

REVIEW PANEL

**EBA BoS 2012 107
24 May 2012**

PROPOSED

**EBA REVIEW PANEL METHODOLOGY FOR THE CONDUCT
OF PEER REVIEWS**

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I. GENERAL PROVISIONS

1. This document sets out the methodology for peer reviews, including the guidance and procedures for the completion of both self-assessments and review by peers, the reporting and publication requirements, and the follow-up work.
2. A peer review constitutes an assessment and comparison of the effectiveness of the supervisory activities and the implementation and effectiveness of the provisions of competent authorities¹. This includes, inter-alia, regulations, procedures, enforcement powers and practices. These are assessed vis-à-vis those of their peers.
3. Peer reviews are conducted periodically by the Review Panel in order to further strengthen consistency in supervisory outcomes and to facilitate the identification of supervisory best practices across competent authorities. Where appropriate and for a limited period, certain follow-up work may be performed in order to monitor implementation progress by competent authorities of agreed corrective actions.
4. The peer reviews shall include but shall not be limited to, an assessment of:
 - (a) the adequacy of resources and governance arrangements of the competent authority, with particular regard to the effective application of the regulatory technical standards and implementing technical standards referred to in Articles 10 to 15 of the Regulation² and of the Acts referred to in Article 1(2) of the Regulation;
 - (b) the adequacy of resources and governance arrangements of the competent authority, with particular regard to the capacity to respond to market developments;
 - (c) the degree of convergence reached in the application of Union law and in supervisory practice, including regulatory technical standards and implementing technical standards, guidelines and recommendations adopted under Articles 10 to 16 of the Regulation, and the extent to which the supervisory practice achieves the objectives set out in Union law;

¹ 'competent authorities' means the authorities defined in Article 4(2) of the Regulation, including authorities from the EEA countries.

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).

- (d) best practices developed by some competent authorities which might be of benefit for other competent authorities to adopt; and
- (e) the effectiveness and the degree of convergence reached with regard to the enforcement of the provisions adopted in the implementation of Union law, including the administrative measures and sanctions imposed against persons responsible where those provisions have not been complied with.
5. Review Panel peer reviews shall strive to complement and avoid duplicating other European Banking Authority (“EBA”) and other EU bodies’ review/evaluation projects.
 6. Each peer review exercise shall be conducted by the Review Panel in accordance with the provisions of Article 30 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council (“the Regulation”) and the Decision Establishing the Review Panel³.
 7. The work programme of the Review Panel shall be approved by the Board of Supervisors in accordance with Article 7 of the Decision Establishing the EBA Review Panel.
 8. In accordance with Article 4 of the Decision Establishing the Review Panel, each competent authority shall commit appropriate human resources to the work of the Review Panel.
 9. The Review Panel may create sub-groups composed of members of the Review Panel or experts delegated by competent authorities if this is deemed necessary for the purpose of its work. Co-ordinator(s) of such sub-group(s) shall report regularly to the Review Panel and at the discretion of the Review Panel, inform and where necessary consult relevant EBA Standing Committees and Working Groups on the on-going work.
 10. The Review Panel shall establish a terms of reference for each peer review, which shall be subject to approval by the Board of Supervisors. The terms of reference will define, inter-alia, the objective, scope, reference period and the timeline for the review and also where applicable, outline proposed consultation and / or interaction with relevant EBA Working Groups.
 11. The peer review assessments shall take into account the actual practices of competent authorities and not only the existing national legal, regulatory and supervisory standards.
 12. The Review Panel shall work in an objective and transparent manner.

³ Reference: EBA DC 035 dated 4 May 2011

13. The Review Panel shall strive to work by consensus. When there are differing views amongst the Review Panel on items presented for approval to the Board of Supervisors, the majority view shall be presented, however minority views may also be presented.
14. This methodology is subject to revision, upon proposal from the Review Panel and subject to approval by the Board of Supervisors.

Steps in a peer review

15. A peer review exercise normally comprises a self-assessment conducted by competent authorities followed by a review by peers. However in some cases a review by peers may not necessarily follow. The complete process can be broadly classified into four phases:
- ***the preparatory phase*** which comprises selection of topic, drafting of terms of reference, the development and approval of the self-assessment questionnaire, including definition of assessment criteria and benchmarks, by the Review Panel, decision on confidentiality by the Review Panel and all contributing experts, nomination of reviewers and distribution of tasks by the Review Panel, testing of the self-assessment questionnaire;
 - ***the self-assessment phase*** which comprises the launch of the self-assessment questionnaire, completion of the questionnaire by the competent authorities and consistency check of the responses provided by competent authorities following which information provided by the competent authorities is reviewed, discussed and clarified with the relevant competent authorities and a draft summary report is prepared for discussion by the Review Panel;
 - ***the review by peers phase*** in which, based on findings from the discussion on the draft summary report, the review by peers is conducted, the finalisation and approval of the final report by the Review Panel for approval by the Board of Supervisors;
 - ***the follow-up phase*** in which, the Review Panel may propose the issuance of guidelines or recommendations pursuant to Article 16 of the Regulation and, subject to approval by the Board of Supervisors, when applicable, request submission of individual progress reports by competent authorities. The Review Panel shall present a summary of the progress reports to the Board of Supervisors according to an agreed timeline.

Use of existing information

16. Existing information and evaluations already made with regard to the competent authority concerned shall be taken into account. The Review Panel shall determine, on a case-by-case basis, on the use of existing information for the purposes of peer reviews. In so doing, account will be taken of various factors, including: - the

source and scope of the information / evaluation; the topic to which the information / evaluation relates; when the information /evaluation was prepared and the time frame to which it relates.

II.THE PREPARATORY PHASE

- 17.For each supervisory provision or practice subject to peer review, the Review Panel shall devise the 'assessment criteria', a corresponding set of 'questions' (the 'self-assessment questionnaire') addressed to the competent authorities, the 'benchmarks' and possible 'requests for further information'.
- 18.Against the 'assessment criteria', 'questions' and 'benchmarks' competent authorities will self-assess and the Review Panel will review whether the objective of each supervisory provision or practice is sufficiently met.

Assessment criteria

- 19.The 'assessment criteria' comprise of the essential elements and intended outcome of the supervisory provision or practice subject to peer review. The 'assessment criteria' must be as objective as reasonably possible, although some degree of interpretation might be necessary to reflect what the day-to-day implementation of these provisions would imply.

Reference Period

- 20.For each peer review a reference period shall be established.
- 21.Decisions as to the length of the reference period shall be taken within the context of the specific peer review. Where appropriate, within one project, the reference period applicable to particular provisions could differ. For example, provisions leading to routine actions may be assessed under a shorter period compared to provisions addressing rare cases.

Questions

- 22.'Questions' shall be devised based on the 'assessment criteria' in order to ascertain the competent authority's level of compliance with the 'assessment criteria'. Questions' shall be as clear and objective as possible and the number of 'questions' may vary, usually in accordance with the level of detail of the 'assessment criteria'
- 23.'Questions shall typically require the competent authority to provide a 'yes' / 'no' / 'not applicable' response. A space shall be provided for the competent authorities to explain their answer where appropriate. Where appropriate, open questions may be used.

24. Before being submitted to the Review Panel for endorsement, the self-assessment questions shall be 'field-tested' by an ad-hoc testing team, composed of Review Panel members or experts from competent authorities not participating in the drafting work.
25. The Review Panel shall determine the type(s) of supporting evidence which shall accompany the answers to the 'questionnaire', such as relevant data, copies of laws, regulations and supervisory guidance, internal procedures and other written material that may be relevant.

Confidentiality

26. When devising the 'assessment criteria', 'questions', 'benchmarks' and possible 'requests for further information', the Review Panel shall seek to define the categories of information to be classified as confidential or not suitable for external publication purposes. Should confidentiality issues arise which fall outside the predetermined categories of confidentiality, these shall be addressed by the Review Panel with assistance from EBA staff on a case by case basis.
27. All external participants and external experts consulted during the peer review process shall be obliged by professional secrecy, and as such will need to be bound by a suitable confidentiality agreement(s).
28. All Members of the Board of Supervisors and the Management Board, the Executive Director and members of EBA's staff, including secondees, and all other persons carrying out tasks for EBA on a contractual basis, are subject to the requirements of professional secrecy as set out in Article 1 of the EBA Decision of the Management Board on Professional Secrecy.
29. During the peer review exercise Review Panel members are expected to share all relevant information including confidential information to the extent necessary for the conduct of the peer review exercise.

Benchmarks

30. The 'assessment criteria' combine to form the basis of 'benchmarks' which correspond to a transparent and objective evaluation as to what degree each competent authority is effectively implementing the supervisory provision or practice subject to peer review and to what degree intended supervisory outcomes are being achieved.
31. 'Benchmarks' will be set for each main set of supervisory provisions or practices under review, and also typically regarding

the whole set (overall benchmarks) of supervisory provisions or practices subject to the peer review.

32. The Review Panel shall, where appropriate consult with relevant EBA Working Groups when devising the 'benchmarks'.

33. When establishing the 'benchmarks', the nature of the supervisory provision or practice being assessed will be taken into account. In particular, different 'assessment criteria' may not be of equal importance and the number of 'assessment criteria' met is not always an indication of the overall evaluation for each supervisory provision or practice subject to peer review. The specific criteria or combinations thereof which correspond to each benchmark will be clearly set out at the beginning of each exercise.

34. For benchmarking purposes, the following grade-scales shall be used:

- **Fully Applied:** A provision is considered to be 'fully applied' when all assessment criteria as specified in the benchmarks are met without any significant deficiencies.

- **Largely Applied:** A provision is considered to be 'largely applied' when some of the assessment criteria are met with some deficiencies, which do not raise any concerns about the overall effectiveness of the competent authority, and no material risks are left unaddressed.

- **Partially Applied:** A provision is considered to be 'partially applied' when some of the assessment criteria are met with deficiencies affecting the overall effectiveness of the competent authority, resulting in a situation where some material risks are left unaddressed.

- **Not Applied:** A provision is considered to be 'not applied' when the assessment criteria are not met at all or to an important degree, resulting in a significant deficiency in the application of the provision.

- **Not applicable:** A provision under review is to be considered 'not applicable' when it does not apply given the nature of a competent authority's market.

- **Non-contributing:** A competent authority shall be classified by the Review Panel as 'non-contributing' if it has not provided its contribution within the prescribed deadline.

35. The Review Panel may, when necessary given the nature of a specific peer review exercise, devise bespoke grade-scales prior to commencement of the peer review exercise. In addition, where joint peer reviews are conducted with other European Supervisory Authorities ("ESAs"), the EBA grade-scales 'largely applied' and

'partially applied' could be given as one grade-scale corresponding with the 'partially applied' grade-scale of other ESA's.

36. Where overall benchmarks are set, a weighted average of the results from specific benchmarks applied to the self-assessment questionnaire shall be applied with the possibility to weight different areas under self-assessment questionnaire with different weights. In addition, the qualitative output shall include conclusions drawn from the responses to open questions. The overall benchmark shall objectively reflect the overall compliance of each respondent. Additionally, if Review Panel members consider that the adopted overall benchmarks do not adequately reflect the answers and explanations provided in a given self-assessment, minor adjustments could be made for which the rationale shall be clearly stated alongside the published benchmarks.
37. To facilitate the identification of best practices, where the Review Panel deems it appropriate, specific benchmarks, distinct from those aimed at assessing compliance can be designed to capture those national measures that go beyond the provisions or practices under review.

Request for further information

38. The Review Panel may 'request further information' from competent authorities, in order to better understand the effectiveness of the supervisory provisions or practices applied and in particular, those practices which exceed minimum compliance requirements. These information requests are intended to assist the Review Panel in the identification of best practices where they exist. Information provided in this context shall not be considered under the benchmarking process for assessing compliance.

III.SELF-ASSESSMENT GUIDANCE AND PROCEDURE

39. After approval by the Review Panel, the 'assessment criteria', 'questions', 'benchmarks' and possible 'requests for further information', shall be distributed to the competent authorities along with general guidance on how to complete the questionnaire. This guidance may include examples of answers. Each competent authority shall be required to complete the 'self-assessment', i.e. to provide answers to the 'questions' via the EBA web based tool.
40. The time granted to competent authorities to complete the questionnaire shall be determined by the Review Panel and shall fairly reflect the scope and complexity of the project.
41. If the Review Panel deems it appropriate, a workshop could be organised shortly after the final questionnaire has been circulated for completion, so as to ensure that the persons drafting the

answers are given some contextual and practical information to assist in completing the questionnaire, to enable a common understanding of both the questions and of the expected level of detail sought.

General principles for completing self-assessment questionnaires

42. Each question shall be answered, even if the supervisory provision or practice has not been applied ('comply or explain approach') and any information required must be provided.
43. 'Questions' left unanswered will be classified 'non-contributing' and may lead to a statement of 'non contribution' as regards the overall assessment.
44. If a supervisory provision or practice is not applicable, the competent authority shall state the reason for its non-applicability. In such cases, the supervisory provision or practice shall be classified as 'not applicable'. 'Not applicable' answers shall not be taken into account for benchmarking purposes.
45. If a supervisory provision or practice has been applied, either in full or partially, the competent authority shall provide sufficiently detailed information on the relevant national implementing measures, considering that peer review aims at identifying compliance and convergence in practice and not solely from a legal perspective. Any derogation from a national implementing measure or any possibility for issuing a waiver from the 'requirement' shall be stated explicitly, together with the rationale for any such exemption, and shall be taken into account in the self-assessment.
46. National measures shall be interpreted broadly and may include for example: -national law; national guidelines, rules, principles, internal policies or procedures of competent authorities.
47. If a national implementing measure is not in force, but has already been adopted, and there is a concrete date of its coming into force within a reasonable period of time after the peer review exercise has started, it shall be assessed as if it had been in force at the time of the self-assessment. The Review Panel shall establish what is considered a 'reasonable period of time' on a case-by-case basis. This period of time shall be established before the commencement of each exercise.
48. If a national implementing measure relating to the supervisory provision or practice subject to peer review is in the process of being drawn up, this fact has to be stated, provided that the implementing measure is already in a concrete stage (e.g. a proposal to Parliament or publication of a consultation paper).
49. If a supervisory provision or practice has not been fully applied, the competent authority must state, as a minimum, the reason for

the non-full application, and, if applicable, the action taken so far to achieve full application, and the proposed timing of full application.

Formal consistency check

50. Each competent authority is responsible for the accuracy and completeness of the information provided.

51. The EBA staff and the Review Panel shall perform an initial review of the responses contained in the 'self-assessment questionnaires' submitted by competent authorities in order to ensure that there is an acceptable and consistent level of completeness (from a substance point of view) of the responses across all competent authorities. Where necessary, competent authorities may be requested to provide clarification and / or further explanation regarding their responses and also may be requested to update the responses in the 'self-assessment questionnaire' and resubmit these within a stated timeframe..

52. If a competent authority does not cooperate or does not meet the prescribed timeframes, the Chair of the Review Panel shall ask the relevant competent authority to explain the reasons of this non-cooperation and shall set a deadline for compliance. If said deadline expires without compliance, the peer review exercise shall continue without the input of this competent authority and any published results shall be accompanied by a statement that the particular competent authority has been classified as 'non-contributing'.

53. The EBA staff shall also prepare a paper, setting out the information that each competent authority has included in the self-assessment but classified as confidential for publication purposes. In the event that there are differences between such information and the categories of information defined as confidential according to paragraph 26 of this document, the EBA staff shall discuss the differences with the relevant competent authority. The EBA staff shall report the outcome of such bilateral discussions to the Review Panel. If the Review Panel agrees, for confidentiality reasons, this information will also be excluded from publication.

Benchmarking process

54. The benchmarking process shall be launched by EBA staff upon expiry of the deadline for completion of the questionnaire, on the basis of the answers provided via the EBA web based tool.

55. The benchmarking process shall recognise that the assessment criteria can be met in various ways. Each grade-scale assigned by the Review Panel shall be accompanied by supporting commentary and the final output shall place emphasis on both the grading and the associated commentary.

Publication relating to the self-assessment exercise

56. Before the review by peers starts, all the self-assessments may be made available on a named basis, on the 'restricted area' of the EBA website, together with individual responses of competent authorities.
57. The Review Panel may determine that it is appropriate to publish a document explaining the peer review self-assessment exercise on the 'non restricted' area of EBA website. Publication of such a document shall be subject to the provisions contained in Article 30.4 of the Regulation requiring the approval of the Board of Supervisors and the agreement of the competent authorities that are the subject of the peer review. This report shall not equate to the report outlined in paragraph 61 when the peer review exercise is discontinued after the self-assessment phase.

IV. REVIEW BY PEERS PROCEDURE

58. The 'review by peers' shall provide an independent, objective and consistent assessment of competent authorities on an individual and comparative basis. It involves the Review Panel's assessment of competent authorities' implementation of and convergence in supervisory provisions or practices based on the self-assessments, the evidence provided and any further information received.
59. The transparency, objectivity, accuracy and analytic quality of the work are essential to the effectiveness and credibility of the peer review.
60. The assessment undertaken during a peer review shall be comprehensive and in sufficient depth to permit an informed judgement on whether criteria are fulfilled in practice, not just in theory.
61. A review by peers shall typically follow the submission of the self-assessments by competent authorities, however where appropriate, the Review Panel may determine that a review by peers would not further the achievement of its objectives. Where the Review Panel makes such a determination, it shall seek approval from the Board of Supervisors to discontinue the exercise prior to commencement of the review by peers phase. The Review Panel shall determine the appropriate format of any final report on a case-by-case basis and shall seek the prior approval by the Board of Supervisors regarding the format.

Review by peers

62. The review by peers shall be conducted for all competent authorities simultaneously, in order to minimise the risk of uneven or biased results.
63. To avoid conflicts of interests, a Review Panel member shall not participate in the review of his/her own competent authority or country.
64. Subsequent to the formal consistency check of the self-assessments, the Review Panel, assisted by EBA staff, shall produce a report, highlighting possible answers or issues which require further investigation in order to assess the degree of compliance of each competent authority with the provisions or practices under review. In light of this preparatory work, the Review Panel shall evaluate and where appropriate challenge the self-assessments, seeking feedback from the relevant competent authorities, and subsequently issue an opinion on degree of compliance.
65. When conducting the review by peers, the Review Panel may seek clarifications on the subject under review from the relevant EBA Standing Committees or Working Groups. The Review Panel may also invite competent authorities to provide additional clarifications.
66. The Review Panel may seek information from external parties on specific issues, provided that the confidentiality of its work is appropriately safeguarded.
67. Before expressing views on specific problems encountered by individual authorities and recommending ways for achieving full implementation by the relevant competent authority, bilateral discussions on this issue shall take place between the Chair of the Review Panel and the relevant competent authority. The explanations and further details received from the competent authority shall be submitted to the Review Panel for consideration.

V. FINAL REPORT

Content

68. For each peer review exercise, the report with the findings of the review may include:
- the extent to which competent authorities apply specific supervisory provisions, achieve convergence in supervisory practices and consistency in supervisory outcomes;
 - the measures that competent authorities not applying specific supervisory provisions and not achieving consistent supervisory

outcomes, intend to take to correct the situation or to adopt a more convergent supervisory practice

- views on specific problems encountered by individual competent authorities and where appropriate recommendations for achieving full implementation by the relevant jurisdictions;
- signal and identify the reasons for inconsistencies or general problems in the implementation of Union law, regulatory and implementing technical standards, guidelines or recommendations, and in the implementation of commonly agreed supervisory practices and the achievement of consistent supervisory outcomes;
- describe possible best practices developed by some competent authorities which might be of benefit for other competent authorities to adopt.

69. Any Review Panel member who objects to a specific issue in the final report which refers to his/her own competent authority or Member State shall not block the submission of the final report to the Board of Supervisors, and may provide explanations to be annexed to the report, before its submission to the Board of Supervisors.

Adoption by the Board of Supervisors

70. Once endorsed by the Review Panel, the final report shall be submitted to the Board of Supervisors for adoption.

71. The final report on the Peer Review exercise shall summarise the project and its outcomes and where applicable identify best practices. Where appropriate, developments and / or, improvements occurring since the end of the reference period shall also be noted.

72. To the extent possible, the final report of the Review Panel shall follow a standardised format which will comprise an executive summary, an analytical section and a recommendations section (e.g. to the EBA or to the European Commission for improvements of legal acts or supervisory approaches) including where applicable, identification of best practices.

73. Where applicable, the Chair of the Review Panel shall highlight to the Board of Supervisors any significant difficulty encountered. In the event that there is a dissenting opinion, as described in paragraph 69 of this document, it may be presented to the Board of Supervisors by the competent authority concerned.

74. The Board of Supervisors may ask the Review Panel to modify the final report should it find for example that a dissenting opinion is well grounded or justified. The Board of Supervisors may also,

after discussing the reasons, decide a selective publication of an outcome of the Review Panel by way of exception for example for reasons of confidentiality.

75. Any competent authority may provide submissions regarding the peer review which may be annexed to the report to be sent to the Board of Supervisors.

Best Practice

76. If possible and appropriate the Review Panel may identify best practices.

77. Best practices can facilitate compliance and achievement of the objectives of the respective provisions under review.

78. Best practices do not have any normative or binding character and are not intended to disqualify other practices or forms of implementation that may be more suitable for a specific jurisdiction.

79. The Review Panel should, where appropriate, consult the experts within relevant EBA Working Groups, as part of identifying best practices. The Review Panel shall take into consideration the 'experts' opinions.

VI. PUBLICATION

80. In accordance with Article 11 of the Decision Establishing the Review Panel, once the final report is adopted by the Board of Supervisors, the main outcomes without reference to individual authorities and the best practices that can be identified from the peer review shall be made public on the 'non-restricted' area of the EBA website. In addition, all other results of peer reviews may be disclosed publicly in the same manner, subject to the approval of the Board of Supervisors and subject to the agreement of the competent authorities that are the subject of the peer review.

81. Once adopted by the Board of Supervisors, in accordance with Article 30.4 of the Regulation, the final report of the Review Panel will be made available on the 'restricted area' of the EBA website, with any other accompanying document the Board of Supervisors considers necessary for information purposes.

VII. FOLLOW UP TO PEER REVIEW

82. Following the completion of a peer review, and upon proposal by the Review Panel and approval by the Board of Supervisors, individual progress reports (presented in a standardised format) may be requested of the competent authorities that have been the subject of the peer review. The frequency and necessity of the

progress report may vary, taking into account the significance of the non-compliance, divergence of practices or any other problem or deficiency of the particular jurisdiction, as reflected in the findings of the Review Panel exercise. The planned work programme of the Review Panel and associated resourcing requirements shall also be taken into account when considering the nature of any proposed follow up work.

83. The Review Panel shall, according to an agreed timeline, present a summary of the progress reports of competent authorities to the Board of Supervisors. This report shall highlight potential delays in implementation of the corrective action agreed to be taken by the competent authority and also propose appropriate responses to such situations.

84. The report(s) shall continue to be requested from competent authorities as long as deficiencies identified during the relevant review remain to be addressed, and are requested by the Board of Supervisors.

85. On the basis of a peer review, the Review Panel may propose the issuance of guidelines and recommendations pursuant to Article 16 of the Regulation.
