

Minutes of the EBA BoS meeting 25-26 September 2012¹

25-26 September 2012
Location: EBA, London

Agenda item 1: “Opening, welcome & approval of the agenda and minutes”

1. The draft agenda and the minutes of 6-7 June 2012 BoS Meeting, BoS Telco minutes of: 22 May 2012, 12 June 2012, 18 June 2012 and 10 July 2012 were approved.

Agenda item 2: “Draft EBA 2013 Work Programme”

2. The Executive Director recalled that the Work Programme (WP) had been prepared in order to be in compliance with the timelines as per the EBA Regulation. Hence, the WP had been prepared fully cognisant of the significant new legislative proposals in the European banking regulation and supervisory architecture, including the Banking Union (BU), CRDIV/CRR and the Recovery and Resolution proposals, which would all have a major impact on the amount and priorities of specific tasks of the EBA in 2013 and thereafter.
3. It was noted that the EBA WP 2013 would need to be re-assessed in the light of the BU proposals, CRDIV/CRR outcome, developments in Recovery and Resolution Planning, and the EC's proposals for a Resolution Authority and for the Deposit Guarantee Scheme. Furthermore, the EBA would need to give greater consideration to the prioritisation of its work, as currently all EC 2013 imposed deadlines are priority one, which gave the EBA limited capacity for any own initiative work.
4. BoS members expressed their views on the WP and as a result, it was agreed that the EBA staff should update the BoS with an assessment/general overview of the work performed over the year. With respect to the comments on priorities, the EBA staff recognised that further prioritisation was needed, but at this juncture, the EBA staff had

1

Please note that these minutes include information which the EBA cannot disclose under its Access to Documents regime due to (i) the public interest as regards the financial, monetary & economic policy of the EU; and (ii) its own, and the Council's, internal consultations and deliberations in order to safeguard their ability to carry out their tasks.

assigned Priority 1 to those items required by legislative proposals with a short time line to be delivered in 2013 or early 2014.

Conclusion

5. The 2013 WP was approved and as per the EBA Regulation, it would be transmitted to the EU Institutions. Assuming the EC's legislative proposals are clearer in December, the EBA would provide a revised WP.
6. EBA staff was asked to provide an update on the status of the EBA 2012 Work Programme for the December 2012 BoS Meeting.

Agenda item 3: "EBA Crisis Management Manual – the Code of Conduct"

7. The Executive Director noted that an ad-hoc Task Force had been set up for the purpose of providing guidance on the procedures to be followed in the event of an emergency situation arising in one or more cross border banking groups. This Task Force had contributed to the creation of the EBA Crisis Management Manual via in-depth discussions.
8. As a result of the June BoS meeting, most comments from the BoS members were incorporated into the final Crisis Management Manual. It was noted that although the Code of Conduct was not legally binding, it ought to become a part of working practices in times of stress.

Conclusion

9. The Chairperson concluded by saying that the EBA Crisis Management Manual would be amended including some of the comments suggested by the BoS members during the discussion. It was also agreed that this is for internal use only.
10. The Manual was approved by the majority of BoS members with one member voting against.

Agenda item 4: "Election of Mediation Panel Members and Alternates"

11. The election took place in accordance with Article 2 of the Rules of Procedure of the Mediation Panel.

Conclusion

12. Mr Andrzej Reich and Mr David Rozumek were elected as of 25 September 2012 as Members of the Mediation Panel for 3 and 2 years respectively. Mr Andrew Bailey was elected as of 25 September 2012 as Alternate for the Mediation Panel for 3 years.

Agenda item 5: "Consumer protection"

13. The Chairperson transmitted to the BoS members the message received from the European Parliament concerning Consumer Protection: the EBA should further develop the work performed in this area. The Chairperson noted that the EBA should review its priorities in the field of consumer protection as well as devote more efforts and resources.
14. The Vice Chair of SCConfin presented the document on the development of EBA guidelines in the area of responsible lending based on the FSB Principles for Sound Residential Mortgage Underwriting Practices.
15. The Chairperson supported the adoption of the FSB principles but stated that the added value that the EBA could bring into this area should be clearer. He added that there were some principles which could be expanded.
16. It was highlighted by one BoS member that the FSB principles not only reflected consumer issues but also prudential rules on macro and micro level; therefore, it was suggested that this should be part of any public communication.
17. With reference to the development of guidelines dealing with arrears handling in the mortgage Market, the document was supported by the BoS. It was noted that the EBA should make an effort to come up with “an umbrella of good practices” that encompassed existing national practices/guidelines.
18. With respect to market developments and supervisory concerns regarding contracts for difference (CFDs), it was highlighted that in general there was a necessity to cooperate between the three ESAs in this field. In relation to this specific topic, ESMA agreed to work in close co-operation with the EBA, emphasising that a clear division of tasks was desirable to avoid duplication of work.

Conclusion

19. The BoS supported the work of SCConFin and agreed to the proposal to establish good practices across Member States with a view to developing guidelines. In addition, the BoS agreed to proceed as outlined in the paper on CFDs, noting the need for close co-operation with ESMA.

Agenda item 6: “Q&A Process for the CRD/CRR”

20. The Chairperson noted that the Q&A Process for the CRD/CRR was very important for the development of the Single Rule Book in banking. Questions raised by industry and national authorities were the key to identify practical implementation issues. He also added that this note was also discussed at the 18 September MB meeting and the MB gave its support to the process and EBA’s enhanced role.
21. Although overall supportive of the initiative, BoS members expressed some concerns regarding certain aspects of the process and asked for further elaboration on issues such as: how the Commission should be involved in this work; the need of having a specific

working group should be further assessed and its role clarified; more clarity was needed on whether all the questions received by the NSAs should be included in the Q&A tool; more guidance was needed on how to distinguish between legal interpretation and practical implementation questions; the involvement of the BoS in this process should be clarified and possibly enhanced to ensure that relevant policy issues were brought to the attention of BoS members.

22. The Chairperson clarified that the proposal to set up a small working group built on the positive past experience with the Capital Requirement Directive Transposition Group. This small network of members and EBA staff would assist in the prioritisation of questions and would coordinate the preparation of the responses. The Chairperson was of the opinion that the working group could respond to broad policy questions while more technical questions should benefit from input from the existing technical groups. The BoS members would be involved in the process as they would always receive the draft responses and have a few days to react. If any of the issues raised are deemed to be of utmost importance they could be brought to the BoS table for further discussion. Furthermore, for this initiative: a) the process needs to work, with a sensible system for triaging questions and the right technical groups providing answers and b) there is a need to avoid getting bogged down in too much detail.

23. There was the need: a) to avoid forum shopping and ensure consistent answers to questions that may be posed in slightly different ways; b) and to be mindful that answers with little consequence in one Member State may have significant consequences in other Member States.

24. The following points were highlighted by the EU COM: a) the term legal should be avoided when referring to the Commission legal services; b) it advised to insert a disclaimer in the EBA Website specifying that only the European Court of Justice could interpret EU Law; c) if an enquiry was received in any other language than English, the response should be provided in that language; d) since the distinction between category 1 and 2 questions was not always clear, the classification of questions should be a dynamic process.

Conclusion

25. The majority of the members supported the development of a tool for addressing questions on CRR/CRDIV (and BTS and GL). The process itself should be further elaborated, namely: who should be involved in the categorisation of the questions; reflect on the need to have a separate working group; the role and involvement of the BoS in the process should be clarified to make sure BoS members were informed about any important policy issues. The document should be revised and sent to SCRePol for discussion before it was re-submitted to the BoS November 2012 meeting. In terms of agreement, this process should be closed in December 2012 at the latest.

Agenda item 7: “Adoption of BTS on Capital Requirement for CCPs”

26. The Chairperson introduced the topic and the Cover Note prepared by the EBA staff.

27. The Director Regulation offered an overview of the final draft RTS and of the EBA Opinion and illustrated the major differences of the final draft RTS with respect to the Consultation Paper.

28. The ESMA and EU COM representatives expressed support for the final draft RTS and praised the intensive collaboration among the institutions involved. The EU OCM representative also welcomed the EBA opinion on the EMIR.

29. Following concerns of some members on the potential misunderstanding of the precise scope for Recital 9 and Article 5.5 it was agreed that they would have to be redrafted in order to exclude all the cases that already fulfil the conditions of Articles 52 and 53 of the EMIR.

30. Similarly, concerns that the approach in Art. 5.5 is more conservative than the requirements in the current Basel proposal were allayed by EBA staff on the basis of higher risks for contagion effects between CCPs, compared to credit institutions exposures to CCPs.

Conclusions

31. The final Draft RTS and the EBA Opinion were adopted with the amendments described below.

Errata	Corrige
Final draft RTS	
<p>Recital 9: <i>“Default fund contributions between CCP are not allowed under Title V of the EMIR for interoperating CCPs clearing cash instruments. However, no such provisions are made for other interoperability arrangements. Therefore, and in order to avoid contagion effects, the exposure of a CCP stemming from the contributions to the default fund of another CCP is risk-weighted at 1250%. This treatment of exposures to another CCP is also consistent with the set of rules proposed for credit institutions. Therefore a risk weight of 2% will be applied to trade exposures with another CCP and a risk weight of 1250% will be applied to contributions to the default fund of another CCP. This is consistent with the interim framework of international standard setters currently published for determining capital requirements for bank exposures to central counterparties.”</i></p>	<p>Recital 9: <i>“A CCP does not have to hold capital for trade exposures and default fund contributions which arise under an interoperability arrangement where the requirements of Articles 52 and 53 of the EMIR are fulfilled. However, where these requirements are not fulfilled, links between CCPs might expose them to additional risk if the collateral posted by them is not fully protected and bankruptcy remote or if the default fund contributions are at risk in case a clearing member of the receiving CCP defaults. Therefore, in this case capital charges should apply to default fund contributions and to trade exposures with other CCPs. In order to avoid contagion effects, the treatment set out in this Regulation regarding default fund contributions to other CCPs is in general more conservative than the treatment of</i></p>

	<i>credit institution exposures to CCPs. The own resources of a CCP used to contribute to the default fund of another CCP should not be taken into account for the purposes of Article 16(2) as they are not invested in accordance with its investment policy. They should also not be double counted for the purpose of calculating risk weighted exposures stemming from these contributions.”</i>
Art. 5(5): <i>“A CCP shall apply a risk weight of 1250% to its exposure stemming from contributions to the default fund of another CCP and a risk weight of 2% to its trade exposures with another CCP.”</i>	Art. 5(5): <i>“Where the conditions referred to in Articles 52 and 53 of Regulation (EU) No 648/2012 are not fulfilled and where a CCP does not use its own resources, the CCP shall apply a risk weight of 1250% to its exposure stemming from contributions to the default fund of another CCP and a risk weight of 2% to its trade exposures with another CCP.”</i>
EBA Opinion of the European Banking Authority on Capital requirements for Central Counterparties under the EMIR	
Section 1.2 “Intra-day exposures”: <i>“In some jurisdictions the peak intra-day exposure may exceed the CCP’s capital.”</i>	Section 1.2 “Intra-day exposures”: “”
Section 1.3 “Interoperability for non cash products”: <i>“This approach is consistent with the interim framework that international standard setters currently have published for determining capital requirements for bank exposures to central counterparties.”</i>	Section 1.3 “Interoperability for non cash products”: “”

Conclusion

32.The BoS members endorsed: the Final draft Regulatory Standards on Capital Requirements for Central Counterparties and the Opinion of the EBA on Capital requirements for Central Counterparties under EMIR. The two documents would be published on the EBA’s website and sent to the European Commission.

Agenda item 8: “IT Strategy”

33.In order to be able to implement the Strategy, it was essential to have a governance and programme execution in place. In this regard, the BoS was requested to delegate the execution of the IT Strategy to the MB with semi-annually progress reports presented to the BoS. The recommendation to have one external member in the Program Steering Board from another ESA was accepted.

34.BoS members expressed the following main concerns regarding the IT Strategy: the Strategy itself was ambitious because of the limited timetable and lack of internal IT staff; all ESAs should strive to harmonise IT systems that were directly used/accessed by NSAs; clear impact of the European Banking Union on this Strategy should be assessed;

35.Five members expressed their disagreement with the proposed IT Strategy and some members expressed concerns about the budget.

Conclusion

36.The majority of the BoS members endorsed the IT Strategy. The BoS delegated the execution of the IT Strategy to the MB. The IT Strategy follow up would be submitted to the BoS meeting in November 2012 providing further details on the questions and comments raised during the discussion.

Agenda item 9: “EBA Decision on Public Statement on Consultation Practices and on Process for adopting Technical Standards, Guidelines and Recommendations”

37.The Chairperson introduced these two proposed decisions. He noted that in relation to the consultation practices, the possibility of creating permanent industry groups, had been replaced with ad hoc technical informal discussions/workshops, to allow for more flexibility in the process.

Conclusion

38.The two Decisions were endorsed by the BoS and would be published on the EBA website.

Agenda item 10: “Risks and vulnerabilities”

39.The Director Oversight provided a presentation on the EBA risk dashboard summarising the main risks and challenges of European Banks, and Banks deposits trends.

40.The Chairperson of SCOP informed the BoS of the outcome of the SCOP discussion on ongoing risks and vulnerabilities, which aimed to supplement the risk monitoring and assessment carried out by the EBA staff. He explained the main risks and vulnerabilities identified by the group: funding, asset quality and forbearance, fragmentation of the internal market.

41.The Executive Director updated the BoS on the three works streams the ESAs initiated regarding the process for setting benchmark interest rates, with a specific focus on Euribor.

42.The ECB expressed its concern regarding the fragmentation of the internal market and its willingness to be involved and to cooperate with the EBA in this regard. The Chairperson

highlighted that he has been asked in different forums about the actions taken by the EBA to avoid this fragmentation. He also clarified that EBA's intervention is difficult, firstly, because the fragmentation is due to the sovereign problem and secondly, the tools provided by the EBA Regulation are not strong on supervisory judgement. Nevertheless, the possible activation of the EBA's power on Breach of Law should be further explored in order to avoid the fragmentation of the market.

43. The Chairperson underlined two initiatives regarding consumer protection: -product governance: the EBA should shape the work plan in this area and provide an update on what can be done in practice; -to ask SCConFin to prepare a thematic review to be conducted by the National authorities in the coming months on the distribution of risky capital and funding instruments to retail customers.

Conclusion

44. Regarding the Euribor investigation: home supervisors/competent authorities must endeavour to ensure that banks remain in the panel while the investigation is ongoing; the importance of panel banks remaining in the submission panels to ensure the continuity of benchmark vote setting was underlined; on Risk dashboard: strong support from the BoS; the EBA staff should try to integrate this into other areas of work with a focus of using it in colleges and to study the possibility of publishing the EBA risk dashboard. The majority of the BoS members expressed their support for option 1 (notification with threshold) and one member asked for a lower threshold than 5%. The Director Oversight will prepare a note with templates to be circulated to the BoS.

Agenda item 11: "Recapitalisation Exercise-Final report for publication and transition from the December 2011 Recommendation to CRD/CRR and disclosure exercise"

45. In relation to the **Recapitalisation exercise**, the Chairperson stated that in term of process, the report and the press release should be published by 3 October 2012. BoS members expressed their views on the final report for publication; as regards, headlines figures, and in particular, the overall strengthening of their capital position by the banks involved in the capital exercise, it was agreed that the main heading figure to be published is around €200bn, resulting from the addition of different amounts.

46. The following amendments that were proposed to the report: -minor changes on the text regarding BMPS and the liaison by the Italian authorities and the European DG Competition; -regarding the backstops activated to meet the EBA Recommendation, it was agreed to make a clear distinction between those cases where the backstops have already been implemented and the capital injected within the deadline of 30 June 2012 and those cases where the backstops are still in progress; with reference to the assets quality assessments in Cyprus and Spain, it was decided, in the case of Spain: to agree on the specific wording with the Bank of Spain after the publication of the Spanish stress results

on 28 September 2012 and in the case of Cyprus: to agree on the specific wording with the Central Bank of Cyprus, in order to ensure consistence and to reduce uncertainty.

47. The BoS agreed to disclose on a bank-by-bank basis the information contained in templates A, composition of capital, and B, composition of RWA. The BoS supported also the publication of templates C1 and C2, exposures to sovereigns in EEA as of December 2011 and June 2012 respectively.

48. The BoS discussed of whether to publish the templates C1 and C2 along with the final results of the capital exercise on a later stage. Some members argued that the sovereign buffer requested by the EBA Recommendation in the framework of the Capital Exercise remains fixed as estimated as of September 2011 and the publication of the sovereign exposures held by the banks as of September 2012 could be misleading. However, the BoS decided to publish both templates C1 and C2 together with templates A and B and the final results of the capital exercise.²

49. Regarding templates D1 and D2 (EAD, RWA and provisions stocks at December 2011 and June 2012), and E1 and E2 (credit risk exposures (EAD) by portfolio, and Country), the discussion was between publishing or not publishing them. EBA staff set out positive benefits to publication in line with stress test but it was finally decided not to publish them³.

50. In relation to the **transition to CRDIV/CRR**, it was decided that the way forward once the CRDIV/CRR enters into force is to keep the legally binding CT1 ratio as stated in the new directive/regulation. The 9% CT1 ratio as established on the EBA December 2011 Recommendation will be replaced by a new capital conservation recommendation, based on a requirement for the banks to maintain a nominal amount of CT1 capital corresponding to the amount identified of 9% as of June 2012 RWAs. The capital conservation requirement will form part of the review of the banks capital plans to gradually move towards compliance with the final, fully phased in capital requirements that will be in place as of 2018. It was noted that the nominal capital level and the capital plans will be monitored by the national supervisors along with the EBA in the framework of the colleges of supervisors when applicable.

51. The Director Oversight briefly informed about the workshop on the above mentioned transition addressed to the national supervisors. This workshop will be held in December 2012.

52. The BoS agreed on the proposal although several members expressed their concerns regarding the references to the EBA stress tests included in the transition text within the final recapitalisation exercise report. It was agreed that the specific wording would be

² A BoS vote regarding communication took place to decide on the publication of the Template C1 and C2 along with the capital exercise, and was adopted by SMV based on Article 32(2)(b) of the EBA Regulation.

³ The BoS decision not to publish the templates D1 and D2 and E1 and E2 was adopted by SMV also based on Article 32(2) (b).

reviewed and BoS members could send their proposals on the specific drafting of this part by 27 September 2012 COB. The final report will be circulated afterwards.

Conclusion

53. The final report on the Recapitalisation Exercise was approved subject to the amendments suggested by the BoS members. It was agreed that the Press Release would be circulated to the BoS for comments before publication. On the disclosure of the templates, the publication of Template A and B and Templates C1 and C2 were approved. On transition to CRIV/CRR, it was decided to keep the CT1 ratio and to replace the 9% CT1 ratio with a new capital conservation recommendation.

Agenda item 12: “Roles and tasks of the EBA in the light of the European Banking Union”.

54. Mr Jacques de Larosière presented some opening remarks on the role of the EBA in the light of the European Banking Union (BU) proposals. He highlighted the following points: the common rulebook is one of the most important achievements of the EU; an independent mediation mechanism will be crucial in a bipolar system of supervision; convergence of supervisory practices (handbook) is also essential.

55. A discussion took place concerning the role and tasks of the EBA in the proposed European Banking Union (BU). Mr Jacques de Larosière replied to several questions raised by BoS members on the BU highlighting the need for the EBA to focus on the following tasks: a) Single rule book, b) Supervisory Manual, c) College functioning, d) EU wide stress test.

56. Mr Jacques de Larosière noted that the EBA should play a leading role in conducting EU-wide stress tests and ensuring consistency across the single market; the EBA would need further resources to reflect the number of tasks attributed to it; the importance of the EBA in colleges was underlined.

57. The Chairperson thanked Mr Jacques de Larosière for his intervention and contribution to the debate on the BU.

Agenda item 13: “Preparation to the 2013 stress test and approaches to asset quality review”

58. The Director Oversight invited the BoS: to note the progress in the preparation of the 2013 and to have a preliminary discussion on the main issues highlighted by the Methodological Task Force and to provide a steer on the best way to bring together assessments of asset quality across the EU to ensure an analytically sound starting point for the 2013 stress test. He also explained the two possible options for developing AQR in preparation for the stress test.

Conclusion

59. The BoS supported the stress test preparation. BoS members raised questions about the scope of any asset quality review which is mainly based on timing and also resources. Therefore, no final decision was adopted on the asset quality review and further discussions will take place with national experts. The Chairperson suggested discussing this topic further with the European Central Bank and to incorporate the comments suggested by the BoS members into the paper. Most BoS members supported keeping static balance sheets with the June 2012-June 2014 timeline. No final decision was adopted in this regard.

Agenda item 14: “Results from Basel III monitoring exercise”

60. The BoS was requested to endorse the reports regarding the Basel III monitoring exercise and the evolution of CRD capital requirements as well as the publication of results from the Basel III monitoring exercise.

61. The results of the Basel III monitoring exercise based on December 2011 data were presented.

Conclusion

62. The BoS endorsed the reports regarding the Basel III monitoring exercise and regarding the evolution of CRD capital requirements. It was agreed to publish the results from the Basel III monitoring exercise and to request from the ISG to prepare for a semi-annual publication of Basel III monitoring reports in the future.

Agenda item 15: “Reports from Committees”

63. They were noted by the Board.

Agenda item 16: “Oral update on premises”

64. The BoS was updated on the EBA premises. The Executive Director stated that as a result of the negotiations, the EBA has achieved long term savings as well as the required expansion of the office space in the existing building. The BoS will be kept informed of any further developments on the premises.

Andrea Enria
Chairperson

**Participants at the Board of Supervisors meeting
25-26 September 2012**

Chairperson

Andrea Enria

Country

Voting Member or Alternate

Representative NCB

Austria

Helmut Ettl

Andreas Ittner

Belgium

Mathias Dewatripont

Bulgaria

Nelly Kordovska

Cyprus

Argyro Procopiou

Czech Republic

David Rozumek

Zdenka Faulhamerova

Denmark

Jesper Meyer

Maria Sinding Asen

Estonia

Raul Malmstein

Timo Kosenko

Finland

Anneli Tuominen

Kimmo Virolainen

France

Frederic Visnovsky

Philippe Richard

Germany

Raimund Roseler

Klaus Dullmann

Greece

Kyriaki Flesiopoulou

Hungary	Károly Szász	Laszlo Seregdi	Marton Nagy
Ireland	Matthew Elderfield	Mary Burke	Sharon Donnery
Italy	Giovanni Carosio	Giuseppe Siani	
Latvia	Kristaps Zakulis		
Lithuania		Aldona Jociene	
Luxembourg	Claude Simon		Norbert Goffinet
Malta	Andre Camilleri		Alexander Borg
Netherlands			Mascha Van der Marel/Tom van Veen
Poland	Andrzej Reich		Izabella Szaniawska/Maciej Brzozowski
Portugal	Pedro Duarte Neves	Adelaide Cavaleiro	
Romania			
Slovakia	Vladimir Dvoracek	Tatiana Dubinova	
Slovenia	Matej Krumberger		
Spain	Fernando Vargas	Cristina Iglesias-Sarria	
Sweden	Martin Andersson		Olof Sandstedt
UK	Andrew Bailey	Paul Sharma	Fiona Mann/Venetia Wingfield
<u>Country</u>	<u>Observers</u>		

Norway Per Jostein Brekke/Arild Lund

Iceland Luovik Porgeirsson

Lichtenstein Rolf Bruggemann

Croatia Damir Odak

Institutions

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European Commission Nadia Calvino/Dominique Thienpont

European Central Bank Panagiotis Strouzas

ESRB Francesco Mazzaferro Silvia Pezzini

EIOPA Carlos Montalvo

ESMA Verena Ross

Others

Executive Director Adam Farkas

Director Oversight Piers Haben

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