



EBA MB 2017 003

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EBA Staff

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10 November 2016

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Location: London

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## Management Board – Final Minutes

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### Agenda item 1.: Welcome, Approval of Agenda and Minutes

1. The Management Board (MB) approved the provisional agenda (document EBA MB 2016 078rev2) and the minutes of the meeting of 13 September 2016 (document EBA MB 2016 076rev1).

### Agenda item 2.: Administrative and Operational Status Report

2. The EBA Director of Operations presented the administrative and operational status report (document EBA MB 2016 084) providing an overview of the EBA activities since the meeting of 13 September 2016. Amongst other things, he informed of the recruitment of seconded national experts; he explained that the establishment of other EU institutions, and the pressure on resources at competent authority-level, could justify the decreasing number of national experts seconded to the EBA, which in turn was putting pressure on the EBA to deliver some core mandates.
3. The Executive Director said, with regard to the possible relocation of the EBA premises following the result of the UK referendum on EU membership of 23 June 2016, that it would likely be decided during the legislative process in the context of the UK-EU negotiations. He said that no budget implications were expected in 2018 for the EBA, and referred to the terms and conditions of the lease of the EBA premises to explain the costs that could be expected if the EBA were to leave the current premises before the end of the lease.

### Conclusion

4. The MB took note of the administrative and operational status report.

### Agenda item 3.: Draft Rules of Procedure on Professional Secrecy and Confidentiality for Non-Staff

5. The Chairperson explained that the draft Rules of Procedure (RoP) on professional secrecy and confidentiality for non-staff (document EBA MB 2016 085) were being discussed with ESMA
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and EIOPA to ensure consistency among the three ESAs, taking into account the feedback received by the three Boards of Supervisors (BoS). A final draft would be tabled for adoption by the MB. The EBA Head of Legal explained some of the legal issues that had been raised by the BoS, namely on the legal basis of the draft RoP and who should lead the investigations. He said that a discussion with the Commission Legal Service was scheduled to obtain their legal feedback. On this note, the Commission representative asked the EBA whether it would be possible to distinguish between process and substance in order to help the Legal Service to provide its feedback; this should also help identify provisions on confidentiality already contained in sectoral legislation and that would make it unnecessary to include them in the RoP.

6. Some members questioned the need for the RoP given that competent authorities (CAs) had already in place confidentiality provisions that applied to their staff, and questioned the legal basis of the RoP. They also said that some of the exceptions provided for in the RoP diverged from national law provisions, and that it would be necessary to include a general exception to address potential inconsistencies with national law. On the possibility that leaks of confidential information to external parties would be caused by the nature of the membership of boards in some CAs, a member said that this should be addressed by the CAs themselves rather than by the EBA.
7. The Chairperson clarified again that the RoP merely intended to establish a procedure to facilitate the investigation by the EBA of breaches of confidentiality rather than setting out a new disciplinary regime. He noted further that the ESAs should be able to set their own rules for reasons of internal working arrangements as well as to guarantee the confidentiality of their information. The EBA Head of Legal clarified that the RoP did not hamper the communication between CAs and other national governmental bodies.

## Conclusion

8. The MB agreed that the ESAs should continue working on the RoP, and that the Board of Supervisors (BoS) would be invited to provide its comments at the meeting of 14-15 February 2017.

## Agenda item 4.: Election of Members and Alternates of the Board of Appeal

9. The Chairperson explained that, in view of the end of the first five-year term of the members of the Board of Appeal of the ESAs, the MB would be called to renew their mandates. He informed that a joint procedure would be launched by the ESAs by mid-November 2016 to elect and renew the members of the Board of Appeal.

## Agenda item 5.: Proposal to fill two BSG vacancies

10. The Chairperson asked the MB whether it would agree with the EBA's proposal (document EBA MB 2016 083) to fill two vacancies that had arisen in the Banking Stakeholder Group. The proposed candidates had served for a first mandate and sought to be renewed for a second mandate.
11. A member asked for a comparative assessment of merits including other candidates in the reserve list.

### Conclusion

12. The MB agreed that the EBA should conduct an assessment of other candidates in the reserve list and then submit a proposal to the BoS for adoption.

## Agenda item 6.: Expansion of EBA Data Infrastructure - Tasks and Resources

13. The Executive Director presented a note (document EBA MB 2016 087) outlining the tasks and resources needed to prepare the expansion of submission of data to the EBA of the full population of EU banks such that the EBA could start receiving data from CAs and the ECB by early 2019.
14. Members discussed the proposal submitted. Considering the scale of the project in terms of resources, some members asked whether alternative options could be considered, e.g. exploring synergies with the ECB (e.g. sharing the same database that would allow both the ECB and EBA to conduct their own, independent analyses), working with CAs on a contract basis, or adopting a statistical approach with a sample of banks rather than the full population. But on the later option, one concern was expressed that it might not be easy to identify adequately a sample of banks given that it would require the definition of business models.
15. Other members were concerned by the impact on CAs in terms of data quality and consistency analysis. They said that if new validation rules were to be designed, this would invariably increase the burden of work on both the EBA and CAs, which in turn would affect other parties; therefore, they should be included within the reporting framework. EBA staff clarified that the burden on CAs should on the contrary be reduced, as one of the outcomes of the project would be the reduction of duplications, inconsistencies, as well as the streamlining of validation rules, without involving CAs in the cleaning of data. Also, they clarified that the EBA's additional checks had been agreed in the past with members and the EBA would continue doing so going forward.
16. Members suggested that the EBA continue exploring further the objectives of the project and the necessary resources to attain them, as well as continue assessing quality control issues in

order to better inform CAs of the impact they could expect. They also required a clearer explanation on the timelines for the recruitment of the resources requested.

## Conclusion

17. The MB agreed to proceed for BoS approval with the project as presented, but stressed the need to clarify the potential for additional burden at CAs. It was agreed that the EBA would provide further clarity on the issue of validation rules and additional checks such as to help CAs better understand the implications for them. The MB also requested that the EBA should provide further explanations on the recruitment of resources.

## Agenda item 7.: FINTECH Strategic Discussion

18. In view of the discussions on FinTech at the BoS Away day on 7-8 July 2016, and later at the BoS meeting of 20 September 2016 where it was agreed that the EBA would present a project on how to deal with it going forward at the 6-7 December meeting, the Chairperson discussed with the MB some preliminary ideas on the EBA strategy to inform the proposal for the BoS December meeting. He explained the main areas from which FinTech could be tackled, namely prudential risks, consumer risks, developments in payment services, and additional guidance on the authorisation of FinTech firms carrying out regulated activities. He also noted the importance of incorporating anti-money laundering aspects into the work.

19. Members agreed to carry out work on the four areas described by the Chairperson. They noted that it was necessary to shed greater clarity on the definition of FinTech, since this would be fundamental to properly define the strategy. They urged the EBA to start work sooner rather than later, and not delay any work that started already, in order to ensure a coordinated approach across the EU. On the strategy itself, some noted that it would be important to make more relevant all operational risk aspects and set out clearly what activities should be included under the regulatory framework. Other areas to be captured should be the identification of services; risks related to the change of business models of banks; and financial technology and its broader implications.

20. Members noted that it would be important to ensure greater coordination at EBA-level in order to be more efficient with the use of resources and final outcomes. They discussed the means by which this coordination could be achieved, i.e. whether it should be only one subgroup doing all the work or different groups doing different parts but in a coordinated way; and also called for greater coordination with other initiatives at EU and international level.

## Conclusion

21. The Chairperson thanked members for their views. He stressed that it would be important to facilitate innovation and identify challenges as market players carry out their business. Also, he considered that it would be important to understand the variety of market players as a means to identify their business models. He proposed that the alternate Chairperson would work

together with EBA staff and the chairs of Standing Committees to propose a plan and a concrete mandate for discussion at the BoS meeting of 6-7 December 2016.

## Agenda item 8.: Discussion on Strong Customer Authentication and Common and Secure Communication under PSD2

22.The EBA Head of Consumer Protection, Financial Innovation & Payments explained the situation resulting from the public consultation on the draft RTS specifying the requirements on strong customer authentication and common and secure communication under the Second Payment Services Directive (PSD2), and the challenges posed to the EBA in terms of respecting the different objectives set out in the legislation (document EBA MB 2016 086). He noted that there would be a scrutiny slot at the European Parliament's Committee on Economic and Monetary Affairs (ECON) on 28 November 2016 where the EBA would explain the state of play of the draft RTS.

23.Members acknowledged the difficulties with dealing with the various objectives of PSD2 and finding the right balance between various competing demands in the draft RTS. They opined that a workable solution should be found, ensuring a high level of security while being sufficiently flexible and allowing exceptions in areas without big security concerns, for which an agreement should be sought from the Commission to ensure that this could be done via the RTS.

24.In view of the sensitive nature of some of the issues addressed in the draft RTS, the MB considered that it would be positive if the EBA and the Commission could share a same position in order to facilitate a smoother discussion with MEPs during the ECON scrutiny slot.

### Conclusion

25.The MB agreed to request from the Commission a delay for the submission of the final draft RTS so that the BoS could discuss and approve them at its meeting on 14-15 February 2017.

## Agenda item 9.: Follow-up to the Joint Committee's discussion on Self-placement

26.The Chairperson presented a note (document EBA MB 2016 088) seeking the MB views on whether the EBA should take a more active role to address the issue of self-placements by credit institutions, in particular with regard to Additional Tier 1 and Tier 2 capital instruments, as well as other debt instruments eligible for the purpose of the Minimum Requirements for Own Funds and Eligible Liabilities (MREL) under the BRRD placed with retail investors, and how the issue should be taken forward considering its relevance in the context of resolvability assessments and decisions on MREL. He proposed a joint task force with ESMA, given their consumer protection role on the distribution of financial instruments to investors on securities markets, with the aim of producing a paper addressed to resolution authorities, institutions and customers.

27. Members agreed that it was important for the EBA to become active on this issue given the relevance of banking distribution of debt financing instruments to retail investors under the BRRD framework, and in particular in the context of legacy instruments. They also agreed that it was crucial that any action should be taken jointly with ESMA.

### Conclusion

28. The EBA would liaise with ESMA and keep informed the MB of the agreed way forward and scope of the joint project work.

## Agenda item 10.: Information on the meetings of the EBA Chairperson with MEPs

29. The Chairperson informed of the meetings he had recently held with members of the European Parliament (MEPs), during which he had noticed that the tone of support to the EBA seemed to be changing. He noted for instance that MEPs were becoming more vocal against own-initiative guidelines, who considered that the ESAs were going beyond their legal mandate. The Chairperson had explained to them however that such own-initiative guidelines intended to deepen in the ongoing process of supervisory convergence, a general mandate of the EBA. One member agreed that it was necessary to improve the communication and explain very clearly the objectives of such own-initiative guidelines.

30. The Chairperson had also discussed with MEPs the possible relocation of the EBA premises following the result of the UK referendum on EU membership of 23 June 2016. He had conveyed to MEPs the need to reduce the uncertainty to EBA staff by ensuring a sufficient long transition period to facilitate the relocation of staff and their families, as well as to minimise the disruption to the EBA's normal functioning. Given the existence of other precedents, the Executive Director stressed the need to properly manage expectations and plan ahead to minimise possible disruptions.

## Agenda item 11.: Provisional agenda for the BoS 06-07 December 2016 meeting

31. The MB invited the Chairperson to deal by written procedure with some of the topics proposed in the provisional agenda for the BoS meeting of 06-07 December 2016 (document EBA BS 2016 357).

## Agenda item 12.: Meetings of the Management Board in 2017

32. The MB requested to move the BoS meeting scheduled on 20 September 2017 to another date given that it would clash with the meeting of the ECB's Supervisory Board of 19-20 September.

## Agenda item 13.: AoB

- Update to the EBA Policy on Reimbursement of Representation Expenses

33.The MB approved a revised version of the EBA Policy on reimbursement of representation expenses (document EBA MB 2016 082).

- Replacement of Alternate Chairperson for BUL cases

34.The MB approved the appointment of Édouard Fernández-Bollo to deal with breach of Union law cases where the alternate Chairperson should abstain due to the presence of a conflict of interests.

**END OF MEETING**

**Andrea Enria**

**Chairperson**

## Participants at the Management Board meeting

10 November 2016

<b>Chairperson</b>	Andrea Enria
<b>Alternate Chairperson</b>	Pedro Duarte Neves

<b><u>Country</u></b>	<b><u>Member/Alternate</u></b>
Czech Republic	Zuzana Silberová
Denmark	Jesper Berg
France	Frédéric Visnovsky
Italy	Luigi Federico Signorini
Poland	Andrzej Reich
Spain	Fernando Vargas Bahamonde

<b><u>EU Institution</u></b>	<b><u>Representative</u></b>
European Commission	Dominique Thienpont

### **EBA Staff**

Executive Director	Adam Farkas
Director of Operations	Peter Mihalik
Director of Regulation	Isabelle Vaillant

Mario Quaglariello; Slavka Eley; Philippe Allard; Jonathan Overett Somnier; Gaetano Chionsini; Nicola Yiannoulis; Ester Botica Alonso; Santiago Barón Escámez