

Draft Minutes of the 14 March 2012 Meeting of the Management Board¹

Opening and approval of the minutes and agenda

1. The minutes (EBA MB 2012 010 and EBA MB 2012 012) and agenda were approved.

Proposed common ESA Rules of Procedure ESA: Rules of Procedure on Mediation

2. On the basis of the preliminary version of the Rules of Procedure (RoP) discussed at the previous meeting of the MB, a new version of the draft RoPs was presented to the MB. The Chairperson introduced the main points to be discussed: the structure of the Panel (whether permanent or ad hoc on a case by case); the possibility for the Panel to have discretion on whether accepting requests for mediation; whether or not the MB should be involved in the EBA decision to trigger mediation on its own initiative; the possibility to issue an opinion at the conclusion of the non binding mediation, and its possible publication.
3. On issues about consensus, the following main points were concluded:
 - Preference for the Panel being permanent and submitting the decision on compliance to the BoS;
 - Support for the ESAs' staff to act as a Rapporteur;
 - For the ESAs' staff to assess whether they could propose some text for the RoP on the admissible criteria for accepting a mediation, under Article 19 of the EBA Regulation, having regard to minimise potential misuse of the process.
4. Furthermore, one member noted that any supplementary rules would need to be approved.
5. The draft RoP are to be tabled for discussion at the next BoS meeting of 3-4 April 2012; then be presented to the Joint Committee and eventually, to a following BoS for approval.

Stress test

[...]

Update on Recapitalisation Exercise

6. The MB was updated on the progress in reviewing the 28 capital plans submitted by NSAs. The EBA is concerned on individual capital plans, in particular, for five banks from two countries where the plans appear to still be in the early draft phase. These will be brought for discussion at the BoS meeting of 3-4 April 2012.

¹ Please note that these minutes include information which the EBA cannot disclose under its Access to Documents regime due to (i) the public interest as regards the financial, monetary & economic policy of the EU; and (ii) its own, and the Council's, internal consultations and deliberations in order to safeguard their ability to carry out their tasks.

7. Otherwise, the process is going well. Communication about the supervisors' views on the plan has been relatively positive. An aggregate assessment will be presented during the meeting of the BoS in April 2012. The final assessment will take place in September 2012.

Update on EBA's follow-up to unilateral sustainability/financial stability measures

[...]

Proposal for Board of Appeal remuneration

8. At the ESA Board of Appeal (BoA) meeting of 14 December 2011, two main subjects were discussed: Remuneration and its draft RoP. The conclusion was that the remuneration ceiling in terms of days was potentially limiting, and the amount per diem fairly low. The Joint Committee (JC) did not support the proposal of the BoA to change the costs to the parties of the appeal, also because this would need a change to the Regulation establishing the EBA. A fixed remuneration should instead be defined and the same policy followed for the BSG should be applied for travel expenses.
9. At its meeting of 22 February 2012, the remuneration policies of other EU agencies with a BoA were examined by the JC. It was noted that there is no uniform practice within the EU Agencies nor guidelines in this regard. The JC proposed to increase the remuneration and stressed that the new framework is generous in comparison to other EU Agencies' practices in this respect. The MB agreed with the suggested remuneration framework.

Issues relating to the terminology and timing of EBA Guidelines; Translation of Guidelines

10. The opinion of the MB was requested on the following points:
 - the use of "Shall" in drafting Guidelines/Recommendations
 - Translation
 - Implementation and compliance dates
11. Concerning the use of "Shall", the MB's view was that the EBA should have an aligned policy with the other ESAs on the use of "Shall" and "Should", with a slight preference for the use of "Should". It was also noted that the use of "Shall" in Guidelines and Recommendations does not affect the legal quality of the text.
12. Regarding translation, the need to translate Guidelines/Recommendations in all official languages of the EU was discussed. It was noted that the ESMA and the EIOPA have both confirmed their intention to translate guidelines/recommendations in all official languages of the EU, having had regard to an opinion provided by the EC's Legal Service, amongst others. Based on this, the MB was of the opinion that Guidelines and Recommendations should be translated to all the official languages of the EU. For any other EBA document, English should be sufficient.
13. On implementation and compliance dates, the Board discussed whether the deadline for implementation by the NSAs should be the same date as the deadline for the NSAs to confirm compliance to the EBA, which has a 2 months timeline

required under Article 16 of the EBA Regulation. The MB proposed flexibility on a case by case basis as to the determination of the date of application and the date by when implementation is sought, although there should be indicative guidance to assist in the setting of such dates. The MB suggested that such guidance could be that the implementation timeline be limited to a maximum of 6 months following the date of publication, and that its exact duration be defined in the text of the Guideline/Recommendation, subject to the EBA BoS approval. In the case of a Guideline only applicable to banks, or to banks and NSAs, the application date should be linked to the date that the Guideline/Recommendation is publicly available in all EU official languages. Whereas if the Guideline is to be directed to NSAs only, there is no need that the date of application date be limited to its translation date.

Administrative and Operational Status Report

14. The Director of Operations presented the budget execution from 1 January until 2 March 2013. The main objective for this year is to improve the execution compared to last year. He confirmed that the level of execution for this year will be better than that of last year. On payment workflow, he noted that there has been an increase in an average duration of payments caused by the backlog generated during the unavailability of ABAC and missing/incomplete supporting documents for a number of invoices. Nevertheless, it was underlined that in the next coming months the trend will be back to the average duration of the second half of last year. With regard to the reimbursement of missions, he stated that the average time for the reimbursement of missions has been reduced from 38.7 days to 31.3 days.
15. In terms of procurement, a significant improvement has been made. EBA staff involved in the procurement of goods and services are well aware of following the proper EU procurement rules and to limit the exceptions. The procurement situation of the agency will be addressed in the report of the Court of Auditors for 2012. One of their findings is that the EBA did not fully comply with the procurement rules of the EU at the beginning of 2011. The final report from the Court of Auditors will be presented to the MB. To be in line with the EU procurement rules, and for transparency reasons, a procurement plan for 2012-2013 has been drafted and updated.
16. The need for the recruitment of Second National Experts (SNEs) in the coming months was stressed by the Director of Regulations. The assignment of the SNEs should be no longer than two weeks. Priority will be given to this request.
17. As far as communication is concerned, special effort has been made to establish better communication between the EBA and national press officers on the implementation process of CRD IV. The Director of Operations informed the MB of the meeting taking place in June with the national press officers network to ensure effective cooperation and that key messages are conveyed to the national press in a consistent and accurate way.

Update on EBA budget surplus of 2011 and Draft Preliminary Budget for 2013

[...]
A.O.B.

- a) MB Mission statement: The MB endorsed the document.
- b) Draft BoS Agenda: The draft agenda for the BoS meeting of 3-4 April 2012 was submitted to the MB for information. As regards CRD4 CRR, the EBA was asked by the MB to select a number of topics to be discussed at the BoS meeting. The MB agreed with the draft BoS agenda subject to some minor amendments.
- c) BoS Away Day - Oral Update: it was noted that a BoS Awayday was planned to be scheduled before the summer break. This meeting should provide a great opportunity to discuss some supervisory issues such as the lessons learned from the crisis and the role to be played by the EBA in the near future. The MB was invited to provide input for discussion for the above mentioned meeting.
- d) The Alternate Chairperson explained that the First Review Panel Meeting was convened.

Andrea Enria
Chairperson

List of Participants

Andrea Enria	Chairperson
Matthew Elderfield	Alternate Chairperson
Frédéric Visnovsky	MB alternate member for Danièle Nouy
Karoly Szasz	MB member
David Rozumek	MB member
Anderson Martin	MB member
Marja Nykanen	MB alternate member for Jukka Vesala
Peter Lutz	MB Alternate for Raimund Roseler
Dominique Thienpont	European Commission
Adam Farkas	Executive Director
Isabelle Vaillant	Director Regulation
Piers Haben	Director Oversight
Peter Mihalik	Director Operations
Corinne Kaufman	Head of Unit - Policy Coordination and Analysis
Patricia Juanes Burgos	EBA Staff - Legal
Joseph Mifsud	EBA Staff – Legal