

EBA/Op/2021/09

17 September 2021

PUBLIC

Opinion of the European Banking Authority on the 2019 discharge report of the European Parliament

Introduction and legal basis

Article 64 of the European Banking Authority (EBA) Regulation¹ sets out arrangements for the implementation and control of EBA's budget. Based on Article 64(11) EBA Regulation², 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 EBA Financial Regulation³ 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.

The EBA thus prepared this opinion to provide a formal response to the observations made by the Parliament during the 2019 discharge process. This opinion has been approved by the EBA Board on Supervisors on 16 September 2021.

General comments

The Authority welcomes the approval by the EP of the closure of EBA accounts for the financial year 2019 and the decision of the EP to grant EBA's Executive Director discharge in respect of the implementation of budget for the said financial year.

¹ Regulation 1093/2010

² 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/>

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

Equally, 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 as well as current practices.

As requested by the Parliament, the EBA hereby provides its response to the observations received from the Parliament's resolution in the requested tabular format ⁴.

⁴ Containing: i) the EP's observations, and ii) the EBA response and measures taken, highlighted following a color code (Green: Implemented; Orange: Ongoing; Grey: For information/No action required)

EBA comments to the observations of the EP

PAR	OBSERVATIONS EP	EBA COMMENTS
<i>Budget and financial management</i>		
1	Notes with concern that the budget monitoring efforts during the financial year 2019 resulted in a budget implementation rate of 97,29 %, representing a decrease of 2,56 % compared to 2018; notes with concern that the rate of execution of payment appropriations was 85,88 %, representing a decrease of 2,35 % compared to the previous year.	The EBA welcomes the recognition by the Parliament of the challenges faced by the Authority when changing its seat to Paris⁵. Whilst still fulfilling its mandate, the EBA successfully settled in its new premises, moved its data centre from the UK to the EU, supported the relocation of its entire staff, and established contractual arrangements with a range of new providers. This created a significant amount of uncertainty in budget planning; nevertheless, the target 95% for implementation of the budget was achieved. It is recalled that the initial budget for 2019 was of EUR 47 819 900, reduced in December 2019 by EUR 2 493 000 through an amending budget, resulting in a final budget of EUR 45 326 900⁶. On the revenue side, this amendment affected only the EU subsidy. The Authority considers that its budget execution rate was very high under the circumstances and is pleased to convey that for the 2020 budget year, which also had its own significant uncertainties arising from the COVID-19 pandemic, the budget execution rate is of 99.2 % on commitment appropriations and of 91.1 % on payment appropriations.
2	Notes the emphasis of matter paragraph in the Court's report about a provision of EUR 10,1 million related to the lease	The three provisions relating to the break of the London premises have been fully reversed (i.e. not needed) by the end of 2020. The final costs have been

⁵ See paragraph 7.

⁶ The amending budget was driven mainly by the delay adoption of the ESA review legislation.

PAR	OBSERVATIONS EP	EBA COMMENTS
	agreement of the Authority's London office; notes that, in particular, part of the provision concerns the reinstatement costs of the London office in its original state, which amounts to EUR 3,4 million.	lower than estimated due mostly to 1) more beneficial deals were reached with the landlord than the ones expected at the time of providing and 2) the exchange rate EUR/GBP was more favourable at the time of the payment than at the time the provisions were estimated. The actual amount paid has been 8.8 MEUR.
3	Notes with concern the Court's observation that the amended 2019 budget and the 2020 budget of the Authority do not contain adequate information on the new host Member State's contributions to the Authority's running costs; calls on the Authority to correct this omission or to diligently communicate the reasons for this omission to the discharge authority;	The EBA notes the concern around the limited information on the French government contribution to the EBA's running costs. This information has been complemented in the EBA's recent budget publications in the Official Journal and the EBA will endeavour that this contribution continues to be reported as such in future.
4	Is concerned that in contrast to the established budget, the contributions of EFTA Members' national competent authorities (NCAs) were not calculated according to the formula set out in that very same budget and thus reduced the payments of Union and EFTA NCAs by EUR 0,7 million; notes that the calculation of pension contributions needs further clarification; is aware that the calculation is an estimate and that it is subject to the composition of the staff during the year and to the possibility of making adjustments annually; calls on the Commission to ensure the receipt of missing payments.	The issue of the NCA payments error has been resolved in 2021 by amending the distribution of the 2019 surplus. This was documented in paragraph 6.5 of Amending Letter No 1 to the Draft General Budget 2021 (COM(2020) 748 final) . Regarding the pension issue, the EBA is working with the Commission on a means to resolve this going forward.
Performance		
5	Notes that the Authority uses certain measures as key performance indicators to assess the added value provided by its activities and also uses other measures to improve its budget management, such as percentage of completed yearly	

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	assessments of supervisory colleges, feedback on training from seminar participants and budget execution; welcomes the fact that the Authority's key performance indicators measure the entire scope of its activity and that they are adapted to following the performance of the annual and multi-annual objectives.	
6	Notes that the administrative staff of the Authority, of the European Securities and Markets Authority and of the European Insurance and Occupational Pensions Authority hold regular meetings to discuss matters of shared interest that have resulted in the sharing of practices and templates, with resultant efficiency gains; strongly encourages the Authority to continue its efforts to increase cooperation and exchange of good practices among decentralised agencies to improve efficiency, in particular in the areas of human resources, building management, IT services and security.	The EBA strives to reach the maximum degree of synergies and efficiency gains with its sister agencies, the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA), as well as other EU agencies. This implies regular meetings, knowledge and information sharing practices. In that context, the EBA has recently carried out some flagship projects: i) sharing of accounting services provision and accounting office role following the signature of an EBA-ESMA Service Level Agreement in April 2021, ii) EBA-EIOPA joint project streamlining the reporting framework development process, and iii) further coordination with other agencies through the EU agencies network. In the area of procurement, the EBA has been systematically inviting other agencies to their procurements and this resulted already in most procurements being interinstitutional.
7	Notes that in 2019 the Authority moved its seat from London to Paris and that associated activities, such as the migration to new data centres, the establishment of new relationships with providers and other tasks, were carried out throughout the year in addition to the obligations arising out of the Authority's mandate; acknowledges the challenges faced by the Authority	

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	in this process, such as loss of staff and know-how and the limited resources assigned to the relocation project.	
8	Acknowledges that for the Authority, 2019 was also characterised by the fundamental review of the tasks, powers and governance of the European Supervisory Authorities, resulting in the amendment of the Authority's founding regulation and the strengthening of the Authority's role in the fields of anti-money laundering, countering the financing of terrorism, consumer protection and relations with third countries.	
9	Acknowledges that the composition of the board of supervisors seems appropriate to deal with the Authority's rulemaking responsibilities, but less so for its supervisory roles; recalls, in this context, the Authority's new mandate in the fight against money laundering and terrorist financing.	
10	Calls on the Authority to improve and intensify its communication with the Member States; urges the Authority to improve and intensify its cooperation with the Member States and the Member States' national banks and commercial banking bodies.	The EBA engages on a regular basis with its network of National press offices keeping them informed of any major activity and publication, also sharing under embargo some specific communications and lines to take. We have increased our engagement with one of our key stakeholders such as banks and banking association through our social media activity, especially on LinkedIn, but also on Twitter. The communication team is currently assessing the recommendations of an updated stakeholder mapping to improve the communication content and channels with all its relevant stakeholders. The revised external communication strategy is expected to be finalised towards the end of 2021 or beginning of 2022.

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		Another key channel through which the EBA promotes its work is the Annual Report which is more and more informative, and this year has received a lot of positive feedback from different stakeholders, including our members.
11	Regrets that the Authority delivered only 19 out of 30 activities from its 2019 work programme; notes that the overview of policy achievements of the Authority regarding its 2019 work programme as presented in its annual activity report does not give a complete overview of the activities performed by the Authority, as the results of ongoing activities are not described; notes with concern that, of the activities described in its annual activity report, 17 out of 21 activities reported were (partially) delivered and that the Authority carried out additional sub activities for nine activities, that seven sub activities were postponed, that five sub activities were delayed, that four sub activities were cancelled and that one is still pending; calls on the Authority to evaluate the shortcomings and causes of weak performance and adopt measures aimed at improving an efficient delivery of the work programme objectives.	The EBA takes note that the Parliament would like to receive further information on the achievements in its non-core area. These changes will be implemented in the next iteration of the Consolidated Annual Activity Report (CAAR) for year 2021.
12	Stresses the importance of increasing the digitalisation of the Authority's internal operations and management procedures; stresses the need for the Authority to continue to be proactive in this regard in order to avoid, at all costs, a digital gap between the agencies; draws attention, however, to the need to take all the necessary security measures to avoid any risk to the online security of the information processed.	EBA adopted in 2019 an EBA IT Strategy 2020-2025 that is focused on Digitalization and transitioning towards a Digital Agency. The IT Strategy establishes 5 Digital areas of priority for the agency: EBA Data Hub, Security and Privacy, Digital Infrastructure, Digital Solutions and Digital Workplace. The Strategy also has an in-built 3-year strategic roadmap (2020-2022) for execution of critical projects in these areas. The execution of the roadmap is done via yearly IT Operational Plans, which are approved by EBA MB and delegated into execution to EBA Management.

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13	Welcomes the Authority's efforts towards a more coordinated supervisory regime across the European financial system; underlines its role of ensuring a stable, well integrated, efficient and safe financial market; highlights the importance of consumer protection in the Union by promoting fairness and transparency on the product and financial services market, and looks forward to receiving an update on future measures taken in this direction, including also responses to the challenges of the digitalisation of the economy and of sustainability measures.	The EBA shares the EP'S priority on consumer's protection issues. The latest EBA initiatives in this regard are the issuance of a consumer factsheet on online retail financial services⁷ in all EU languages; the follow-up to the EBA's Consumer Trends Report⁸, expected in Q1 2022, on the lack of transparency and the excessive levels of fees and for products such as mortgage credit, consumer credit, payments services, e-money, deposits, and payment accounts; and the issuance of two supervisory convergence reports on the implementation of the EBA's Guidelines Product Oversight and Governance⁹ as well as on the EBA's Guidelines on the remuneration of sales staff (expected for 2022). Moreover, the EBA also affirms its efforts to ensure that the supervisory and regulatory framework is fit for purpose in the digital age. The EBA supports scaling of innovative technology cross-border whilst ensuring high standards of financial sector operational resilience and consumer protection in line with the principle of technological neutrality. The latest actions in this field are the thematic work on Digital Platforms, RegTech¹⁰, Digital Identities and Artificial Intelligence in line with the European Commission's Digital Finance Strategy (DFS). The European Supervisory Authorities (ESAs) have also received a call

⁷ [0. EBA Factsheet for consumers Final copy new colors \(europa.eu\)](#)

⁸ [EBA Consumer Trand Report \(europa.eu\)](#)

⁹ [EBA Report on the application of the guidelines on POG arrangements.pdf \(europa.eu\)](#)

[Second EBA report on the application of the POG guidelines arrangements.pdf \(europa.eu\)](#)

¹⁰ <https://www.eba.europa.eu/eba-assesses-benefits-challenges-and-risks-regtech-use-eu-and-puts-forward-steps-be-taken-support>

PAR	OBSERVATIONS EP	EBA COMMENTS
		for advice from the EC on digital finance and related issues ¹¹ , and is undergoing preparatory actions in connection with the legislative proposals on markets in crypto-assets (MiCA) and the digital operational resilience (DORA).
14	Stresses that the supervision of the public financial sector positively contributes to combating tax fraud and money laundering.	
15	Recalls the importance of the Authority in the prevention of money laundering and of the financing of terrorism, as well as the Authority's new mandate therein; looks forward to receiving the Authority's 10-point action plan for 2020/21 to enhance the future framework of prudential and anti-money laundering requirements covering dividend arbitrage trading schemes; stresses further that the Authority should make full use of the powers granted to it under Chapter II of Regulation (EU) No 1093/2010 to ensure that all assignments and tasks are carried out properly and on time, and to ensure attainment of the tasks and objectives set out in that same Chapter, particularly with regard to consumer protection in the fast-growing area of digital finance, including neobanks.	The EBA would also like to report on its work on dividend arbitrage trading schemes such as cum-ex and cum-cum. After the issuance of a 10-point action plan ¹² in May 2020 (see progress in Annex 1). The completion of this plan is set for December 2021. Action no.10 of the action plan opens the possibility for an inquiry under Article 22 of the EBA Regulation into the actions taken by financial institutions and national authorities within their competencies to supervise compliance with requirements applicable to dividend arbitrage trading schemes.

¹¹

https://www.eba.europa.eu/sites/default/documents/files/document_library/About%20Us/Missions%20and%20tasks/Call%20for%20Advice/2021/962631/Cover%20letter%20SB%20to%20ESAs%20digital%20finance.pdf

¹² [EBA publishes its inquiry into dividend arbitrage trading schemes \("Cum-Ex/Cum-Cum"\), and announces a 10-point action plan to enhance the future regulatory framework | European Banking Authority \(europa.eu\)](#)

PAR	OBSERVATIONS EP	EBA COMMENTS
16	Underlines the duty of the financial system to respond appropriately to financial sustainability challenges, the European Green Deal, and the Paris Agreement; welcomes, therefore, the Authority's efforts to incorporate environmental, social, and governance factors fully into its work; is interested, in particular, in the Authority's intention to gather evidence over time on exposures related to assets of activities associated substantially with environmental and/or social objectives, and looks forward to an update on this work.	The EBA concurs on the importance of the work in this area and thus prioritises the timely completion of the said mandates as outlined in the EBA's action plan ¹³ published in December 2019. To illustrate this, in 2021, the EBA created a dedicated unit to support the work on ESG risks.
17	Notes that the Authority has conducted an inquiry into dividend arbitrage trading schemes such as cum-ex or cum-cum as requested by Parliament in its resolution of 29 November 2018 on the cum-ex scandal: financial crime and loopholes in the current legal framework; notes, however, the report's shortcomings in shedding light on those illegal practices and regrets that no date for a formal inquiry has been set.	See response to paragraph 15 and Annex 1.
18	Points out that the Authority, when carrying out its activities, needs to pay attention to ensuring compliance with Union law, to respecting the principle of proportionality as guiding principle where relevant, and to complying with the fundamental principles which govern the internal market; welcomes the establishment of an Advisory Proportionality Committee to oversee the principle of proportionality and looks forward to receiving the proposed methodology on how	One month after the entry into force of the ESAs review, the EBA set up the Advisory Committee on Proportionality (ACP) which plays a key role in advising the Board of Supervisors on how new EBA products should account for proportionality. The ACP provides ex ante and ex post feedback to the development of regulatory products and has defined the methodology for impact assessment and cost measurement.

¹³ [EBA Action plan on sustainable finance.pdf \(europa.eu\)](#)

PAR	OBSERVATIONS EP	EBA COMMENTS
	the Committee will provide input to the Authority's annual work programme.	
19	Notes that, as the Authority's workload is increasingly shifting from regulatory tasks to enforcing and applying Union law, budgetary and personnel resources have to be reallocated internally; points out that a strict focus on the mandate assigned by the Union legislator will ensure a more effective and more efficient use of resources; stresses the urgency of allocating sufficient resources to the Authority to allow it to carry out its allocated tasks in an adequate and efficient manner; considers that the future responsibilities arising, inter alia, from the Digital Finance Strategy as well as the responsibilities inherent in the fight against money laundering require an adaptation of the Authority's financing; notes that budget increases should be gradual and continuous over time in line with the increase in competences.	The EBA would like to highlight that the importance of its regulatory workload. It will continue to distribute its resources to satisfy the timely completion of the mandates conferred by the co-legislators and conversely the objectives set by the agency. To ensure an efficient resource allocation, the EBA senior management started in 2021 to review the adequacy of internal resources to the EBA key priorities and objectives. Moreover, internal staff policies have been enhanced: internal mobility is encouraged, and the training offer is being expanded to ensure that employees have the relevant skills to transition to other policy areas. This should bring a twofold stream of benefits: it will ensure an efficient allocation of resources and create a flexible workforce that can adjust to changes, but also will also offer career growth and progression to staff. Finally, the internal organisation was adjusted on 1 June 2021 with a view to adjusting to the development of the portfolio of activities and to reap more synergies.
20	Calls on the Authority to focus on disseminating the results of its research to the general public.	The EBA would also like to underline its efforts to engage in communications policies with members states and stakeholders more generally. The EBA research and analysis is continuously disseminated via its website. Those are thematic publications ¹⁴ in addition to the regular products like the Risk Dashboard ¹⁵ and Risk Assessment report, as well as reports on funding plans and asset encumbrance. Further visual materials and factsheets, EBA staff

¹⁴ [Risk reports and other thematic work | European Banking Authority \(europa.eu\)](https://www.europa.eu/euba/risk-reports)

¹⁵ [Risk Dashboard | European Banking Authority \(europa.eu\)](https://www.europa.eu/euba/risk-dashboard)

PAR	OBSERVATIONS EP	EBA COMMENTS
		papers ¹⁶ as well as the annual research workshop ¹⁷ complement those efforts.
Staff Policy		
21	Notes that, on 31 December 2019, the establishment plan was 99,31 % implemented, with 144 temporary agents appointed out of 145 temporary agents authorised under the Union budget (compared to 145 authorised posts in 2018); notes that, in addition, 42 contract agents (49 authorised) and 16 seconded national experts (17 authorised) worked for the Authority in 2019; notes that staff turnover amongst temporary agents, contract agents and seconded national experts decreased from 12,1 % to 9,0 %.	
22	Notes that the Authority has undertaken changes in its top management following the appointment of the new chairperson in March 2019 and the resignation of its executive director in August 2019.	
23	Notes with satisfaction that the Authority suffered fewer relocation-driven resignations than it had assumed and that the core business was able to continue almost as normal	

¹⁶ [Staff Papers | European Banking Authority \(europa.eu\)](https://euba.europa.eu/Staff-Papers)

¹⁷ [EBA Research Workshops | European Banking Authority \(europa.eu\)](https://euba.europa.eu/EBA-Research-Workshops)

PAR	OBSERVATIONS EP	EBA COMMENTS
	throughout the period of the relocation; acknowledges this extraordinary commitment of the Authority's staff.	
24	Notes with satisfaction that the Authority reported that it employs staff of 28 nationalities, of whom the Authority reports that 50 % are female and 50 % are male; notes with concern that 83 % of senior management is male and 17 % is female; asks the Authority to ensure gender balance at the senior management level in the future.	The EBA strives to promote gender equality in the organisation. Since 1 September 2020, the EBA has started implementing a range of policies to promote gender balance, when recruiting, promoting, and managing its staff. As of 1 June 2021, the gender balance of its management team was 37% female and 63% male¹⁸ vs. 29% and 71%, respectively, on 1 September 2020. At director level, the share of females changed from 25% to 40%. Other initiatives are taken in the areas of the prevention of sexual and psychological harassment, and diversity and inclusion. Following the ESAs Review requirement to ensure a gender-balanced Management Board¹⁹, the EBA had also started implementing a mechanism so that, when a vacancy arises, Board of Supervisors candidates from the under-represented gender are invited to express an interest before expressions of interest are opened to all Board of Supervisors members. Gender balance on the Management Board improved in 2020 by the inclusion of two female members on the Board.
25	Encourages the Authority to pursue the development of a long-term human resources policy framework which addresses work-life balance, lifelong guidance and career development, gender balance, teleworking, geographical balance among members of staff and the recruitment and integration of people with disabilities.	Regarding its HR strategy, improvements were introduced via reviewed appraisal templates, appointment of team leaders, 360-degree evaluations for management and other transparency initiatives. Forward looking, the Authority will also organise training for its staff on unconscious bias and will look at how to develop further the recruitment and integration of people with disabilities.

¹⁸ [Internal organisation | European Banking Authority \(europa.eu\)](https://www.europa.eu)

¹⁹ Article 45 [EBA regulation](#)

PAR	OBSERVATIONS EP	EBA COMMENTS
Procurement		
26	Notes that the Authority ran four procurement procedures above the threshold laid down in Directive 2014/24/EU of the European Parliament and of the Council, and that the Authority also concluded 14 contracts arising from negotiated procedures above EUR 15 000.	
27	Notes the observation of the Court that the Authority used a framework contract with an IT company for the provision of IT consultants and that the Authority issued work instructions to some of those IT consultants directly, potentially blurring the lines between the Authority's staff and the consultants; stresses the risks brought about by the use of external IT consultants; urges the Authority to pay special attention to ensuring operations security and data protection; notes the Authority's reply that this resulted from the implementation of a new IT-service model and related framework contract and that the Authority is working to mature its management of the third party service integration; calls on the Authority to keep the discharge authority informed about this process of maturation and entrenchment of service-based consumption of IT services.	While IT external resources are necessary to complement the internal skillsets and capacity, the Authority pays the highest attention to the risks that external consultants may entail for what concerns security and data protection. To palliate these risks, the EBA is no longer using interim workers but move to time and material (T&M) contracting (further information can be found on Annex 2).
28	Notes with high concern the observation of the Court that the Authority runs legal and reputational risks by using an IT company not domiciled in the Authority's host country to provide IT consultants working at the Authority's premises that	In 2020, the EBA implemented a system to continuously check the IT Vendor's compliance with the applicable rules on its posted workers. The European Court of Auditors reviewed this system during their 2020 annual audit, and did not identify any concerns regarding it.

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	would qualify for posted worker status under the provisions of French law concerning the transposition of the Posting of Workers Directive and the Enforcement Directive, and by not verifying the declaration of compliance with Union and national law of the contractor.	
Prevention and management of conflicts of interest and transparency		
29	Welcomes the further steps taken in order to enhance the transparency of the Authority's activities by reporting the meetings that the Authority's staff have with external stakeholders, and their availability, on the Authority's website.	
30	Notes with satisfaction that the declarations of interest and the CVs of the senior management and of all members of the management board are published on the Authority's website; notes with concern that the annual declarations of interest published on the website are based on self-assessment by the members of the management board; calls on the Authority to evaluate independently the potential existence of conflicts of interest; welcomes the extension of the scope of conflicts of interest to non-staff beyond the board of supervisors and management board, to include the anti-money laundering standing committee, the resolution committee and independent panels, including panels investigating breaches of Union law.	Since September 2014 the EBA has been collecting annual declarations of interests from the members of its governing bodies and has made them available on the EBA's website ²⁰ . In 2020, the EBA's conflicts of interest policy was amended to also include members of the Standing Committee on Resolution (ResCo), of the Standing Committee on Anti-money Laundering and Countering Terrorist Financing (AMLSC), and of independent panels established in accordance with Article 41 for the purposes of Article 17, 19 and 22(4) of Regulation (EU) No 1093/2010. The self-declaration approach established in the EBA's conflicts of interest policy reflects that such board and committee members are expected to be the heads of their respective authorities which form part of the European System of Financial Supervision. They will therefore be subject to domestic ethical obligations which, in the interests of efficiency and good cooperation, the EBA has not sought to duplicate. The EBA publishes the declarations of interests without redacting

²⁰ <https://www.eba.europa.eu/about-us/organisation/organisation-chart/conflict-of-interest-policy>

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		the interests declared by members, this way increasing both transparency and accountability of members vis-à-vis the public. Moreover, where appropriate the Chairperson makes recommendations to individuals of actions necessary to address any potential conflict of interests.
31	Notes that the Authority established harassment prevention policies and related training frameworks.	
32	Notes the adoption of the 2019 anti-fraud strategy by the Authority in January 2020, reflecting the update of the Commission's anti-fraud strategy to ensure full alignment; notes that the most recent fraud risk assessment, which is a central instrument for tailoring anti-fraud measures in accordance with the Commission's anti-fraud strategy, was not performed in 2019 due to the relocation of the Authority and the late conclusion of the previous assessment; calls on the Authority to resume the annual performance of a fraud risk assessment and, where necessary, adjust the Authority's anti-fraud strategy.	The EBA is currently updating its anti-fraud risk assessment which concluded in July 2021 and is expected to be presented to the Management Board in Q3 2021. The EBA has taken the opportunity of the establishment of its strengthened risk and compliance function to reassess and improve the processes included in the anti-fraud risk assessment, including building into the assessment consideration of the potential impact of relocation and remote working methods.
33	Recalls its resolution of 16 January 2020 on institutions and bodies of the Economic and Monetary Union: preventing post-public employment conflicts of interest and the decision of 18 November 2020 and the recommendation of 7 May 2020 of the European Ombudsman in case 2168/2019/KR; notes with concern the inquiry of the Ombudsman that took place following the Authority's decision not to forbid its former executive director from taking up a role in the Association for	The EBA would like to also provide a state of play regarding the European Ombudsman enquiry concerning the post-employment activities of the EBA's former Executive Director. On 18 November 2020 the European Ombudsman closed the inquiry into complaint 2168/2019/KR noting that the EBA had taken steps to implement the Ombudsman's recommendations. On 21 August 2020, the EBA adopted two decisions, one to deal with post-employment restrictions and prohibitions which better equips it to deal with post-employment situation of its staff; and another setting out the processes that staff working for the EBA should follow in order to ensure that, once it is

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	Financial Markets in Europe (AFME) and the inquiry's conclusion that there was maladministration by the Authority in not immediately withdrawing its executive director's access to confidential information; stresses that in this case, prohibition of a direct move to AFME might have been considered; notes the recommendations made by the Ombudsman and the Authority's reply that the new staff policy addresses the recommendations; welcomes the adoption by the Authority's Board of Supervisors of its policy 'Independence and Decision Making Processes for avoiding Conflicts of Interests' as a first step towards the prevention and proper management of conflicts of interest and transparency measures; calls on the Authority to ensure that its internal procedures for dealing with conflicts of interest are in line with the Ombudsman's recommendations, if they are not yet fully aligned; looks forward to a full update on the state of play of preventive and management measures taken and/or foreseen in order to avoid the repetition of such a situation; underlines that post-public employment and 'revolving door' conflict-of interest situations are a problem common to many bodies and agencies across the Union; invites the Authority to prevent future 'revolving door' cases; calls on the Authority to draw inspiration from the publication by the European Central Bank's Ethics Committee of its opinions on cases of conflicts of interest and post-mandate gainful employment, in order to increase transparency on potential conflicts of interest and on	known that a member of staff is moving to another job outside the EBA, their access to confidential information is cut off with immediate effect. Both decisions have been made known to staff via multiple channels and are published on its website for public information, while for candidates for staff vacancies information on ethics requirements, including post-employment restrictions and prohibitions are included in all vacancy notices. The Ombudsman commended the EBA for agreeing to introduce far-reaching measures as regards access to confidential information of staff that are leaving and risks of conflict of interest in post-employment activities. The EBA is confident that these two new decisions have been instrumental in reinforcing the framework applicable to post-employment restrictions further to Article 16 of the Staff Regulations. Furthermore, the EBA is looking into the recommendations by the European Ombudsman as set out in the Report on the publication of information on former senior staff so as to enforce the one-year lobbying and advocacy ban (SI/2/2017/NF) with a view to developing further the annual information already provided on its website. In particular this would include the number of staff, both senior and non-senior, who left the service during the year, and disaggregating the data for senior staff; together with information on requests submitted by staff to engage in an occupational activity after leaving the service. Moreover, the information would contain detailed information on occupational activities of former senior staff members. The EBA will consider the European Central Bank's approach as part of implementing the recommendations in the Ombudsman's report.

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	post-mandate gainful employment; calls further on the Authority to enforce its Ethics Guide so as to protect the Authority's integrity and establish fair and responsible practices.	
34	Calls on the Court to specifically scrutinise in its future audits of the Authority (i) whether senior members of staff have taken up certain positions in the financial industry after their term in office, and (ii) whether access to confidential information for members of staff is withdrawn in a timely manner, once it becomes known that they are moving to another job.	Acknowledged.
Internal controls		
35	Notes the adoption and implementation of a revised internal control framework by the Authority in January 2020; regrets that no annual assessment of the internal control framework was performed in 2019; calls on the Authority to perform the annual assessment without delay and to report to the discharge authority of its results in the framework of the annual discharge procedure.	The Authority acknowledges that the Internal Assessment was not carried out in 2019 and confirms that the internal risk assessment is expected to take place over 2021 to enable data to be collected for the full year 2020 (further information can be found on Annex 3).
36	Notes that after the completed relocation from London to Paris following the UK's withdrawal from the Union, a provision of EUR 10,1 million is made for the lease of the Authority's London office; suggests that an audit be conducted once all the costs and consequences of the move are clear in order to identify best practices and areas for improvement.	See response to paragraph 2.

PAR	OBSERVATIONS EP	EBA COMMENTS
Other comments		
37	Welcomes the Authority's commitment to register its office space under the Union's eco-management and audit scheme; invites the Authority to strengthen its commitment to creating a sustainable work environment; encourages the Authority to follow closely EMAS guidelines.	Despite the impact of the COVID-19 pandemic and the closure of our premises, the first 18 months of EMAS implementation at the EBA were very busy. We achieved major milestones in the project: the initial environmental review was finalised in April 2020 and the EBA environmental policy was approved in July 2020. Moreover, in 2021, we launched our first survey on the mobility plan, and we concluded the tender for the provision of electricity from renewable energy sources. Finally, EMAS Communication strategy & visual identity, handbook and roles & responsibilities were adopted in June 2021. Throughout this period, we offered several training sessions for managers and staff, including one virtual 'World Café' event for all. Altogether, they amounted to more than 30 training hours. We also communicated regularly via staff newsletters, emails, and EMAS sections of the EBA intranet newsroom. Consequently, all managers were trained on the EMAS requirements, and most staff participated in the EMAS events (surveys, trainings, meetings, etc.). The EBA plans to apply for the EMAS registration by the end of 2021. Its performance and preparations will be subject to quality audits by independent experts as well as external validation by EMAS verifiers. Official certification will be just a first step along the road of continuous environmental improvement.
38	Welcomes the efforts made to increase the Authority's cyber security and data protection, especially as regards the training campaign for the entire statutory staff.	The EBA continues to conduct yearly cyber awareness campaigns, together with phishing simulations and tailored programs (new joiners, working from home, etc.) with increasingly improved results. A network of Data Protection

PAR	OBSERVATIONS EP	EBA COMMENTS
		Coordinators in all EBA units was established so that together with the DPO they support the implementation of Data Privacy rules and guidelines in daily operations. The EBA has invested additionally in enhancing its cyber security monitoring and reaction capabilities (new Security Operations Center) and in testing its assets (pen-testing) in close collaboration with CERT-EU and its IT suppliers.
39	Believes that the Authority should take account of new digital challenges and those related to sustainability; considers that the fulfilment of these established objectives and their integration into the regulatory and supervisory framework must always be in line with the strengthening of the market, without undermining its competitiveness and without placing an excessive burden on market actors, especially small and medium-sized ones; considers that the monitoring of the implementation of these objectives must be met with adequate resources.	Refer to response to paragraph 18.
40	Refers, for other observations of a cross-cutting nature accompanying its decision on discharge, to its resolution of 29 April 2021 on the performance, financial management and control of the agencies.	Acknowledge the horizontal report of the agencies.

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

Done at Paris, 17 September 2021

[signed]



[José Manuel Campa]

Chairperson

For the Board of Supervisors

Annex 1

Progress on action plan on dividend arbitrage trading schemes (“Cum-Ex/Cum-Cum”)

The EBA European Parliament resolution of December 2018 requested the EBA “to conduct an inquiry into dividend arbitrage trading schemes [DATS] such as cum-ex or cum-cum”. In response, the EBA **launched an inquiry** in 2019 with both **AML and prudential authorities** in EU Member States.

In May 2020, the EBA issued the findings of its inquiry with a report and a 10-point action plan. As of July 2021, the EBA is on track to deliver all of the actions as planned by the end of 2021, and has already completed seven of them.

This includes amendments to our Guidelines on internal governance under CRD, our Guidelines on the assessment of the suitability of members of the management body, our SREP Guidelines, our Guidelines on AML/CFT risk factors, our input to prudential and on AML/CFT colleges, and much more.

OUTLINE 10-ACTION PLAN	ACTION
1 Amend its prudential Guidelines on Internal Governance, in order to ensure that the management body develop, adopt, adhere to and promote high ethical and professional standards. In particular, the policies implemented by institutions will need to set out principles on, and provide examples of, acceptable and unacceptable behaviours linked in particular to misconduct and financial crime, including tax crimes through dividend arbitrage schemes. The amended draft Guidelines will be consulted by Q3 2020 and finally adopted by Q1 2021	Published on 2 July 2021, revised EBA guidelines on internal governance, which now take into account the amendments introduced by Directive 2019/878/EU (CRD V) and by Directive 2019/2034/EU (IFD) to Directive 2013/36/EU and their effect on institutions governance arrangements. In particular, the link between money laundering and terrorism financing risks and prudential risks has been clarified, and also a reference to dividend arbitrage schemes has been included.
2 Amend its prudential Guidelines on the Assessment of the Suitability of Members of the Management Body and Key Function Holders in order to ensure that tax offences, including where committed through dividend arbitrage schemes, are considered in the assessment. The amended draft Guidelines is	Published on the 2 July 2021, <u>revised joint (EBA and ESMA) Guidelines on the assessment of the suitability of members of the management body and key function holders</u> , which now take into account the amendments introduced by Directive 2019/878/EU (CRD V) and by Directive 2019/2034/EU (IFD) to Directive 2013/36/EU and their effect on the assessment of the suitability of members of the management body. In

OUTLINE 10-ACTION PLAN

planned to be consulted by Q3 2020 and to be finally adopted by Q1 2021	
3 Amend its prudential Guidelines on Supervisory Review and Evaluation Process (SREP) with regard to the section on governance, in order to include an appropriate reference to tax crimes, such as dividend arbitrage schemes, to reflect the relevant amendments in the guidelines on internal governance and fit and proper assessments. The amended draft Guidelines is planned to be consulted by Q2 2021 and finalised by Q4 2021, but some first elements may be included in an Opinion on the prudential treatment of ML/TF risks under SREP to be published by Q4 2020.	ACTION particular, in line with Directive 2013/36/EU, the GLs now clarify that the knowledge, experience and skill requirements include identifying, managing and mitigating money laundering and financing of terrorism risk and therefore those aspects are part of the assessments of the suitability of members of the management body and key function holders. In addition, tax offences, whether committed directly or indirectly, including through unlawful or banned dividend arbitrage schemes should be considered for the assessment of the reputation, honesty and integrity of members of the management body. Published on 28 June 2021 a <u>Consultation paper on draft revised EBA SREP Guidelines</u>, which include the requirement for prudential supervisors to assess in the SREP whether institutions, as part of their code of conduct, and in line with the EBA Internal Governance Guidelines, have set out principles on and provided examples of acceptable and unacceptable behaviours linked to financial misreporting and misconduct, economic and financial crime whether committed directly or indirectly including through dividend arbitrage schemes. The assessment forms part of the assessment of the internal governance and institution-wide controls under the overall SREP review of the institution (Title 5 of the SREP Guidelines, refer to paragraph 104 (j)).
4 Monitor, in the context of the preparation of the Supervisory Convergence Report due in Q2 2021, how prudential colleges have followed up, in a risk-based approach, on guidance embedded in the 2020 convergence plan	Set the topic for supervisory colleges attention in 2020 and still engaging with colleges in 2021 to achieve that the topic is explored during supervisory college meetings, as part of their SREP assessment of the internal governance framework (cf. section on Topical tasks requiring the attention of supervisory colleges in 2021, page 81 of the <u>2020 Report on convergence in supervisory practices</u>).

OUTLINE 10-ACTION PLAN

	ACTION
5 Assess the responses the EBA will receive to its ongoing consultation on its Guidelines on ML/TF risk factors to identify whether the existing references to tax crimes contained in the draft Guidelines are sufficient to address the risks arising from dividend arbitrage trading schemes	Published on 1 March 2021, the revised <u>Final EBA Guidelines on AML/CFT risk factors</u> , in which we stress the need for supervisory authorities and financial institutions to enhance their understanding of tax crimes (for details, see, for example, the requirements articulated in GL 2.14 and 2.15)
6 Amend its Guidelines on Risk-Based AML/CFT Supervision under Article 48(10) of AMLD4 to include additional requirements on how AML/CFT competent authorities should, in a risk-based approach, identify, assess and address ML/TF risks associated with tax crimes such as illicit dividend arbitrage schemes. These amendments will review the scope of information that AML/CFT competent authorities should consider and clarify how AML/CFT supervisors and tax authorities should cooperate, in line with changes introduced by AMLD5. The draft of the revised guidelines is planned to be published for consultation in Q4 2020 and will be finalised in 2021.	Published 17 March 2021, a <u>Consultation Paper on draft EBA Guidelines on risk-based AML/CFT supervision</u> , which also emphasises the importance for supervisors to develop a good understanding of ML/TF risks associated with tax crimes, which may involve a cooperation with tax authorities in their Member State (for details, see, for example, the requirements articulated in GL 4.1.4, 4.2.1, 4.2.2, and 4.2.3).
7 Amend its biennial Opinion on ML/TF Risks under Article 6(5) of AMLD4, by assessing ML/TF risks associated with tax crimes in greater detail than the previous version the Opinion already did. The Opinion tends to identify and analyse current and emerging money laundering and terrorist financing (ML/TF) risks to which the EU's financial sector is exposed, drawing on information provided by competent authorities and obtained in the context of the EBA's work throughout the year. The next Opinion is planned to be published in Q1 2021	Published on 3 March 2021, a revised <u>EBA Opinion on the ML/TF risks affecting the EU financial system</u> , which has inter alia identified, as one of the risks, the differences in the treatment by competent authorities of financial institutions' involvement in facilitating or handling tax-related crimes (for details, see paras 39-44 of the Opinion and paras 32-50 in the annexed report).
8 Continue to allocate, in its ongoing multi-annual programme of staff-led AML/CFT implementation reviews of AML/CFT	Ongoing. Due to be completed by Dec 2021, as planned

OUTLINE 10-ACTION PLAN

ACTION

	competent authorities, explicit time to authorities' handling of ML/TF risks associated with tax crimes, where this risk is significant. The EBA will publish a summary report of its implementation reviews every year, with the next edition planned to be published in Q2 2021	
9	Monitor discussions in AML/CFT colleges, and intervene actively as necessary, to ensure that AML/CFT colleges for financial institutions that are exposed to significant ML/TF risks associated with tax crimes, address such risks. The basis of this work are the 2019 Guidelines on Cooperation and Information Exchange between AML/CFT and Prudential Supervisors, which require AML/CFT competent authorities to set up stand-alone AML/CFT colleges for certain financial institutions. The EBA will publish its first report on the functioning of AML/CFT colleges in Q4 2020	Ongoing. Due to be completed by Dec 2021, as planned
10	Carry out an inquiry under Article 22 of the EBA Regulation into the actions taken by financial institutions and national authorities within their competencies to supervise compliance with requirements applicable to dividend arbitrage trading schemes as amended as per the above	To be commenced once actions 1 to 9 have been completed

Annex 2

IT consultancy

While IT external resources are necessary to complement the internal skillsets and capacity, the Authority pays the highest attention to the risks that external consultants may entail for what concerns security and data protection. In recognition of risks of using interim/temp workers to supplement the EBA resources, and since the move to Paris in 2019, the EBA has abandoned these practices and moved from T&M contracting (with inherent dependency risk to externals), to QTM (quoted time and means) and FP (fixed price) contracting, where a reputable IT Vendor provides services and not consultants. External IT Services are provided now with clear demarcation and pre-defined processes integrated into EBA IT activities. EBA and IT Vendor have clear segregated responsibilities and regular joint review and monitoring of deliverables. EBA now contracts and consumes process-defined services, with acceptance based on service deliverables and not on timesheets of individuals. EBA has also taken adequate measures to prevent that IT Vendor staff operating on EBA premises can be confused/mistaken as EBA staff, including visual identification (badge, email, identity systems, etc.), segregated communication channels and rules. During their 2020 annual audit, ECA reviewed measures taken and raised no concerns or further recommendations. In 2020, the EBA implemented a system to continuously check the IT Vendor's compliance with the applicable rules on its posted workers. The European Court of Auditors reviewed this system during their 2020 annual audit and did not identify any concerns regarding it.

Annex 3

Internal controls

Authority acknowledges that the Internal Assessment was not carried out in 2019. Following the approval of the EBA Internal Control Framework in January 2019, the Internal Control Approach document has been approved by the Executive Director in Q1 2021. The document defines the objectives for the period 2021-2024. Following the high-level assessment of internal controls, the most prominent weakness identified was the absence of comprehensive set of key performance indicators (KPIs) that would enable systematic measurement of effectiveness and efficiency of implemented internal controls. These KPIs have been in the meantime drafted and are planned to be approved by Q2 2021. The internal risk assessment is expected to take place over 2021 to enable data to be collected for the full year 2020.

In addition to above, the new Executive Director, requested Internal Audit Services to carry out an assessment of the existing EBA internal control framework to give reasonable assurances about the internal controls in place and areas for improvement, with the objective of further strengthening these.