

EBA/DC/2020/314 (consolidated version)

EBA REGULAR USE



Decision of the European Banking Authority

of 22-01-2020

concerning rules of procedure for non-binding mediation between competent authorities

Amended by:

➤A1 EBA/DC/2021/418 rev1

03.12.2021

The Board of Supervisors

Having regard to Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC¹ (the ‘Regulation’ and ‘the EBA’), in particular Article 31(2)(c) thereof, according to which the EBA shall promote a coordinated Union response, inter alia, by carrying out non-binding mediation upon a request from the competent authorities or on its own initiative,

Having regard to Article 41(1) of the Regulation according to which the Board of Supervisors may establish internal committees or panels for specific tasks attributed to the Board of Supervisors, and may provide for the delegation of certain clearly defined tasks and decisions to internal committees or panels, to the Management Board or to the Chairperson,

Having regard to the Decision of the EBA adopting the Rules of procedure of the EBA’s Board of Supervisors (the “Rules of procedure of the Board of Supervisors”),

Having regard to the Decision of the EEA Joint Committee No 199/2016 of 30 September 2016 amending Annex IX (Financial services) to the EEA Agreement [2017/276].²

Whereas:

(1) The settlement of disagreements between competent authorities by the EBA in the form of non-binding mediation may be initiated upon the request by one or more competent

authorities in disagreement or on EBA's own initiative,

- (2) The competent authorities should have recourse to the process of non-binding mediation carried out by the EBA at an early stage of the process in the event of a disagreement. Such early EBA involvement should facilitate finding a resolution to the disagreement.
- (3) Cases concerning the settlement of disagreements between competent authorities should be examined primarily by the EBA Chairperson and in the absence of a settlement between the competent authorities by a restricted, objective panel. This shall consist of the Chairperson of the EBA and members or substitutes of the panel responsible for binding mediation, who neither are representatives of the competent authorities which are party to the disagreement nor have any interest in the conflict or direct links to the competent authorities concerned. The composition of the panel should be appropriately balanced.
- (4) In cases where a disagreement involves a competent authority from an EFTA State, the process of settlement has to take into account the role of EFTA Surveillance Authority and EFTA States competent authorities as stipulated by Decision of the EEA Joint Committee No 199/2016.
- (5) The Regulation has been amended by Regulation (EU) 2175/2019¹ in a number of respects relating to the settlement of disagreements and it is therefore necessary to update the EBA's framework in this area. The existing rules of procedure for non-binding mediation should therefore be replaced by this decision which should take effect immediately.

Has decided as follows:

Article 1 – Non-binding mediation

These Rules of Procedure regulate the impartial settlement of disagreements between competent authorities pursuant to Article 31(2)(c) of the Regulation.

Article 2 – Procedure for the non-binding mediation

1. The EBA may be asked to assist in the settlement of a disagreement pursuant to Article 31(2)(c) of the Regulation by a competent authority which is a party to the disagreement by filing a request with the EBA. The Chairperson of the EBA (the "Chairperson") shall refuse requests which he/she considers are unsubstantiated, abusive or outside the scope of Article 31(2)(c) of the Regulation. The EBA shall inform the parties of its decision without delay.
2. Where the Chairperson on the EBA's own initiative proposes to settle a disagreement pursuant to Article 31(2)(c) of the Regulation, the Chairperson shall inform the Vice-Chairperson. The Vice-Chairperson shall inform the Chairperson without delay of his/her objections for the involvement of the EBA in the settlement of a disagreement between competent authorities on EBA's own initiative. Where the Vice-Chairperson objects, the Chairperson shall consult the

¹ OJ L 334, 27.12.2019, p. 1-145

members of the panel referred to in paragraph 6 and considers their views before taking a decision.

3. The Chairperson shall set a time-limit for the settlement of a disagreement pursuant to Article 31(2)(c) taking into account any relevant time periods stipulated by Union acts referred to in Article 1(2) of the Regulation and the complexity and urgency of the matter.
4. The Chairperson shall act as a mediator and facilitate an agreement among the parties during the non-binding mediation. For this purpose the parties may be required to provide the relevant information and to participate in meetings. The Chairperson shall, with the agreement of the parties, inform the Board of Supervisors and the panel referred to in paragraph 6 on developments during the non-binding mediation.
5. The Chairperson may on his/her own initiative or following a request by one of the parties, propose the appointment of another individuals to act as mediator in his/her place for the purpose of settling the dispute pursuant to paragraph 4. The appointment of such mediator, and the identity of that mediator, shall be subject to the agreement of the parties and of the Chairperson.

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6. In the absence of a settlement of the disagreement between the competent authorities the Chairperson shall propose the composition of a panel following the approach under Article 41(3) of the Regulation (“the Panel”). Article 2 of Decision EBA/DC/313 of 22 January 2020 concerning rules of procedure for the settlement of disagreements between competent authorities shall apply in relation to the Panel.

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7. The Panel may summon the parties and, when appropriate, other relevant experts, for their testimony.
8. In the absence of a settlement of the disagreement between the competent authorities the Panel may provide the parties with its informal view on the case itself. If the parties to the disagreement fail to settle their disagreement following the informal view of the Panel, the Panel shall:
 - a) report back to the Board of Supervisors; and
 - b) consider whether to propose an opinion or recommendation to the Board of Supervisors.
9. Before proposing the opinion or recommendation pursuant to Article 2.8 (b), the Panel shall inform the parties of its intention, setting a time limit within which the parties may express their views on the matter. The time limit shall take full account of the urgency, complexity and potential consequences of the matter.

10. The Panel shall propose the opinion or recommendation for final adoption by the Board of Supervisors. The proposed opinion or recommendation shall include:

- a) the identity of the addressees;
- b) the opinion and the reasons on which it is based; and
- c) where appropriate, the deadline by which the addressees should take, or cease taking, any action proposed.

11. The proposed opinion or recommendation shall be accompanied by materials setting out the views expressed by the parties on the proposal, and by the Panel's opinion whether publication would be in conflict with the legitimate interests of financial institutions in the protection of their business secrets, or could seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system of the Union.

12. The Panel may make such other recommendations to the Board of Supervisors as it considers appropriate.

13. Decisions of the Panel shall be taken where at least four members of the Panel vote in favour of the proposed decision.

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14. Members of EBA bodies responsible for preparing decisions for the Board of Supervisors as part of the non-binding mediation shall act independently and objectively in the sole interest of the Union as a whole when doing so.

15. The proceedings of bodies referred to in paragraph 14 and of the Board of Supervisors shall be secret pending the non-binding mediation. Members of the Board of Supervisors and of such bodies shall not divulge information concerning the settlement process or discuss it with any person outside those participating in the non-binding mediation in the Board of Supervisors or such body, except staff of a competent authority on a need-to-know basis for the specific purpose of receiving advice in relation to the settlement process.

16. No other persons shall interfere in the work of the Board of Supervisors or of a body referred to in paragraph 14 or shall influence its members, except in accordance with the non-binding mediation process.

17. The members of the Board of Supervisors and of a body referred to in paragraph 14 shall report to the Chairperson, without undue delay, any attempt to influence them in the performance of their tasks relating to the non-binding mediation.

18. The Chairperson shall take any appropriate action to ensure the independence of the Board of Supervisors and of a body referred to in paragraph 14.



Article 3 – Non-binding mediation involving competent authorities of EFTA State

This decision shall apply for the non-binding mediation of a disagreement where at least one of the parties to the disagreement is a competent authority of an EFTA State, with the following modifications:

- a) a reference to Union acts shall apply to the extent that those acts are incorporated into the EEA Agreement and taking into account any adaptations made;
- b) a competent authority of an EFTA State shall submit a request for non-binding mediation to the EFTA Surveillance Authority, which shall without delay forward such request to the EBA accompanied by information regarding the relevant legal requirements of Union acts as incorporated into the EEA;
- c) the Chairperson shall inform the EFTA Surveillance Authority without delay on request for non-binding mediation made by competent authorities of Member States which involves competent authorities of EFTA States;
- d) for the purposes of Article 2(9), the Chairperson shall inform the EFTA Surveillance Authority that it intends to propose an opinion or recommendation pursuant to Article 2(8);
- e) the Rules of Procedure of the European Banking Authority Board of Supervisors, in particular Article 4, shall apply for adopting opinions or recommendations in accordance with Article 2(8)(b).

Article 4 – Monitoring and compliance

The Chairperson shall take any necessary steps to monitor whether the parties comply with the agreements concluded during the non-binding mediation and report regularly to the Board of Supervisors.

Article 5 – Supplementary provisions

Articles 4, 6, 9, 10(1) and 10(2) of the Decision of the European Banking Authority adopting the Rules of Procedure for the settlement of disagreements between competent authorities (EBA/DC/2020/314) shall apply in relation to the tasks of the EBA and of the Panel established by this Decision.

Article 6 – Entry into force

Decision EBA/DC/2014/093 Rev (1) is repealed and replaced by this decision. This decision shall enter into force immediately.

José Manuel Campa

Chairperson

For the Board of Supervisors