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Board of Supervisors

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# Board of Supervisors meeting – Final Minutes

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## Agenda item 1: Welcome and approval of Agenda

1. The Chairperson welcomed the participants. With regard to the Minutes of the previous meeting, the Chairperson mentioned that the Board of Supervisors (BoS) approved them in written procedure.
2. The Chairperson informed about the changes in membership and mentioned that Elisa Ferreira and Pedro Duarte Neves stepped down and that Ana Paula Serra and Luis Costa Ferreira have replaced them as the BoS Member and a High-Level Alternate respectively, both appointed as representatives of Banco de Portugal. He also mentioned that Santa Purgaile has been appointed as a Latvian BoS Member and Yves Mersch as the ECB representative.
3. The Chairperson also informed the BoS that the French Conseil d'Etat has decided to ask the Court of Justice whether the EBA acted within its powers in issuing the 2016 Guidelines on Product Oversight and Governance (POG). This followed a 2017 challenge brought by the French Banking Federation to the ACPR's decision to comply with the guidelines. He stressed that this was the first time that ESA guidelines have been challenged before the courts and therefore, it was an important case which could have implications for the EBA's ability to issue guidelines. The EBA would work with the Commission and other ESAs to put forward the strongest case for the adoption of the guidelines. He concluded by clarifying the guidelines remain in place and that the EBA expects that competent authorities (CAs) and financial institutions would continue to apply them.
4. Finally, the Chairperson also mentioned that written comments submitted ahead of the meeting by some Members not attending due to the strike situation in Paris would be shared with other Members during relevant items.

## Conclusion

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5. The BoS approved the Agenda.

## Agenda item 2: Appointment of an interim Executive Director

6. The Chairperson reminded the BoS that the decision restricting activities of Adam Farkas as an Executive Director (ED) required him to delegate his formal functions as ED before he left the office. This approach was taken pending finding a longer-term solution. To that end and given the ongoing selection procedure, which would continue even after 31 January when the ED's contract ends, the EBA was proposing to appoint Peter Mihalik, Director of Operations, as acting ED in order to ensure continuity until the new ED takes up the position.

### Conclusion

7. The BoS approved Peter Mihalik as an acting Executive Director.

## Agenda item 3: Update on the selection procedure for the appointment of the EBA Executive Director

8. The Chairperson informed the BoS that the selection procedure for the appointment of a new ED was ongoing and according to the envisaged steps, the three shortlisted candidates would attend informal exchanges of views with members of the ECON Committee of the European Parliament (EP) in the coming days. He also mentioned that relevant members of the Management Board (MB) were preparing questions for the interview with the candidates.
9. The EBA Head of Legal Services (Legal) reminded the Members that they should not be in contact with the candidates on matters related to the ongoing selection procedure.

## Agenda item 4: Election of the ResCo Chair

10. The Chairperson informed the BoS that the current ResCo Chair, Dominique Laboureix decided to step down from his position after serving two terms of office. Therefore, the EBA launched a call for interest on 21 October 2019 to fill the vacant position and received three nominations from Jesús Saurina (Banco de España), Frédéric Visnovsky (ACPR) and Sebastiano Laviola (the Single Resolution Board).
11. A secret ballot vote was casted.

### Conclusion

12. The BoS elected Sebastiano Laviola as the ResCo Chair.

## Agenda item 5: Election of SCPS Co-Chair

13. The Chairperson informed the BoS that following the resignation of Domenico Gammaldi of the Banca D'Italia as Co-Chair of SCPS in October, the EBA issued a call for expressions of

interest in November to seek his successor. By the deadline, the EBA received one application, of the Central Bank of Lithuania, who was proposing Ruta Merkeviciute.

## Conclusion

14. The BoS approved the nomination of Ruta Merkeviciute as the SCPS Co-Chair.

## Agenda item 6: Update on risks and vulnerabilities in the EU

15. During the presentation of the EBA's assessment of risks and vulnerabilities in the EU banking system the EBA Director of Department Economic Analysis and Statistics (EAS) pointed out that the CET1 ratio (fully loaded) have gone slightly up YoY and noted the differences in application of the O-SII buffer. On assets, he highlighted the end of the deleveraging process and the slowdown in NPL decline. Furthermore, the Director of EAS explained that banks have made broad use of benign funding conditions to issue MREL-eligible liabilities. On profitability, he pointed at the slight decrease in RoE and showed a chart on the differences in operating costs as a percentage of total assets by country. He also summarised analysts' views on banks Q3 results. He ended his presentation showing the results of a survey on restrictions to apply negative interest rates to client deposits, but emphasised this was still work in progress.
16. The ESRB representative confirmed that there was a trend of lending to riskier segments. He also mentioned that the ESRB would start working on an update of its 2016 report on macro prudential issues in the low interest rates environment.
17. Some Members clarified their answers to the negative deposit rates questionnaires. The Director of EAS asked the Members to review the statistics presented and provide a single answer.
18. A Member considered the banking market is in the need of a major shake-up yet he also acknowledged banks difficulties to reduce some operating costs such as those related to compliance and IT. He also advocated for the reduction of national options and discretions and the creation of a truly Single Rulebook. Another Member confirmed that after the summer break banks have issued significant volumes of MREL eligible bonds.
19. The Chairperson concluded by acknowledging the low profitability issue and the current barriers to inorganic restructuring of the banking sectors via consolidation. He also suggested a follow-up written procedure with the BoS for confirming the outcome of the stocktake on legal constraints to negative rates.

## Agenda item 7: EU-wide Stress test exercise

20. The Director of EAS introduced the item by reminding the BoS that based on the agreement during the BoS conference call, ESRB continued working on the lower for longer scenario and the EBA further analysed the interaction of the methodology and this scenario. He mentioned that the methodology works also in this scenario and the only element for the BoS to consider

could be the extension of the scope of the legal floor to all deposits and the asset side. A presentation on the scenario by the ESRB representative followed.

21. The ECB representative was of the view that the current methodology was a consistent approach and it should not be changed. In particular, he was of the view that there should not be any floor with regard to the assets. He requested that if new information emerging at a later stage would require deciding about the treatment of individual floors in the stress test, then the BoS should be presented a list of the new floors and their proposed treatment. On the announcement of the scenario; i.e. the narrative and the numbers, he was of the view that these should be done at the same time to allow banks to prepare for the exercise. He also referred to the FAQ and requested that the EBA provide more details on the expected process. He concluded by mentioning that one more bank would have to be excluded from the exercise and that they would inform the EBA and BoS in the coming weeks.
22. On the methodology, one Member was of the view that the impact assessment was not sufficiently extensive to serve as a reliable basis for a well-informed decision on the changes to the methodology. Other Members supported the methodology as it is, while others suggested to expand the scope of the legal floors either by changing the methodology or preparing a FAQ. Two Members argued that the expansion of the scope should also consider other kinds of floors besides the legal ones.
23. Most Members supported the publication of narrative and scenario figures at the launch of the exercise as also advised by the STTF.
24. In his response, the Director of EAS explained that the deadline for the FAQs were tight but that there was a good network of experts and all the answers should be drafted within the deadlines. He also pointed that the methodology was published in November with an aim to give banks enough time to prepare for the changes introduced in the methodology and frontload possible questions.
25. The Chairperson concluded by summarising the view of the BoS with regard to the joint publication on the same day of the narrative and figures of the scenario and no further changes to the methodology. However, he also noted that, as some Members were of the view that there is merit in expanding the scope of the legal floors, this issue should be addressed in a FAQ. He also underlined that contractual floors should not be considered.
26. The agenda item continued with a presentation by the Director of EAS on the discussion paper on the future changes to the EU-wide stress test. The main question to the BoS were regarding frequency of the stress test, the disclosure (including publication of P2G), new determination of P2G, usage of ICAAP in the bank leg, usage of top-down elements in the supervisory leg and possibility of a dialogue between the two legs. The Chairperson stressed the importance of a clear steer from the BoS on the key drivers for the future of the exercise as well as on the communication of the process.

27. On the frequency of the exercise, one Member proposed to postpone the discussion on this point to a later stage of development. Members unanimously agreed that the current biennial frequency is well established and should not be changed in the future. Furthermore, this practice allowed for analysing lessons learnt during the years when the exercise was not being executed.
28. On the publication of the results, and the implications for P2G and capital distribution, one Member was not in favour of the publication of the P2G, especially if there was no direct link between the stress test results and the P2G identifiable from an external perspective. Some other Members supported this view, mentioning also that the P2G should not be published, as it would transform this current soft requirement into a hard requirement. One Member also suggested not to mention the P2G issue in the discussion paper. One Member pointed that not all Member States were following the same methodology for the publication as the SSM and that national law allowed the CAs to decide on the publication. One Member suggested to align the publication with the SREP publication. Overall, some Members were inclined to include an option of publishing P2G in the discussion paper for getting public's feedback, even though they might not necessarily support its publication at the end.
29. With regard to the bank leg, Members suggested to include ICAAP option to collect industry views (not as a baseline option) but stressed also that the bank leg should allow for enough flexibility. Banks should be allowed to use their models from internal risk management (ICAAP), but a principle-based methodology should be provided. The ECB representative stressed that supervisory quality assurance was not envisaged for the bank leg.
30. On the supervisory leg, one Member proposed to streamline work in risk areas. Other Member was of the view that the approach that top-down projections replaced constrained bottom-up projections for suitable risk types (credit risk, net interest income) should be a part of the baseline proposal. A number of Members agreed that the current methodology already includes a number of mechanistic elements, which could be replaced with supervisory top-down models. One Member proposed to further elaborate on the full top-down approach in the discussion paper, while a number of Members supported the development of top-down models in longer run.
31. With regard to the dialogue, some Members proposed to refine the supervisory leg in way so it has a dialogue with the bank leg during the QA phase. However, this should not result in just one single outcome, which would undo the benefits of the new two-leg approach. Most Members supported the idea of having two results, bank and supervisory result, rather than only one. One Member was reluctant to have this kind of approach.
32. Majority of Members were of the opinion that the proposal of a new methodology for the determination of P2G should not be discussed in the paper, but rather in the dedicated SREP working group.

33. One Member also mentioned that they were in favour of one macro-scenario with attached sensitivity analyses, rather than multiple macro-scenarios. Other Member was of the view that having multiple scenarios could help finding weaknesses of banks. In this regard, one Member mentioned that banks had, already now, their own scenarios. On explanatory scenarios, one Member proposed to postpone the discussion, while others supported their introduction in the paper.
34. The Director of EAS noted the comments received and concluded that the timeline on the development of methodology for the 2022 in the discussion paper's roadmap should stick to the same that was for the 2020 methodology. If there were fundamental changes, the EBA had to rush or stretch the exercise. On the options on number of scenarios and sensitivity analyses, he concluded that they should be included in the paper and the public should be asked about them. For exploratory scenarios, the EBA did not have a model yet, but mentioning it in the paper was a preliminary stock take for all possible scenario options. He agreed that it would not be a part of a usual stress test. The frequency of the stress test would remain two years and the paper would not include a question on the frequency. The Director of EAS mentioned that regarding the disclosure (incl. P2G disclosure), the Members were open to asking questions to the public. Dialogue between bank and supervisory leg should be included as a possible option and a question to the public. However, even if there was some kind of a dialogue between the two outcomes, the option for two separate outcomes, and not one, should be the expected outcome. He also mentioned that the ICAAP approach as part of the bank leg should be considered, but not as a baseline option. Hybrid approach would be incorporated in the discussion paper in way that showed how the current mechanistic elements could be replaced by supervisory top down models.
35. The Chairperson concluded by acknowledging the work that aimed at improving the relevance of the stress test exercise. He also mentioned that as there was a support for a biennial exercise, the question on the frequency would not be included in the discussion paper. He also emphasised that the discussion paper should mention that if the potential changes do not improve upon the existing framework, we would stick to the current approach.

## Conclusions

36. The BoS agreed with the methodology.
37. The BoS agreed to publish the scenario (narrative and numbers) on the same day.
38. The BoS agreed that the final discussion paper would be discussed at the January BoS meeting. If there was agreement, it would be published in January for consultation until April. If there was a need, a BoS written procedure for collecting final comments would be conducted after the meeting. In case the discussion paper was not published in January, the discussion would continue.

## Agenda item 8: ESAs' Review

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39. The Chairperson introduced the item by mentioning that the three ESAs have been coordinating the work under the ESAs Review in order to align processes and wording. He also mentioned that given the publication of the amending legislation would only take place on 27 December 2019, the Board could not adopt implementing measures at its meeting. The Board was therefore asked to endorse the proposals, with the formal decisions to be adopted in January 2020.
40. The Head of Legal updated the BoS on the ongoing implementation of changes resulting from the ESAs Review and focused on some aspects, such as a conflict of interest policy, transparency and whistleblowing.
41. One Member commented on the process and explained that in this case, it would be beneficial to see all comments received by all BoS Members in tracked changes. Another Member was supportive and asked for more discussions with the BoS Members. Another Member stressed that there was a strong need that the wording of the COI provisions in the BoS Rules of Procedure (RoP) as well in the Conflict of Interest (COI) policy document was aligned with the other ESAs. Moreover, they considered that it was important to take an approach which was consistent with the view of the EC Legal Service and therefore a formal view by the EC Legal Service would be very helpful in this respect. This proposal was supported by several Members.
42. On the COI, one Member summarised views shared with the BoS before the meeting in writing. Another Member acknowledged the change in the legislation but was of the view that a conflicted individual concerned should always have the right to remain in the room. In this regard, one Member mentioned that it should be up to the whole BoS to decide about presence of the BoS Member in question, not only a request from one member to exclude a conflicted individual. Furthermore, this Member said that the COI rules should only apply in cases of breach of Union law and mediation procedures and on the contrary, these rules should not apply in cases of peer reviews and EBA opinions.
43. With regard to the composition of the advisory committee on proportionality (ACP), one Member was of the view that no external membership should be allowed. Several Members supported that view. One Member also suggested that the mandates should be overlapping and an appropriate rotating rule should apply.
44. On the AMLSC, some Members suggested that the chairmanship of substructures should be aligned with other standing committees.
45. On the BUL panel, several Member was of the view that no external members should be allowed. Another Member mentioned that their previous comments and suggestions on this issue had not been taken into account.
46. With regard to the peer review committees, one Member suggested that as the Terms of Reference represents the key framework for the peer review, it should be approved by the BoS, not by the MB.

47. On the Decision establishing ResCo, one Member raised several technical comments.
48. One Member suggested to extend written procedures from 8 to 10 working days. He also required clarification on the coordination with other ESAs and potential differences in some cases. In his response, the Chairperson explained that the three Chairs have agreed that the aim was to achieve as much convergence as possible, in particular on the issues such as the COI, treatment of stakeholders groups and ACP.
49. The EC representative was supportive of the work done but raised comments related to the COI. He stressed the change in the legislation which meant that any type of conflicts of interest, including institutional conflicts need to be considered. He also explained that the right to be heard was not questioned and should always apply but is separate from the question of participation in the Board discussion and voting. Finally, he mentioned that as the APC is an internal committee it should not, in the EC's view, have external membership.
50. The SRB representative expressed their interest in participating in the APC.
51. One Member asked for further clarification on the right to be heard. In this regard, the BoS discussed practical situations that might happen with regard to the COI, participation in the meeting and in the decision making process. The Head of Legal explained that where a right to be heard is required, that right needs to be fulfilled before the proposal is tabled for decision by the BoS, in line with Article 39 of the EBA Regulation but that it was always open to the BoS to decide to hear the views of relevant parties in addition to the formal right to be heard. Given the uncertainty, the BoS requested further clarification from the Commission on the application of legal requirements and their potential consequences.

## Conclusions

52. The BoS supported the work on the ESAs Review. The Commission was asked to provide its views in writing on the COI requirements which would be circulated to the BoS. The BoS rules of procedure would be revised to provide for a conflicted individual to be able to present the view of their competent authority at a BoS meeting, and for a vote to be held if a member requested the exclusion of a conflicted individual during the discussion and voting. The participation of the BSG Chair in the APC would be reviewed in conjunction with the other ESAs. The revised proposals in these areas would be brought back for approval to the January BoS meeting, and the other proposals would also be circulated for adoption in January either in written procedure or at the BoS meeting.

## Agenda item 9: Basel III CfA: Specialised lending and MREL/TLAC

53. The Chairperson introduced the item by referring to the letter received on 15 July 2019, in which the EC asked the EBA to provide additional analysis to inform their decision-making in few areas of the Call for Advice on the final elements of the Basel III framework.

54. The EBA Head of Risk-based Metrics (RBM) continued by clarifying that the EC requested the EBA in July 2019 to provide two additional analyses on Basel III, beyond what was delivered in the Advice on Basel III. These analyses relates to the Specialised Lending Exposures (SLE) and the MREL TLAC requirements. In particular, the EC asked EBA to carry out additional analysis on the appropriateness of LGD input floors included in the Basel III framework and advice on criteria to differentiate the quality SLE. He explained that given the high degree of complexity of the topic and a short timeline, the analysis is focused on presenting in a more granular way the impact of the reform on SLE. The impact was mainly driven by the LGD input floors. However, given the nature of institutions with specialised lending business additional considerations was provided on the interaction with the output floor, although it should be stressed that the output floor would not be binding at the sub-exposure level. The Head of RBM then continued by presenting the results on MREL and TLAC requirements requested by the EC. In this regard, he mentioned that because MREL decisions taken by Resolution Authorities has only been given fairly recently, it has not been possible to do this analysis before now. The analysis relied on work done under the auspices of ResCo, which would soon provide a report on actual shortfalls compared to the MREL decisions. Based on this analysis, it has been possible to extend the analysis to provide an indication of what Basel III will have of consequences on MREL decisions. He also clarified that the impact numbers on the MREL impact of Basel III rely on a number of important assumptions. Also, there was significant uncertainty on how resolution authorities would modify the MREL decisions based on the changes stemming from Basel III and therefore would be subject to even higher uncertainty compared to the analysis provided on the Basel III impact.
55. The SRB representative confirmed that some further data check on MREL on their side would be done in the coming days and if any changes were needed, the SRB would inform the EBA.
56. The EC representative stressed that while no further work was needed on MREL, although presentation of certain assumptions and data may be slightly streamlined, further analysis would be necessary for the specialised lending and that the EBA might want to discuss with the industry and rating agencies whether they could provide more insights on this portfolio.
57. The ECB representative mentioned that any further work on SLE should not deviate from international standards set up by the Basel Committee.
58. One Member acknowledged a short timeline but was concerned that none of the concise questions asked by the EC on SLE were answered in the EBA's analysis. Other Member was of the view that more work should be done in relation to the specialised lending and he did not agree that there was a limited impact. He also mentioned that the standardised approach should be reviewed.
59. The Chairperson concluded that regardless of the deadline for submission of the analysis to the EC by the end of 2019, the EBA would continue working on the topic and liaise with the industry to improve the analysis, in addition to further use of the data from the Resolution Authorities. The EC representative noted the submission in January.

## Agenda item 10: Benchmarking package

60. In his introduction, the Chairperson reminded the BoS that similarly to previous years, the EBA has drafted credit risk and market risk benchmarking reports and updated the ITS on supervisory benchmarking.
61. With regard to the updated ITS, the EBA Head of Unit Liquidity, Leverage, Loss Absorbency and Capital (LILLAC) explained that the main changes related to the introduction of new annexes dealing with IFRS 9. On the credit and market risk reports, the Head of RBM summarised that changes were limited and related to the deletion of the exemption to report RW calculated under the SA for the Low Default Portfolios (LDP). He also mentioned that the results of the 2019 annual benchmarking exercise for market risk portfolios were based on the analysis of the market Risk Measures of end of September 2019. On the credit risk reports, he explained that the results were broadly in line with results presented in previous reports, and were presented in a comprehensive manner in an “annex - chart pack”. New analysis was highlighted in a new “summary report”, which included in particular a new comparison of the variability under the standardized approach and under the IRB approach.
62. One Member had concerns related to SA metric being mandatory for low default portfolios was (LDP). He mentioned that forcing mostly smaller banks, that were not required to implement the Standardised Approach in the past, e.g. due to the waiver according to Art. 500 (1)b CRR, to now report the RWA under the current STA also for the LDP was questionable. He was of the view that the cost by far outweigh the unsure benefits of the proposed reporting requirement for the banks in his jurisdiction. This new mandatory reporting requirement seemed also not to fit into the current general discussion on the cost of compliance report, where the aim was a reduction of the reporting burden. The Member also pointed out that the consultation period should not be shorter than three months given the impact of the ITS on the industry. Finally, he questioned whether Article 78 CRD provided a clear legal basis for the EBA to conduct supervisory benchmarking exercises of accounting models and approaches. He asked for a legal opinion, also in terms of the coverage of exposures under the SA approach, before the BoS could agree with the publication of the consultation paper.
63. One Member proposed minor drafting suggestions and other Member highlighted the importance of the work, but also stressed that it is important to communicate the key messages in a clear manner.
64. In her response, the Head of LILLAC confirmed that the legal basis had been checked with EBA Legal and EC Services when starting the work.
65. The Head of RBM clarified that the consultation period was longer compared to previous years, and that the consultation paper should be published before the end of the year, while the reports could be published in January

## Conclusions

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66. The BoS supported the immediate publication of the consultation paper and publication of benchmarking reports following a short written procedure.

## Agenda item 11: CfA Benchmarking of National Loan Enforcement Frameworks (including Insolvency Benchmarking)

67. The Chairperson noted that the BoS discussed in February 2019 a Call for Advice (CfA) from the EC for the purposes of a benchmarking of National Loan Enforcement (including insolvency) Frameworks. Given several constraints and the difficulties to collect the necessary data in a very short timeline, the BoS endorsed the request to modify the CfA prior to the launch of the data collection. The EBA subsequently sent a letter to the EC requesting to amend the timeline of the CfA. The EBA received an answer to the letter by the EC confirming the amended timeline.
68. The EBA Head of Economic Analysis and Impact Assessment Unit (EAIA) continued by summarising that under the revised timeline, the EBA has continued the preparatory tasks and technical discussions regarding the representative sample of banks and the data collection templates. The data collection have been performed in the second half of 2019, with the final report to be delivered to the EU Commission by the end of June 2020. He stressed that the amount of data received thus far was quite satisfactory, with just a couple of countries still clearly below their committed amount of submissions. By the time of the December BoS meeting, the EBA had received data on more than 2.1 million loans. Nevertheless, EBA has been receiving submissions and resubmissions from banks and that the data quality was worse than expected. Some banks were using old templates, or provided only partial data, in addition to data quality issues regarding data formats. Therefore, the EBA envisaged to review all the received data by mid-January 2020, followed by submission of the preliminary data analysis to the BoS in February 2020.
69. The SRB representative highlighted that the collected data was unique and it would be for the BoS to consider how to further use this data. Similarly, one Member suggested to consider how to best present the data. In his response, the Head of EAIA confirmed that the EBA would consider various options how to present the results of its analysis.
70. The Chairperson asked the BoS to follow up on the discussion in order to improve the data quality already received and submit missing data at the national level.

### Conclusion

71. The BoS supported the work and ongoing data collections.

## Agenda Item 12: EBA IT Strategy

72. The EBA Director of Operations presented a long-term vision and direction of the IT at the EBA, a mid-term IT Strategic Roadmap and specified the EBA's strategic IT objectives. He stressed

that the EBA should become a digital agency operating a Data Hub of information with digital dexterity and increased efficiency and transparency for the benefit of EBA's stakeholders and ultimately the European Union's economy, its citizens and businesses.

73. One Member highlighted that any IT tools should serve, primarily the EBA, then to CAs and then to the wider audience. Other Member asked if the EBA had any budget estimations for all the projects envisaged in the IT Strategy.
74. The EBA Head of IT explained that all projects had a budget envelope and the Director of Operations clarified that IT budget is rather stable within overall EBA budget and no additional funds are requested for the implementation of the IT Strategy.

### Conclusions

75. The BoS approved the IT Strategy.

### Agenda item 13: Brexit update

76. Discussion in a restricted setting (EU 27).

### Agenda item 14: Sustainable finance – Call for advice on short-termism

77. The Chair introduced the item by reminding the BoS of the recently approved and published EBA Action plan on sustainable finance.
78. The EBA Head of Unit Banking Markets, Innovations and Products (BMIP) continued by explaining that the three ESAs have been asked by the EC in February to each deliver a report by the end of this year on the issue of short-termism and more specifically short-term pressures from the financial sector on corporations. She summarised that the EBA and the network on sustainable finance, which gathered the CAs, have worked on the report on the basis of a review of literature, interactions with institutions and analysis of some quantitative data. The report covered the notion of short-termism, analysis of the potential presence of short-termism from a banking sector perspective, the role of some regulatory requirements in mitigating short-termism and it provided some policy recommendations.
79. One Member was concerned that the overall tone of the report was defensive and proposed to mention that, while in the past some aspects, such as climate risks, were not considered, these aspects were relevant now and that they were causing some pressure. He suggested to strengthen the message, especially on pressures received by banks, and to mention the fact that modelling approaches based on historical data may be insufficient to capture forward-looking and long-term risks. Another Member found that the report was achieving a very good balance but agreed that going forward the role of historical data may be considered in EBA's work on sustainable finance.

80. The Head of BMIP proposed to update the report to take into account the points raised and agreed that the report could reflect on the limitation of using primarily historical data for modelling and calibration of prudential requirements.

81. The Chairperson announced that a short written procedure after the meeting would be launched to review the final changes.

## Conclusions

82. The BoS agreed with the report under condition that the updated version would be submitted to them in written procedure after the meeting.

## Agenda Item 15: FinTech – Status of the EBA FinTech agenda and way forward with digital finance

83. The EBA Director of Banking Markets, Innovation and Consumers (BMIC) Department noted the importance of technological neutrality in driving all of the EBA's work to ensure that regulatory and supervisory approaches did not inadvertently hinder or favour any one technology or actor. He reminded the BoS that the EBA published its FinTech Roadmap in March 2018, taking account of the feedback from the FinTech Discussion Paper published in August 2017 and the March 2018 EC FinTech Action Plan, which conferred specific mandates on the ESAs. The Roadmap identified six core thematic priorities and the need to establish an EBA FinTech Knowledge Hub. In addition, the EBA identified virtual currencies and other forms of crypto-assets as priority for continuous monitoring and action as required. The Director of BMIC confirmed that the EBA completed all the deliverable set out in the Roadmap, established the EBA FinTech Knowledge Hub and, with the other ESAs, a new structure for sharing information amongst innovation facilitators – European Forum for Innovation Facilitators (EFIF) and that these both aimed at monitoring new technologies and opportunities as well as emerging risks. In this regard, he explained that the monitoring role of the EBA was crucial to ensure a proactive approach to technological neutrality and that the EBA should cover on an ongoing basis monitoring of innovations, regulatory perimeter and licensing, regulatory obstacles to financial innovation, supervisory knowledge and consumer awareness. He explained that in addition the EBA would continue to look at specific issues and the key topics for 2020, would include RegTech and SupTech, Platforms, Crypto-assets, and Operational resilience.

84. One Member stressed that big data companies had more data about clients of banks than banks themselves. He also mentioned that this fact was key for any further work as the banks might want to change their business models to be able to compete with these new technological companies.

85. The ECB representative announced that the ECB was planning to publish aggregated data of digital banks. He said that their profitability was better than those of banks with more

traditional models. In this regard, some Members suggested to further analyse the profitability, in particular of non-significant banks, also at the EBA level.

86. One Member raised concerns related to AML and FinTech. He also pointed that the coordination between the ESAs was necessary and that the BoS should discuss what could be the role of the EBA in the future with regard to FinTech.
87. On the priorities, one Member was of the view that more focus should be on platforms and he asked if the EBA could be a single contact point for all FinTech related issues. Other Member referred to so-called stable coins and big data as of the highest priority.
88. One Member also suggested to focus less on writing reports and more on identifying how we can build our capacities and expertise with innovative technologies that allow us to do our work better while being more effective in our roles.
89. The Director of BMIC noted the comments related to data and business models and reminded the BoS of already published reports of the EBA on these topics. He also mentioned that the EBA would further focus on cooperation with data regulators, as well as links between big data and oversight, in particular in relation to cloud services.

## Agenda Item 16: First report on AML reviews of supervisory authorities

90. The Chairperson introduced the item, referring to the work done by the EBA staff with the support of a network of AML/CFT experts from CAs on a series of reviews of CAs' approaches to the AML/CFT supervision of banks.
91. The Director of BMIC explained that these reviews were part of an ongoing project that was agreed by the BoS in April 2018 in order to review all CAs that were responsible for the AML/CFT supervision of banks in the EU as part of the EBA's ex ante efforts to strengthen AML/CFT supervision across the EU. He recalled that every review was followed by feedback from the review team to the relevant authority on areas for further action and improvement. He highlighted that whilst all feedback was confidential the BoS had asked for thematic reports and mentioned that for the purpose of the first thematic report, the EBA was drawing on reviews of seven AML/CFT CAs from five Member States. The report summarised the team's findings and recommendations, but did not contain the names of the CAs that had been reviewed. This was in line with the BoS' decision in 2018. He explained that AML/CFT staff across CAs were committed to the fight against ML/TF and the review team noted that significant reforms were underway in many CAs to implement the risk-based approach to AML/CFT. Nevertheless, there were both unique challenges and a number of challenges that were common to all CAs; these challenges broadly related to assessing ML/TF risk, translating these risk assessments into supervisory strategies and practice, and cooperation. The report therefore contained a number of recommendations the review team had issued to CAs, which were likely to be of interest to other CAs also.

92. The Director of BMIC also mentioned that going forward, and in line with the BoS's request to minimise the impact on CAs of various reviews, the EBA and the Council of Europe had agreed to cooperate in respect of relevant reviews in 2020 and a letter to the EC setting out joint approach and candidates for joint assessments was currently being drafted and should be finalised before Christmas. Finally, the Director of BMIC referred to the AMLSC and the recent call for candidates. He stressed that the importance of senior representation given the decision making powers of the AMLSC and noted he would be bilaterally contact some NCAs to discuss relevant seniority.
93. The BoS welcomed the report. They said it was balanced and constructive, and showed that CAs were broadly moving in the right direction even though understandably, some challenges remained. Members noted the importance of the work and one Member commented that while the commitment of the CAs was high, there was still a lot of work to be done. She also mentioned that this was a very useful exercise that would help also other CAs. She stressed the important role of the EBA in coordination and exchange of information.
94. Other Members pointed that there were external expectations on the EBA on how it would deal with the AML issues. This report showed that the EBA understood where the issues lay and how to address them, and it was therefore important that this report be published.
95. One Member welcomed the agreement with the Council of Europe. He also mentioned that the findings from the report could be used for any future convergence work, in particular when developing best practices of supervisory tools, supervisory strategy, or when considering how new technologies could be used.
96. The EC representative supported the work and also stressed the public expectations. Therefore, the EBA should consider a publication strategy and key messages. Several Members agreed that the publication should be well managed.
97. Two Members did suggest that the report could be reviewed once more to ensure it was even more balanced to avoid any unintended misunderstanding of the text by the media and the public. One Member referred that the report should not be given as final until all of the CAs, whose approaches were reviewed, have been informed on a bilaterally basis by the EBA regarding the respective findings.
98. The Director of BMIC explained that individual reports were not disclosed in line with the BoS's decision in 2018. He agreed on the importance of clear communication and recalled that the report would be discussed in the forthcoming Joint Committee's AML/CFT sub-committee, where he would ask members to look carefully at the text to ensure appropriate balance. He also noted the importance of the coordinated and well managed publication.
99. The Chairperson concluded by acknowledging the role of the EBA in AML, its role after the ESAs review as the leading AML agency in the EU and by stressing that the communication on what the EBA has done and was planning to do was crucial. With regard to the report, he mentioned its aim was to help CAs to identify their weaknesses, priorities and possibly,

relevant next steps. He also referred to the importance of cooperation, not only in the AML colleges but also within the EU and referenced the forthcoming Cooperation Guidelines.

## Conclusion

100. The BoS welcomed the coordination with the CoE and the continuation of the EBA's AML implementation reviews. It also approved the report for publication in principle. The report would be submitted for adoption by written procedure after discussion at the Joint Committee's AML/CFT sub-committee.

## Agenda Item 17: 2021 Single Programming Document

101. The EBA Head of the Policy Coordination Unit (PAC) presented the Single Programming Document, which outlined the multi-annual and 2021 annual strategic priorities and accompanying finance and human resources to achieve these. He informed that once the 2020 budget was approved by the BoS, an updated version would be circulated for final approval in January 2020.

102. One Member commented on the sustainability of the EBA budget increase for NCAs in the long term. Another Member concurred that the EBA would need to work further on the prioritisation of tasks in order to make a distinction between mandatory and optional ones and allocate resources accordingly.

103. One Member suggested amending the EBA mission statement and include statement that the main objective of the EBA was to contribute to the financial stability in the EU, so that the banking sector in the EU was more resilient and better prepared for a possible future financial crisis.

104. Other Member questioned the increase of 5 FTEs for the stress test exercise purposes.

105. The Chairperson concluded that the EBA has reached a steady state, which required a tighter management of its budget and resources to fulfil its strategic objectives.

## Agenda Item 18: Report on benchmark diversity practices 2019

106. The Chairperson introduced the item by reminding the BoS that the EBA published its first diversity benchmarking report based on 2015 data in 2016 and that now a second benchmarking exercise has been performed.

107. The EBA Head of Supervisory Review, Recovery and Resolution Unit (SRRR) continued by explaining that the EC reviewed the first exercise and submitted a few recommendations that all have been taken on board, such as to collect separate data on staff representatives and on the compliance of significant institutions. He also mentioned that for the 2019 report, the data of a representative sample of institutions, representing the situation as of 30 September 2018

has been collected early 2019 and has been analysed. However, some data had to be reviewed and therefore, the report would be submitted to the BoS again in written procedure.

108. The BoS supported the work and some Members acknowledged the importance of the topic. One Member suggested to review the wording within the report to ensure that the terminology used was correct from a statistical point of view. Other Member was of the view that a period of three years for this exercise would be more appropriate than two years and that the EBA should take into account that members of the management body were usually appointed for a term of five years.

### Conclusion

109. The BoS supported the publication of the report under a condition that the data included would be reviewed and the report would be submitted to the BoS again in a written procedure.

## Agenda Item 19: Consultation paper on the draft RTS on identified staff

110. The Chairperson clarified that following the changes made to Article 92 CRD IV by Directive 878/2019 (CRD V), a new draft RTS on identified staff has been developed as mandated under CRD V.
111. The Head of SRRR explained that some of the criteria for the identification of risk takers were now directly included in the Directive and had therefore to be removed from the tabled RTS. He also mentioned that the EBA has been mandated to provide a set of definitions in this context in addition to the criteria directly encoded in the CRD, namely the terms “managerial responsibility”, “material business unit” and “significant impact” on the institutions risk profile needed to be defined. He pointed that the identification outcome of the previous RTS (into force since 2014) was appropriate and should be preserved. However, considering the developments since 2014, some minor adjustments seemed appropriate, e.g. as IT risks became more important and heads of IT and IT security should be considered identified staff together with the head of outsourcing. Moreover, a few smaller adjustments have been made taking into account also the results of the review of the RTS on identified staff by the EBA’s review panel, such as committee members who take decisions on loans were now only identified if they are voting members and initiating loans has been excluded and credit risk was now more closely linked to the actual decision making powers.
112. One Member was of the view that the amended wording “managerial responsibility” instead of “heads of” captured two levels of management instead of one and that there was no necessity for such extension of risk takers in the internal functions mentioned there.
113. Other Member was concerned that there were unjustified regulatory burdens and costs for small and non-complex institutions due to new RTS. They were of the view that these small institutions would identify according to the RTS criteria significant number of staff members

as “identified”, despite the fact, that these institutions would be then permanently waived due to the CRD 5 implementation from the application of the vast majority of the specific remuneration requirements applicable just to the “identified staff members”. Furthermore, this Member pointed that there was an absence of possibility to exclude staff member identified according to the inadequate impact of the qualitative criteria, where it was duly justified, similarly to such a possibility already existing in the case of quantitative criteria. To address the issue, the EBA agreed to add a question to the consultation paper to request the specific views of respondents on the application of the criteria in small institution. Finally, the Member suggested to keep the 3-months consultation period instead of suggested 2-months.

## Conclusion

114. The BoS approved the publication of the consultation paper with a 2-month period for public consultation.

## Agenda Item 20: CumEx - Report

115. The Chairperson informed the BoS that on 28 November 2018, the EU Parliament adopted a resolution that included a request to ESMA and the EBA to conduct an inquiry into dividend arbitrage trading schemes such as cum-ex or cum-cum, in particular to assess whether there were breaches of either national or Union law; to assess the actions taken by financial supervisors in Member States; and to make appropriate recommendations.

116. The Director of BMIC explained the process followed to address this request. Initially, an assessment was performed from the AML/CFT perspective. This assessment was followed by an analysis on whether credit institutions had adequate governance arrangements to tackle the risks associated with dividend arbitrage trading schemes.

117. The Director of BMIC continued by summarising the findings of two EBA surveys on whether there was an EU AML/CFT angle to pursue in relation to these schemes and whether it was a governance issue. He also mentioned that the report set out the EBA’s expectations in terms of CAs’ approaches to tackling the risks associated with dividend arbitrage trading schemes from both, an AML/CFT and governance arrangements perspective.

118. The ECB representative noted that the discussed issue was challenging and that the BoS might consider if similar cases could happen in the future and how they would affect internal functioning and AML. However, he recognised that it was not an easy exercise and supported the report.

119. Few Members stressed that the legislation has changed since the case and therefore, the report should clearly explain legal and historical backgrounds.

120. Some Members pointed out that the CAs should not be held responsible for reviewing and identifying tax issues and offences as this was agenda of tax authorities.

121. The Chairperson concluded that there was not one EU-wide definition of tax fraud and therefore, similar cases would always had to be considered within the national legislation. He also noted that internal controls in banks need to be assessed regularly to ensure that banks would be able to detect and avoid similar situations in the future.

### **Conclusion**

122. The Members who raised comments agreed to submit them in writing after the meeting.

123. The BoS supported the work and the publication of the report under the condition that the report would be submitted to the BoS again in written procedure.

### **Agenda Item 21: AoB**

124. The Chairperson informed the BoS about the candidates shortlisted for the ED position and reminded them to abstain from any contacts with these candidates with regard to the selection procedure.

125. The Chairperson also thanked the BoS Members for attending the meeting given the strike situation in Paris.

## Participants at the Board of Supervisors' meeting

11 – 12 December 2019, Paris

Chairperson: Jose Manuel Campa

<u>Country</u>	<u>Voting Member/High-Level Alternate<sup>1</sup></u>	<u>National/Central Bank</u>
1. Austria		
2. Belgium	Jo Swyngedouw	
3. Bulgaria	Stoyan Manolov	
4. Croatia	Martina Drvar	
5. Cyprus	Stelios Georgakis	
6. Czech Republic		
7. Denmark	Jesper Berg	Peter E. Storgaard
8. Estonia	Andres Kurgpold	Indrek Saapar
9. Finland	Jyri Helenius	Paivi Tissari
10. France	Frédéric Visnovsky	
11. Germany		
12. Greece	Spyridoula Papagiannidou	
13. Hungary		
14. Ireland	Gerry Cross	
15. Italy	Andrea Pilati	
16. Latvia	Ludmila Vojevoda	
17. Lithuania	Renata Bagdonniene	
18. Luxembourg	Martine Wagner	Christian Friedrich
19. Malta	Marianne Scicluna	Oliver Bonello
20. Netherlands	Maarten Gelderman	Sandra Wesseling
21. Poland		
22. Portugal	Ana Paula Serra	
23. Romania		
24. Slovakia	Vladimir Dvoracek	
25. Slovenia	Damjana Iglic	
26. Spain	Jesús Saurina Salas	Alberto Rios
27. Sweden	Karin Lundberg	Camilla Ferenius
28. UK	Charlotte Gerken	Nigel Fray

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<sup>1</sup> Accompanying experts: Kurt Van Raemdonck (Belgian National Bank); Anamarija Fabian (Croatian National Bank); Michele Lanotte (Banca d'Italia); Cees Jan Geuze (De Nederlandsche Bank); Izabella Szaniawska (Polish Financial Supervisory Authority); Jose Rosas (Banco de Portugal); Olena Loboiko (European Commission)

<b><u>Country</u></b>	<b><u>Member</u></b>	<b><u>Representative NCB</u></b>
1. Iceland	Jon Thor Sturluson	Orn Hauksson
2. Liechtenstein		
3. Norway	Morten Baltzersen	Sindre Weme

<b><u>Observer</u></b>	<b><u>Representative</u></b>
1. SRB	Sebastiano Laviola

<b><u>Other Non-voting Members</u></b>	<b><u>Representative</u></b>
1. ECB/SSM	Korbinian Ibel Edouard Fernández-Bollo, Carmelo Salleo, Karen Braun-Munzinger
2. European Commission	Martin Merlin
3. EIOPA	Kai Kosik
4. ESMA	Verena Ross
5. EFTA Surveillance Authority	Marco Uccelli
6. ESRB	Tuomas Peltonen

#### **EBA Staff**

Director of Banking Markets, Innovation and Consumers	Piers Haben
Director of Prudential Regulation and Supervisory Policy	Isabelle Vaillant
Director of Economic Analysis and Statistics	Mario Quagliariello

Philippe Allard; Lars Overby; Jonathan Overett Somnier; Delphine Reymondon; Dirk Haubrich; Angel Monzon; Gaetano Chionsini; Olli Castren

Tea Eger; Dragan Crnogorac; Carolin Gardner; Endija Springe; Anne Tiedemann; Erika Sole