

EBA/DC/2014/091

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CONFIDENTIAL

Decision of the European Banking Authority adopting the Rules of Procedure for the settlement of disagreements between competent authorities

The Board of Supervisors of the European Banking Authority

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 41 (4) thereof, according to which the Board of Supervisors of the EBA shall adopt the Rules of Procedure of the panel that shall be convoked to facilitate an impartial settlement of disagreements between competent authorities in cross-border situations (the “Panel”) pursuant to Articles 19, 41(2) and 41(3) of the Regulation,

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”),

Whereas:

- (1) The settlement of disagreements between competent authorities by the EBA may be initiated either on its own initiative, or upon request by one or more competent authorities in the event of a disagreement, where specifically provided for by Union acts.

1. OJ L331, 15.12.2010, p. 12.

- (2) The competent authorities should have recourse to the process of settlement of disagreements 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 by a restricted, objective panel, composed of members 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. The decision taken by the panel should be approved by the Board of Supervisors.
- (4) In view of the supervisory tasks conferred on the ECB by Regulation (EU) No 1024/2013, the EBA should be able to carry out its tasks also in relation to the ECB in the same manner as in relation to the other competent authorities. As result of the establishment of the Single Supervisory Mechanism the existing mechanism for settlement of disagreements needs to be adjusted to the requirements stipulated by Regulation (EU) No 1022/2013, to remain effective.

Has decided as follows:

Chapter I – GENERAL PROVISIONS

Article 1 – Tasks of the Panel

These Rules of Procedure regulate the set-up and functioning of an independent panel which shall propose decisions for final adoption by the Board of supervisors to facilitate the impartial settlement of disagreements between competent authorities pursuant to Article 19 of the Regulation (the “Panel”).

Article 2 – Composition and appointment of the Panel

- 2.1. The Panel shall consist of the Chairperson of the EBA (the "Chairperson"), who shall chair the Panel, and of six other members of the Board of Supervisors. The latter may each be replaced by one of four substitute members ("a substitute").
- 2.2. The members of the Panel and the substitute members shall be appointed by the Board of Supervisors from among its voting members in accordance with the procedure set out in the Annex. The term of office of the members of the Panel shall be three years and their mandate may be renewed once. The term of office of the substitutes shall be three years and may be renewed. The mandate of the members of the Panel and the substitute members shall in any case expire when they cease to be members of the Board of Supervisors.
- 2.3. If a member's or substitute's term lapses while a settlement of disagreement pursuant to Article 19 is under way his/her term shall where necessary be extended for the purpose of completing that settlement.

- 2.4. Should the term of office of a member of the Panel or of a substitute prematurely terminate, there shall be a new election in the next convenient meeting of the Board of Supervisors following the premature termination.
- 2.5. Before the Chairperson convenes the Panel for the purposes of the settlement of a particular disagreement, the Chairperson shall inform the members of the Panel of the general nature of the disagreement and of the identity of the parties. The members of the Panel shall without delay inform the Chairperson in writing of any impediments to their participation in the Panel for the purpose of settling the disagreement.
- 2.6. Pursuant to Article 41(2) of the Regulation, the members of the Panel shall not be representatives of the competent authorities who are parties to the disagreement, neither to have any interest in the conflict nor direct links to the competent authorities concerned. For this purpose, the Chairperson, based on (i) his knowledge, (ii) information received from members of the Panel, or (iii) following the request of one of the parties to the disagreement, shall decide whether a member of the Panel is disqualified from participating in the settlement of a particular disagreement. In the case that a member of the Panel does not meet the conditions to participate in the settlement of a particular disagreement the Chairperson shall appoint a substitute to replace that member. In the event that it is not possible to fully constitute a Panel from among its members and substitutes, the Chairperson shall ask the Board of Supervisors to fill any vacancy from among its members.
- 2.7. A Panel member or substitute from a competent authority of the same Member State as a party to a disagreement shall be considered as having an interest in the conflict or direct links to the competent authorities concerned. In the case of a disagreement related to the functioning and activity of a supervisory college, members or substitutes from competent authorities which are part of the same college shall not be treated *per se* as having an interest in the conflict.
- 2.8. The Panel shall be assisted in its tasks by EBA staff who shall prepare the work of the Panel, with appropriate safeguards to prevent situations of conflict of interests.

Article 3 – Panel decision-making

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

Chapter II – Binding settlement of disagreements

Article 4 – The conciliation phase

- 4.1. The EBA may be asked to assist in the settlement of a disagreement pursuant to Article 19 of the Regulation by a competent authority which is a party to the disagreement by filing a request with the EBA. The Chairperson may in compliance with Article 4.2. launch the EBA's own initiative for settlement of a disagreement pursuant to Article 19 of the Regulation.

- 4.2. The Chairperson shall establish whether the relevant legal requirements stipulated by Union acts referred to in Article 1 (2) of the Regulation are met. In cases where the Union acts provide for discretion for the involvement of the EBA in the settlement of a disagreement pursuant to Article 19 of the Regulation, the Chairperson shall inform the alternate Chairperson about his intention that the EBA become involved. The alternate Chairperson shall inform the Chairperson without delay of his/her objections for the involvement of the EBA, including in the settlement of a disagreement between competent authorities pursuant to Article 19 of the Regulation on EBA's own initiative. Where the alternate Chairperson objects, the Chairperson shall consult the members of the Panel and consider their views before taking a decision. The Chairperson shall in particular refuse requests which he/she considers are unsubstantiated, abusive or outside the scope of Article 19 of the Regulation. The EBA shall inform the parties of its decision without delay. The Chairperson shall set a time-limit for conciliation 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.
- 4.3. The Chairperson shall act as a mediator and facilitate an agreement among the parties during the conciliation phase. 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 Panel on developments during the conciliation phase.
- 4.4. In the absence of a settlement of the disagreement between the competent authorities the dispute shall enter into the decision phase pursuant to Article 19(3) of the Regulation.

Article 5 – Decision phase

- 5.1. The Panel shall enter into the decision phase:
- a) if the parties were not able to reach an agreement within the conciliation phase, or
 - b) if Union acts referred to in Article 1(2) of the Regulation require the EBA to take a decision pursuant to Article 19(3) of the Regulation without entering into the conciliation phase.
- 5.2. Upon the start of the decision phase pursuant to Article 19(3) of the Regulation, the Panel when necessary shall set for the parties:
- a) a deadline for the transmission to the Panel of their positions accompanied by the relevant documentation which will be transmitted by the EBA without delay to the other parties;
 - b) a subsequent deadline to reply to the positions of the other parties.
- 5.3. The Panel may summon the parties and, when appropriate, other relevant experts, for their testimony.
- 5.4. Before proposing the decision to the Board of Supervisors, the Panel shall inform the parties of its intention to propose the decision, 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.

- 5.5. The Panel shall adopt its decision and submit it without delay for final adoption by the Board of Supervisors. Any dissenting view by a member of the Panel shall be reported to the Board of Supervisors with the decision. If no decision is proposed the Panel shall report back to the Board of Supervisors in accordance with Article 8.
- 5.6. Any proposed decision shall:
- state the identity of the addressees;
 - state the reasons on which it is based;
 - require a party or parties to take specific action or to refrain from action in order to settle the disagreement;
 - inform the addressees of the legal remedies available under the Regulation;
 - set a deadline within which the addressees shall comply with it and report on compliance to the EBA;
 - set out concisely the views expressed by the parties on the proposed decision; and
 - state whether the Panel proposes to publish the decision in accordance with Article 39(5) of the Regulation.
- 5.7. Pursuant to Article 19(3) of the Regulation the Board of Supervisors shall take a final decision in accordance with the procedure set out in the third to fifth subparagraphs of Article 44(1) of the Regulation and decide on its publication in accordance with Article 39(5) of the Regulation.
- 5.8. Where the Board of Supervisors has addressed a decision under Article 19(3) of the Regulation to a party and the Panel considers that the party is not complying with that decision, and thereby is failing to ensure that a financial institution complies with requirements directly applicable to it by virtue of the acts referred to in Article 1(2) of the Regulation, the Panel where appropriate shall propose to the Board of Supervisors an individual decision addressed to a financial institution requiring the necessary action to comply with its obligations under Union law, including the cessation of any practice. Articles 5.3 to 5.6 shall apply mutatis mutandis.

Chapter III – ANCILLARY PROVISIONS

Article 6 – Confidentiality

- 6.1. The rules governing confidentiality in accordance with Article 70 of the Regulation and Decision EBA DC 004 on Professional Secrecy which lays down practical arrangements for the implementation of the Regulation, shall apply to any person involved in the proceedings of the Panel.

- 6.2. A request may be made to the EBA for the confidential treatment of a document or any information contained in a document to be filed in connection with a disagreement which is before the Panel.
- 6.3. In determining the request, the Panel shall have regard as appropriate to the relevant provisions of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

Article 7 – Monitoring and compliance

The Chairperson shall take any necessary steps to monitor whether:

- a) the parties comply with the agreements concluded during the conciliation phase; and
- b) whether addressees comply with decisions taken pursuant to Article 19 (3) of the Regulation;

and report regularly to the Board of Supervisors.

Article 8 – Reporting of the Panel’s activities

- 8.1. The Chairperson shall report periodically to the Board of Supervisors on his activities during the conciliation phase and on activities of the Panel. Such reports shall not identify the parties to disagreements unless the parties have consented.
- 8.2. In the report referred to in Article 50(2) of the Regulation, the Chairperson shall set out the nature and type of disagreements between competent authorities, the agreements reached and the decisions taken to settle such disagreements.
- 8.3. The EBA annual report referred to in Article 53(7) of the Regulation shall state in a summary form the nature and types of disagreements brought before the EBA and the Panel, the Panel’s decisions, and the subsequent decisions of the Board of Supervisors pursuant to Articles 19(3).

Article 9 – Supplementary rules

- 9.1. The Panel may adopt supplementary internal rules to regulate its proceedings and activities. In particular, the Panel may adopt standard timetables which may make provision for different types of disagreement. The timetables may be adjusted by the Panel to take into account, inter alia, the level of complexity and urgency of a particular disagreement.
- 9.2. The Panel may issue supplementary forms and guides.
- 9.3. Supplementary rules, forms and guides adopted by the Panel shall be reported to the Board of Supervisors.

Article 10 – Miscellaneous

- 10.1. This decision and any supplementary internal rules, forms and guides shall be published on EBA’s website.

10.2. The decision and any supplementary internal rules, forms and guides shall be communicated to the parties to the disagreement. This may be done by referring the parties to the place on EBA's website where they are published.

10.3. This Decision repeals the Decision of the European Banking Authority adopting the Rules of Procedure of the Mediation Panel (EBA DC 055).

Article 12 – Entry into force

This decision and any supplementary internal rules, forms and guides shall enter into force the day following their adoption.

Done at London, 20 February 2014

[signed]

Andrea Enria

Chairperson

For the Board of Supervisors

ANNEX

Election of Panel members and substitutes

1. At least two months before the term of office of a Panel member or of a substitute is to elapse, the Chairperson of the EBA shall issue a call for nominations which shall stipulate the date of the Board of Supervisors meeting at which the election of the new Panel member or of a substitute is scheduled.
2. Nominations for the members of the Panel and the substitutes shall be submitted in writing by the candidates themselves to the Executive Director no later than ten working days before the start of the meeting of the Board of Supervisors at which the election is to take place and shall be communicated to the members of the Board of Supervisors.
3. Candidates shall submit a brief résumé in support of their candidature at the time of the nomination.
4. The Chairperson may advise the Board of Supervisors on a balanced composition of the Panel, taking into account responsibilities for supervision at the consolidated level and at the solo level.
5. The Board of Supervisors shall strive for consensus when electing a Panel Member and a substitute. Should a consensus not be reached, then an election would require a qualified majority of three quarters of the voting members. Each voting member shall have one vote. In case there is an election for one position in the Panel or as substitute, the procedure as outlined under Article 7.5 of the Rules of procedure of the Board of Supervisors shall apply. In derogation from Article 7.5, in case there are more vacant positions in the Panel or as substitutes, one voting member shall have one vote for each position. The candidates that receive the required majority and the highest number of votes given the positions available shall be selected. Possible additional secret ballots for the remaining positions shall be held whereby one voting member shall have one vote for each of the remaining positions. In case there would be one remaining position, the election as outlined under Article 7.5 of the Rules of procedure of the Board of Supervisors shall apply. If the required majority cannot be reached, a new election procedure shall be held at the latest at the next meeting of the Board of Supervisors.