



EBA/Op/2020/13

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PUBLIC

# Opinion of the European Banking Authority on the 2018 discharge report of the European Parliament

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## Introduction and legal basis

Article 64 of the EBA Regulation<sup>1</sup> sets out arrangements for the implementation and control of EBA's budget. Based on Article 64(11) EBA Regulation<sup>2</sup>, the Authority shall provide a reasoned opinion on the position and on any other observations of the European Parliament (EP) during the discharge procedure. Article 105(1) of the European Banking Authority (EBA) Financial Regulation<sup>3</sup> states that the European Parliament (EP), upon recommendation from the Council, shall, before 15 May of year N+2 where otherwise provided in the constituent act, give a discharge to the Executive Director for the implementation of the budget for year N.

Article 107 of the Financial Regulation also states that the Executive Director shall take all appropriate steps to act on the observations accompanying the EP's discharge decision and on the comments accompanying the recommendation for discharge adopted by the Council.

This EBA opinion, approved by its Board of Supervisors, provides the formal response to the observations made in the 2018 Discharge Report of the EP.

## General comments

The EBA welcomes the feedback received during the discharge process which is as an essential exercise for the evaluation of the Authority's performance. It provides an external point of view to the actions undertaken by the Authority during the year 2018 as well as current practices.

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<sup>1</sup> [Regulation 1093/2010](#) (link)

<sup>2</sup> 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/EC (OJ L 331, 15.12.2010, p. 12).

<https://eur-lex.europa.eu/eli/reg/2010/1093/>

<sup>3</sup> <https://eba.europa.eu/sites/default/documents/files/documents/10180/15784/fe13ff98-3990-42a7-84d1-9fd96e46144f/EBA%20Financial%20Regulation%202019.pdf>

The EBA has provided preliminary feedback to the Parliament's observations during the ongoing discharge process. In addition to what was communicated, the EBA welcomes this opportunity to provide further comments and response to the final remarks in the 2018 Discharge Report.

## EBA comments to the observations of the EP

The EBA takes note of all observations provided by the EP and provides a response to the following:

### Performance

1. In relation to the EP's observation on the EBA's work on dividend arbitrage schemes, so called *Cum ex* or *Cum-Cum*, the EBA reports on the publication on 12 May 2020, of the results of its inquiry into dividend arbitrage schemes. The report (EBA/REP/2020/15)<sup>4</sup> looks into the actions of prudential and anti-money laundering (AML) and countering the financing of terrorism (CFT) supervisors in dealing with such schemes. It sets out the EBA's expectations of credit institutions and national authorities under the current regulatory framework. In addition to that, the EBA also decided on a 10-point action plan for 2020/21 to enhance the future framework of prudential and anti-money laundering requirements covering such schemes<sup>5</sup>.
2. Regarding the EBA's work on AML matters, the EBA welcomes the EP support to increase human capacity and material resources to contribute effectively to the consistent and efficient prevention of the use of the financial system for the purposes of money laundering and the financing of terrorism.
3. The EBA is cognisant that the EP considers that Authority and ESMA missed opportunity for economies of scale and efficiency gains when they stopped the joint procurement procedure for the renting of office space in Paris. As elaborated during the 2018 discharge process, ESMA and EBA explored and assessed possible synergies of selecting the same building for their respective move/relocation. Subsequently, EBA and ESMA did a joint market prospecting and none of the suitable buildings identified as available at a time provided more favourable financial terms for joint occupancy compared to a single occupancy. Albeit joint procurement of office space was not possible on this occasion, mainly due to a hard deadline for the relocation imposed on EBA and thus incompatible timelines between EBA and ESMA, EBA continues to participate in on-going procurement procedures with ESMA and other agencies whenever possible. Recent procurement initiatives with the other ESAs recently agreed or under discussion are: legal services, interim staff services, language training services, medical services, and proof-reading and editing services.
4. The EBA confirms its commitment to enhance proportionality. Following the entry into force of the revised EBA Founding Regulation, the EBA was required to establish a Proportionality

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<sup>4</sup> [EBA Report on Competent Authorities' approaches to tackling market integrity risks associated with dividend arbitrage trading schemes, April 2020 \(EBA/Rep/2020/15\). \(link\)](#)

<sup>5</sup> [EBA Action plan on dividend arbitrage trading schemes \("Cum/Cum-Cum"\), April 2020 \(link\).](#)

Committee according to Article 1(6). Such Advisory Proportionality Committee (ACP) has been established and will oversee how the principle of proportionality is being fostered at the EBA. The EBA, through the ACP, is currently concentrating on establishing a methodology and process on how to provide input to the EBA's annual work programme.

5. In relation to the need to reduce supervisory reporting burden for small and non-complex institutions, the EBA works on how to measure the costs that institutions incur when complying with the supervisory reporting requirements, and in particular with those set out in the EBA's ITS on Supervisory Reporting as mandated by Article 430(8) of the CRR. The EBA started to assess whether these reporting costs are proportionate compared to the benefits delivered for the purposes of prudential supervision and make recommendations on how to reduce the reporting cost at least for small and non-complex institutions. The findings from this analysis should be formulated in a report ("cost of compliance study") and delivered to the European Commission. This project was initially foreseen for December 2020, however, due to impediments deriving from the outbreak of COVID-19, the EBA will only be able to deliver it in the first half of 2021.

### Staff policy

6. In relation to the Parliament's concerns regarding gender balance, the Authority will be working with its new Executive Director to reinforce gender, diversity and inclusion measures at the EBA.
7. The EBA is aware of the Court's report<sup>6</sup> where it is outlined that one of the main obligations resulting from Directive 2008/104/EC of the European Parliament and of the Council<sup>7</sup> and UK labour law is that interim workers must work under the same working conditions as workers employed directly by the user undertaking, that being the EBA. Further to what was previously communicated, the EBA has recently joined ESMA in a procurement for interim staff. The EBA will ensure that it analyses the working conditions of any interim staff that it uses to ensure that they are in line with Union and national labour law. In the context of the Paris relocation, the EBA has joined ESMA in 2018 in a procurement for ICT professional services to replace its London practice of using temporary workers. As such, EBA has stopped using directly interim IT staff via an intermediary, and is currently contracting IT services from IT vendors that are using their own resources for service delivery. All contracts now implementing the ESMA FWC for ICT professional services are compliant with EU and national labour law. In addition, the EBA has nearly finalised the establishment of a due diligence process to continuously check (and keep an register of evidence) that its IT Vendors meet their own obligation under EU and national law, especially with regards to posted workers, in order to mitigate any respective risks.

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<sup>6</sup> [https://www.eca.europa.eu/Lists/ECADocuments/AGENCIES\\_2018/AGENCIES\\_2018\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/AGENCIES_2018/AGENCIES_2018_EN.pdf)

<sup>7</sup> Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9).

## Prevention and management of conflicts of interests and transparency

8. Following the entry into force of the new ESAs regulation, the EBA will be taking several measures to enhance the prevention and management of conflict of interest. Examples of these measures are: fortnightly publishing external meetings for senior management and quarterly for all staff; application of a new Conflict of Interest Rules for BoS Members and Members of the AML and Resolution committees where e.g. no vote will be allowed if the attendee is conflicted; etc.
9. Concerning the comments made regarding preventing post-public employment conflicts of interest, the EBA concurs on the need to ensure confidence in the system of financial supervision and in supervisory bodies. The EBA has contributed fully to an Ombudsman enquiry into the EBA's decision-making concerning the appointment of the EBA's former Executive Director as chief executive of AFME. In making two findings of maladministration, the EBA accepts that the Ombudsman has reached a different conclusion on the appropriate measures that the EBA should have taken when taking its decision, notwithstanding the extensive set of restrictions adopted by the EBA together with comprehensive measures designed to monitor compliance with those restrictions.
10. The Ombudsman has adopted three recommendations, which the EBA is in the course of implementing. In relation to invoking the option of forbidding its senior staff from taking up certain positions, the EBA has adopted a decision prohibiting the former Executive Director from taking up, in connection with his role as chief executive of AFME, a position as a non-executive director of TheCityUK Limited, an industry body representing UK-based financial and related professional services. The EBA has also strengthened its internal policy and in particular the criteria applied to its staff in order to clarify when it will forbid moves to new posts outside the EBA. The updated policy is based on the applicable legal framework, in particular the requirements of Article 16 of the Staff Regulations and Article 21 of Commission Decision C(2018) 4048 final. The EBA has also put in place a process for immediately removing access to confidential information once it is known that a member of staff is moving to another job that raises potential conflicts of interest.

## Internal controls

11. Following the EP's request to provide further information on the developments following the Commission's Internal Audit Service audit report in 2018 on *The Single Rulebook - Questions & Answers*, the EBA hereby informs of measures taken in close cooperation with Competent Authorities in order to reduce the backlog of answers. There was a reduction of the backlog from 670 in March 2018 to 360 by the end of 2019. Moreover, the internal process description of the Single Rulebook Q&A process was updated in October 2018. It now takes into account, besides purely administrative aspects, the steps for decision making, the involvement and interaction with policy experts, the Q&A Networks, EBA substructures, governing bodies and, when applicable, external stakeholders. More exhaustive information is provided annexed to this Opinion.

## Other Comments

12. The EBA concurs with the EP on the importance of sustainability. In this regard, the EBA defined a respective multi-annual priority in its Single Programming Document 2021. Sustainable finance and the incorporation of ESG factors will be a core part of the EBA's work going forward, as already shown in our current guidelines on loan origination. The EBA will work towards ensuring that financial institutions' strategy, governance and risk management incorporate ESG factors. Over time, the EBA will gather evidence to assess whether or not a dedicated prudential treatment of exposures related to assets or activities associated substantially with environmental and/or social objectives would be justified. In light of the above, the EBA allocated an additional 2 FTEs into this activity in 2020.
13. Moreover, the EBA as an authority, in reply to the European Court of Auditors' recommendation of full implementation of European eco-management and audit scheme (EMAS) by all EU institutions and bodies, as from January 2020 the EBA has started working to achieve its EMAS registration.
14. The EBA also notes the EP's suggestion of carrying out an audit on the efficiency and cost-effectiveness of the Authority's relocation to Paris in order to identify best practices and address areas for improvement. Should the Court decide to conduct such an audit, the EBA stands ready to assist so that the results may be of maximum utility for the future. We consider it worth noting that the EU agencies Network of Procurement Officers (NAPO) has recently opened discussions on lessons learned with agencies that have moved offices in the past couple of years, with a view to sharing such lessons among the agencies network.

This opinion will be published on the EBA's website.

Done at Paris, 3 September 2020

[Signed]

José Manuel Campa

Chairperson  
For the Board of Supervisors

## Annex

We have included hereafter an excerpt from the Follow-up of outstanding recommendations from past audits by the Internal Audit Service of the European Banking Authority – Note on audit conclusions (from October 2019) covering the Audit on the Single Rulebook – Questions & answers.

### Excerpt of IAS follow-up (October 2019):

#### Recommendation No 1 (important): Reducing the backlog of open Q&A on supervisory reporting and expanding the reporting on all Q&A

An action plan of 19 February 2019 approved by the EBA Board of Supervisors sets out a course of action to address the backlog of open Q&A on supervisory reporting. In the short term, the plan aimed at reducing the backlog by rejecting open Q&A already identified as belonging to ‘category 3’ (questions considered either redundant, outside the scope of the tool, or not meeting the qualitative submission criteria). In the medium term, the EBA planned to group open Q&A classified in ‘category 2’ (questions to be addressed by the Q&A networks with EBA staff as members) in clusters, reducing review and drafting processes. In the long term, the EBA planned to streamline the whole Q&A process. Similar proposals for streamlining and automation has been made by the EBA Q&A team (Issues Note on the Q&A Environment from 10 October 2017) and in the draft report of the Q&A implementation review from February 2019.

As part of the plan, the EBA launched in March 2019 a call for expression of interest among the National Competent Authorities to mobilise experts on supervisory reporting to support temporarily the EBA Standing Committees in addressing open Q&A. Furthermore, the Authority planned to reinforce the Q&A Team by recruiting an expert in supervisory reporting, initiated in March 2019.

A table prepared by the EBA shows that the number of open Q&A on supervisory reporting dropped from 670 to 536 between 1 March 2018 and 31 December 2018. By August 2019 the backlog had decreased to 460 as shown by the Progress report on the Single Rulebook Q&A process from 19 September 2019 addressed to the EBA Board of Supervisors (EBA BS 2019 369). According to the Q&A Team, rejecting the Q&A currently in ‘category 3’ will further reduce the backlog to 400.

Finally, the Q&A Team reported in September 2019 that for more than 120 Q&A in ‘category 2’ answers had been drafted. These will be published successively during the rest of the year 2019, which should bring down the backlog of open Q&A on supervisory reporting to around 300.

Overall, the reduction of the backlog from 670 in March 2018 to the expected 300 by the end of 2019 represents a significant positive development. It reduces the risks related to this backlog, which becomes easier to control and manage. Also, in parallel the Authority updated and expanded the Single Rulebook following revised and new legislative acts, which required updating many existing Q&A. Finally, the efforts to reduce the backlog largely coincided with the EBA and its staff relocating its official seat from London to Paris.

Reporting on Q&A is now consolidated into an overall progress report on the Single Rulebook Q&A process, which provides a state of play of all Q&A, both the regular/policy ones and the those related to supervisory reporting (common and financial). The report includes information of the evolution of the backlog of Q&A on supervisory reporting. It is submitted to the EBA Board of Supervisors for its statutory meetings.

Further to the IAS follow-up, it is clarified that the actual backlog for Reporting Q&A at the end of 2019 stood at 360 Q&A, which is only slightly higher than the anticipated amount.

### **Recommendation No 2 (important): Action plan to reduce the administrative workload related to the Q&A process**

The Issues Note on the Q&A Environment from 10 October 2017 prepared by the Q&A Team continues to serve as the basis for the actions planned for optimising the Q&A process. This includes providing a more integrated and automated solution to be able to combine and link updates of the Q&A tool with the interactive Single Rulebook and the internal records of the Authority (including the document management system EDEN).

The planned actions can however not be finalised until their adjustment that takes into account the results of the Q&A implementation review of which the final report was issued in August 2019. This review covered how the EU banking supervisors and the banking sector use the Single Rulebook Q&A as part of the interactive Single Rulebook in practise and how they perceive its usefulness and implementation.

Furthermore, the action plans and the timeline for their implementation will need to take into account how the interactive Single Rulebook is evolving as new and/or updated legislative acts and EBA guidelines are successively added to it. Also the ongoing revision of the European Supervisory Authorities Regulation may have an impact on this.

Given the above elements, the IAS considers that the ongoing actions sufficiently mitigate the related risks and therefore the recommendation can be closed.

### **Recommendation No 3 (important): Updating the internal process description on the Q&A process**

The internal process description of the Single Rulebook Q&A process was updated in October 2018. It now takes into account, besides purely administrative aspects, the steps for decision making, the involvement and interaction with policy experts, the Q&A Networks, EBA substructures, governing bodies and, when applicable, external stakeholders. The process itself applies to all level one and two legislative acts the interactive Single Rulebook currently covers as well as the EBA guidelines included in the Single Rulebook. The description will need further updating following the outcome of the Q&A implementation review as outlined for recommendation No 2 above.

All recommendations issued as a result of this audit have now been closed.