approach for 2021-2023. He noted that the approach should aim for maximum synergy between the different colleges. On KPIs, the focus should be on content and not on bureaucracy and once developed, they should be further discussed at the MB.

Agenda item 7: BoS Provisional Agenda

36. The Chairperson of the EBA introduced the Members to the provisional agenda of the BoS conference call on 9 June 2021. Subsequently, he informed the Members that an additional item on third country branches might be added to the provisional agenda shortly after the MB meeting.
37. The Management Board approved the provisional agenda for the BoS conference call on 9 June 2021.

Agenda item 8: Ombudsman inquiry on disclosure of BUL voting records

38. The EBA Head of Legal & Compliance updated the Members on the Ombudsman inquiry on the disclosure of BUL votes. The European Ombudsman has opened an inquiry into a complaint by a journalist about the EBA's decision not to disclose the BoS voting records in two Breach of Union Law (BUL) cases. The Ombudsman has asked the EBA to reply by 31 May to her letter opening the inquiry.
39. The EBA's proposal is to maintain the position already taken with the journalist that voting records in BUL cases are confidential and that their disclosure would lead to external pressure on Board Members which would seriously undermine the Board's decision-making process. The proposed reply stressed the need to preserve a good balance between ensuring effective decision-making and transparency around decision-making. In doing so, it emphasised that the EBA employs extensive transparency measures, which include publishing detailed minutes of BoS discussions as the EBA has done in the two BUL cases mentioned.
40. If the Ombudsman does not accept EBA's reply, she may issue a formal recommendation for disclosure or she might suggest a friendly solution involving full or partial disclosure. In that case, the proposed way forward is that the EBA would then come back to the Management Board and Board of Supervisors before deciding whether to maintain or vary its position that voting records must remain confidential.
41. There was general support for the letter. Several Members suggested to give the argument on the legal constraints of disclosure a more prominent place in the letter. Other Members noted that the letter did not address all the questions and comments posed by the Ombudsman and urged the EBA to safeguard that the letter touched upon all the different aspects of the Ombudsman inquiry.
42. A number of Members noted not being concerned with the disclosure of BUL votes as they had no problem with publicly explaining their vote. Subsequently, they suggested to tone down the wording on the impact of the disclosure of BUL votes on the decision-making process within the BoS. On the other hand, another Member noted that external pressures were not only hypothetical but could be very real, especially when it concerns BUL cases. In that context, he noted that political pressure was specifically addressed in the EBA Regulations. Another Member suggested to include the element of retroactivity in the letter.
43. The Chairperson concluded that there was general support for the EBA letter but that some of the suggestions made needed to be addressed in the letter. On retroactivity he suggested not to address the point in the letter. Given the short timelines, Members were invited to share their concrete drafting suggestions by the end of the day.

Agenda item 9: AOB

44. The representative of the COM referred to a recent written procedure sent to the Management Board on a Modification of the EBA Establishment Plan. Given the subject of the written procedure, he suggested to put this kind of topics on the agenda of the MB in order to allow Members to properly understand and discuss the different aspects of the matter at hand.
45. The Chairperson thanked the representative of the COM for the suggestion made and reminded the Members of the possibility to request that topics handled via written procedure are discussed in a Management Board meeting.

Participants at the Management Board conference call 27 May 2021

Chairperson Jose Manuel Campa
Alternate Chairperson Jo Swyngedouw

Member Thomas W. Andersen
Member Martina Drvar
Member Helmut Ettl
Member Maarten Gelderman
Member Dominique Laboureix
Member Karin Lundberg
EC 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 Prudential Regulation and Supervisory Policy	Isabelle Vaillant

Philippe Allard; Jonathan Overett Somnier; Jordi Climent; Corinne Kaufman; Erika Sole; Francesco Mauro; Cian Carroll; Fergus Power; Oleg Shmeljov; Tijmen Swank