

EBA MB 2022 030 rev. 1

Management Board

22 March 2022/09:30 – 12:00

Location: EBA premises

Management Board meeting – Final Minutes

Agenda item 1: Welcome and approval of the agenda and the Minutes (for decision)

1. The Chairperson welcomed the Members at the EBA premises. None of the MB Members declared any conflict of interest regarding the agenda items.
2. The Chairperson informed that the Minutes of the 20 January 2022 MB meeting were approved by the MB in the written procedure.

Conclusion

3. The MB approved the Agenda of the meeting.

Agenda item 2: Administrative and Operational Status Report (for information)

4. The Executive Director presented the Administrative and Operational Status Report. On HR related issues, he informed that as of March 2022 the EBA was close to having a largely renewed, complete management team following the reorganisation implemented in 2021. A new Director of Innovation, Conduct and Consumers Department (ICC) – Ms Marilyn Pikaro, had been appointed, joining Rūta Merkevičiūtė appointed as the Head of Digital Finance Unit and Pilar Gutiérrez, who was an acting Head of Reporting and Transparency Unit, became a permanent Head of this Unit. He noted that the selection procedure for the position of a Head of AML/CFT Unit was well advanced and that a new Head of HR Unit would have to be selected given that the current Head of HR Unit had decided to go back to her previous EU agency. The Executive Director also noted that the appraisal exercise was launched in January and the Staff Engagement Survey in February 2022. Finally, he referred to the coaching programme rolled
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out for all managers following the 160-degree feedback exercise carried out in 2021, to which the Chairperson and the Executive Director will also take part.

5. With regard to financial matters, the Executive Director informed that the EBA projected a very high execution rate of the 2022 budget and that two important calls for tender have recently been launched - for Managed Network Services, and for Mystery Shopping. He also noted that the EBA has already received a clear opinion from the independent auditor on the 2021 provisional accounts, which was all the more positive that the EBA's accounting office had also been responsible for EIOPA's closure for the first time
6. On organisational matters, the Executive Director said that as of 7 March 2022, the EBA resumed with its two days per week mandatory office presence, which had been suspended on 8 December 2021 as a result of the fifth wave of Covid-19. As of 21 March, the EBA has, in accordance with the French Protocol, removed majority of measures related to seating, social distancing and other sanitary requirements. He also mentioned that the EBA was reaching final stages of EMAS certification and as announced, the EBA was reducing the number of missions and physical meetings by 50% compared to 2019. Finally, the Executive Director informed about internal changes related to the Policy Coordination Unit and said that the Unit's three core tasks would be reinforced to further increase our organisation's efficiency and impact: "Governance and procedures", "Work programme and Institutional affairs", which would take responsibility for our liaison with key third country centres and the work on equivalence, and "Communications and Training". As a result, the Unit was renamed the Governance and External Affairs Unit. He also mentioned that the responsibility for Questions and Answers (Q&A) task was distributed between the relevant core business units, with oversight and targeted support provided by the Legal and Compliance Unit. Separately, as the new Peer Reviews mandate required more in-house capacity, it would be steered by Legal and Compliance so as to build on - and reap synergies with - available expertise in the legal team.
7. The Director of Operations updated the MB on the EuReCA (AML/CFT Central Database) and said that as planned, the first release of EuReCA went live in January 2022, enabling AML/CFT and prudential competent authorities (CAs) to submit data (Material Weaknesses, Applied Measures, and other relevant information) in respect of financial institutions, of branches of financial institutions. He noted that for now, only manual submissions were available but, in the future, also automated submissions would be considered for one of the subsequent releases. The database would be, when relevant, handed over to the future AML authority/agency.
8. The Head of Legal and Compliance Unit (LC) updated Members on a request for amendments to the EBA report on competent authorities' responses to the 2020 Luanda Leaks from an UK law firm.
9. The Members took note of the Administrative and Operational Status Report. One Member questioned the requests for AML data and stressed that the relevant RTS have not been formally approved by the European Commission (EC). Another Member noted that while the

EuReCa did not allow automated submission yet, at the national level, the submission could be automated. He also mentioned that there should be some feedback regarding the nature and amount of submissions to help CAs to employ similar submission thresholds. Other Member asked for clarification on the level of detail for the submitted data and with regard to the AML, mentioned an issue of a high number of AML colleges. On the colleges, one Member explained the challenges and noted that their organization could be flexible and based on the needs of each college, including organising conference calls instead of meetings. One Member asked what measures the EBA has taken in order to address any potential cyber-attacks.

10. The EC representative reminded the MB of the legal requirements in Level 1 text which, regardless of the RTS, required submission of relevant AML data, which was now possible given that the database was available.
11. With regard to the EuReCa, the Director of ICC informed that more than 70% of the institutions have logged in and started using the database and that the EBA was providing trainings for relevant staff.
12. On the question relate to potential cyber-attacks, the Director of Operations said that the EBA has raised alert levels with all its cyber defence partners, rehearsed its Information Security Incident Team procedures and conducted active threat hunting exercises.

Conclusion

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

Agenda item 3: Risk management – Status update (for discussion)

14. The Chairperson introduced the item by reminding the MB that since 2021, the EBA has been increasing its focus on ethics and other compliance topics. A new dedicated team within the Legal and Compliance Unit was set up and it has started working on risk management issues given that they were considered by the EBA as an important internal control requirement. The team has been working with external consultants to develop a new enterprise risk management (ERM) framework and the initial work has been tabled for the MB's comments.
15. The Executive Director summarised the main aspects of the draft ERM policy – the EBA's ERM strategy, risk appetite and tolerance, roles and responsibilities and process framework, and a draft strategic risk register. He noted that he would value the MB's views for further developing the documents, and when moving to the next stage of making risk assessment more operational within the EBA at strategic and working levels including establishing monitoring, management and reporting tools, and integrating risk assessment into the work programme cycle.
16. The Head of LC explained that the ERM Policy has been developed based on the internal control framework of the EC and structured according to COSO ERM principles. The overall vision was that risk assessment and management would develop from being a formal annual

exercise to become a strategic decision-making tool which helps optimise the EBA's performance. The policy set out three objectives: managing risk at agency level so that the EBA identifies, measures and responds to risks and provides senior management with an understanding of risk exposures; integration of risk management into decision-making to optimise resources; and establishing and maintaining a risk-aware culture. He noted that the programme was currently focused on the first objective but with the second and third objectives firmly in mind when preparing the 2023 work programme as the next stage in making risk management more operational in the EBA and establishing clear responsibilities and regular reporting at senior management and MB level. He also said that a key issue for the ERM policy was establishing the EBA's risk appetite statement and that the consultants have proposed that the EBA is 'risk neutral' across the six risk categories - External factors; Governance; Strategy & Planning; Core activities; Operations, and Reporting. If adopted, this would mean that the EBA takes a balanced approach to risk taking, giving equal consideration to risks and return objectives, not preferring any particular risk response, and all mitigating actions being based on cost effectiveness and management priorities. The Executive Director stressed that there might be merit in being very risk adverse in certain areas (like Ethics of Finance matters) and a bit less in others (such as in policy development or risk analysis in order for instance to be able to develop ad hoc policy response to unexpected critical developments – like the pandemic – even if that were to result in certain delays for some of the activities of the Work Programme). The head of LC concluded by noting that it was work in progress and therefore, the experience and input from the MB Members were welcomed.

17. The MB supported the work and shared their national approaches to the risk management. They agreed that it was an important, yet challenging topic. One Member said that at the national level, they have identified 10 risks and that they were using a bottom-up process based on which only those risks with a very high impact were discussed at the Board level. Other Members noted that one of the strategic risks identified was the risk that resources do not match external expectations in terms of delivering the EBA's tasks, and that while this is a common concern they had found that having such a broad risk had not proved useful in their own exercises. Some Members were of the view that there should be areas that were not 'risk neutral' and in some areas, such as ethics, independent decision making or reporting, especially if it concerned supervisory data, the EBA was probably risk averse. One Member suggested to have different risk appetites for crisis and non-crisis situations. Another Member said that the consequences of a particular risk appetite should be clarified and that mitigation actions should be considered given that residual risks might be minimal and this would have an impact on the overall framework. He also pointed that some risks were overlapping and therefore, further considerations on the risks should be done by the EBA. Overall, members considered that the number of strategic risks identified was too high and should be significantly reduced, and that it would be useful to adjust some of the language further to reflect the nature of the EBA as an organisation and clarify the risk categories.
18. The EC representative welcomed that most of the areas were to be risk neutral, while noting that there are more risks in some areas, such as governance and ethics, given the high

reputational risks and the type of the EBA's public exposure. He also supported any further work on a common dictionary to aid understanding of the risk framework.

19. The Chairperson concluded by noting the comments and said that the MB should define the risk appetite and that some flexibility was necessary, i.e., while some areas, such as the governance, ethics, decision-making, the risks should be carefully considered, in other areas, such as policy and external issues, the result of the risk management framework should not limit the work and actions taken. The Executive Director added that the framework would be considered as part of the 2023 work programme preparations.

Agenda item 4: Draft Terms of Reference for Peer Review on authorisation under PSD2 (for information)

20. The Chairperson introduced the item by reminding the MB that in October 2021, the Board of Supervisors (BoS) approved the EBA's Peer review work plan 2022-2023. The first peer review to be performed under this workplan is on the EBA Guidelines on the authorisation of payment institutions (Pis) and e-money institutions (EMIs) and for the registration of account information service providers (AISPs) under PSD2 (EBA GL/2017/09) (the Guidelines).
21. The Head of LC continued by adding that the EBA staff proposed to extend the scope of the peer review so as to cover not only the implementation of the Guidelines themselves but also how CAs have authorised Pis and EMIs and registered AISPs in accordance with the provisions of PSD2 more broadly. He explained that the proposal was to focus on a selection of areas where a peer review may be beneficial for assessing potential divergent practices of CAs and/or identify best practices developed by CAs the adoption of which might be of benefit for other CAs. With regard to the timelines, the Head of LC clarified that the objective was to launch approval of the peer review report before the end of the year.
22. The MB supported the proposed terms of reference. One Member raised a comment related to the EBA reports in general and said that while the contents were useful, a more concise report could achieve the same goals. More specifically for the peer reviews, he suggested to consider while preparing the final report how the main findings should be communicated in the report and press releases in order to be more digestible by external stakeholders as well as helpful in strengthening supervisory convergence. One Member questioned why business plans were not included with the proposed selected focus areas. Another Member asked about the lessons learnt from other peer reviews and how they could be implemented for this peer review, in particularly with regard to the timelines. One Member questioned whether, as part of the work, an opinion on the overlap and inconsistencies between the PSD2 and e-money directive could be considered in order to contribute to the Commission's preparations for revisions to PSD2.
23. The Head of LC acknowledged the challenging timelines and said that one of the options that could be considered for future peer reviews to address some of the related issues was to limit the scope of some peer reviews to a sample of CAs as well as to increase the amount of

preparatory work carried out by EBA staff. He added that in order to be able to meet the deadlines of the peer review process it was important that CAs respond in time to requests for information and that, with Members' support, the EBA intended to take a stricter approach on this than in the past given that the methodology already provides for two opportunities for new deadlines to be set. He said that the assessment of business plans could also be added to the ToR.

24. The Chairperson concluded by noting the support of the MB with the two amendments discussed regarding the timelines and the assessment of the applicant's business plan and also noted that the final report on the peer review should be shorter and more focused than in the past.

Conclusion

25. The MB agreed to submit the Draft Terms of Reference for Peer Review on authorisation under PSD2 to the BoS for approval.

Agenda item 5: EBA Draft report on the Peer Review on supervision of NPE management (for discussion)

26. The Chairperson reminded the MB that as part of the Work Plan 2020-2021, the EBA has conducted a Peer review on the supervision of management of NPE, and by virtue of it also on the implementation of the EBA Guidelines on the management of non-performing and forborne exposures. The peer review also aimed at understanding the readiness of the competent authorities (and to the extent possible of institutions) for dealing with potential post-Covid-19 NPE increases.
27. The EBA Senior Policy Expert (in his role of the Chair of the Ad-hoc Peer review Committee) presented the main findings of the peer review. He acknowledged several challenges that the EBA had to face during the peer review resulting in the delay of the exercise. These included the complexity of the peer review as it covered assessment of practices by both prudential and consumer protection authorities based on two self-assessment questionnaires (SAQ); later delivery due to delays in receiving responses to the SAQ and subsequent requests for follow up information and meetings/interviews with the CAs which caused that he information collection phase took longer than anticipated and ended only in December 2021, as well as changes in the composition of the Peer review committee. He noted that the overall conclusions of the peer review were positive and mentioned that the CAs across the EU have applied risk-based approach to the supervision of NPE management by the institutions; the CAs from jurisdictions with higher level of NPE and involved in supervision of large share of institutions with elevated levels of NPE, have established more sophisticated supervisory processes for NPE supervision and were more engaged with credit institutions under their supervision on the topics of NPE management, and the EBA Guidelines on management of non-performing and forborne exposures have been largely implemented by the CAs and applied in their supervisory practices. He concluded by referring to the recommendations

around implementing some good observed practices and for the EBA to incorporate number of items into the review of the Guidelines on management of non-performing and forborne exposures, when these guidelines were up for a review noting that there was no urgent need to update the guidelines now.

28. The MB supported the work. One Member supported the proposal for the clarification of the definition of NPL ratio in the guidelines noting that cash balances in central banks which should be put out of ratio. Other Member suggested to include neutral references to legal tool to be used by the CAs given that not all CAs could use supervisory expectation publications as mentioned in the draft report, suggesting instead to refer to the supervisory dialogue. One Member stressed that any potential changes to the EBA Guidelines on the management of non-performing and forborne exposures, as result of the peer review, would need to be further discussed in detail. He also said that the industry needed clarity and stable framework on the NPE management, so there should be no rush to update the guidelines. Other Member referred to the link with the upcoming Credit Servicers Directive, and asked whether the guidelines should also be updated in light of that directive. He also mentioned institutional practices that could have been further explored.
29. The EC representative questioned whether the EBA had any intentions on any future work on readiness of CAs and/or institutions regarding NPEs that would materialize post-Covid and whether the guidelines were the most suitable tool to promote the best practices. In this regard, he mentioned that the EBA might consider including some of the good practices in the Supervisory Handbook.
30. In his response, the EBA Senior Policy Expert clarified that it was not being proposed to update the EBA Guidelines on the management of non-performing and forborne exposures at this stage, as this was not a priority also considering the current evolution of the NPL situation in the EU. However, when the update happened, any amendments would be discussed at the experts' level and that these changes would have to also reflect provisions of the Credit Servicers Directive. He explained that the intention would be to update the Guidelines and in parallel include relevant detailed practices in the Supervisory Handbook. On the institutional practices, he said that the content of the responses received from the CAs did not provide sufficient material to analyse these practices in detail. He explained that the draft report would be submitted to the BoS meeting in April for discussion followed by a written procedure in which the BoS would be asked to approve the report.
31. The Chairperson concluded by noting the MB's support and stressing that it was important to ensure that good practices identified in this exercise were not lost and forgotten before the next crisis.

Agenda item 6: Selection of a Member of the Banking Stakeholder Group (BSG) (for decision)

32. The Chairperson informed the MB that following the resignations of one BSG Member, the EBA had to fill a vacancy in the category of financial institutions.
33. The Head of Governance and External Affairs (GEA) Unit briefly summarised the CVs of the three potential candidates and explained that the EBA was proposing Mr Wolfgang Johann Gerken as new member given that has worked in different EU jurisdictions and outside the EU, both in the private and the public sector and had solid experience in microprudential supervision gained at the ECB and a good knowledge of the Basel and EU regulatory framework.
34. The MB supported the nomination. One Member asked how the EBA took into account nationality of the candidates.
35. The Head of GEA clarified that when considering candidates, the EBA always aimed for a balance in nationality, gender, or experience.
36. The Chairperson concluded by noting the MB's support.

Conclusion

37. The MB supported the nomination of Wolfgang Johann Gerken as a new BSG member to be submitted by the EBA to the BoS.

Agenda Item 7: Provisional Agenda BoS 20 April meeting (for discussion)

38. The Chairperson reminded the MB that the next BoS meeting was scheduled for 20 April followed by a physical joint BoS/BSG meeting.
39. One Member asked whether the mandates of the standing committees would be reviewed by the MB. Other Member questioned a need for a separate item on policy issues related to the conflict on Ukraine.
40. The Chairperson clarified that no review of the mandates by the MB was envisaged at this stage and that under the Risks and vulnerabilities item, the EBA was planning to hold a discussion also in relation to the Ukrainian conflict and there may an additional item added to the BoS agenda regarding ongoing discussions at the AMLSC on the need for an EBA statement on issues related to refugees arriving into the EU.

Conclusion

41. The MB took note of the draft Agenda of the 20 April BoS physical meeting.

Agenda Item 10: AOB

42. The Chairperson informed the MB that following the departure of Martina Drvar from the MB, the EBA had to fill the vacancy that her departure has left in the Advisory Committee on Conflict of Interest (ACCI). The ACCI, as per the Conflict of Interests Policy, provided advice where potential conflicts of interests of the EBA Chairperson and Executive Director have been identified. The ACCI also provided advice where the assessment of the declarations of interest of EBA staff reveals a breach of the EBA's rules on declarations of interest. Where such a finding was established, the Executive Director may ask the ACCI to perform a review of the draft instruments adopted by the groups to which the EBA staff members contributed. Finally, the ACCI also advised on complaints filed by EBA staff members against decisions of the Executive Director on conflicts of interest. He mentioned that the ACCI was chaired at present by Fergus Power, head of the EBA Finance and Procurement Unit and that Jesper Berg was the member representing the Board of Supervisors. A third member shall be appointed by the MB.
43. Dominique Laboureix expressed his interest to join the ACCI.

Conclusion

44. The MB appointed Mr. Dominique Laboureix as a ACCI member.

Participants at the Management Board conference call

22 March 2022

Chairperson Jose Manuel Campa
EBA Vice-Chairperson Jo Swyngedouw

Member Maarten Gelderman
Member Kamil Liberadzki
Member Karin Lundberg
Member Dominique Laboureix
Alternate Peter Lutz

European Commission representative Dominique Thienpont

EBA Directors

Executive Director	Francois-Louis Michaud
Director of Operations	Peter Mihalik
Director of Data Analytics, Reporting and Transparency	Meri Rimmanen
Director of Innovation, Conduct and Consumers	Marilyn Pikaro

EBA Head of Units

Philippe Allard; Jonathan Overett Somnier;

EBA Experts

Tea Eger; Larisa Tugui; Ester Botica Alonso; Oleg Shmeljov

For the Management Board,

Done at Paris on 04 May 2022

[signed]

José Manuel Campa

EBA Chairperson