

Additional background and guidance for asking questions¹

1. What is the rationale for the Q&A process in the EU?

The rationale stems from Article 1. 5 (a) of Regulation 1093/2010 that requires the EBA to ensure consistent and effective application of the European legislation within its scope. The Single Rulebook in banking regulation also comprises European Commission Delegated or Implementing Acts, EBA Regulatory Technical Standards, EBA Implementing Technical Standards (adopted by the European Commission) and / or EBA Guidelines.

The EBA should also address the evolution of supervisory practices and developments in banking practice and financial innovation.

The process as such is consistent with Article 29(2) of Regulation 1093/2010, asking the EBA to “develop new practical instruments and convergence tools to promote common supervisory approaches and practices”. It will contribute to and supplement the Single Rulebook and moreover ensure that the latter embodies a ‘living’ and evolving regulatory framework.

The Q&A have no binding force in law nor are they subject to “comply or explain”. However their application will be rigorously scrutinised and challenged by the EBA and national supervisory authorities given their undoubted practical significance to achieve a level-playing field. Peer pressure and market discipline are also expected to play a driving force in ensuring adherence to and compliance with the answers provided in the Q&A process.

Depending on the observation of regulatory implementation across the EU, evolution of banking operations or supervisory practices, the Q&A could inform the review of the Level 1 text, of related technical standards or of EBA guidelines, and if necessary lead to the extension or issuance of own initiative guidelines.

For questions that go beyond matters of consistent and effective application of the regulatory framework a Directorate-General of the Commission (Directorate General for Internal Market and Services) will prepare answers, albeit that only the Court of Justice of the European Union can provide definitive interpretations of EU legislation. These answers will be unofficial opinions of that Directorate General, which the European Banking Authority publishes on its behalf. These answers are not binding on the European Commission as an institution. You should be aware that the European Commission could adopt a position different from the one expressed in such Q&A,

¹ This guidance has been updated in June 2014 to reflect the changes to the Q&A tool and the adoption of stricter criteria, in January 2015 to reflect the inclusion of the BRRD in the scope of the tool as well as in July 2016 to reflect the inclusion of the DGSD in the scope of the tool.

for instance in infringement proceedings or after a detailed examination of a specific case or on the basis of any new legal or factual elements that may have been brought to its attention.

2. Who can ask questions?

Anybody, including national supervisory authorities, institutions that are subject to the provisions of Directive 2013/36/EU (the Capital Requirements Directive or CRD), Regulation (EU) No 575/2013 (the Capital Requirements Regulation or CRR), Directive 2014/59/EU (the Bank Recovery and Resolution Directive or BRRD) and Directive 2014/49/EU Deposit Guarantee Schemes Directive (DGSD); and related industry associations, individuals and other entities. Where possible, institutions and other organisations are encouraged to submit questions via a central function to avoid duplication and to ensure that several aspects of an issue are considered prior to submission.

Users should note that questions perceived as having a high impact on the single market and a level playing field, in addition to those questions from institutions, industry associations and competent authorities will be prioritised over others. Questions from other stakeholders will be considered with lower priority unless they are raising a high impact issue or it is demonstrated (as part of the information submitted) that these stakeholders are acting on behalf of institutions that are subject to the CRR/CRD, BRRD and DGSD. Although the EBA will do its utmost to process questions as quickly as possible, given the numbers and the complexity of the questions that are being submitted, this different prioritisation will necessarily impact upon the time taken for the EBA to provide a response.

3. Do I have to use a certain language?

In principle you can ask your question in any official EU language. English is only preferred to avoid the likely delay involved in translating the question.

4. What questions can I ask?

Any question relating to the practical application or implementation of provisions of Directive 2013/36/EU (CRD), Regulation (EU) No 575/2013 (CRR) Directive 2014/59/EU (BRRD) and Directive 2014/49/EU Deposit Guarantee Schemes Directive (DGSD) and associated Commission delegated or implementing acts, EBA technical standards as adopted by the Commission and EBA guidelines adopted under that legislation.

5. How should I ask questions?

Questions should be as specific as possible and practical examples are always helpful. Hypothetical questions (like: "What would happen if yyy happens?" or "What would have been the consequence under provision xxx if yyy had happened?") should as much as possible be avoided.

Questions should be sufficiently clear and should clearly identify a provision of the CRR, CRD, BRRD, DGSD or associated delegated or implementing acts, technical standards and guidelines which have been adopted under that legislation. Questions that seek to reinterpret or call into question the level 1 text cannot be accepted.

Please note that the purpose of the tool is not to confirm independently obtained third party bespoke advice specifically related to an individual submitter, nor is its purpose to direct submitters to where they can find information on a given topic within the Level 1 text and associated delegated or implementing acts, technical standards and guidelines, or to explain the provisions that are already clearly set out therein. In addition questions should be clearly phrased, identify an issue of practical implementation or application, and respect the formal requirements for submitting questions set out below.

Potential submitters are strongly urged to check in the ‘search’ function that the question they have has not yet been covered before submitting it to the tool.

Questions which do not fulfil these requirements shall be rejected.

6. What should I enter in the box "Topic"?

Please select one topic from the drop-down list. If the topic of your question is not listed, select one which is the most closely related, or else select ‘other’. In case the question relates to more than one topic, please choose the one that is at the heart of the question – also bearing in mind the article that you are referencing below.

For questions on Directive 2014/59/EU the topic box will automatically be populated with “Recovery and Resolution”, in the case of Directive 2014/49/EU the topic box will be populated with “Deposit Guarantee Schemes” Submitters should then select the subject area most appropriate to their question for the drop down menu provided in the “Subject Area” box.

7. What should I enter in the box "Legal act"?

You should insert the legal act the question is referring to. You should indicate the legal act, and complete the related legal references, even if your question is directly related to a European Commission Delegated or Implementing Acts, EBA Regulatory Technical Standards, EBA Implementing Technical Standards (adopted by the European Commission) and / or EBA Guidelines.

You should note that if a question you submit is not related to any of the legal texts listed, it is possible that the question is not admissible in the context of this process and, thus, likely to be rejected.

8. What should I enter in the box "Legal reference"?

You should indicate the article number of the legal act you are referring to together with relevant paragraph number (if applicable) and further subdivisions used in the legal act such as subparagraphs, letters, sub-letters and bullets, etc.

Questions on recitals – if any – should only be asked if they can be linked to a specific article of the legal act in question.

9. What should I enter in the box "Name of institution"?

Please enter the name of the institution or entity that you represent. If you submit your question in your personal capacity, please insert your surname and first name.

Please note that the data in this box will not be published if you request to remain anonymous. However, it is necessary for the EBA to have a contact address in cases where the question is not entirely clear or further information would be necessary or helpful.

10. What should I enter in the box "Subject matter"?

Please provide in this field a short description of the question you are submitting to allow a user of this tool to understand what the issue is about. The description should not be longer than the box provided.

11. What should I enter in the box "Question"?

Please provide in this field the question you are submitting. The questions should be as short and concise as possible. Additional information should be provided as background. Including the legal text can help as long as it is not overly long, otherwise the use of precise references is recommended.

Please note that questions should be limited to issues relating to the practical application or implementation of provisions of the CRR/CRD, BRRD, DGSD (and, possibly, related interactions) and/or to associated delegated or implementing acts, technical standards or guidelines under that legislation.

As already mentioned under point 5 above, hypothetical questions (like: "What would happen if yyy happens?" or "What would have been the consequence under provision xxx if yyy had happened?") should as much as possible be avoided. Further, questions should be sufficiently clear and should clearly identify a provision of the CRR, CRD, BRRD, DGSD or associated delegated or implementing acts, technical standards and guidelines which have been adopted under that legislation.

12. What should I enter in the box "Background on the question"?

Please provide in this field any relevant background information that is necessary for the understanding of the question you are submitting and the context in which this arises. Background information should also be short and concise, although practical examples can be helpful.

The background information should in particular explain why the question is relevant and how it raises either an issue of consistent or practical application. Submitters should note that questions without appropriate background information cannot be accepted.

13. What should I enter in the box “Proposed answer”?

Please provide in this field your view on what the answer to your question should look like and add arguments supporting this view. This constitutes an essential part of the Q&A process and aims to ensure that submitters duly consider relevant elements of the legal or regulatory requirements or guidelines before posting a question. Submitters should note that questions without a proposed answer cannot be accepted.

As indicated in point 2, where stakeholders act on behalf of institutions subject to the CRR/CRD, BRRD or DGSD, they should indicate this as well as the identity of the client in question as part of the proposed answer (which is not published). Unless this is the case, or the question raises a high impact issue, it will not be possible to treat it as a high priority issue.

14. Where can I view my question?

In order to ensure that questions arising for a given topic are answered in the most comprehensive manner possible, questions of a similar nature and priority may be grouped together, and in some cases merged, to provide a coherent and consistent answer. Due to this grouping, questions will only be published on the tool once there is a final and agreed answer.

Upon submission of a question to the tool, the submitter will receive a notification confirming receipt. Updates will be provided once the question has been finalised (or in case it will be rejected). Rejected questions will be available to view on the EBA’s website for a period of 2 months prior to being removed from the tool.

Submitters are kindly requested not to seek updates on the status of their questions. Depending on the complexity of the issue, some questions can take longer than the 2-4 month period envisaged.

15. How will my question be treated?

Once you have submitted your question, it will be subject to close analysis and review by EBA staff. It may be necessary for the EBA to request further information from submitters in order to obtain further clarity. In some cases, in the interests of expedience, and efficiency and quality, the EBA may need to merge your question with one or several other more Q&As on a similar topic. Submitters will be informed if this is the case.

It should also be noted that the EBA is applying a strict approach to accepting / rejecting questions which do not meet the guidance set out in points 2 to 13.

16. When will I get an answer?

As stated above, the objective is to answer the majority of questions within 2-4 months. However, depending on the complexity and priority of the question, a longer (or possibly shorter) period might be taken to provide an answer. Please also keep in mind that translations are likely to cause delay to the development and publication of the response.

17. Where will I find an answer?

Answers can be found in the ‘Search for Q&A’ tab. Searches can be narrowed down using a set of criteria (or a combination thereof), including topic, legal act and related articles.

Final answers will be published on Fridays between 12pm and 1pm GMT, except if this coincides with an EU public holiday. In this instance answers will be published on the preceding working day between 12pm and 1pm GMT (or BST as appropriate).

Answers will be published in English and also in the language of the question if other than English. As noted directly above, translations are likely to cause delay.

In the ‘Search for Q&As’ section, users now have the possibility to export all or a sub-set of Q&As into a PDF file with a view to facilitating the review of Q&As.

The export possibilities will be based on the results of the search tool. The user will be able to export any results that will be produced by the search. By selecting specific ‘tabs’ (e.g. ‘Final Q&A’ or ‘Rejected Q&A’) or topics (e.g. ‘Own Funds’ or ‘Supervisory Reporting’) the search, and thereby the export, can be further refined and customised.

For any search result users have the option to choose between ‘Export all results’ or ‘Export selected results’. (In the latter case selections are made by ticking the box next to the relevant Q&As.)

For example to export all the final published Q&As, a user should select the ‘Final Q&A tab’ before choosing ‘Export all results’ at the bottom of the table. The resulting pdf file – to be downloaded and saved – will contain all final Q&As by date of publication (with the most recent upfront).

To export all the final published Q&As on a particular topic such as ‘Own Funds’ or ‘Supervisory Reporting’, a user should select the respective topic and hit search. They should ensure the ‘Final Q&A tab’ is active in order to limit the results to published Q&As, then choose ‘Export all results’ at the bottom of the table. The resulting pdf file – to be downloaded and saved – will contain all final Q&As on ‘Own Funds’ by date of publication (with the most recent upfront).

To obtain all Q&As (final and rejected ones) on a particular article, a user should write the article in question in the ‘Article’ field and hit search. In this case they need to ensure the ‘All’ tab is

active to get results for both final and rejected Q&As, then choose 'Export all results' at the bottom of the table. The resulting pdf file – to be downloaded and saved – will contain all final Q&As on the chosen article regrouped first by status (final / rejected) and within status by date of publication. Similar searches and exports can be undertaken by using particular keywords.

Among the search results users also have the possibility to export only selected Q&As by ticking the boxes in front of the relevant Q&As, and then choosing 'Export selected results'.

IMPORTANT: Please note that the EBA only starts accepting questions on the application and implementation of technical standards related to the CRD, CRR, BRRD and DGSD once these are published on the Official Journal of the European Union. An exception is made with respect to certain draft Implementing Technical Standards on Supervisory Reporting, as the EBA needs to address these on a timely basis in order to allow institutions to make the necessary preparations or changes to their reporting systems. The EBA has begun to publish the provisional answers to questions; however, it is important to note that these should not be considered final until the Implementing Technical Standards on Supervisory Reporting they refer to are endorsed by the European Commission and published on the Official Journal of the European Union.

